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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Third periodic reports of States parties due in 2015**

**Serbia\* \*\***

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\* The present document is being issued without formal editing.

\*\* The annexes to the present report are on file with the Secretariat and are available for consultation.  
They may also be accessed from the web page of the Human Rights Committee.



## Introduction

1. The Third periodic report on the implementation of the ICCPR has been prepared by the Office for Human and Minority Rights (OHMR) in accordance with Article 40 paragraph 1 of the Covenant. On the occasion of preparation of the Report, the participants of which were all competent state bodies and relevant organisation of civil society, we took into account the Concluding Observations of the Committee related to the Second Periodic Report on the Implementation of the ICCPR (CCPR/C/SRB/CO/2).<sup>1</sup>

2. Although Kosovo and Metohija (K&M) constitute an integral part of the RS, which is acknowledged in the UNSC Resolution 1244, the competent authorities of the RS are not able to implement the Covenant in part of its territory given the fact that, pursuant to the said Resolution, the Province is administered by the UNMIK. For this reason, the data on the implementation of the Covenant in K&M are not exhaustive.

## Article 2

### Recommendations (para. 5)

#### Training on Human Rights

3. Training on human rights is conducted by the competent state bodies and relevant organisations of civil society. The Judicial Academy has been carrying out initial and regular training of judges and prosecutors. The initial training programme includes the following topics: The CoE and the ECHR and the law of the EU. The training programme for judges on the law of the EU has also been included in the regular programme of permanent training since 2011. In the course of 2013, under the international support, *the ECHR* programme was implemented for judges and prosecutors who had registered to be lecturers at this programme.

### Recommendations (para. 6)

#### National Mechanism for Monitoring the Recommendations of UN Human Rights Mechanism

4. The Council for monitoring the implementation of recommendations of UN mechanisms for human rights was formed in December 2014. The Council's responsibilities are: to review and monitor the implementation of recommendations received by the RS in the process of the UPR and the recommendations of UN treaty bodies; to propose measures for the implementation of the recommendations received; to give opinions on the progress of human rights in the reporting period and to provide expert explanations about the state of human rights and the results achieved by applying the recommendations.

5. The Director of the OHCHR is the President of the Council consisting of nine members who are holders of positions and civil servants holding positions with the relevant state bodies. The sessions of the Council may be attended by the representatives of the interested state bodies, independent state bodies for human rights and organisations of civil society. The Council was established on 27 March 2015.

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<sup>1</sup> The information concerning Articles 1, 4, 5, 11 and 15 of the Covenant are contained in the Second Periodic Report on the Implementation of the ICCPR(CCPR/C/SRB/2).

## **Recommendations (para. 7)**

### **The Protector of Citizens**

6. According to the Law on Amendments and Supplements to the Law on the Budget of the RS for 2014, the funds in the amount of RSD 176,580,000.00 were allocated for the Protector of Citizens, which is an increase of 7.78% in relation to RSD 163,824,000.00 of funds allocated in 2013.

7. In 2014 the Protector of Citizens spent RSD 159,448,912.98 in total, namely 90.30% of allocated budgetary funds, which is a nominal increase of 2.04% in relation to spending of funds in 2013, when the Protector of Citizens spent RSD 156,263,921.97 in total. The funds allocated from the budget were used to finance regular activities of the Protector of Citizens, acting in accordance with the financial plan.

### **Protection of the Right to a Trial within Reasonable Time**

8. The Law on Organisation of Courts introduced to the legal system of the RS a new legal remedy protecting the right of citizens to legal protection within reasonable time as guaranteed by the Constitution. This legal remedy is prescribed in the provisions of three Articles (8, 8b, 8c) applied as from May 2014 enabling the parties to lodge an application for protection of the right to a trial within reasonable time by referring directly to a high court, with an option to request compensation in case of a violation of the right concerned. It has been prescribed to conduct the proceedings without delay and apply the provisions governing non-contentious proceedings.

9. In order to make due preparations for acting in respect of applications for protection of the right to a trial within reasonable time, the Supreme Court of Cassation adopted certain views, which were published on the web site of this Court and serve as guidelines to other courts for harmonised acting. In order to eliminate different case-law and act according to this legal remedy, several gatherings were held on the subject of obligations and responsibilities of the Court in the process of harmonisation of case-law, application of provisions of the Law on Organisation of Courts concerning protection of the right to a trial within reasonable time, learning about the case-law of the ECHR.

10. The Law on Protection of the Right to a Trial within Reasonable Time was adopted in May 2015<sup>2</sup> governing protection of this right in a comprehensive manner. The holders of this right are all parties in civil, non-contentious and enforcement proceedings. In respect of criminal proceedings, this right belongs to the damaged party, but not to the public prosecutor as a party in the proceedings. Legal remedies available to the holder of this right are: an objection, an appeal and a request for just satisfaction.

## **Article 3**

### **Recommendations (para. 9)**

#### **Domestic Violence**

11. In 2011 the RS adopted the National Strategy for Preventing and Combating Domestic and Intimate Partner Violence against Women. Also, the General Protocol on Procedures and Cooperation between institutions, bodies and organisations in cases of

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<sup>2</sup> This Law shall enter into force on 1 January 2016.

domestic and intimate partner violence against women was adopted, as well as a series of specific protocols by competent institutions (ministries of interior, justice, social policy and health) establishing standards and procedures for the work of those institutions in cases of violence against women. On 26 May 2015 the Committee for Human and Minority Rights and Gender Equality of the National Assembly adopted a conclusion with a view to undertake urgent measures by the competent bodies in cases of violence against women. Establishment of institutional mechanisms for cooperation at the local level is currently underway. Organisations of civil society pay a particular contribution to combating violence against women.

#### *Investigation of Cases of Domestic Violence*

12. The Public Prosecution Offices of the RS (PPO) undertakes measures with the aim to conduct investigation of cases of domestic violence. In performance of their activities, public prosecution offices shall act in accordance with the General Protocol on Procedures and Cooperation between institutions, bodies and organisations in cases of domestic and intimate partner violence against women, and also in accordance with the Special Protocol for Judiciary in cases of domestic and intimate partner violence against women, which was adopted in 2014. The Special Protocol prescribes procedures that must be applied by a prosecutor in criminal proceedings, as well as treatment of damaged parties.

13. Within the framework of the project on support to damaged parties and witnesses conducted by the PPO, the Office for Information to Damaged Parties and Witnesses with the High Public Prosecution Office in Belgrade started to work on 10 April 2014. The aim of establishment of this Office is to render information to damaged parties and witnesses related to their rights and obligations in criminal proceedings with the aim to increase efficiency of public prosecution offices in criminal proceedings, on one hand, and to facilitate and bring closer the judiciary system to citizens, on the other hand. The Office was provided with a special telephone line and an electronic mail address to facilitate communications with citizens. In the course of January 2015 the PPO signed a Memorandum of Understanding with Victimology Society of Serbia, an NGO which is one of the key partners in organisation of support services to damaged persons and witnesses. In this way, damaged persons and witnesses will be referred to relevant organisations dealing with provision of support and assistance, where necessary services will be rendered to them.

14. It has also been planned to form these offices in the remaining three centres — Novi Sad, Niš and Kragujevac, as well as with other high public prosecution offices, with 25 of them in total. The establishment of offices will fulfil another of the activities prescribed in the Action Plan for implementation of the National Judiciary Reform in the RS for the period from 2013 to 2018, as well as the activity prescribed in the AP for the Negotiating Chapter 23.

15. In the entire Serbia since 2011 the Autonomous Women's Centre, a civil society organisation organised a large number of seminars, training courses, expert meetings and round tables for judges and public prosecutors concerning violence against women, domestic violence and protective measures. The representatives of public prosecution offices attended all the above mentioned events.

#### *Training and Sensibilisation of Police Officers for Issues of Domestic Violence*

16. In respect of violent delinquent acts committed among family members, or within partner relations, criminal police officers from specialised operational lines for suppression of blood and sexual delinquent acts, suppression of juvenile delinquency and onsite investigation operations shall act according to a prosecutor's order. Police officers attend training courses in this field continually, as well as training courses for application of the

Special Protocol on Conduct of Police Officers in Cases of Domestic and Intimate Partner Violence against Women. Also, a working group to monitor and coordinate police activities in cases of domestic violence has been formed with the Ministry of Interior(MoI) with a task to implement this Protocol.

17. The MoI has been paying special attention to detection and processing of criminal acts containing elements of domestic violence committed by police officers. Disciplinary measures are also undertaken against police officers committing domestic violence. Measures of criminal responsibility against police officers who had not applied all available legal measures and actions against violent individuals are also undertaken.

18. Coordinators are appointed at all police directorates, one general competence police officer and one criminal police officer at each of them, whose task is to coordinate activities in the field of preventing and combating domestic violence and who had attended several training courses in the field of domestic violence.

19. In the course of 2014, the MoI initiated active participation of representatives of all police directorates in 16 Days of Activities Combating Violence against Women, an international campaign. Within this campaign, preventive activities were also implemented, police operations were presented in public media, contacts with other bodies and organisations were made, 42 meetings, 36 forums, 24 round tables, 6 seminars, 5 conferences, 5 lectures, 3 training courses, 2 expert gatherings were held in total, as well as 20 visits of police officers to local television stations.

20. In collaboration with civil society organisations, the publication of Guidelines for Police Officers Conduct and Prevention of Secondary Victimization of Domestic and Intimate Partner Violence Victims was made. In June 2015 this publication was disseminated to all police stations in the RS and an order was issued to all coordinators in charge of monitoring activities in the field of violence suppression to learn about its contents and arrange its presentation at their organisational units through lectures on the issue. Also, training for coordinators from all police directorates was organised (54 in total) for PEACE — Method, concerning improvement of techniques to carry out interviews.

21. In respect of juvenile persons, actual or potential victims of violent torts (also including criminal act of domestic violence), police shall act in accordance with powers prescribed by law and procedures contained in the Special Protocol on Conduct of Police Officers in Protection of Juvenile Persons from Abuse and Neglect, which was renewed in 2012 after 6 years of application. Special attention is paid to the protection of personality of a juvenile person in the capacity of a victim and the method of having an interview with him/her.

22. Training of police officers to apply this Protocol makes an integral part of compulsory training performed in accordance with the Law on Juvenile Offenders of Criminal Acts and Judicial Protection of Juvenile Persons (Art. 165), which is organised by the Judicial Academy and the MoI. 159 police officers — new trainees were trained in the course of 2013 and 2014, and they were issued certificates by the Judicial Academy. Since 2006, when the application of this Law started, 1,911 police officers finished training and received certificates, which guarantee that they had acquired special skills in the field of the rights of the child, juvenile delinquency and judicial protection of juvenile persons.

#### *Support to Victims of Domestic Violence*

23. The Ministry of Labour, Employment, Veteran and Social Policy (MLEVSP) has introduced an obligation to attend accredited training programmes for professionals in the social welfare system. The system of accreditation is contained in the Law on Social Protection and is closely linked with the process of obtaining a licence for the operation of the professionals in this field. Majority of accredited training programmes contain modules

(mainly introductory ones) on human rights, and all programmes aimed at improving the status of children contain central topics on exercise and improvement of the rights of the child.

24. NADEL-SOS, the national telephone helpline for children has been financed by the RS since January 2014. Twenty-five counsellors work on the helpline: they are educators, psychologists, social workers, physicians and lawyers. During 2013 NADEL received 119,435 calls in total and 1,479 unfolded calls — which is 9,415 received and 400 unfolded calls more than in 2012.

### **Gender Equality – Institutional, Strategic and Legislative Solutions**

25. On 30 October 2014, in accordance with Article 10 of the Convention of the CoE on Preventing and Combating Violence against Women and Domestic Violence<sup>3</sup> the RS formed a Gender Equality Coordinating Body<sup>4</sup> with a task to examine all issues and coordinate the activities of state administration bodies related to gender equality. In April 2015 this body adopted the AP for 2015. At present, its activities are focused on drafting a new law on gender equality as well as on drafting a national strategy in this field for the period from 2016 to 2020.

## **Article 6**

### **Recommendations (para. 10)**

#### **Cases of Human Rights Violations**

26. The PPO, in compliance with their role and competence defined by the Constitution and law, undertakes all necessary measures aimed at conducting efficient and consistent investigation, and convicting offenders of all criminal acts prosecuted ex officio.

### **Recommendations (para. 12)**

#### **Batajnica**

27. The War Crimes Prosecution Office(WCPO) has undertaken all necessary measures and established all facts concerning transfer of human remains of civilians killed in K&M, from the places where they had been killed to the locations in Batajnica, Petrovo Selo and the Perućac Lake. The WCPO could not establish any necessary link between the persons who had committed war crimes and the persons who were in charge of transport of human remains from K&M. Because of the lack of this link, the persons who were in charge of transport of human remains from K&M could not be responsible for war crimes. In respect of the persons in charge of transport of human remains from K&M, the WCPO also conducted an investigation with the aim to establish whether there were some other criminal acts, primarily the act of Assistance to Offenders after the Commitment of a Criminal Act. In view of the fact it is not here about a criminal act not falling into the group of criminal acts against humanitarian law and war crimes, because of lapse of time, prosecution became the subject of the statute of limitation for the criminal act concerned and for this objective circumstance the WCPO may not take over the prosecution.

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<sup>3</sup> The RS ratified the Convention on 31 October 2013.

<sup>4</sup> The Official Gazette of RS, nos. 121/14 and 147/14.

28. Depending on new data and information, it is expected in the forthcoming period that further measures will be undertaken with the aim to highlight circumstance not known so far regarding deaths of civilians in K&M and transfer of their remains to the locations in Batajnica, Petrovo Selo and the Perućac Lake.

## **Recommendations (para. 13)**

### **Cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY)**

29. In respect of delivery of accused persons, the RS has finalised cooperation with ICTY after the arrest of the last of 46 accused persons, whose delivery and transfer to the Hague had been requested by the Tribunal. With regard to requests for assistance from the ICTY Prosecutor's Office concerning the collection of documents needed to prepare the ICTY cases and releasing the witnesses from the obligation to keep the state, military and official secrets, Serbia approved all of 2,160 requests made.

30. In respect of replies to the requests for assistance by defence of defendants before the ICTY, within the period from the end of 2004 up to now the RS positively replied to all of 1,329 requests received in total. Defence of defendants whose proceedings are still pending before the ICTY periodically make requests that are processed in accordance with the procedure prescribed by law. No request from the ICTY Prosecutor's Office or defence of defendants to gain access to archives of the government bodies of the RS has been denied. To date, the representatives of the ICTY Prosecutor's Office have accomplished insight into the archives of the government bodies of the RS through over 50 requests for assistance.

### **War Crimes**

31. In addition to cooperation with the ICTY and documenting criminal acts of war crimes, within the scope of its activities, the Department for Detection of War Crimes of the Criminal Police Directorate of the MoI also detects criminal acts against humanity and international law and search for missing persons, namely clear up the circumstances of war crimes commitment, find damaged persons and potential witnesses, collect evidence, identify offenders, lodge complaints with the competent prosecution offices against them and deprive them of liberty, if available. In April 2015 this Department, acting upon a letter by Amnesty International and its submission to the UN CED provided an opinion to the Police Directorate indicating that the MoI in a responsible, professional and impartial manner shall deal with detection, clearing up of circumstances of commitment of all criminal acts covered by its scope of activities and report them to the competent prosecution offices irrespective of national, religious, political or other affiliation of damaged persons and without selection of accused on any grounds. The reorganisation currently underway by the Police Directorate in its subordinate organisational units, as well as in the Criminal Police Directorate is aimed at provision of capacities for professional, efficient, impartial, detailed and effective investigation.

32. The Screening Report of the EC for the Negotiating Chapter 23 contains five recommendations to the judiciary bodies of the RS in the field of war crimes. The WCPO has cooperated with the Ministry of Justice (MoJ) in defining the activities in respect of those recommendations. Some of the most important activities that will affect the future work of the WCPO include: strengthening of the WCPO capacities through appointment of deputy prosecutors and prosecutor assistants; preparation of the Strategy of the WCPO for processing of war crimes in the RS in the light of the ICTY Final Strategy; specifying the criteria for the selection of war crime cases and creating a list of priority war crime cases; providing complete access to and research of the archives to the ICTY and the Mechanism

for International Criminal Tribunals and analysis of found documents; cooperation of the WCPO with the ICTY/the Mechanism for International Criminal Tribunals in concrete cases in order to gain general and specific knowledge related to concrete cases, experience and strategy of the ICTY Prosecutor's Office and the Mechanism for International Criminal Tribunals on collected evidence and methods of their use; establishment of drill and training system for persons involved in the war crime processes in the field of international humanitarian law and criminal investigation in line with the new Criminal Procedure Code.

### **Use of Coercion Means**

33. The use of coercion means is regulated by the Law on Police, the Rulebook on Technical Properties and Method of Use of Coercion Means, the Compulsory Instructions on Method of Reporting and Assessment of Justification and Regularity of Use of Coercion Means. Within the period from 2011 to 2015 coercion means were used on 13 occasions contrary to law, while there were no death casualties due to excessive use of force. In this connection, 13 disciplinary proceedings were initiated against police officers.

34. In accordance with its powers, the Police Internal Control Sector shall check all indications and information about abuses by police officers when exercising police powers. Particular attention shall be paid to check up of allegations contained in applications submitted by citizens complaining about police officers who exceed official powers during interventions in respect of them or their next of kin. Within the period from 2012 to 2014 this Sector checked allegations in 474 applications and other documents indicating certain abuses and other irregularities and failures of police officers when applying coercion means.

35. After the check-ups, this Sector found that within the period from 2012 to 2014 police officers exceeded or abused official powers in 18 cases, which were followed by criminal charges or initiation of disciplinary proceedings. In addition, in another two cases this Sector also established that there had been certain failures by police officers concerning violations of prescribed procedures after the use of coercion means (late reporting to superiors on use of coercion means and lack of reports on their use).

### **K&M**

36. Since 10 June 1999 up to now and according to the data available to the RS, in the territory of K&M there were over 7,000 physical attacks in which 1,262 people had been killed, of whom 1,037 were Serbs and other non-Albanians and 1,818 persons were injured. Up to now no person has been convicted by a final judgment for any of the above mentioned murders. As a general rule, in such attacks the investigation never resulted in finding the offenders or even accused.

37. In K&M no reliable official records are kept concerning ethnically motivated crimes or incidents or their processing. Fire was put up in the archives of the Peć Police Station on 15 August 2012, at the EU Office Building at Dragodan in Priština, as well as in the documentation at the Kosovo Police Headquarters in Priština.

38. Resolution of crimes against Serbs was prevented both institutionally and legislatively, by adopting a new Kosovo Law on Criminal Procedure at the beginning of 2013. This Law introduced the provisions without precedent: a) if a witness who had given an indicting statement to the police or the prosecutor before the trial would change the statement during the very trial, the prosecutor may not confront the witness with the previously given statement but may only ask the witness if his/her memory was good; b) if such a witness dies before testifying before the court, his/her statement given before the trial may not be taken as evidence or may be given only a very limited validity.



## Article 7

### Recommendations (para. 11)

#### Amendments to Criminal Legislation

39. Within the framework of the implementation of the AP for the Negotiating Chapter 23, for the beginning of 2016 the RS has planned numerous amendments and supplements to the Criminal Law taking into account the recommendations directed to improvement and harmonisation of the provisions with the European standards.

### Recommendations (para. 14)

#### Police Custody

40. In order to improve police procedures in respect of persons deprived of liberty, the Instructions on How to Treat Arrested and Detained Persons were adopted in 2012. Since October 2013 and according to the provisions on the Criminal Procedure Code any preliminary investigation is to be conducted by public prosecutors. An order to keep an accused person (either of age or a juvenile person) in custody is within the competence of public prosecutors who may authorise the police to serve to the accused an order on custody up to 48 hours during preliminary investigation.

41. All organisational units of the Criminal Police Directorate of the MoI apply in their activities general legal acts and bylaws — the Criminal Procedure Code, the Criminal Code, the Compulsory Instructions on Police Operations (Instructions on How to Treat Arrested and detained Persons) under full compliance with the improved police procedure in respect of persons deprived of liberty. In accordance to its financial capabilities, the Ministry allocated certain funds for reconstruction and construction of custody premises pursuant to international standards, at the police stations in Novi Pazar, Jagodina and Kikinda.

42. Following the entry into force of the new Law on Offences a custody measure for an accused (either a person of age or a juvenile person) up to 24 hours in offence proceedings shall be adopted by offence judge by means of an order for custody (Arts. 191 and 192) whereas the police may decide on the length of custody of up to 12 hours to a person (either of age or a juvenile person) who was caught committing an offence under the influence of alcohol or other psychoactive substances (Art. 193).

43. External control of police activities shall be performed by the National Assembly, the Government, the competent judiciary bodies, the state administration bodies in charge of certain supervision operations and other bodies and authorities authorised to do so by law as well as the Protector of Citizens in the capacity of the National Mechanism for Prevention of Torture.

#### Treatment of Juvenile Offenders

44. Collecting information from juvenile persons as in the capacity of citizens (damaged party/victim or eye witness) and hearing of a juvenile persons as an accused (in case a juvenile prosecutor entrusted the hearing to the police) shall be explicitly performed by police officers for juvenile persons and, where necessary, other police officers who hold adequate certificates guaranteeing they had acquired special knowledge in the field of the right of the child, juvenile delinquency and judiciary protection of juvenile persons.

45. A police officer in charge of juvenile persons shall be obliged to inform a juvenile person and his/her parents or guardian about their rights and reasons for applying police power, to ensure that they can actively participate in the procedure and make observations and express opinions, to issue a copy of the official record or the minutes of collected information at their request and under the circumstances of fulfilled legal conditions, to enable the juvenile person concerned to choose a trustworthy person who will be present during the hearing. When informing the public about events in which juvenile persons took part, the police must not indicate the name or initials of the juvenile person concerned or other data that may lead to revealing the person's identity.

#### **Prohibition of Torture, Inhuman or Degrading Treatment – Control Mechanisms**

46. Within the period from 1 October 2011 to 1 October 2013, there were 74 motions made, 12 indictments, 3 private actions for the criminal acts of ill-treatment and torture. Within the same period 5 judgments were adopted dismissing charges, 12 judgments releasing the accused from charges and 18 judgments declaring the accused guilty. Out of these 18 judgments, unconditional prison sentences were pronounced in 4 of them, fines in 4 judgments and 9 suspended prison sentences. Also, within the mentioned period 11 decisions were adopted suspending the proceedings (in most cases because of withdrawal of authorised prosecutor). Within this period, 51 proceedings were conducted against 95 officials (in 98% of cases they were officers of the MoI).

47. In respect of the criminal act of extortion of a statement, proceedings were conducted or closed in 5 cases only. In 2 cases indictments were rejected, 2 proceedings are still pending, while proceedings were closed in a final judgment of the appellate court dismissing charges because of absolute statute of limitation of criminal prosecution. In 4 cases out of 5 the damaged party was a subsidiary prosecutor. In 2 cases the accused was charged for extortion of a statement including ill-treatment and torture.

48. At the 24th session of the First Grand Chamber held on 10 July 2013, deciding in the case Už-4100/2011, the Constitutional Court decided adopted for the first time a decision establishing a violation of the constitutional appeal applicant's right to physical and psychical integrity, guaranteed in Article 25 of the Constitution. In the above mentioned decision, the Constitutional Court took a view that the members of the security service both during detention and prison sentence serving treated the applicant inhumanly, finding that use of coercion means in respect of him was justified on 3 occasions but non-proportionate while on 1 occasion use of coercion means was assessed as unjustified.

## **Article 8**

### **Recommendations (para. 16)**

#### **Human Trafficking**

##### *Criminal Prosecution of Offenders*

49. In 2012 the MoJ prepared the Special Protocol on Acting of Judiciary Bodies in Protecting Victims of Human Trafficking in the RS. The basic aim of this Protocol preparation is to give guidelines for most efficient identification and recognition of victims of human trafficking in order to provide them with adequate protection at all stages of proceedings, but also to conduct criminal proceedings for the criminal act concerned efficiently.

50. The PPO has been undertaking a series of activities for combating human trafficking with the aim to increase procedural efficiency in resolution of human trafficking cases and protect victims from this criminal act. In October 2012, within the framework of the PPO, specialisation for criminal prosecution in cases of human trafficking was introduced, by appointing contact prosecutors at all high prosecution offices in the RS for cases of human trafficking, who are specially trained for this field and who act and coordinate the activities in cases of human trafficking.

51. With the aim to implement planned activities, the PPO, in cooperation with the Judicial Academy, foreign partners and civil society organisations shall organise and perform training for public prosecutors, especially for contact public prosecutors for cases of human trafficking, cooperate at strategic and operational levels with the MoI, the Centre for Protection of Human Trafficking Victims and civil sector.

52. As the result of cooperation with civil sector, in September 2012 and October 2013, the PPO signed Memorandums of Understanding with NGOs ASTRA and ATINA, by which the signatories obliged each other to collect data and exchange information in cases of human trafficking, undertake activities in respect of prevention and deal in particular with improvement of rights of human trafficking victims.

53. In respect of protection of victims and witnesses of all criminal acts, also including the criminal act of human trafficking, the provisions of the new Criminal Procedure Law are of particular significance, which extend options for protection of witnesses and damaged parties who, in addition to elementary protection, may also get the status of a particularly vulnerable witness and of a protected witness.

54. In the course of 2013 police officers of the MoI filed 30 criminal complaints in total because of suspicion of commitment of criminal act of human trafficking, in which there were 68 cases of criminal acts of human trafficking in total. These complaints include 63 offenders of criminal acts in total, of whom 62 offenders are citizens of the RS and 1 person is stateless. In submitted criminal complaints, 45 damaged persons were identified, all of them being citizens of the RS. Sexual exploitation (28) and forced begging (10) are most common. In the course of 2013 police officers filed 17 criminal complaints in total because of suspicion of commitment of criminal act of human trafficking, in which there were 25 offenders (24 citizens of Serbia and 1 citizen of Greece). In submitted criminal complaints, 52 damaged persons were identified (all of them being citizens of the RS). Labour exploitation (35), followed by sexual exploitation (8) and forced begging (3) are most common.

55. The War Crimes Detection Office of the Criminal Police Directorate of the MoI, in coordination with the WCPO has been undertaking activities aimed at more efficient preliminary investigation in the Organi-Žuta Kuća case, conducted by a special investigating team from Brussels (EEAS/CPCC/SITF).

#### *Assistance and Support to Human Trafficking Victims*

56. The Centre for the Protection of Human Trafficking Victims was established by a decision of the Government in April 2012. The Centre, established as a social care institution, performs assessments, needs, strengths and risks of human trafficking victims, identify and provide human trafficking victims with appropriate assistance and support with a view of their rehabilitation and reintegration. The Centre operates through two organisational units, the Office for Coordination of Protection of Human Trafficking Victims and the Shelter for Urgent Accommodation of Human Trafficking Victims. Within the system of social care the victims of human trafficking have access to all services in accordance with the Law on Social Care and the Family Law.

57. At the Centre, through assessment of needs and conditions of persons reported to be victims of human trafficking, identification and recognition of needs of a victim are performed in order to meet them. On the basis of recognised needs and assessment of risk level, priorities of response are established, followed by inclusion of system institutions and civil sector in direct assistance and provision of support.

58. Social welfare centres are the basic holders of protection of children who are victims of human trafficking and adults deprived of business capacity as victims of human trafficking. Within the system of social care children who are victims of human trafficking have special care, which is in accordance with family judicial protection of juvenile persons, pursuant to the Family Law. Children are provided with accommodation, health care and social care, while families are provided with assistance if it is assessed that families are safe environment and that the child concerned may return to the family of origin. Children are provided with an interim guardian or a guardian who is to attend court proceedings concerning the criminal act of human trafficking, in addition to other roles and as a person of trust.

59. In the RS prevention programmes are implemented for children of early, primary and secondary school age (the Serbian Red Cross), trainings of employees of social welfare centres to understand the victims and how the centres should treat the victims in accordance with accredited training programmes. The Centre have initiated activities to create and define common indicators to recognise victims of human trafficking, also including children, which will render all systems and citizens the grounds to respond in due time in respect of possibilities of human trafficking.

#### *Regional Cooperation*

60. With the objective to improve cooperation with the neighbouring countries and at regional level, the *Brdo Procesa* Network of National Coordinators for Combating Human Trafficking of 10 countries has been formed (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania, Serbia and Slovenia) as well as the Network of National Coordinators of 6 member countries of MARRI — Regional Initiative for Migrations, Asylum and Refugees (Serbia, Bosnia and Herzegovina, Croatia, Montenegro, Macedonia and Albania). Cooperation of networks of national coordinators for combating human trafficking in the region makes it possible to exchange information, examples of good practice and achieve cross-border cooperation in preventing human trafficking also strengthening national referral systems of the countries concerned.

#### *Strategic Documents*

61. A proposal of the text of the National Strategy for the Prevention and Suppression of Human Trafficking has been made, especially in respect of women and children, and for the protection of victims in the RS for the period from 2015 to 2020, as well as a proposal of the accompanying NAP for the period from 2015 to 2016. The new National Strategy will provide respect for and protection of human rights, as a response to human trafficking, a continuous comprehensive response of the society to human trafficking by means of improved system of prevention, assistance and protection of victims, timely identification of cases and efficient processing of offenders, implying a reform of organisational units at the police now dealing with suppression of human trafficking.

#### *Training of Police Officers*

62. 38 police officers working on suppression of illegal migrations and human trafficking attended training courses in the course of 2010 and 2011, who became qualified to be lecturers in the field of combating human trafficking. In 2013 these police officers held 222 training courses in total concerning conduct of police officers in cases of human

trafficking, which were attended by 3,087 police officers in total. In the course of 2014, police officers performed, under a limitation due to the state-of-emergency because of floods and for the reason that police were considerably involved in rescues and recovery activities following the floods, 19 educations attended by 329 police officers, of whom 228 were from the regional police administrations and 101 were border police officers.

63. In the course of 2014, the staff of the MoI conducted numerous trainings related to human trafficking. The Border Crossing Police and the Cyber Combating Department of the MoI — SBPOK (2012-2014) conducted the EU Twinning project under the title of Strengthening of Border and Cyber Security with the aim to establish an efficient system for prevention and suppression of illegal migrations and human trafficking in the territory of the RS that are increasingly supported through use of high technology and Internet.

64. Since the establishment of the Criminal Police Academy in 2006, the curriculum of the fourth year of academic studies includes as an optional subject *Illegal Migrations and Human Trafficking*. In the course of 2014 lectures in this subject, having 75 teaching lectures in total, were attended by 57 students.

#### **Types of Work for Persons in Detention or on Parole Release**

65. Criminal sanction of work of public interest has so far been applied at public companies and cultural institutions. The Law on Enforcement of Non-Custodial Sanctions and Measures prescribes that such a sanction shall be fulfilled with a legal entity dealing with jobs of public interest (in particular, in humanitarian, medical, ecological or utility activities).

66. A novelty in the legislation of the RS is a provision of the Law on Enforcement of Criminal Sanctions prescribing that work of a convicted persons makes an integral part of treatment programme, namely that work is not an obligation of convicted person concerned during his prison sentence service but only his right.

## **Article 9**

### **Recommendations (para. 18)**

#### **Free Legal Aid**

67. The Criminal Procedure Code prescribes free legal aid. It may be rendered within compulsory defence and defence of indigent person.

68. In case of compulsory defence, if a defender is not selected, the public prosecutor or the president of the court before which the proceedings are held shall appoint a defender in the capacity of office for further course of the proceedings by a decision, according to the order from the list of attorneys submitted by the competent bar chamber. Upon the suspension of criminal proceedings or if the accusation was dismissed or if the accused person was released, it would be stated in the decision and/or in the judgment that the costs of criminal proceedings (also including the defender's and proxy's fees) would be on the account of budgetary costs of the court. If the court pronounces the accused guilty, it shall specify in the judgment that the accused is obliged to compensate the costs of criminal proceedings.

69. Defence of an indigent person implies that the accused who cannot pay fees and costs of the defender because of his/her financial standing shall have a defender under his/her request although there are no reasons for compulsory defence, if criminal proceedings are carried out for a criminal act for which a prison sentence over three years

may be pronounced or for the reasons of equity. In this case, the costs of defence will be covered from the budgetary funds of the court. The president of the court shall appoint a defence council from the list of attorneys-at-law to be submitted by the competent bar chamber. The appointed defence council has the capacity of an ex officio defence council.

70. In respect of civil legal aid, the Law on Civil Procedure prescribes that a court will approve free legal aid to a foreigner if the party is fully released from payment of costs of proceedings and if necessary to protect the rights of the party concerned or if prescribed by a separate law, respectively. This Law links the approval of the right to free legal aid to the outcome of the decision on release from payment of costs, i. e. it shall receive a subsidiary character. An attorney-at-law may explicitly be appointed a free proxy.

71. Non-contentious proceedings, enforcement and security proceedings and administrative disputes are prescribed in other laws. The provisions of the Law on Civil Procedure concerning proxies as well as the right to a free legal representative shall also be applied in these proceedings.

72. A draft of the Law on Free Legal Aid has been prepared, prescribing that free legal aid refers to civil, non-contentious, criminal, administrative proceedings, mediation proceedings, delictal suit, proceedings in conjunction with enforcement of criminal sanctions and proceedings before the Constitutional Court. Also, free legal aid should include proceedings pursuant to ordinary and extraordinary legal remedies.

### **Deprivation of Liberty**

73. The Law on Enforcement of Criminal Sanctions prescribes that the MoJ — the Directorate for Enforcement of Criminal Sanctions shall organise, implement and supervise enforcement of prison sentences, prisons for juvenile persons, prison sentences in premises where the convicted lives, so-called home prison, work of public interest, suspended sentences with supervision, security measure of compulsory psychiatric treatment and maintenance at medical institution, compulsory treatment of drug addicts and compulsory treatment of alcohol addicts, as well as correction measures of stay at correctional institution, and to undertake measures to ensure attendance of convicted in criminal proceedings in accordance with the Law on Criminal Procedure — detention and prohibition to leave living premises, so-called home prison. There is a central register of persons deprived of liberty who are at penitentiary institutions. Authorised persons of the Directorate have access to this register and they use it internally at the Directorate.

### **K&M**

74. Deprivation of liberty of Serbs in K&M is accompanied by a legal document on detention, which is only performed on formal side of legality. In substance, detention in K&M serves as quasi-judicial instrument producing political consequences or protecting economic interests of influential individuals. In fact, Serbs in K&M are not protected from politically and ethnically based arbitrariness.

75. One form of high profile detention is detention of the distinguished politician from Kosovska Mitrovica, immediately before local elections at which he was one of the candidates. His detention directly caused drastic decrease of number of voters at local elections, increased uncertainty among the Serbs and affected the results of local elections in 2012. In the same way, based on statements of witnesses, indictments were also issued against other persons.

76. Detentions based on statements of witnesses are very problematic since they take place after 10 or more years following alleged crimes, although accused Serbs were in K&M all the time, thus being available to the authorities. So far such statements proved to be groundless but only after many years spent in detention or prison.

## Article 10

### Recommendations (para. 15)

#### Application of Alternative Sanctions

77. By adoption of a separate Law on Enforcement of Non-Custodial Sanctions and Measures, a uniform regulatory framework was created improving the conditions for implementation of sanctions to be enforced in the community. The implementation of the EU project for strengthening of the system of alternative sanctions in the RS, which was implemented within the period from 2011 to 2014, three important components of enforcement of alternative sanctions and measures were developed: improvement of legislative and institutional framework, improvement of working methods and encouragement of support in the society necessary for more efficient system of alternative sanctions. Necessary training courses for commissioners and other administrators were carried out for implementation of alternative sanctions with the aim to improve working methods, as well as meetings and conferences with those holding judicial positions.

78. The Law governing a wide scope of enforcement in relation to present solutions has been harmonised with the Recommendations on Probation Rules of the CoE, CM/Rec 2010/1). Non-custodial sanctions defined by this Law are: postponement of criminal prosecution according to a decision of the public prosecutor, home prison, prohibition of access to a certain person, work of public interest, suspended sentence with supervision, conditional release under supervision and post-penal inclusion.

79. 25 offices for alternative sanctions were opened in the republic of Serbia in all towns with the seats of high courts. In this way local communities have also taken over more active role in the implementation of modern forms of sanctioning offenders of criminal acts. The number of alternative sanctions has been increasing continually: in 2011 there were 202 of them, in 2012 there were 923 of them, in 2013 there were 1,092 of them and in 2014 there were 1,166 sanctions. Since September 2014 the Directorate for Enforcement of Criminal Sanctions has been monitoring fulfilment of obligations for suspension of criminal prosecution and until the end of 2014 the prosecution offices issued 5,024 new orders.

#### Surveillance of Prisons

80. On the grounds of the Law on Enforcement of Criminal Sanctions bylaws have been adopted, which define in more details the status and treatment of persons deprived of liberty in accordance with international standards, as follows: The Rulebook on Measures for Order and Security Maintenance at Institutions for Enforcement of Criminal Sanctions, the Rulebook on Disciplinary Procedure for Convicted Persons, the Rulebook on House Rules at Correctional Institutions and District Courts, the Rulebook on Enforcement of Detention Measure, the Rulebook on Clothes, Footwear, Underwear and Bedding of Convicted Persons, the Rules on Activities of Convicted Persons and the Rulebook on House Rules of the Special Prison Hospital.

81. The Directorate for Enforcement of Criminal Sanctions (DECS) keeps uniform monthly and annual records on treatment of persons deprived of liberty. For the purpose of internal supervision at the Directorate (Inspection Department), regular monitoring of application of rules on treatment of liberty deprived persons shall be ensured. Internal supervision shall include: 1) status and protection of liberty deprived persons; 2) expert activities in determination and implementation of programmes for treatment of liberty deprived persons; 3) control of measures undertaken for safety and security of institution; 4) financial operations of institution; 5) training and employment of liberty deprived

persons; 6) institution management and work of employees; 7) control of measures and legality of treatment undertaken in respect of safety of liberty deprived persons.

82. The Law on Enforcement of Criminal Sanctions introduced a new type of judicial control of enforcement of criminal sanctions — a judge for enforcement of criminal sanctions who shall be appointed at each high court and who shall be in charge of control of penitentiary institutions within the court's territory in respect of accomplishment of rights of liberty deprived persons by visiting the institutions and deciding on the complaints filed by liberty deprived persons. The proceedings before a judge for enforcement of criminal sanctions, in addition to disciplinary and criminal proceedings that may be conducted against an employee because of ill-treatment or torture, shall be initiated by a direct complaint of a liberty deprived person.

83. External control and supervision of enforcement of criminal sanctions shall be performed by the Commission for Control of Enforcement of Criminal Sanctions of the National Assembly, the Protector of Citizens as the National Mechanism for Prevention of Torture and civil society organisations.

84. The Strategy for the Development of Penal Sanctions Enforcement System in the RS until 2020 was adopted in December 2013 and the AP for its implementation was adopted in August 2014. This Strategy defines the main challenges in the activities of the Directorate until 2020 and certain priority activities in 12 development areas of the system for enforcement of criminal sanctions.

85. By decrease of overcrowded accommodation capacities at institutions for enforcement of criminal sanctions in the RS within the period from 2010 to 2015, which was possible through adoption of new legal solutions (adoption of the Law on Amnesty, the Law on Amendments and Supplements to the Criminal Code with regard to conditional release, the new Criminal Procedure Code with regard to alternative measures in respect of detention and the Law on Enforcement of Non-Custodial Sanctions and Measures) the number of liberty deprived persons at correctional institutions has been kept at the same level of 10,500 persons, which is considerably less compared with the number of persons at institutions until November 2011 (about 11,300 persons). Current capacity of penal correctional facilities is 9,000 places. Parallel to application of measures related to convicted persons, the number of detainees has also been decreased. Data related to the number of detainees: in 2010 — 3,328 detainees; in 2011 — 3,019 detainees; in 2012 — 2,478 detainees; in 2013 — 1,868 detainees; in 2014 — 1,594 detainees. The percentage of detainees out of the total number of persons deprived of liberty amounted to 30% in 2010, at the end of 2011 it dropped to 24.7%, in 2013 it amounted to 18.5%, while at the end of 2011 further decrease to 15.49% was registered.

86. There were numerous investments in order to improve accommodation facilities for liberty deprived persons in accordance with national regulations and international standards. In February 2012 a new institution of closed type was opened equipped with special security means and accommodation capacity for 450 convicted persons. Also, the accommodation capacity of the Padinska Skela Correctional Institution was expanded reconstructing one of its facilities with 180 beds. The funds for reconstruction of entire accommodation capacity at the Women's Penitentiary Institute in Požarevac were ensured from the EU pre-accession grants. The DECS provided funds from a loan granted by the Development Bank of the CoE for construction of two new penitentiary institutions in Kragujevac (for 400 persons) and Pančevo (for 500 persons), which project will be implemented from 2014 to 2018.

87. The resolution of issues of overcrowded penitentiary institutions and provision of conditions in accordance with international standards have been in progress through application to a greater extent of alternative measures and sanctions in compliance with the



new Law on Enforcement of Non-Custodial Sanctions and Measures and application of conditional release, as well as through construction and reconstruction of accommodation facilities at institutions.

88. HIV persons and those suffering from hepatitis C are enabled to have adequate therapy at the clinic for infectious diseases of the Ministry of Health under the same conditions as persons not deprived of liberty. Through cooperation with the Ministry of Health (MoH), the Global Fund and UNODC strategies concerning combating drug addiction and *Damage Decrease* programmes are implemented at all institutions.

89. Sanitary conditions at institutions are regulated by the House Rules of Penitentiary Institutions and District Courts. The standards of meals for convicted persons are prescribed in the Law on Enforcement of Criminal Sanctions and the Rulebook on the House Rules. All convicted persons have three meals a day (breakfast, lunch and dinner) whose total value must not be below 12,500 joules. Convicted persons have meals prepared in accordance with their religious beliefs and pursuant to the possibilities of the institution concerned.

90. Video surveillance is provided in order to prevent violence among persons deprived of liberty at penitentiary institutions. In particular, treatment services at institutions keep regular interviews with convicted persons with the aim to prevent any form of violence and control programmes of aggressive behaviour are organised, which are conducted by institution pedagogue workers.

91. Convicted persons and detainees are informed about their rights and regularly use protection procedure if they deem some of their rights had been limited or violated as prescribed by the Criminal Procedure Code. In cooperation with OSCE mission to the RS and with the aim to inform convicted persons better, the DECS disseminated to the institutions laws, rulebooks, guidelines for convicted persons and handbooks for convicted persons. In cooperation with OSCE mission to the RS and the Protector of Citizens, the DECS carried out a campaign of placing boards at the institutions containing forms of submissions, complaints, appeals and special envelopes for applications to the Protector of Citizens.

#### **Juvenile Offenders of Criminal Acts**

92. The DECS has two separate institutions for enforcement of custodial criminal sanctions for juvenile offenders. A corrective measure of staying at a reformatory school shall be performed at the Reformatory School in Kruševac (having two separate male and female wards). Juveniles of male sex shall serve prison sentences at the Penitentiary Institution for Juvenile in Valjevo, while juveniles of female sex serve prison sentences at a special ward of the Penitentiary Institution for Women in Požarevac. In March 2014 the Protocol on the implementation of the project of Improvement of Accommodation Quality and Capacity of the Penitentiary Institution in Valjevo, so that complete reconstruction of buildings for accommodation of convicted persons started in 2014.

93. A measure of detention for juvenile persons shall be ordered restrictively, so that on 31 December 2014 there were 10 juvenile detainees at the penitentiary institutions. This measure shall be applied at all penitentiary institutions in compliance with the seat of the court before which criminal proceedings are conducted. Juvenile offenders are accommodated at special wards of the institution and separated from adult prisoners. Criminal proceedings conducted in respect of a juvenile has the character of urgent proceedings, so that it is standard to keep a juvenile in detention for a short time until possible sending to specialised institutions for juveniles, where they have organised education, vocational training and individual treatment programmes.

94. Rights and obligations of juveniles at the institutions are defined in the Law on Juvenile Offenders of Criminal Acts and Judicial Protection of Juvenile Persons, the Law on Enforcement of Criminal Sanctions, the House Rules for Juvenile Penitentiary Institutions and the House Rules of Reformatory School. The institutions meet all necessary conditions for exercise of rights in respect of juvenile persons. Juvenile persons are informed about the rights of persons deprived of liberty at admission to the institution, at reception, while laws and rulebooks shall be available to them on daily basis.

95. In institutions for juvenile persons, individualised treatment programmes are carried out as well as specialised treatment programmes and therapeutic methods (psychotherapy, socio-therapy, family therapy). Mediation between a victim and offender is one of the methods for resolution of interpersonal conflicts among juvenile population.

96. Upon admission at the institution, during his/her stay at the reception ward, within 30 days, juvenile personality is tested from psychological, sociological and criminological aspects, on which basis specificities for determination of individualised treatment programmes defined. Direct communication of wards with their families shall be possible on daily basis by means of telephone conversations, letters and visits. There are non-custodial benefits the wards may use and which they use within the family, as a rule.

97. Institutions accomplish good cooperation with local community and associations of citizens. Regular cooperation with schools, social welfare centres and courts has been accomplished through implementation of educational programmes for juveniles. Juveniles at the Reformatory School in Kruševac and at the Penitentiary Institution in Valjevo attend regular educational classes in cooperation with educational institutions in those towns. In addition, all juveniles undergo professional training and obtain qualifications in some of about 10 handicrafts at the very institution. For those juveniles who finish primary school and will not continue further education, courses are organised and they pass exams to obtain certificates so that they leave the institution with some valid certificates to enable them to get employment.

#### **Application of Standards for Treatment of Prisoners**

98. The RS implements the UN Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in their entirety, given that these have been incorporated into the domestic legislation as fundamental principles for treatment of persons deprived of liberty.

99. Right to accommodation, right to spend certain time outside, right to organised physical activities, personal hygiene and hygiene of clothes and rooms where convicted persons stay, right to medical protection, meals, right to clothes, right to visits, correspondence, right to work, education, religious rights are regulated in the Law on Enforcement of Criminal Sanctions. Treatment, classification and individualisation of treatment programmes are prescribed in the Law on Enforcement of Criminal Sanctions, while they are precisely defined in the Rulebook on Treatment, treatment programme, classification and subsequent classification of convicted persons.

100. Detailed procedures have been defined for treatment at the institution after the use of coercion measure against convicted persons. An obligation to submit separate written reports by security service and reports on medical examination to the head of the institution without delay has been introduced. Medical examinations are repeated between 12 and 24 hours after the application of coercion measures. The head of the institution shall be obliged to inform the director of the DECS within 24 hours about the application of coercion measure and to submit at the same time a report by security service and a report on medical examinations.

101. The UN Standard Minimum Rules for the Administration of Juvenile Justice are applied at the Reformatory Institution in Kruševac and the Juvenile Penitentiary Institution in Valjevo to the maximum possible extent. Cooperation is kept with social welfare centres and courts in charge of wards on daily basis. Also, there is good cooperation with civil society organisations whose are basically interested in juvenile delinquency.

102. Parole release has been applied to a great extent as a recommendation of the UN Standard Minimum Rules. Professional staff, accommodation capacities and distribution of the institution to wards, cooperation with other institutions are to serve as a guarantee that the Beijing Rules would be applied to maximum possible extent.

### **Disciplinary System Applicable at Penitentiary Institutions**

103. Disciplinary system applicable at penitentiary institutions is governed by the Law on Enforcement of Criminal Sanctions and the Rulebook on Disciplinary Procedure for convicted persons. In addition to disciplinary measures, this Law also prescribes special measures that may be imposed to convicted persons if there is a risk of escape, violent behaviour, self-injury or encroachment of order and security of other type, which may not be eliminated in some other way. Accommodation under enhanced supervision may only be applied at the institutions of closed type with special security service, namely at closed wards of the institution based on reasoned decision of the head of the institution. A convicted party or a detainee, respectively, has the right to an appeal on this decision to enforcement judge. This measure shall be reviewed every 3 months.

104. An isolation measure may be imposed to a convicted person who shall persistently disturb order, encroach security seriously and present a serious danger for other convicted persons, based on reasoned decision of the head of the institution within the period of up to three months at maximum without any interruption. In a calendar year this measure may be applied twice at maximum. During the enforcement of isolation measure, a convicted person must be provided with certain time outside of one hour at least daily and the convicted person concerned must also be enabled to work at the premises where the measure is applied while he/she may use his personal belongings, read press and books, keep correspondence, listen to the radio and watch TV. The convicted person concerned may file an appeal on the decision on isolation to the enforcement judge.

### **Contact of Convicted Persons with the Outside World**

105. Contact of convicted persons with the outside world, number of visits and their duration are guaranteed in the Law on Enforcement of Criminal Sanctions. A convicted person has the right to 2 visits monthly. A visit shall last for 1 hour at least. A foreign national shall also have the right to a visit by the diplomatic-consular representative of his/her country, and/or of the country protecting his/her interest, and a convicted person whose interest is not protected by any party shall have the right to a visit by the competent bodies and organisations of the RS and the competent international organisations.

106. According to the Law on Enforcement of Criminal Sanctions a convicted person has an unlimited right to correspondence on his/her account as well as to telephone conversation. According to the Rulebooks on the House Rules of penitentiary institutions and district courts a convicted person sent to a closed ward may make telephone calls four times a week and a convicted person sent to semi-open and open wards may make telephone calls every day, in accordance with the institution possibilities.

### **Rehabilitation of Convicted Persons**

107. The adoption of the Law on Enforcement of Criminal Sanctions and the Law on Enforcement of Non-Custodial Sanctions and Measures created a uniform regulatory

framework enabling more efficient implementation of treatment of convicted persons as well as their social reintegration and inclusion after serving prison sentence.

108. Since the introduction of new treatment programmes and training for convicted persons were established to be one of priorities, following successful completion of the project of *Support to Professional Education and Training at Prison Institutions in the RS* in 2013, financed by the EU from IPA funds, within which 500 convicted persons obtained diplomas for certain professions, the Directorate for Enforcement of Criminal Sanctions ensured self-sustainability of the project and continued training of convicted persons.

109. At the institutions for enforcement of criminal sanctions convicted persons who have problems with addiction are included into advisory individual or group activities, programmes of drug rehabilitation are applied, various platforms and lectures on harmful effects of drugs and alcohol are organised, and addiction problem is also treated by other available means. After a convicted person leaves the institution upon completion of sentence serving, if necessary, the Office of the Commissioner shall continue supervising treatment process.

## **Article 12**

### **Recommendations (para. 19)**

#### **Provision of Personal Documents**

110. The Law on temporary and Permanent Residence of Citizens enabled citizens to register their temporary and permanent residences at the address of the institution where they are permanently accommodated or at social welfare centres in the territory of which they are located. On the basis of established permanent residence the competent body shall issue an identity card to be valid for 10 years. For citizens of Roma nationality personal documents are issued as a priority and according to summary procedure. Based on this Law, the Rulebook on the Process of Registration and Withdrawal of Registration of Permanent and Temporary Residence of Citizens, Registration of Temporary Residence Abroad and Return from Abroad, Passivation of Permanent and Temporary Residences, Forms and Record-Keeping Method was adopted, which entered into force on 9 August 2013.

111. The MoI, under the agreement of the then Minister of Labour, Employment and Social Policy adopted the Rulebook on the Form of Residence Registration at the address of the institution or social welfare centre, which entered into force on 8 December 2012. According to the report of the social welfare centre about 1,700 persons were registered at the addresses of social welfare centres in the RS.

112. With the aim to improve the status of members of Roma national minority as well as of all other persons who are not registered in the registry book of births, the Ministry of Public Administration and Local Self-Government (MPALSG) also adopted two binding instructions on how to act custody bodies, as follows: The Instructions on how custody bodies and social welfare institutions should act in the procedure of registration of residence at the address of social welfare centre and social welfare institution as from 19 June 2013, and the Instructions on how to act custody bodies in application of Article 71 points a) to n) of the Law on Non-Contentious Procedure and/or in initiation of non-contentious procedure for determination of time and place of birth for persons not registered in the registry books of births and who cannot evidence the same in the manner prescribed by the regulations governing keeping of registry books as from 19 February 2014.

113. In the procedure of determination of time and place of birth in compliance with the Law on Amendments of the Law on Non-Contentious Procedure, a total number of 247 applications for determination of time and place of birth were lodged to the competent courts since the beginning of application of this Law on 8 September 2012 to 15 October 2013 and 157 decisions in respect of these applications were adopted.

114. The Law on Amendments and Supplements to the Law on Travelling Documents harmonised the regulations of the RS with the regulations of the EU in the field of travelling documents and security of documents. The harmonisation process of bylaws with this law has been in progress. Within the period from 1 January 2011 to 1 April 2015 the competent bodies received 2,341,928 applications for issuance of travelling documents, while 1,809 applications (0.046%) were dismissed. In the largest number of cases the reason to dismiss applications for issuance of passports was the decision against the applicant on initiation of investigation or issued indictment.

115. In cooperation with the Administration of the City of Belgrade and the Social Welfare Secretariat of the City of Belgrade, the MoI conducted a campaign of issuance of personal documents with urgency for persons dislocated to newly formed settlements in the territories of the municipalities of Čukarica, Surčin, Rakovica, Mladenovac and Barajevo, who used to live under the Gazela Bridge and in the Belvil settlement. In this way, about 1,000 persons in the territory of the City of Belgrade registered their residences. In cooperation with the Administration of the City of Belgrade from the end of 2014 to May 2015 about 100 residences were registered and personal documents were issued for persons dislocated from the Belvil-route informal settlement from New Belgrade to the Orlovsko Naselje in the Zvezdara municipality.

#### **Access to Adequate Housing**

116. With the aim to ensure the conditions to implement the National Strategy of Social Housing, the Ministry of Construction, Traffic and Infrastructure (MCTI) has been applying the Regulation on standards and norms of planning, designing and construction and on conditions for occupancy and maintenance of flats for social housing from 2013.

117. The preparation of the Law on Housing has been in progress. Procedures on how to act on the occasion of dislocation of Roma settlements that cannot be kept in the existing location will be prescribed in a separate chapter of the law concerned, which is planned to be adopted in the second quarter of 2015.

118. Provision of housing for all 49 families from the Belvil-route in Belgrade started on 25 December 2014. 24 families got flats on this occasion. Other 25 families have been waiting to get flats under construction. It is expected that they will move into flats until the end of 2015.

119. Assessment of conditions in Roma sub-standard settlements in 20 pilot municipalities in the RS has been performed. After the floods in May 2014, an analysis of conditions of sub-standard settlements in the Obrenovac municipality was additionally made. Based on this assessment of conditions, a list of priorities was made for improvement of the settlements concerned. Based on the decisions adopted by eleven local self-governments, the process of preparation of plans of general and detailed regulation has been initiated, which should cover twelve sub-standard Roma settlements.

#### **Internally Displaced Persons (IDP)**

120. Since 1999 the RS has invested considerable funds from the budget in taking care of and improving the position of more than 210,000 IDP. Over 20,000 persons were displaced today from the very territory of K&M while 203,140 IDP live in other areas of the RS. Strategic, legal and institutional frameworks for support of IDP have been established.

121. All persons registered as IDP were given identity cards of IDP, which together with an adequate personal document enable them to get accommodation at collective centres, humanitarian aid and aid within the programmes of improvement of living conditions while they are dislocated. 18 collective centres are functional at present (of which 8 are in K&M) at which 802 IDP are accommodated.

122. The RS has developed mechanisms at local and central levels for implementation of all types of support programmes intended for IDP. Thanks to the system of making local action plans in solution of needs of the persons concerned local self-government has taken an active part while the programmes were financially supported by EU, UNHCR and OSCE and governments of foreign countries in addition to the budgetary funds of the RS.

123. Since 2011 up to now the housing conditions of 2,415 families of IDP were improved by means of assistance in the form of packages of construction materials, social housing under protected conditions, purchase of rural households, grant of prefabricated houses. Within the same period, 2,223 families of IDP were supported through grants for economic strengthening.

### **K&M**

124. Since 15 October 2013 the former procedure of police escort for organised visits of displaced Serbs to K&M was quashed, who were mainly going there for religious holidays as organised in cooperation with EULEX police. Direct consequences are decrease of security and a larger number of attacks against displaced Serbs who go to visit their houses, churches and graveyards. Another direct consequence is that Djakovica has become a prohibited town for its former citizens Serbs who are now displaced. Until 1999 there were 12,000 Serbs in Djakovica, while at present 4 old women live there at the monastery.

## **Article 13**

### **Refugees**

125. 35,295 persons are still living in the RS from the former Yugoslav republics who have the status of refugees according to the Law on Refugees. Out of 617,000 refugees registered during the 1996 consensus, over 300,000 persons now have citizenship of the RS. According to the assessment of the Commissioner's Office for Refugees and Migrations, around 150,000 people returned to countries of origin from the RS, while over 46,000 persons left for third countries.

126. In spite of premature, groundless and ill-founded adoption of the recommendation of the UNHCR and cease of refugee status for persons who had left the Republic of Croatia as the consequence of conflicts from 1991 to 1995, the RS continued rendering all possible assistance to those persons in accordance with the international standards of human rights and humanitarian law.

127. From the budget of the RS and in cooperation with international organisations, governments of certain countries and local self-governments, the Commissioner's Office implements the programmes of permanent solutions for refugees, by giving them construction materials to finish their houses or adapt buildings they own not in accordance with the relevant standards, buying-out rural houses and land around them, granting prefabricated houses, building dwelling units to be granted for rent with an option to buy them out, providing social housing under protected conditions. Aid for economic strengthening of families is also granted.

128. At present four projects for solution of housing issues for about 4,000 refugee families are being implemented within the framework of the Regional Housing Programme

conducted in the RS, Croatia, Montenegro and Bosnia and Herzegovina with the aim to ensure permanent housing solutions for 16,780 families. In addition to donations, funds for housing projects have also been allocated from the national budget.

### **Asylum Seekers**

129. The provisions of the Law on Asylum prescribe principles, conditions, procedure to see asylum and cease of the right to asylum as well as the rights of persons seeking asylum in the RS. A person who will express an intention to seek asylum must not be punished for illegal entry or stay in the RS, provided he/she will file an application for asylum immediately including an adequate explanation of his/her illegal entry or stay.

130. Until the adoption of the final decision on asylum application, asylum seekers are provided accommodation and basic living conditions at the Asylum Centre, which is an integral part of the Commissioner's Office for Refugees and Migrations. In the territory of the RS there are five asylum centres of open type without any limitations in respect of entry and exit, in Banja Koviljača, Krnjača, Bogovadja, Sjenica and Tutin, all of them having the total capacity of accommodation for 810 persons. The persons who had obtained international protection based on the Law on Asylum have the right to work, assistance in accommodation and integration.

131. After the Law on Asylum came into force in 2008 until 2015, in the RS 50,467 persons requested asylum, as follows: 77 in 2008, 275 in 2009, 522 in 2010, 3,132 in 2011, 2,723 in 2012, 5,066 in 2013, 16,490 in 2014 and 22,182 within the first five months of 2015. Out of this number, 22 asylum seekers received international protection, 9 of them received refugee protection and 13 persons received subsidiary protection.

132. In 2014, the Belgrade Centre for Human Rights, a civil society organisation fitted information boards at the Nikola Tesla Airport so that foreigners wishing to seek asylum in the RS may contact lawyers in order to get free legal aid. Since September 2014, the team of the Belgrade Centre for Human Rights, together with the Border Police Station in Belgrade established arrangements for cooperation and method of treatment so that a foreigner who is at the Nikola Tesla Airport may contact the Belgrade Centre for Human Rights with an asylum application in the RS.

133. In November 2014 the RS adopted the new Law on Employment of Foreigners, which is in accordance with the standards and regulations of the EU. The most important novelty of this Law is an obligation to ensure equal treatment to foreigners in respect of conditions for employment, payments of remuneration, dismissal conditions and acquisition of social preferences (e. g. for accomplishment of rights related to unemployment).

### **Readmission**

134. The application of the Agreement on Readmission in the RS is mainly linked with an obligation to admit domestic citizens although an important segment of it is also an obligation to admit citizens of third countries and stateless persons. The Agreement on Readmission between the RS and the EU has been applied since 1 January 2008. Also, from bilateral aspect, the RS has concluded 11 agreements on readmission.

135. In the course of 2014 the Readmission Office at the Nikola Tesla Airport, which is a part of the Commissioner's Office for Refugees and Migrations, admitted and registered 1,716 persons in total, namely 597 families (805 juveniles and 911 adults), indicating there is a considerable number of children in readmitted population. 919 persons were received and registered within the first 4 months of 2015. The largest number of returnees consists of persons of Roma nationality. In 2013 the Office registered 2,577 persons, in 2012 there were 2,107 registered persons and in 2011 there were 1,606 registered persons.

136. The Commissioner's Office renders professional support to local self-governments in preparation of local action plans with the aim to include persons readmitted according to the Agreement on Readmission and provide them this way with assistance and adequate means. Out of 182 municipalities that adopted plans for resolution of issues of migrants in their territories, 87 of them reviewed the plans and included the readmitted persons in them.

137. Financial funds were allocated in the budget of the RS to incite units of local self-governments to implement measures and activities directed to resolution of issues of readmitted persons. In 2014 the Commissioner's Office ensured 15,000,000.00 to finance the project of local self-government units for implementation of measures and activities for reintegration of readmitted persons.

## **Article 14**

### **Recommendations (para. 17)**

#### **Independent Judiciary**

138. The review of reappointment of judges has been completed and non-appointed judges were integrated into the judicial system of the RS. The National Strategy of Judiciary Reform for the period from 2013 to 2018 was adopted on 1 July 2013 and the AP for its implementation was adopted on 31 August 2013. This Strategy prescribes five fundamental reform principles implying improvement of independence, impartiality and quality of justice, professional competence, accountability and efficiency of judiciary.

139. In respect of independence of judiciary, this Strategy identifies the necessity to amend the Constitution in the part concerning the impact of legislative and executive authorities on the process of appointment and discharge of judges, presidents of courts, public prosecutors, and/or deputy public prosecutors, as well as of elective members of the High Judicial Council and the State Council of Prosecutors, specifying the role and the status of the Judicial Academy, as a mechanism for entry the judiciary. By reason of duration and complexity of the procedure for amendment of the Constitution, a series of transitional measures has been prescribed aimed at strengthening independence of judiciary, through amendments of judicial laws, within the framework of the provisions of the Constitution. The High Judicial Council and the State Prosecution Council, acting in accordance with the strategic objectives, should become key institutions of judiciary with full capacity of powers and precisely defined system of transparency and accountability.

140. Within the first year of implementation of this Strategy, a set of judicial laws was amended and the activities to analyse the provisions and identify necessary amendments of the Constitution in the part concerning judiciary. The presidents of courts of all instances were appointed. The High Judicial Council and the State Prosecution Council adopted the criteria and standards for evaluation of activities of judges, presidents of courts, public prosecutors and deputy public prosecutors and started the activities to make the criteria and standards of appointment to judicial positions. The planned amendments of the Law on High Judicial Council and the State prosecution Council will considerably improve transparency of operations of both bodies. The introduction of programme budget started and the capacities of administrative offices of the High Judicial Council and the State Prosecution Council were strengthened. Taking into account constant spreading of scope of their competences, there is still an evident need to strengthen administrative capacities in the field of finances, analytics and strategic planning.

141. This Strategy also planned the institution of the system of appointment and advancement of judges and public prosecutors based on clear, objective and in advance



defined criteria. The improvement of initial and permanent training of both holders of judicial positions, associates of judges and public prosecutors and the representatives of judicial professions, together with the system of preparation of comprehensive annual programmes of training and evaluation of attendees, has been designated as a strategic approach to the reform of the Judicial Academy.

142. Since inefficiency has been the largest problem of judiciary of the RS for a long time, this Strategy defines a whole series of measures aimed at improvement of efficiency, as from improvement of procedural laws through establishment of the system of e-judiciary to monitoring and correction of functioning of judiciary network. Through the establishment of the system of private bailiffs, public notaries and mediation in settlement of disputes, it has been planned to decrease backlogs of courts in order to achieve shorter lengths of court proceedings and improve access of citizens to justice, together with accelerated resolution of old cases and investments into infrastructure.

143. A new judicial network with an increased number of courts and public prosecution offices has started its operations since 1 January 2014, which should decrease the costs and contribute to an easy access of citizens to justice. The improvement of ICT at courts and public prosecution offices was continued, but there is still a problem of parallel functioning of several incompatible systems, which protracts monitoring statistical parameters of efficiency of judiciary, data exchange between courts and public prosecution offices, an insight of parties into the case status, as well as the very duration of proceedings. Such a state of ICT shall also have negative effect to scope of automatic assignment of cases.

144. The Supreme Court of Cassation prepared uniform programme for resolution of old cases under the support of USAID — programme of distribution of power. The measures provided for in this programme have already been applied in particularly selected pilot courts and proved to be successful and contributed to acceleration of work on the old cases. The application of this programme shall be monitored by the Working Group formed by the Supreme Court of Cassation. The objective is to decrease the number of old cases for 80% until the end of 2018.

#### **Organisation of Courts and Prosecution Offices**

145. The new judicial network consists of courts of general and special jurisdiction. The courts of general jurisdiction are: 66 basic courts established for the territory of a town, and/or one or several municipalities, 25 high courts established for the territory of one or several basic courts, 4 appellate courts established for the territory of a larger number of high courts and the Supreme Court of Cassation, which is the highest court in the RS with its seat in Belgrade. Courts of special jurisdiction are: 16 commercial courts established for the territory of one or several towns, and/or several municipalities, the Commercial Appellate Court established for the territory of the RS, with its seat in Belgrade, 44 misdemeanour courts established for the territory of a town or one or several municipalities. The Misdemeanour Appellate Court was established for the territory of the RS, with its seat in Belgrade and departments (for the territory of several misdemeanour courts) in Novi Sad, Niš and Kragujevac. The Administrative Court was established for the territory of the RS, with its seat in Belgrade and departments (for the territory of several high courts) in Novi Sad, Niš and Kragujevac.

146. The system of public prosecution offices consists of the public prosecution office of the RS, 4 appellate public prosecution offices (Belgrade, Novi Sad, Niš and Kragujevac), 26 high public prosecution offices, 34 basic public prosecution offices and 2 prosecution offices of special jurisdiction. The basic public prosecution offices shall prosecute offenders of criminal acts issued prison sentences of up to 10 years, high public prosecution offices shall prosecute offenders of criminal acts issued prison sentences over 10 years as well as other criminal acts prescribed by law, appellate public prosecution offices shall act

upon appeals and the PPO shall act in respect of extraordinary legal remedies, undertake measures for protection of constitutionality and legality and direct and supervise the activities of public prosecution offices. Also, there are public prosecution offices of special jurisdiction, the Organised Crime Prosecution Office and the War Crimes Prosecution Office, which were established in the territory of the RS and shall act both at first instance and upon appeals, while at the High Public Prosecution Office in Belgrade there is also Department for Cyber Crime, which shall also act in the entire territory of the RS in cases within its jurisdiction.

#### **Procedure for Removal of Judges and Holders of Public Prosecution Functions from Office**

147. The regulatory framework for removal of judges from office consists of the Constitution of the RS and the Law on Judges. On 26 March the High Judicial Council adopted the decision to remove a judge of the Appellate Court in Belgrade from office because of a severe disciplinary offence contained in Article 90 paragraph 2 in conjunction with paragraph 1 indent 3 of the Law on Judges (unjustified delay in preparation of decisions).

148. The regulatory framework for removal of public prosecutors from office consists of the Law on Public Prosecution Office. The Rulebook on Disciplinary Procedure and Disciplinary Responsibility of Public Prosecutors and Deputy Public Prosecutors prescribes the cases of a prosecutor's disciplinary offences. After the decision proclaiming a prosecutor responsible for a severe disciplinary offence became final, the Disciplinary Commission shall make a motion for removal of the prosecutor concerned to the State Prosecutorial Council. On 14 June 2013 the State Prosecutorial Council adopted the decision removing from office a deputy public prosecutor of the Basic Public Prosecution Office in Požega because he had been proclaimed guilty by the final judgment of the Appellate Court in Belgrade for the criminal act of taking bribe contained in Article 367 paragraph 3 in conjunction with paragraph 2 of the Criminal Code.

#### **K&M**

149. The state of judiciary in K&M is anxious, as presented by OMIK reports from January 2012, *inter alia*, stating: the principle of judiciary independence is seriously encroached; there is a huge backlog of cases and unenforced judgments; informal contacts of judges with parties in dispute conducted before them; judges and prosecutors are under constant pressure due to numerous threats and intimidation; long delays and procedural failures in enforcement of civil and criminal judgments at courts in K&M encroach the right to a fair trial within reasonable time, as evidenced by the fact that there are 100,000 unenforced judgments in civil cases only. It has been confirmed by the very judges and prosecutors that they have no trust in "capability of the existing security service to protect them, in case of threats".

#### **Article 16 – Entry into General Official Records on Personal Status of Citizens**

150. The positive effects of application of the Law on Registry Books were noted immediately after its adoption, for the largest number of applications for subsequent entry of the fact of birth into the registry books had been received and resolved in 2009 — 9,573 applications and 7,996 applications in 2010. In 2011 there were 774 applications, in 2012 there were 1,552 applications, in 2013 there were 784 applications and in 2014 there were 419 applications for subsequent entry of the fact of birth into the registry book of births.

Other entries into the registry book of births in the above mentioned years were made within terms prescribed by law for applications for entry of the fact concerned.

151. Also, a certain number of persons who could not prove the fact of birth in administrative proceedings accomplished the right to entry into the registry book of births in accordance with the provisions of the Law on Non-Contentious Procedure — establishment of time and place of birth. According to the data of the MoJ, 149 motions for establishment of time and place of birth were resolved in 2014.

152. The Law on Registry Books and the Instructions on How to Keep Registry Books and Forms of Registry Books also define procedure for renewal of destroyed or missing registry books kept for the territory of K&M according to which over 130,000 entries were made within the period from 1999 to 2012, there were 3,649 entries in 2013 and there were 3,959 entries in 2014.

## **Article 17 – Protection of Personal Data**

153. Protection of personal data shall be guaranteed by the Constitution of the RS and the Law on Protection of Personal Data. The RS is a party to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and to the Addition Protocol to the Convention, in conjunction with surveillance institutions and cross-border data streaming. The decision of the Constitutional Court adopted at the session held on 30 May upheld that bylaws may not be a valid legal ground for processing of personal data.

154. The Commissioner for Information of Public Importance and Protection of Personal Data is an autonomous government body independent in exercise of its competence, which shall carry out the jobs of protection of personal data and whose wide scope of competence is defined in Article 44 of the Law on Protection of Personal Data.

155. Having regard to the fact that the Law on Protection of Personal Data does not define protection in sufficiently precise and comprehensive manner resulting in numerous difficulties in its application, the Commissioner prepared a Model of the Law that could define the same subject in more details and presented it to the MoJ.

156. In respect of personal data processing related to processes in different fields (for example, health care, education, interior affairs), the Commissioner is of the view it should be regulated by separate sector laws defining in full the very given areas. At present, in some areas the subject legal regulations are entirely or partially present, while in other areas there no such regulations (for example, in respect of video surveillance and biometry).

### **Electronic and Other Types of Surveillance, Interception of Telephone or Other Types of Communication, Tapping and Recording of Conversation**

157. The Criminal Procedure Code prescribes the conditions for application of special evidentiary actions in the domain of electronic surveillance of communications, issuance of orders to do so and enforcement and documenting of their application in performance of activities (Arts. 161-180). In addition to this Code, which is one type of grounds of police operations, secrecy of electronic communications, lawful interception and data keeping are regulated in the Law on Electronic Communications (Arts. 126-130). For all special evidentiary actions applied within the scope of activities of the Department for Special Investigation Methods, it is necessary to have written and reasoned order of the court.

**Search of Private Houses and Personal Search and Body Inspection by Officials**

158. Search of premises and buildings shall be regulated by: the Law on Criminal Procedure, the Law on Police and the Rulebook on Police Powers. Inspection and search of persons shall be regulated by the Law on Police and the Rulebook on Police Powers.

159. Search is an evidentiary action the application of which shall be regulated by the provisions of the Criminal Procedure Code (Arts. 152-160). This action shall be undertaken under a court order or based on authorisation based on law in exceptional cases. In case a public prosecutor or authorised police officials undertook a search without an order, they shall be obliged to report on it immediately to a judge for previous procedure who shall assess whether all legal conditions for the search had been fulfilled. The minutes of search shall be made.

**Article 18****Recommendations (para. 20)****Position of Churches and Religious Communities**

160. Pursuant to the Law on Churches and Religious Communities, the subjects of religious freedom are traditional churches and religious communities, religious groups and other religious organisations. There is no provision of the Law governing autonomy, property and financing, religious services, educational activities and cultural activities of churches making a difference in the scope and type of rights enjoyed by traditional churches and religious communities, on one hand and other churches and religious communities, on the other hand, namely, there is no privileged positions of traditional churches and religious communities.

161. At the beginning of 2013, in respect of initiated proposals and initiatives from 2010 for assessment of constitutionality and harmonisation of the Law on Churches and Religious Communities with recognised international documents, the Constitutional Court adopted a decision dismissing the above mentioned proposals and rejecting the initiative. In its decision the Court, *inter alia*, took a view that legal difference between traditional churches and religious communities and other religious communities was not discriminatory, *i. e.* that it was not contrary to general prohibition of discrimination, principle of equal treatment of all churches and religious communities and freedom of religion. To take such a view, the Court took into account the Guidelines for Review of Legislation concerning faith or religious issued by OSCE and the Venetian Commission, as well as the opinions of relevant experts of ODIHR.

**Conscientious Objection**

162. Within the period from 2011 to 2015, members of reserve forces who had served their military duty with weapons and had a war position in the war units of the Army of Serbia filed 12 applications in total to obtain the status of conscientious objection maker.

**K&M**

163. The attacks against the Serbian Orthodox Church and its buildings and its priesthood and robberies of churches and monasteries have been in progress. All cases were timely reported to the Kosovo Police and KFOR but no report on the results of investigation was received in any case and the offenders were not arrested, either. Protection of cultural and religious heritage in K&M has been committed to the Kosovo Police Forces, which are not confident for the Serbian population and Orthodox priesthood. In the media in K&M the

information have lately been published that at the session of so-called Senate of the Priština University a proposal had been made to make a conversion of the unfinished Serbian Orthodox Cathedral Church of Christ the Saviour into a museum or to remove it, which is located in immediate vicinity of the University Camp in Priština.

164. General conditions of Orthodox graveyards in K&M are very bad. Out of 329 assessed graveyards 229 are in bad or very bad conditions (58% of the total number). Only 46 graveyards (12%) are in very good conditions, 83 graveyards (21%) are in good conditions, 24 graveyards (9%) are in decent conditions. Contrary to this, in the Northern Kosovska Mitrovica in the part where the Serbs live, there is a Moslem graveyard wherein no gravestone had been damaged, as well as in other Albanian Moslem graveyards in the Serbian communities in K&M.

## Article 19

### Recommendations (para. 19)

#### Roma

165. In accordance with the Draft AP for the Negotiating Chapter 23 a draft of the Strategy for Inclusion of Roma in the RS until 2025 has been made. This document is methodologically founded on the concept of protection of human rights and based on the Initial Study for the preparation of the Strategy for Inclusion of Roma from 2015 to 2025, which was prepared by the OHMR following extensive consultations with local self-government units, civil society organisations, state institutions and independent bodies.

166. The Office for European Integrations, the OHMR and the Social Inclusion and Poverty Reduction Team of the Government of the RS initiated the establishment of a mechanism to hold regular coordinating meetings on projects for improvement of the status of Roma. The objective of this initiative is to have all relevant beneficiaries of projects, donors and project implementation teams, through regular exchange of information on implemented and planned activities, contribute to more efficient and effective use of budgetary funds and grants, thus considerably supporting the process of improvement of the status of Roma in the RS.

#### *Status Issues*

167. The MoI of Interior shall continue to monitor the situation in the field of registration of temporary and permanent residences. The collection of data on the number of persons who had accomplished the right to registration of births in the registry books of births in the procedure of subsequent registration of births before the competent bodies referred to in Article 6 paragraphs 2 and 4 of the Law on Registry Books and the Law on Non-Contentious Procedure for establishment of time and place of birth before the competent courts. All measures and activities contained in the AP for the implementation of the Strategy for Improvement of the Status of Roma for 2014 were implemented in full.

#### *Education*

168. The positions of teaching assistants were systematised by the Government's Regulation No. 20/2011. Teaching assistants have completed studies of accredited modules of training. In cooperation with UNICEF, the Social Inclusion and Poverty Reduction Team of the Government of the Republic of Serbia made an analysis of measures for support to indigent children and defined packages of measures that may contribute to better support to education of Roma children at the level of local self-government unit and at the school

level. The execution of IPA Project 2012 Measure 5 has started, which is an activity related to formation of local mobile teams resulting in formation of mobile teams in 20 municipalities in the territory of the RS where teaching assistants are also engaged.

#### *Employment*

169. 22,377 members of Roma nationality are registered as unemployed with the National Employment Agency, of whom 10,355 are women (46.28%). Out of the total number of registered persons, 14,985 persons or 66.9% belong to the category of persons who are unemployed for long-term. Within the period from January to October 2014, 1,281 person of Roma nationality registered with the National Employment Agency got jobs (employment contracts were concluded with 640 persons while 641 person was employed without employment contracts. Out of the total number of persons who concluded employment contracts 82.68% were engaged temporarily.

170. The MLEVSP initiated the procedure for preparation of legislative framework to regulate the field of social entrepreneurship in accordance with affirmative practice of the EU countries, as a business model, which should represent a mechanism of labour social activation of persons whose employment is difficult and a reply to identified needs of the community.

#### *Social and Health Cares*

171. 74 medical mediators were engaged through the funds of the MoH. Until 31 August 2014, through the programme of Implementation of AP on Health Care for Roma, the following results were obtained: there were 37,502 initial visits to families; there were 170,278 visits to families or family members in order to implement medical education by means of planned interview and dissemination of medical brochures; 140,408 citizens were covered and recorded during initial visits: 46,453 women, 43,201 men and 50,754 children; personal documents and health cards were provided for 16,330 citizens; 28,003 citizens designated their doctors; 30,018 children were vaccinated; 4,500 pregnant women and maternity women were examined; 12,617 women were subject to systematic medical examination; 11,177 women designated their gynaecologists; 1,144 mammography screening were made; 7,710 children were subject to systematic medical examinations for school enrolment.

#### *Housing*

172. The MCTI has been implementing activities to establish the Geographic Information System for sub-standard (Roma) settlements, through the implementation the National Programme for the RS.

173. The Housing Agency of the RS has been implementing the Programme of Construction of Flats for Social Housing, which was adopted by the Government for six towns within the territory of the RS (Zrenjanin, Kikinda, Pančevo, Kikinda, Niš and Čačak).

## **Recommendations (para. 22)**

### **Protection of Journalists**

174. Within the period from 2011 to 2014 criminal charges were pressed for 26 persons in total who had committed the criminal act Endangerment of Safety to detriment of journalists or persons performing jobs of public importance in the field of information, which is contained in Article 138 of the Criminal Code in conjunction with jobs performed by the damaged party. Because of the enforcement of this criminal act investigations were

carried out against seven persons, five criminal complaints were rejected as groundless and 13 persons were accused. Condemnatory judgments were proclaimed in relation to 8 persons, while acquittal judgments were adopted in relation to 3 persons.

175. Threats to and violence against journalists were assessed as serious threats to freedom of expression and media pluralism. To overcome this challenge, it is necessary that all competent bodies coordinate and that awareness is raised about importance of protection of freedom of expression. The EC noted that it was necessary to ensure protection of journalists against threats of violence and pay particular attention to end discrimination of LGBT community and ensure respect for their rights and freedoms, stating these recommendations in the Screening Report for the Negotiating Chapter 23. With the aim to implement these recommendations the draft of the AP for this Chapter also prescribes the following activities for protection of journalists:

- Amendments and supplements to the Rulebook on Administration in Public Prosecution Offices in respect of manner of records keeping for offenders of criminal acts committed to detriment of journalists. With the aim to provide the most efficient operations of public prosecution offices, it has been planned to designate the cases in which journalists are damaged parties as priority ones.
- Production and signing of cooperation agreement between the PPO, the MoI and the Ministry of Culture and Information (MCI) prescribing that investigations of threats and violence against journalists would have priority.
- Production and signing of cooperation agreement between the PPO, the MoI and representatives of journalists' associations. This agreement shall appoint contact persons for cooperation between these institutions and prescribe method and procedure of information exchange, as well as method of informing about the events without criminal properties, method of identification of problems and other relevant subjects to improve the cooperation.

## **Recommendations (para. 21)**

### **Abolition of Defamation as a Criminal Act**

176. By the amendments and supplements to the Criminal Code at the end of 2012 defamation as a criminal act was decriminalized.

### **Freedom of Expression and Freedom of Media**

177. A set of new media laws was adopted in August 2014 within the framework of implementation of the AP for the Development Strategy of Information System in the RS: The Law on Public Information and Media, the Law on Electronic Media and the Law on Public Media Services. The above mentioned laws were fully harmonised with the European legal framework and for the purpose of their entire implementation the MCI adopted the below stated bylaws within the term prescribed by law: The Rulebook on Co-Financing of Projects accomplishing public interest in the field of public information; the Rulebook on Method and Entry into Records of representatives of Foreign Media and Representative Offices of Foreign Media; the Rulebook on Documentation to be Attached in Media Registration Procedure in the Media Register; the Regulation on method of data collection to form and keep uniform records on fee payers for public media service; the Regulation on temporary financing of public media services in 2015.

178. The above mentioned bylaws were made in comprehensive consultations with line ministries, the Provincial Secretariat for Culture and Information, representatives of civil sector, media and journalists' associations, representatives of OSCE, and with the

assistance of experts of the EC working on IPA Project of Strengthening Media Freedom of the Ministry of Culture and Information. An important component of this project is aimed at strengthening of freedom of expression and professionalism in journalism through rendering assistance in the implementation of projects of the Media Fund.

179. In accordance with the strategic objectives of the state, the new legal framework provides grounds from withdrawal of the state from ownership of media, transparency of ownership, transfer to the system of programme co-financing of projects in the field of public information and protection of media pluralism. The Privatisation Agency carries out media privatisation. An exception from privatisation was made for media founded by the national councils of national minorities. Although the national councils of national minorities are mainly financed from the budget, the Law on Public Information and Media prescribes that the national councils may be the founders of media. Also, pursuant to law, the RS foundation two public media services: Radio Television of Serbia, a public media institution and Radio Television of Vojvodina, a public media institution. In 2014 and 2015 the public media services were financed from the budget of the RS, after which period they will switch to the financing system through collection of fee.

180. In respect of ownership transparency in media, the legal framework makes it possible to achieve it by establishing the Media Register. The provisions of the Law on Public Information and Media governing entry of relevant data into the Media Register have been applied since 13 February 2015.

181. With regard to programme co-financing of projects in the field of public information, the Law on Public Information and Media established an obligation of the RS, autonomous province and local self-government unit to issue, for the purpose of accomplishment of public interest and each year, a tender for co-financing of projects in the field of public information, as well as to issue a separate tender for co-financing of projects in languages of national minorities. The MCI issued six tenders for co-financing of projects in the field of culture in 2015 (public information in languages of national minorities; production of media contents in the field of public information; public information for disabled persons; organisation and participation at expert, scientific and other related gatherings, as well as improvement of professional and ethical standards in the field of public information; public information for members of Serbian population in the countries of the region; projects implemented through electronic media with the seat in the territory of K&M).

## **Article 20**

### **Prohibition of Advocacy of National, Racial or Religious Hatred**

182. By amendments and supplements to the Criminal Code Article 54.a was added to it introducing a special circumstance for assessment of sentence for committed act of hatred. If a criminal act was committed due to hatred on the basis of racial and religious, national or ethnic affiliation, sex, sexual orientation or gender identity of another person, the court shall deem such a circumstance aggravating unless it is stipulated as an attribute of a criminal act.

### **K&M**

183. There are about 1,300 churches, monasteries and other buildings, localities and premises making cultural heritage of the Serbian nation. About 150 churches, monasteries and other buildings were destroyed, of which even 61 have the status of cultural monument. Parallel to this, more than 10,000 icons, church artistic pieces and articles for religious services were either destroyed or stolen, which ended at the illegal markets of antiques all



over the world. 5,261 gravestones were destroyed or damaged in 256 Serbian Orthodox graveyards, and in over 50 graveyards there is no single whole gravestone.

184. There are constant and persistent attempts to rename and exterminate the presence of Serbian cultural and religious heritage. In April 2014 there was another campaign of threats to Serbian churches in K&M, by unknown but not less dangerous authors of graffiti on the walls of the Visoki Dečani Monastery.

185. The provisions of the Kosovo Law on Amendments and Supplements to the Law 04/L-054 on the status and rights of war veterans, disabled persons, veterans, members of the Kosovo Liberation Army, victims of sexual violence during the war, civil victims and their families do not contribute to conciliation, integration or living together but encourages differences and separations very openly.

## **Article 21 – Freedom of Assembly**

186. Article 151 of the Criminal Code under Chapter Criminal Offences against Freedoms and Rights of Man and Citizen prescribes the criminal act of prohibition of public assembly, which shall protect the right to freedom of assembly through the institute of criminal responsibility.

187. 35 registered public assemblies were prohibited in 2011, 10 in 2012, 13 in 2013 and 19 public assemblies in 2014. During the first three months of 2015, in two cases decisions were adopted prohibiting registered public assemblies, wherein one decision on prohibition of assembly was quashed after repeated proceedings and a decision allowing public assembly was adopted.

## **Article 22 – Freedom of Association**

### **Associations**

188. For the purpose of implementation of the Law on Associations, the following regulations were adopted: Regulation on funds for encouragement of programmes or lacking part of funds for financing of public interest programmes to be implemented by associations, the Rulebook on Contents, Method of Registration and Keeping of the Registry of Associations and the Rulebook on Contents, Method of Registration and Keeping of Register of Association.

189. This Law prescribes that associations shall be registered on voluntary basis. Upon registration in the Register, an association shall obtain the status of a legal entity, while in case of associations not registered in the Register, which then have no status of legal entities, the legal rules on civil partnership shall be applied. The supervision of implementation of this Law shall be made by the MPALSG, while inspection supervision shall be made through the administrative inspection.

190. The procedure of registration, recording and publication of data and documents, which are, in accordance with separate law, the subject of registration, recording and publication in the registers and records kept by the Business Registers Agency, as well as other issues of importance for registration, records and publication are regulated in details by the Law on Registration with the Business Registers Agency. According to the data of the Business Registers Agency, 24,710 associations and unions of associations have been entered into the Register of Associations, while 50 representative offices of foreign associations in total were entered into the Register of Foreign Associations.

### **Political Parties**

191. The Law on Political Parties governs the establishment and legal status of political parties, entry and deletion from the register, cease of political parties and other issues of importance for the activities of political parties. A political party shall be established and act explicitly according to the territorial principle, and it shall obtain the status of a legal entity upon entry into the Register of Political Parties.

192. Inclusive of 1 January 2015, the Register of Political Parties kept by the MPALSG contained 101 registered political parties (of which 96 are active political parties). Out of this number 58 political parties are parties of national minorities (of which 56 are active).

### **Prohibition of Establishment and Limitation in Respect of Establishment and Activities of Associations and Political Parties**

193. According to the data of the Business Registers Agency, since the beginning of application of the Law on Associations until 1 January 2015, no decision was adopted dismissing entry of an association into the Register, while 213 decisions were adopted rejecting applications for entry of establishment of an association into the Register for formal legal reasons.

194. By the decision of 12 June 2012, the Constitutional Court prohibited the activities of the *Otacastveni pokret Obraz* association of citizens due to actions directed towards violation of guaranteed human and minority rights and incitement of national and religious hatred. The Constitutional Court ordered deletion of this association from the Register of Associations. The Business Registers Agency deleted this association from the Register on the day of receipt of this decision.

195. In the course of examination of applications by political parties and the attached documentation, inclusive of 1 January 2015 the MPALSG adopted two decisions dismissing an application for entry of harmonisation of political organisations into the Register of Political Parties, as follows: The Party of Veterans of Serbia and the United Serbian Movement with the seat in Belgrade for the reason that by final judgments of the First Basic Court in Belgrade the applicants had been declared guilty for commitment of continuing criminal offence of forgery of documents contained in Article 355 paragraph 1 of the Criminal Code in conjunction with Article 61 of the Criminal Code, namely, because they had submitted a certain number of false documents to the MPALSG, in the capacity of the president of political organisations, attached to the application for registration in the Register of Political Parties.

196. The MPALSG adopted decisions rejecting applications for entry into the Register of Political Parties for formal legal reasons. The decisions of the MPALSG are final and no action may be lodged against them with the Administrative Court.

197. Since the beginning of application of the Law on Political Parties no note has been made in the Register of Political Parties concerning initiation of proceedings for prohibition of activities of any political party and the MPALSG adopted no decision on deletion of any political party from the Register for the reason that the Constitutional Court had adopted a decision on prohibition of activities of a political party.

### **Article 23 – Position of Pregnant Women**

198. Since April 2013 when the application of amendments and supplements to the Labour Law commenced, concerning protection of pregnant women, who were working for a limited period and whose employers could not terminate their employment contracts until the expiry of maternity leave and/or leave for care of the child, the number of applications

lodged by pregnant women has been increased, who were working for a limited period and whose employment contracts had been terminated. In 2013 there were 58 employees, who got pregnant during the validity of employment contracts for a limited period and whose employment contracts had been cancelled by employers, and who referred to the labour inspection by reason of unlawful cancellation of employment contract. Following the inspection supervision, the employers concluded employment contracts with all pregnant women whose employment contracts had been previously terminated contrary to the Labour Law.

199. According to the Law on Exercise of Rights to Health Care for Children, Pregnant Women and New Mothers and Children up to the Age of 18, pregnant women and new mothers within a period of up to 12 months after giving birth to a live child are entitled to full health care, also including the right to medicines in accordance with the Law on Health Insurance and general acts of the Fund of the Republic of Serbia, as well as to paid transport costs regarding the use of health care regardless of health insurance basis and regardless of the fact that their health insurance card is not valid any longer.

## **Article 24 – Rights of the Child**

200. The RS signed the Third Optional Protocol to the CRC on a Communications Procedure in February 2012.

201. The National Assembly carries out its activities relating to the protection of the rights of the child through the work of a separate *Committee on the Rights of the Child*, which was established in July 2012 and officially proposed abolition of the statute of limitation of sexual delinquent acts against children.

### **Protection of Children from Abuse and Neglect**

202. The inter-sectorial collaboration between the ministries in charge of labour and social policy, labour, interior affairs and health care was established by the General Protocol for Protection of Children from Abuse and Neglect. On the basis of this Protocol the following documents were adopted: The Special Protocol on Conduct of Judiciary Bodies in Protection of Juvenile Persons, the Special Protocol for Protection of Children at Social Welfare Institutions from Abuse and Neglect, the Special Protocol on Conduct of Police Officers in the Protection of Juvenile Persons from Abuse and Neglect at Educational Institutions and the Special Protocol on Health Care System for Protection of Children from Abuse and Neglect. Also, the General Protocol for Action and Cooperation of Institutions, Bodies and Organisations in Situations of Domestic and Intimate Partner Violence against Women was adopted, which explicitly defines that a child victim of domestic violence shall be deemed a witness of domestic violence.

## **Article 25 – Electoral System**

203. According to the 2014 Law on Ministries, the MPALSG shall perform the affairs of public administration, which also refer, among other things, to keeping of the single electoral register.

204. The Law on the Single Electoral Register prescribes that entry into the single electoral register shall be a condition to exercise a voting right. The electoral register shall be kept by the MPALSG, while a part of electoral register for the area of local self-government shall be updated by municipal and/or town administration, as a vested affair. According to the data available at the Ministry, there were 7,018,361 voters in total registered in the single electoral register inclusive of 1 January 2015. For the purpose of

implementation of the Law on the Single Electoral Register, the following regulations were adopted: The Instruction on How to Join Existing Electoral Registers in the Single Electoral Register and the Instructions for the Implementation of the Law on the Single Electoral Register.

205. Elections are regulated by the Law on Election of Parliament Members, the Law on Election of the President and the Law on Local Elections. The Law on Local Elections provided for a proportional electoral system and a single electoral unit (municipality, as a single electoral unit). The amendments with regard to the previous reporting period concern the solutions in conjunction with candidacies and distribution of mandates. Candidate for councillors, according to this Law, may be proposed by registered political parties, coalitions of registered political parties, as well as groups of citizens whose electoral lists will be supported by their signatures by at least 30 voters per proposal for each candidate in electoral register. In this, a proposer must have in the electoral register at least one third of candidates of the total number of councillors to be elected. At the units of local self-government having less than 20,000 voters, electoral registers shall be established even if signed by at least 200 voters.

206. The Law on Local Elections prescribes that at nationally mixed local self-government units special attention is paid to representation of political parties of national minorities in the assemblies of local self-government units on the occasion of appointment of electoral boards for election of councillors. Likewise, at local self-government units with nationally mixed population, attention shall be paid to provide proportional representation of national minorities in assemblies of local self-government units. This Law made it possible for political parties of national minorities and coalitions of political parties of national minorities to participate in distribution of mandates, upon the completion of elections, even if they had less than 5% of votes of the total number of voters who had voted.

#### **K&M**

207. Local elections in 2013 and general elections in 2014 in K&M showed failures and manipulation with the rules related to elections and deprived a huge majority of persons displaced from K&M of their right to vote. This raised the issue of illegitimate treatment of displaced persons by the authorities within the meaning of non-recognition of their legal personality, with obvious political motivation that the number of Serb voters was the smallest possible. Displaced Serbs were not recognised their rights to be registered in the electoral registers under various allegations.

208. Before the extraordinary elections, which were held on 8 June 2014, it was first proposed and then postponed to adopt a new Law on Elections the application of which was to give less rights to members of the communities. Nevertheless, by means of the decisions of the Central Electoral Commission and by amendments of electoral rules, all intended amendments were implemented to detriment of the Serbian community, including discrimination. Albanians, as the majority of the Central Electoral Commission voted that in all communities where Serbs lived there had to be Albanians as well, and where Albanians were alone that there were no Serbs in electoral boards. Many administrative obstacles were instated to prevent inclusion of displaced Serbs in the electoral register and the municipal electoral commissions were permitted to refuse to comply with official views concerning the acceptance of votes of displaced Serbs.

209. 39,300 displaced persons in total had filed applications for voting by mail, of which 6,500 applications were accepted. There were recorded cases of candidates at elections without the right to vote, although the Central Electoral Commission acknowledged validity of their candidacies. The appellate proceedings were designed and conducted in such a way

that they could not be completed in due time in order to make voting possible for successful appellants.

210. Out of 32,000 appeals in total, 16,355 (50%) filed appeals in due time, of which 5,458 were accepted. Appeals were filed to the Constitutional Court as the last instance within 24 hours from the receipt of information on dismissal. The number of voters in the final electoral register was larger than the number of inhabitants in K&M according to the census.

## **Article 26**

### **Recommendations (para. 8)**

#### **Representation of Women in Public Administration, Local Self-Governments and at Decision-Making Positions**

211. One of important steps forward in respect of better participation of women in public and political life was made by adoption of the Law on Amendments and Supplements to the Law on Election of Representatives to the National Assembly. This Law prescribes that among each three candidates there must be at least one member of less represented sex. The similar provisions are also contained in the Law on Local Elections.

212. The amendments of this Law resulted in the increase of number of female members of the National Assembly, from 20.4% within the period from 2008 to 2012 to 34% after the elections in May 2012. The Government of the RS has 4 female ministers. In 2011 the Commissioner for Protection of Gender Equality addressed a recommendation to the National Assembly of the RS concerning provision of participation of women in international delegations.

213. The representation of women holding executive positions with the Ministry of Defence and the Army of Serbia amounted to 19.31% in November 2014 in relation to the total number of employed women. At the MoI the number of women holding executive positions has also been increasing (14.5% in relation to 10.3% in 2013). The results of gender analysis made at the Security Information Agency indicate that there has been an increase of representation of women at executive positions in relation to 2013, especially in respect of strategic level of management. At the Customs Administration of the Ministry of Finance representation of women in decision-making amounted to 28.5% in 2014 in relation to the total number of high rank executives. At the Directorate for Enforcement of Criminal Sanctions of the MoJ and at organisational units, women make 29% of the total number of employees. There are 18 women holding executive positions at the MPALSG.

#### **Non-discrimination**

214. According to the statistical data of the Commissioner for Protection of Gender Equality covering the period from 2010, about 17.5% of all received complaints referred to discrimination in procedures before the public authorities. Discrimination is mostly present in employment procedure or at work (38%), in the field of education and vocational training (7.5%) and on occasion of public service rendering or use of buildings and surfaces (7.2%). The Commissioner received over 3,500 complaints and referrals of citizens since the beginning of activities.

215. The Strategy for Prevention and Protection from Discrimination for the period from 2014 to 2018 was adopted on 27 July 2013, while the AP for its implementation was adopted on 2 October 2014. The Strategy is intended for prevention of discrimination and improvement of status of nine vulnerable groups (women, children, persons with

disabilities, elderly people, LGBT population, national minorities, refugees, internally displaced persons and members of other vulnerable migrant groups, persons whose health status can be the cause of discrimination, members of small religious communities and religious groups) that are mostly subject to discrimination.

216. The Council of the Government of the RS to monitor the implementation of the Strategy was formed on 13 August 2015. The task of the Council is to monitor progress in execution of measures, implementation of the activities and meeting the established deadlines, and to warn timely of potential challenges in the implementation.

#### **K&M**

217. The property rights of Serbs and members of communities, especially of displaced persons, are not protected. Serbs lodged 18,000 claims for damage compensation to the courts in K&M (40% of total number of unresolved civil cases); a large number of forged documents related to property and contracts on transfer of property rights; 40,612 proceedings were initiated before the Kosovo Property Agency for restitution of usurped land; according to unofficial data, almost 700,000 land lots owned by Serbs had been unlawfully occupied; only 1,691 (11%) enforced applications resulted in actual restitution of land to its owner.

218. The statistical reviews of judgments and cases hide the actual state of scope of judgments adopted before the Kosovo courts dismissing the claims for damage compensation for destroyed property lodged by Serbs.

219. Over 200,000 persons are still displaced and the method in which the census in K&M had been designed and carried out excluded all displaced persons because of the length of their stay out of the Province (for more than a year). On the other hand, a large number of Albanians from abroad were received, who have local personal documents thus meeting the requirements of being registered as permanent residents, although they come to K&M once or twice a year to visit their relatives. Further, such a census on population and households implicitly entails certificates of property owned at the given time, which had to be left by actual owners at the time they had been forced to leave the country and become displaced persons.

220. For the Serbian community, such a census means legalisation of act and consequences of ethnic cleansing of K&M and acceptance of demographic model changed by force. Out of the total number of 427 villages and places in K&M in which Serbs and members of other communities used to live, 311 of them is ethnically cleansed and only Kosovo Albanians live in them today.

221. A difficult position of returnees and impossibility to exercise fundamental human rights result in increasing isolation of Serbian population due to their withdrawal to enclaves or isolated villages. Their economic standing is worse compared with entire population and even in relation to other displaced persons and returnees living in larger Serbian communities. In addition, it is obvious that the Law on Amnesty has been selectively applied, depending on ethnic affiliation of offenders or of alleged offenders of criminal acts.

## Article 27

### Recommendations (para. 23)

#### Equal Participation of National Minorities in Public Affairs and Political Life

222. The RS has an adequate legislative framework for protection of rights of national minorities, including the Law on Civil Servants, which prescribes that employment with the government bodies is possible to all candidates under the same terms and conditions. The candidates are elected in accordance with their qualifications, knowledge and skills.

223. However, there are no records on representation of members of national minorities performing public affairs. The Statistical Office of the RS collected the data on national affiliation of citizens pursuant to law (including a remedy that citizens were not obliged to declare their national affiliation) at the population census in 2011. These records could be used to establish representation of national minorities in public affairs and political life and to indicate whether it is necessary to introduce affirmative measures in order to accomplish entire equality in participation in public affairs and political life.

#### National Councils of National Minorities

224. In January 2014 the Constitutional Court adopted the decision<sup>5</sup> declaring certain provisions of the Law on National Councils of National Minorities concerning powers of national councils incompatible with the Constitution. A part of this Law relating to elections and constitution of national councils of national minorities was amended in May 2014 in order to eliminate numerous failures in election process having occurred on the occasion of the first elections for national councils in 2010. Among other things, administrative judicial protection from all acts to be adopted by the competent ministry in the application of laws, while the Electoral Commission of the RS became the supreme body to carry out elections for national councils.

225. The second elections for national councils of national minorities were held at the end of October 2014. In direct elections, members of national minorities elected 17 councils (Albanian, Ashkali, Bosniak, Bulgarian, Bunjevci, Vlach, Greek, Egyptian, Hungarian, German, Roma, Romanian, Ruthenian, Slovak, Slovenian, Ukraine and Czech national councils) while members of Macedonian, Montenegrin and Croatian national councils were elected at the electoral assembly.

#### Strategic Documents

226. For the purpose of implementation of recommendations of the EC, within the framework of negotiations of the RS for accession to the EU, the draft of the AP for the Negotiating Chapter 23 prescribes adoption of the AP for national minorities until the fourth quarter of 2015 and a new Strategy for Improvement of the Status of Roma in the RS.

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<sup>5</sup> IUz No. 882/2010.