



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**By Thomas Hammarberg**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to Serbia  
on 12-15 June 2011

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## **Summary**

Commissioner Thomas Hammarberg and his delegation visited Serbia from 12 to 15 June 2011. In the course of this visit the Commissioner held discussions with representatives of the Serbian authorities and intergovernmental organisations, as well as with members of civil society. The present Report focuses on the following major issues: post-war justice and reconciliation (section I); fight against discrimination (section II); and freedom of the media, access to public information and personal data protection (section III). Each section is accompanied by the Commissioner's conclusions and recommendations.

### **I. Post-war justice and reconciliation**

Serbia has a key role in the process of post-war justice and reconciliation in the region of the former Yugoslavia. The Commissioner calls on the authorities to strengthen their efforts aimed at effectively investigating and prosecuting war-related crimes, in accordance with the international legal principles of accountability, justice and the rule of law. The Commissioner hopes that the Serbian authorities will pursue their efforts to remove the remaining obstacles to effective inter-state co-operation. Access to justice for all victims should be ensured and effective domestic remedies should be provided. The Commissioner urges Serbia to improve the witness protection system and to promptly investigate and prosecute all reported cases of threats and intimidation of witnesses. He welcomes the commitment shown by the authorities during his visit to improving the witness protection system by transferring the relevant competence to the Ministry of Justice.

Whilst welcoming the ratification in May 2011 by Serbia of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, the Commissioner invites the authorities to continue with determination their efforts, at national and regional level, aimed at resolving the approximately 14 000 cases of persons missing due to the wars in the region.

The Commissioner welcomes the efforts made to resolve the remaining problems of those forcibly displaced during the war, and urges the authorities to complete this urgent work. The most vulnerable remain the approximately four thousand persons living in collective centres. Further co-operation between Serbia, Bosnia and Herzegovina, Croatia and Montenegro is needed in order to effectively address the pending issues arising from forced displacement in the region.

Establishing the truth about the gross human rights violations is one of the most important components of the transitional justice process. It is urgent that the countries of the former Yugoslavia overcome and eliminate ethnic polarisation and come to terms with the past. A serious truth and reconciliation process is of utmost importance in order to give justice to victims and establish standards for the future.

### **II. Fight against discrimination**

The Serbian legal and institutional framework against discrimination and racism has been strengthened. The Commissioner welcomes the adoption in 2009 of the Law on the Prohibition of Discrimination and the establishment of the Office of the Commissioner for the Protection of Equality. This law provides for protection against discrimination on the grounds of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation. The Ombudsman of Serbia continues to play an important role in the protection and promotion of human rights and fundamental freedoms. The Commissioner calls on the authorities to ensure that the Ombudsman has sufficient human and financial resources to continue carrying out his tasks.

As regards the protection of national minorities, the Commissioner welcomes the adoption in 2009 of the Law on Minority National Councils. He remains concerned that the members of the national minority council of Bosniaks have not yet been elected and hopes that there should be no further delays in the election process.

The Commissioner welcomes the action taken by the Serbian authorities in recent years to counter hate crimes, notably those committed by extremist groups. He welcomes the decision of the

Constitutional Court of Serbia in June 2011 to ban the extreme right-wing organisation *Nacionalni stroj*, and calls on the authorities to consider banning other organisations promoting racist hate speech.

While he welcomes the progress made with regard to the protection of the human rights of Roma, the Commissioner urges the authorities to increase and systematise their efforts in order to enhance protection, in particular in the sectors of employment, education, housing and healthcare, drawing upon the Council of Europe Committee of Ministers' Recommendation (2008)5 *on Policies for Roma and/or Travellers in Europe*. The Commissioner remains deeply concerned by the situation of the displaced Roma from Kosovo\* who face the harshest living conditions. The Commissioner is particularly concerned by the non-registration of Roma children upon their birth and the lack of personal identity documents of approximately 5% of Roma in Serbia. He urges the authorities to facilitate access to personal identity documents for Roma.

Whilst welcoming the authorities' support for the work and activities of LGBT activists and organisations, the Commissioner remains concerned about widely-present homophobia. He calls on the authorities to increase their efforts aimed at fighting violence and discrimination against LGBT persons, including a more vigorous implementation by courts of the criminal provisions concerning hate crimes.

The Commissioner commends the adoption of legislation aimed at the protection and promotion of the rights of persons with disabilities. The implementation of this legislation has facilitated the process of deinstitutionalisation of children with disabilities and has increased the employment of persons with disabilities. However, the Commissioner remains concerned at the fact that a number of elderly and adult persons with mental disabilities are placed in institutional care without their consent. He is also worried by the reported abuse of the legal capacity proceedings, often by close family members. The Commissioner calls on the authorities to amend the legal provisions concerning the removal of legal capacity, taking into account the concerns expressed by the Serbian Commissioner for the Protection of Equality and the standards contained in the UN Convention on the Rights of Persons with Disabilities.

### **III. Freedom of the media, access to public information and personal data protection**

The Commissioner underlines the importance of encouraging media's potentially crucial role in the development of pluralism and broadmindedness in society. He stresses that defamation should be decriminalised and that unreasonably high fines in civil cases relating to media should be avoided. He suggests that the position of the Constitutional Court against excessive fines in defamation cases should be clearly reflected in the forthcoming media legislation. At the same time, the media community should be encouraged to promote and apply ethical professional standards and to develop a system of effective self-regulation.

The Commissioner commends the authorities' prompt reactions to recent attacks on journalists, but remains seriously concerned by the failure of the authorities to resolve past cases of killings of journalists. He urges the authorities to conduct effective investigations into all these violent incidents, in full compliance with the case-law of the European Court of Human Rights and the 2011 Guidelines of the Council of Europe Committee of Ministers *on eradicating impunity for serious human rights violations*.

The Commissioner also calls on the authorities to improve and strengthen the personal data protection system. He urges them to adopt and implement an action plan for putting into effect the Strategy on Personal Data Protection which was adopted by the government in 2010.

Lastly, the Commissioner reiterates that media could play an important role in countering prejudices and should not perpetuate stereotypes on ethnic or religious minorities, in particular Roma. The authorities are urged to promote systematic dialogue with media professionals and relevant civil

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\* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

society groups in order to ensure the elimination of manifestations of anti-Gypsyism and the promotion by media of tolerance and social cohesion.

The authorities' comments are appended to this Report.

## **Introduction**

1. The present report follows a visit to Serbia by the Council of Europe Commissioner for Human Rights (the Commissioner) from 12 to 15 June 2011.<sup>1</sup>
2. The Commissioner wishes to thank the Serbian authorities in Strasbourg and in Belgrade for their assistance in organising the visit and facilitating its independent and smooth execution. He wishes to thank all his interlocutors, both national authorities and civil society, for their willingness to share their knowledge and insights with him.
3. During the visit the Commissioner held discussions with national authorities, including the Minister of Human and Minority Rights, Public Administration and Local Self-Government, Mr Milan Marković, the Minister of Labour and Social Policy, Mr Rasim Ljajić, the Minister of Culture, Media and Information Society, Mr Predrag Marković, and the Special Prosecutor for War Crimes, Mr Vladimir Vukčević. He also met with the Commissioner for the Protection of Equality, Ms Nevena Petrušić, the Commissioner for Refugees, Mr Vladimir Cucić, the Ombudsman of Serbia, Mr Saša Janković, and the Commissioner for Information of Public Importance and Personal Data Protection, Mr Rodoljub Šabić.
4. In addition, the Commissioner met and held discussions in Belgrade with intergovernmental and non-governmental organisations, and visited the collective centre for displaced persons in Kaludjerica, Belgrade, and the irregular Roma settlement in Marija Bursać, Blok 61, Belgrade.
5. Serbia acceded to the Council of Europe on 24 April 2002 and has signed and ratified most of the major Council of Europe and core United Nations human rights treaties. Serbia has not as yet acceded to the European Convention on Nationality, and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.
6. Serbia is going through a post-war period, striving to overcome the legacy of the violent past, and to work towards ethnic depolarisation and social cohesion. Notwithstanding considerable progress made since his last visit in 2008, the Commissioner believes that more sustained and concerted efforts are needed to redress the gross human rights violations of the armed conflicts of the 1990s, to vigorously fight against and eliminate discrimination and to effectively protect and strengthen media freedom.
7. The present Report focuses on the following major issues: post-war justice and reconciliation (section I); fight against discrimination (section II); and freedom of the media, access to public information and personal data protection (section III). Each section is accompanied by the Commissioner's conclusions and recommendations.

### **I. Post-war justice and reconciliation**

8. The legacy of the violent past still affects the enjoyment of human rights, democracy and the rule of law in Serbia. The lack of a systematic approach in the region in coping with and redressing the past gross human rights violations has resulted in the impunity of war criminals as well as in an individual pursuit of the truth and reparation by victims. Information and education of the population in order to overcome pre-war and current prejudices due to ethnic polarisation are sporadic or non-existent. The Commissioner would like to underline that the complex but necessary process of post-war justice in the region cannot be successfully achieved without close and constructive co-operation among the respective countries. The Serbian government has taken important initiatives in this regard which should be followed through.

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<sup>1</sup> During the visit, the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Nikolaos Sitaropoulos, and his Adviser, Ms Erliha Bičakčić.

### **1. International and regional co-operation**

9. Co-operation between Serbia and the International Criminal Tribunal for the former Yugoslavia (ICTY) improved considerably with the arrests of the ICTY fugitives Ratko Mladić and Goran Hadžić in May and July 2011 respectively.
10. Regional co-operation, an important factor for the effective prosecution and punishment of war-related crimes, has improved in recent years. The improvement of the co-operation between national prosecutors, including agreements on bilateral extradition and recognition of foreign judgments, has contributed to the fight against impunity in the region. The Commissioner welcomes the signature in February 2010 of the bilateral agreements between the Ministers of Justice of Bosnia and Herzegovina, Croatia and Serbia, to prevent the abuse of dual citizenship in extradition procedures.<sup>2</sup> However he remains concerned about reports indicating that Bosnia and Herzegovina and Serbia have barred extraditions of their own nationals.
11. The Commissioner has noted with concern that Serbia and Bosnia and Herzegovina have not yet signed an agreement on the exchange of evidence in war-related criminal proceedings. The signing of this agreement, expected for July 2011, did not take place. The draft agreement aims to solve the problem of parallel investigations<sup>3</sup> for war-related crimes in Bosnia and Herzegovina and Serbia. Serbia signed a similar agreement with Croatia in 2006. The Commissioner underlines the importance of such an agreement and calls on Serbia and Bosnia and Herzegovina to overcome their differences and make access to justice a reality.
12. The adoption by the Serbian Parliament of a resolution in March 2010 which condemned the crimes committed in 1995 in Srebrenica was a positive step. Nonetheless the Commissioner is worried by statements of certain Serbian politicians who have denied the facts of these atrocities. The Commissioner reiterates that such statements seriously affect the process of reconciliation.
13. The Commissioner has noted with satisfaction the attendance by the Serbian President Tadić of the Srebrenica commemoration in July 2010 and the 2010 meetings between the Presidents of Serbia and Croatia that have enhanced bilateral relations and the much-needed spirit of regional inter-state co-operation and reconciliation. In November 2010, for the first time, Presidents Josipović and Tadić visited together the Ovčara memorial for the Croatian war victims in Vukovar. There they shared words of apology for the war-related crimes and underlined their determination and commitment to concluding the process of inter-state and ethnic reconciliation.
14. The Commissioner welcomes the dialogue between authorities in Belgrade and Priština, provided for by the UN General Assembly Resolution 64/298 and which began in March 2011 in Brussels. The meetings held so far have focused on, among other things, the issue of civil registry and freedom of movement. Forthcoming meetings will follow up on the important issues of missing persons and mutual recognition of school and university diplomas. The Commissioner welcomes these developments and stresses the need for the dialogue to focus on all issues that have concrete, serious implications for the lives and human rights of a large number of persons, in particular those who have been forcibly displaced from Kosovo.

### **2. Domestic proceedings concerning war-related crimes**

15. In 2003 Serbia established by law the War Crimes Chamber of the District Court in Belgrade (WCC) and the Office of the War Crimes Prosecutor of the Republic of Serbia. Their competence extends to the prosecution and trial of perpetrators of war crimes, genocide, and crimes against humanity committed on the territory of the former Yugoslavia since 1 January 1991.

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<sup>2</sup> The agreements will allow the arrest and extradition of convicted criminals who have evaded justice as a result of holding dual citizenship.

<sup>3</sup> See Commissioner's Report following his visit to Bosnia and Herzegovina, 29 March 2011, paragraph 130.

16. The Commissioner has noted reports indicating slow progress in war-related criminal proceedings. According to the War Crimes Prosecutor's Office,<sup>4</sup> 383 persons have been prosecuted for war-related crimes as of June 2011. 22 final judgments were delivered involving 53 convicted persons, while in three cases involving 15 accused the appeal proceedings are pending.
17. The Commissioner is concerned by reports showing that the War Crimes Prosecutor and his deputies are operating in an atmosphere of threats and intimidation from some members of the public. Reportedly this situation is aggravated by limited political support and even obstruction by some political parties. During his visit the Commissioner noted comments made by civil society representatives, according to whom proceedings initiated so far have targeted mainly low-level alleged perpetrators, due to concerns that such investigations could disclose evidence concerning involvement in criminal activities of officials still in positions of authority.

*2.a. Protection of witnesses in war-related criminal proceedings*

18. The Parliamentary Assembly of the Council of Europe, in Resolution 1784 (2011) on *the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*, called on the Serbian authorities to ensure the functioning of the witness protection system according to professional standards by allocating qualified and trained staff, and adequate resources. The authorities were also called upon to consider the transfer of responsibility for the Witness Protection Unit (established in June 2006) from the Ministry of Interior to the Ministry of Justice in order to avoid any conflict of interest between the members of this unit and the witnesses they are mandated to protect. The Commissioner fully supports this recommendation.
19. Amendments to the 2001 Criminal Procedure Code concerned witness protection. Measures provided for by this law concern notably in-court protection, assignment of pseudonyms, and provision of testimony behind a screen. Special measures such as witness relocation or change of identity are contained in the 2005 Law on the Protection Programme for Participants in Criminal Proceedings.
20. The Commissioner has noted that the capacity of the witness protection system in Serbia remains limited and that the system suffers from a reported lack of trust on the part of witnesses. Insufficient human and financial resources have also been reported, as well as the lack of adequate equipment. Lack of co-ordination and co-operation between the Witness Protection Unit, the War Crimes Prosecutor's office and the War Crimes Chamber has also been noted.<sup>5</sup>
21. The Commissioner is seriously concerned by reports indicating that several members of the Witness Protection Unit are former members of the 'red berets',<sup>6</sup> a unit whose members had allegedly committed war-related crimes in Croatia, Bosnia and Herzegovina and Kosovo. In this context it is noted that there has not been a satisfactory vetting of police staff members in Serbia. In 2003 Serbia adopted the Law on Accountability for Violations of Human Rights but no steps have been taken so far for its implementation. The law provides for the establishment of a commission to take decisions concerning violations of human rights since 1976. This commission has not yet been established.<sup>7</sup>

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<sup>4</sup> War Crimes Prosecutor of the Republic of Serbia, general statistics, [http://www.tuzilastvorz.org.rs/html\\_trz/pocetna\\_eng.htm](http://www.tuzilastvorz.org.rs/html_trz/pocetna_eng.htm).

<sup>5</sup> Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Report on *the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*, 12 January 2011, paragraphs 116 and 124.

<sup>6</sup> The 'red berets' was a special unit of the State Security Service of the Ministry of Interior of Serbia. Jovica Stanišić, head of this service, is facing trial at the ICTY for his role in the wars on the territory of the former Yugoslavia in connection with the operations of several paramilitary units, including the 'red berets'. The 'red berets' were disbanded by Serbia in 2003 after the assassination of the former Prime Minister Zoran Djindjic by a member of this unit.

<sup>7</sup> International Center for Transitional Justice, Submission on Serbia to the Universal Period Review (UPR) of the UN Human Rights Council, 17 July 2008, page 3, <http://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Serbia-Review-2008-English.pdf>.

22. During his visit the Commissioner was informed of incidents concerning inappropriate behaviour by some members of the Witness Protection Unit towards witnesses, which has occasionally resulted in witnesses changing their testimonies or simply deciding not to testify at all. Threats and intimidations targeting witnesses' family members have also been reported.
23. Against this background, the Commissioner welcomes the Serbian authorities' determination, shown during his visit, to improve the witness protection system by transferring the relevant competence to the Ministry of Justice. The Commissioner was informed that the full transfer of this competence is planned to be completed in two years since it requires the enhancement of national expertise and the allocation of significant financial resources. The Commissioner calls on the authorities to take all necessary measures to make sure that adequate witness protection is provided during the transitional period.

#### *2.b. Adequate and effective reparation for victims*

24. Adequate, effective and prompt reparation to the victims of gross violations of international human rights law and serious violations of international humanitarian law is a constituent element of post-conflict justice. The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>8</sup> highlight various forms of remedies to be introduced at national level in order to provide redress to victims. It is underlined that reparation should be proportional to the gravity of the violations and the harm suffered.
25. The Commissioner is worried by the lack of a reparation mechanism for all victims of war-related crimes in Serbia. The laws in force<sup>9</sup> provide for administrative compensation for a limited group of war victims, excluding victims whose injuries or loss of life resulted from actions of Serbian state agencies. Those entitled to administrative compensation are war-related disabled persons and families of persons killed in an armed conflict or deceased as a result of injuries suffered in connection with the conflict. Former camp detainees, victims of sexual violence, and victims of torture may not benefit from administrative compensation unless the abuses against them resulted in bodily infirmity above a certain threshold.<sup>10</sup>
26. Victims from the excluded categories can seek compensation for pecuniary and non-pecuniary damages before the courts. The legal basis for these compensation proceedings is found in the Constitution of Serbia, the Law of Obligations, the Criminal Code and the Civil Code.
27. During his visit the Commissioner was informed that in practice a high standard of proof applied by domestic courts and the statutes of limitations have prevented victims from obtaining compensation for physical or psychological harm in many cases. In 2004 the Serbian Supreme Court took the position that claims against the state must be brought within five years of the event that caused the alleged harm. The Commissioner has noted with concern that the five-year deadline has already expired for victims of the gross human rights violations which were committed in the 1990s.

### **3. Missing persons**

28. There is a need to resolve the pending cases of missing persons from the 1991-1999 wars on the territory of the former Yugoslavia and thus bring an end to the suffering of their families. This is a prerequisite for a true process of reconciliation in the region. In this context, the Commissioner welcomes the ratification in May 2011 by Serbia of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.
29. There are approximately 14 000 persons still missing in the region. The Commissioner underlines that regional co-operation is crucial for the successful completion of the process of clarifying the fate of missing persons. In order to effectively address this issue commissions on

<sup>8</sup> Available at: <http://www2.ohchr.org/english/law/remedy.htm>.

<sup>9</sup> Administrative compensation is regulated by the following laws: the 1996 Law on the Rights of Civilian Victims of War, the 1998 Law on the Basic Rights of Former Soldiers, Military Disabled Persons and Families of Killed Soldiers and the 1989 Law on the Rights of Soldiers, Military Disabled Persons and Members of their Families.

<sup>10</sup> International Center for Transitional Justice, Submission to the UPR, cited above, page 3.

missing persons have been established in the region. The Commission on Missing Persons of the government of Serbia established in 2006 is a successor to the mechanisms that existed since 1994 in previous constitutional and legal contexts.<sup>11</sup>

30. The International Commission on Missing Persons (ICMP) and the International Committee of the Red Cross (ICRC) have played an important role in the process of facilitating co-operation between countries in the region. A number of meetings on joint co-operation between Serbia, Bosnia and Herzegovina and Croatia have been held under the auspices of the ICMP and ICRC.
31. The Commissioner has noted progress in the co-operation between the authorities in Belgrade and Priština with regard to the issue of missing persons. In 2010 the exchange of information on gravesites in the meetings of the Working Group of Missing Persons, chaired by ICRC, has resulted in the recovery of 47 human remains that were handed over to the families in Serbia and Kosovo.<sup>12</sup>
32. The opening of military and police archives appears to be one of the most sensitive issues in this context. The Commissioner has noted with satisfaction that in 2010, for the first time, the Serbian Defence Ministry submitted information from military archives to the Serbian Missing Persons Commission.<sup>13</sup>
33. According to ICRC, co-operation in 2010 between the commissions on missing persons of Serbia and Bosnia and Herzegovina at the site of Lake Perućac resulted in the recovery of the remains of about 97 missing persons on both the Bosnian and Serbian sides of the lake.
34. The issue of missing persons was high on the agendas of the meetings in 2010 between the Presidents of Serbia and Croatia. In November 2011, during his visit to Croatia, President Tadić brought with him important documents concerning persons who have been missing since the siege of the Croatian town of Vukovar in 1991. The Commissioner hopes that these documents will help in the search for the persons missing from the Vukovar region. Another step towards accelerating this process is the publication in November 2010 of a joint list of missing persons of the two countries.
35. The Commissioner welcomes these developments. He stresses that it is necessary to sustain and reinforce the efforts undertaken. There is a need for extensive searches for gravesites and information on the fate of missing persons in all state archives, while the identification of exhumed bodies should be speeded up. Unconditional exchanges between all states concerned of information on the fate of the missing persons are crucial in this context.

#### **4. Access to the truth concerning gross human rights violations**

36. Victims of gross human rights violations, and their representatives, are entitled to seek and obtain information notably on the true causes and conditions concerning the violations they have suffered.<sup>14</sup>
37. The Commissioner is seriously concerned by the prevalence of ignorance and occasional denial of the gross human rights violations during the wars in the former Yugoslavia, expressed in public and political discourse in Serbia. This seriously undermines the efforts made so far towards ethnic depolarisation and reconciliation. The Commissioner believes that it is necessary to establish a mechanism that will make effective investigations possible and

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<sup>11</sup> In 1994 the Federal Republic of Yugoslavia established the Commission of the Federal Government for Humanitarian Issues and Missing Persons. In 2003, after the establishment of the Union of Serbia and Montenegro, the Commission of the Council of Ministers for Missing Persons was established. For more information see <http://www.impunitywatch.org/upload/UserFiles/file/IW%20Serbia%20BCR,%20Serbian.pdf>.

<sup>12</sup> ICRC, Annual Report 2010, page 345, <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-2010-western-balkans.pdf>.

<sup>13</sup> Idem.

<sup>14</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005), section X.



- give victims access to the truth. Indeed it is only when the truth is uncovered that justice and social cohesion can be attained.
38. The Council of Europe Parliamentary Assembly, in Resolution 1786 (2011) on *the reconciliation and political dialogue between the countries of the former Yugoslavia*, has supported the establishment of a regional truth and reconciliation commission, with the participation of all countries involved in the conflicts, with a view to reaching a mutual understanding of past events and to honoring and acknowledging all the victims.
  39. There have been several attempts in the former Yugoslavia to establish a truth commission. One such commission was established in 2001 by the Serbian authorities but it was finally dissolved in 2003 without achieving any significant results.
  40. In 2008 a regional coalition of non-governmental organisations (Coalition) launched an initiative aimed at establishing a regional truth commission (RECOM). To date the Coalition consists of a network of about 1 500 non-governmental organisations, associations, and individuals. The initiative was created by civil society representatives from Serbia, Bosnia and Herzegovina and Croatia with extensive experience in post-war justice.
  41. On 26 March 2011 the Coalition adopted a draft Statute<sup>15</sup> for an international agreement which the former Yugoslav states are asked to ratify in order to make the Statute part of the national legal systems. The Statute also provides that an official, independent commission shall be established to proactively investigate all alleged war crimes and human rights abuses committed during the wars of the 1990s. At the end of its three-year mandate, the commission would issue a report, containing the facts established, and issuing recommendations in terms of reparations, non-recurrence and further steps to be taken. It would also create an archive, open to the public.
  42. The Commissioner has carefully followed the work of the Coalition. During his visit, he met with representatives of an NGO which is one of the Coalition's founders. The Commissioner was informed about the aim of collecting one million signatures from citizens in the region in support of establishing the above commission. The aim was to hand the signatures over to the respective authorities in the region by the end of June 2011.
  43. Following his visit the Commissioner has noted that the Coalition collected about half a million signatures which were handed over to the President of Croatia, the Presidency of Bosnia and Herzegovina and a State Secretary of the Slovenian government. However, the Coalition, at the time of preparing this Report, had not managed to hand over the signatures to the political leaders in Belgrade, Priština and Skopje.
  44. As of February 2011 support for the Coalition had been expressed by the Parliament of Montenegro, the Presidents of Serbia and Croatia, the European Commission, the Subcommittee for Human Rights of the European Parliament and the Serbian Parliamentary Committee for European Integration. In April 2011 a number of political parties represented in the Parliament of Serbia expressed their support for the establishment of RECOM. In May 2011 the Slovenian President, Danilo Türk, and the Parliament Speaker, Pavel Gantar, also expressed their support for the initiative. However, the Commissioner has also noted reports indicating that there are other leading politicians in the region who oppose this initiative.
  45. The RECOM initiative is the only regional initiative that has gathered such wide support from a significant number of representatives of civil society, victims' associations and individuals from all countries in the Western Balkans. A number of awareness-raising campaigns in the region have been organised by the initiators. The campaigns have been intensified during the collection of signatures for the RECOM Statute and have no doubt contributed to the understanding by the region's peoples of the importance of the reconciliation process. This in itself is a most welcome and needed contribution.

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<sup>15</sup> The RECOM Statute is available at the web-site of the Coalition for RECOM: <http://www.zarekom.org>.

### **5. The protection of the human rights of persons displaced by the wars**

46. Serbia hosts one of the largest forcibly displaced populations in Europe, including persons displaced from Kosovo as well as persons who are still registered as refugees, mainly from Croatia. There are 74 000 refugees in Serbia still in need of durable solutions. The Commissioner welcomes the efforts by the authorities to find durable solutions for this population by developing mechanisms for their integration in Serbian society. The 2002 National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons (IDPs) was revised in 2011 to provide comprehensive measures for integration and return.
47. The Commissioner has been informed that integration mechanisms for refugees and IDPs have been developed at national and local levels. During his visit, Commissioner Hammarberg met with Mr Vladimir Cucić, the Commissioner for Refugees, who informed him that 114 municipalities (out of 150 municipalities in Serbia) have adopted local action plans to provide solutions to forcibly displaced persons under their jurisdiction, and that 80% of these municipalities have allocated funds for the implementation of the action plans.
48. Whilst welcoming the closure in 2010 of seven collective centres for displaced persons, the Commissioner is seriously concerned by the fact that about 4 100 persons still live in 42 collective centres in Serbia. The largest collective centre, which is situated in Smederevo, accommodates 500 persons.
49. According to UNHCR, collective centres host 800 refugees from Croatia and Bosnia and Herzegovina, and 3 200 displaced persons from Kosovo. The Commissioner witnessed that the living conditions of the families in the collective centre in Kaludjerica, Belgrade, which he visited on 14 June 2011, are difficult. There he met a six-member family from Kosovo accommodated in a small hut since June 1999. The two eldest family members suffer from chronic illnesses and the family's only income is social care assistance.
50. The Commissioner was informed by UNHCR that the Belgrade authorities will soon begin the construction of three social apartment buildings for the displaced populations accommodated in collective centres. Financial resources were made available for this project in March 2011. Apartments are planned to be allocated in accordance with personal vulnerability criteria, according to which persons with disabilities, the elderly and single parents would be given priority.
51. The issue of access by refugees from Croatia, currently residing in Serbia, to their property and other economic and social rights in Croatia was raised in the discussions the Commissioner had with the Serbian authorities and civil society representatives. Representatives of an expert NGO informed the Commissioner that there has been progress by Croatia in the implementation of the Housing Care Programme.<sup>16</sup> According to UNHCR, so far more than 13 700 family applications for this programme were filed, of which 8 871 received a positive decision and 7 092 have received housing care. 63% of the applications come from Serb refugees, IDPs and returnees, out of which more than 5 400 have received positive decisions.<sup>17</sup>
52. The Commissioner welcomes the commitments made in 2011 by Serbia, Bosnia and Herzegovina, Croatia and Montenegro, under the initiative of the United Nations High Commissioner for Refugees' Special Envoy for Protracted Displacement in the Western Balkans. The initiative aims at organising a donor conference in 2011 to finally close the displacement chapter in the region. In addition to the Regional Project developed under the auspices of the Sarajevo Declaration Process,<sup>18</sup> which is focused largely on the needs of the most vulnerable persons, the above initiative aims to adopt a comprehensive approach with a multi-year strategy.

<sup>16</sup> This programme was introduced in 2003 to offer alternative housing for rent or purchase to former occupancy rights holders who exercise their right to return.

<sup>17</sup> UNHCR, Submission for the UPR on Croatia, March 2010, page 3.

<sup>18</sup> Under the Sarajevo Declaration Process which was initiated in January 2005, Bosnia and Herzegovina, Croatia, Montenegro and Serbia committed themselves to working towards finding durable solutions for refugees and IDPs.

53. Under the aforementioned initiative the governments of the above four countries will be called upon to sign a Joint Declaration under which a comprehensive strategy will become operational and the displacement chapter will finally be closed. Fund-raising will be organised for a multi-year implementation of this strategy.

*Conclusions and recommendations*

54. The Commissioner remains concerned at the limited progress made so far in domestic war-related criminal proceedings, which appears to be related to, among other things, the lack of broad, clear and unconditional political support. The Commissioner recalls the 2005 UN 'Basic Principles and Guidelines'<sup>19</sup> and the 2011 Guidelines of the Council of Europe Committee of Ministers *on eradicating impunity for serious human rights violations*, which make clear the states' obligation to effectively investigate and take action against all persons responsible for serious human rights law violations and violations of international humanitarian law.<sup>20</sup>
55. The Commissioner remains concerned about persisting obstacles posed to the prosecution of war-related crimes. Bosnia and Herzegovina and Serbia have barred extraditions of their nationals and have not yet signed the bilateral agreement on the exchange of evidence in war-related criminal proceedings. The authorities of Serbia and Bosnia and Herzegovina are urged to step up their efforts in removing the remaining obstacles to the effective prosecution of all war-related crimes.
56. Having noted with satisfaction the adoption in March 2010 by the Serbian Parliament of a resolution condemning the atrocities committed in Srebrenica, the Commissioner has also observed with concern statements by political figures denying these events.
57. The Commissioner reiterates the importance of effective protection and support to witnesses in the context of war-related proceedings. He is concerned about reports indicating that there are serious flaws in the witness protection system in Serbia, and that there have been threats and intimidation of witnesses notably by certain members of the Witness Protection Unit. The Commissioner welcomes the commitment demonstrated by the competent Serbian authorities to improving the witness protection system by transferring the relevant competence from the Ministry of Interior to the Ministry of Justice.
58. The authorities are urged to investigate promptly all reported cases of threats and intimidation of witnesses, initiate criminal proceedings in such cases, and fully protect the security of the witnesses concerned.
59. The authorities should also undertake a comprehensive vetting procedure of members of the police forces. The 2003 Law on Accountability for Violations of Human Rights provides the legal framework for this undertaking.
60. All war victims should be provided with adequate, effective and proportionate reparation for the harm they have suffered. The Commissioner urges the Serbian authorities to take all necessary measures to ensure reparation to victims of war-related crimes and to their families, in line with the established principles of international law as reiterated in the 2005 UN 'Basic Principles and Guidelines'.
61. As regards the issue of missing persons, the Commissioner recalls the authorities' obligations arising from the International Convention for the Protection of All Persons from Enforced Disappearance, recently ratified by Serbia, as well as from Article 2 and 3 of the European Convention on Human Rights<sup>21</sup> and invites them to continue with determination their efforts, at

<sup>19</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law UN GA Resolution 60/147, 16 December 2005.

<sup>20</sup> See also Council of Europe Parliamentary Assembly, Resolution 1785 (2011) *on the obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes*.

<sup>21</sup> See, *inter alia*, European Court of Human Rights, Grand Chamber, *Cyprus v. Turkey*, judgment of 10 May 2001.

national and regional level, aimed at resolving the approximately 14 000 cases of persons missing due to the wars in the region.

62. The prompt and just resolution of the pending issues arising out of forced displacement due to the 1991-1999 wars is crucial for the development of social cohesion and human rights in Serbia. The Commissioner commends the efforts made by Serbia in the field of forced displacement, and urges the authorities to continue their work at national and regional level in a determined and principled manner in accordance with UN and Council of Europe standards.<sup>22</sup>
63. The Commissioner considers positive the discussions held on 25 March 2010 in Belgrade in the context of the International Conference on Durable Solutions for Refugees and IDPs. He also considers positive the commitments made in 2011 by Serbia, Bosnia and Herzegovina, Croatia and Montenegro, under the initiative of the United Nations High Commissioner for Refugees' Special Envoy for Protracted Displacement in the Western Balkans, to finally close all relevant pending issues between the four states.
64. The Commissioner remains concerned by the lack of a comprehensive mechanism in the region capable of safeguarding access to the truth concerning the gross human rights violations perpetrated by all sides during the wars. This situation seriously undermines the reconciliation efforts made so far. The full and effective respect of the human rights of all war victims and their representatives dictates the need for the political leaderships in the region to reflect on and further support the truth and reconciliation process by enhancing inter-state dialogue and coming to an agreement on a truth and reconciliation policy which would unite all countries and peoples concerned.

## **II. Fight against discrimination**

### **1. Anti-discrimination law and policy**

65. Serbia is vested with an adequate legal and institutional framework for the protection against discrimination. A prohibition of discrimination is enshrined in Article 21 of the Constitution of Serbia. In April 2009 Serbia adopted the Law on the Prohibition of Discrimination (Anti-discrimination Law).
66. The Anti-discrimination Law prohibits discrimination on the grounds of, among other things, racial or ethnic origin, citizenship, national affiliation, language and religious beliefs in all fields. The law prohibits direct and indirect discrimination as well as victimisation, the work of racist organisations, hate speech, harassment and humiliating treatment.
67. In 2011 the Ministry of Human Rights and National Minorities and the Ministry of Public Administration and Local Self-Governance were merged. A Directorate of Human Rights and Minority Rights was established within the new Ministry. The Ministry is in charge of monitoring the implementation of the Anti-discrimination Law.
68. The Anti-discrimination Law designates the Commissioner for the Protection of Equality ('the Equality Commissioner') as Serbia's 'equality body'. The Equality Commissioner's powers include taking action in cases of discrimination against individuals or groups of individuals. The Equality Commissioner can also bring discrimination cases to civil courts. In May 2010, Ms Nevena Petrušić was elected by the Parliament of Serbia as the first Equality Commissioner.
69. A lack of adequate conditions for the work of the Equality Commissioner was mentioned in several reports, including the 2011 European Commission against Racism and Intolerance

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<sup>22</sup> See the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, the 1998 UN Guiding Principles on Internal Displacement; see also Council of Europe Committee of Ministers Recommendation (2006)6 on internally displaced persons and Commissioner's Viewpoint, 'Persons displaced during conflicts have the right to return', 15 September 2008.

- (ECRI) report on Serbia.<sup>23</sup> During his visit, the Commissioner met with the Equality Commissioner who informed him that her office was finally provided with improved conditions in order to be operational. The meeting took place in the Equality Commissioner's new premises situated in a building accessible also to persons with disabilities.
70. Ms Petrušić highlighted that she has started activities in order to increase the visibility and accessibility of her Office to all citizens. She had already visited six towns in Serbia in order to identify the optimal model for the Office's field work. The Commissioner highly encourages the Equality Commissioner's efforts to increase her Office's accessibility to all citizens, and calls on the authorities to provide all necessary aid to the Equality Commissioner.
71. During his visit the Commissioner also met with the Ombudsman, Mr Saša Janković. His work focuses on the protection of national minorities, children's rights, the rights of persons with disabilities, the rights of persons deprived of liberty and gender equality. The Commissioner believes it is important that the state level Ombudsman has sufficient resources to carry out his work. He noted with satisfaction that the Ombudsman is proactive and has gained support for his work from citizens and the media. He has also managed to develop good co-operation with the authorities on some important projects (see below, sub-section on the lack of birth registration and personal identification documents among Roma).
72. As for the protection of national minorities, the Commissioner has noted with satisfaction that in August 2009, the Law on Minority National Councils was enacted. This Law regulates the competencies and the election of national minority councils. According to the law the councils will be able to independently decide on issues regarding the use of minority languages, education, culture and public information. The first elections for the councils were held in June 2010 when representatives of 19 councils were elected. During his visit the Commissioner noted with concern that the national minority council of Bosniaks had not yet been constituted due to alleged procedural shortcomings in the election process. New elections announced for March 2011 have been postponed. The Commissioner hopes that the elections will be organised by the end of 2011 as announced by the authorities.

## **2. Racist violence and hate speech**

73. In recent years, extreme right and nationalist groups have been on the rise, as noted by a number of human rights monitoring bodies, including ECRI.<sup>24</sup> They include the Serbian section of Stormfront (*Nacionalni stroj*), Blood and Honour (*Krv i cast*), Honour (*Obraz*), skinheads and a group of football hooligans known as 'Red United Force'. The government has acknowledged the existence of such groups, whose members are suspected of attacks on human rights defenders, LGBT persons and national minorities, including Albanians and Roma.
74. Members of the above-mentioned extremist groups are suspected of being involved in a number of incidents and attacks in recent years. One such attack occurred in September 2009 when a young French football fan was brutally murdered in the centre of Belgrade. The police established that the main suspects were members of an extreme-right group. In January 2011 the four main defendants were sentenced to imprisonment. Two of the convicted attackers which were sentenced in absentia are still at large at the time of preparing this Report.
75. The Serbian authorities have adopted several measures in order to fight hate crime. The Criminal Code of Serbia was amended in 2009 to introduce the criminal offence of racist discrimination. Moreover, under the Criminal Code the publication and dissemination of texts inciting racial hatred were made punishable by imprisonment for three to five years. In June 2011 the Constitutional Court of Serbia banned the registration of the extreme right-wing organisation *Nacionalni stroj* and proscribed the presentation and distribution of its programmatic goals and ideas. The Court concluded that the work of this organisation was unconstitutional as it was aimed at inciting racial and ethnic hatred, and the violation of human rights, including those of minorities.

<sup>23</sup> ECRI Report on Serbia, 31 May 2011, page 9.

<sup>24</sup> Ibid. paragraph 77.

76. The current criminal legislation does not include a specific provision on hate speech. It includes the criminal offence of 'incitement to national, racial or religious intolerance' which however does not include all forms of hate speech provided for by the Council of Europe Committee of Ministers' Recommendation No. R (97)20 on 'hate speech'.<sup>25</sup>
77. The Law on Public Information and the Law on Prohibition of Discrimination contain provisions on hate speech. ECRI expressed concerns in 2011 that the implementation of the relevant provisions appears to be rather slow as few proceedings have been initiated so far compared to the alleged frequent occurrence of hate speech, including in the media. The Commissioner has noted concerns by civil society representatives that in some criminal cases where Roma were victims the charges against the suspects were only for physical assaults, and did not reflect their racist motivation. It was also stressed that the sentences imposed in most of the cases of violence against Roma have been suspended ones. Concerns have also been expressed by NGOs about the lack of systematic monitoring by the authorities of hate and racist crimes.
78. Attacks against LGBT persons by members of extremist groups culminated in 2010 during the Belgrade Pride Parade when more than 6 000 hooligans gathered in the centre of Belgrade to protest against the Parade. The protests led to violent clashes with the police whose intervention was necessary to prevent the mob from reaching the participants of the Parade (see also below, sub-section on discrimination against LGBT persons).
79. During his visit the Commissioner was informed by representatives of an expert NGO that the sentences which are being imposed by courts in cases of hate and racist crimes are in general lenient. They expressed concern that such sentences do not have an individual or general preventive effect. In 2011 ECRI also reported that there are few prosecutions of racist crimes and that the sentences are usually mild, consisting mainly of fines amounting to very small sums. ECRI has also noted a lack of investigation by the police into acts of vandalism against religious minorities<sup>26</sup>
80. The Commissioner has noted with interest that a judgment in a hate speech case against LGBT persons was delivered in June 2011 by the Belgrade Appeal Court. The court ruled in favour of the LGBT organisation, Gay Strait Alliance (GSA), in civil proceedings against a local newspaper that had published online anti-LGBT comments by readers, which were considered by the court to constitute hate speech. This is the first judgment on hate speech targeting LGBT persons based on the aforementioned Anti-discrimination Law. GSA has initiated another 16 anti-discrimination proceedings before domestic courts.
81. Finally, following the intensified investigation by police and the prosecutor's office into violent attacks, including the attacks during the 2010 Pride Parade and the aforementioned killing of a French national in 2009, some of the heads of extreme right-wing groups are currently standing trial. The Commissioner welcomes these developments. He emphasises however that the authorities need to sustain their efforts and that a more vigorous implementation of the criminal provisions against racist and hate crimes should be undertaken.

### **3. Human rights of Roma**

82. In the 2002 census 108 193 persons, approximately 1.44% of the total population, identified themselves as Roma. The actual number is deemed to be much higher. According to the Serbian government's estimates the actual number of Roma ranges from 250 000 to 500 000.<sup>27</sup>

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<sup>25</sup> According to this Recommendation the term hate speech 'shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of migrant origin.'

<sup>26</sup> Ibid paragraph 15.

<sup>27</sup> See government's Strategy for Improvement of the Status of Roma in the Republic of Serbia, 2010, [http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-web-FINAL.pdf?utm\\_source=twitterfeed&utm\\_medium=twitter](http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-web-FINAL.pdf?utm_source=twitterfeed&utm_medium=twitter).

83. The Commissioner has noted that in 2009 and 2010 a strategic, institutional framework for the improvement of the human rights of Roma was set up. In 2009 the government adopted the Strategy for Improvement of the Status of Roma and tasked the Group for the Improvement of the Status of Roma within the Ministry for Human and Minority Rights, Public Administration and Local Self-Government to work, among other things, on the implementation of the Strategy. An action plan to implement the strategy was adopted in July 2009.
84. The National Council of the Roma National Minority was elected in 2010 to work on the improvement of the use of the Romani language, as well as on the improvement of education, culture and public information on Roma. The government currently provides €5 million annually for enhancing Roma social inclusion, while the European Union Instrument for Pre-Accession (IPA) included projects targeting or mainstreaming Roma with a total budget of more than € 40 million<sup>28</sup> for the period 2007-2010.
85. Notwithstanding the government's efforts to improve the human rights of Roma, the problems facing Roma remain some of the most serious human rights challenges. The Commissioner underlines that the Roma-related projects must be accompanied by resolute efforts to combat prejudice and deep-seated stereotypes against Roma. Efforts are necessary to raise awareness among the Roma population on available mechanisms to combat discrimination. In this context, the Commissioner welcomes the Equality Commissioner's activities organised in Roma settlements which aim to raise their awareness about the work of her office.
86. Many Roma are in need of counselling and assistance to be able to fully enjoy their human rights. This has been highlighted by almost all of the non-governmental organisations that the Commissioner met, and by the Equality Commissioner. An effective system of free legal aid is of crucial importance for Roma and other vulnerable social groups.
87. In July 2009 the UN Committee against Torture found that Serbia had violated the Convention against Torture in the case of *Besim Osmani*, concerning a Roma man who had been beaten by the police together with his four-year-old son in June 2000 during a forced eviction and demolition operation in an informal settlement in Belgrade.<sup>29</sup> The Commissioner has noted with concern that, following his visit, a video-clip was released on YouTube showing a brutal beating of a minor Roma boy by a police officer in the Vršac police station. The Serbian Minister of Interior announced that the two police officers involved in this incident were suspended, and that criminal proceedings would be initiated against them. The Commissioner welcomes this development, and calls on the authorities to step up their efforts aimed at preventing and eliminating human rights violations by members of the police force.

### 3.a. Access of Roma to health care

88. The Commissioner has noted with interest the reported positive results of the work of health mediators who have been appointed as an interface between Roma and the Ministry of Health. They are located in local hospitals but they carry out visits to Roma families. The health mediators engage in obtaining health cards for Roma and facilitate their medical checkups. In 2008 when this project started, 15 mediators were appointed. There are currently 75 health mediators employed in 59 municipalities in Serbia.<sup>30</sup> NGOs with which the Commissioner met during his visit stressed that this project is successful because of the adequate training that the mediators received, and the gradual increase in the number of mediators.
89. Despite the progress made in the area of health care, Roma still face barriers due to lack of information, lack of personal identity documents and poverty. The 2005 Law on Health Insurance aims to enhance access of Roma to health care, as well as to improve their living

<sup>28</sup> Information provided by the Office of the Council of Europe Special Representative of the Secretary General for Roma Issues in June 2011 .

<sup>29</sup> UN Committee against Torture, decision on communication No 261/2005, Doc. CAT/C/42/D/261/2005.

<sup>30</sup> Information provided by the Office of the Council of Europe Special Representative of the Secretary General for Roma Issues in June 2011.

conditions. This law provides for the right to health care for members of vulnerable groups, including Roma.

90. In 2011 ECRI noted with concern that in many respects, the hygienic and sanitary conditions in many Roma settlements have not improved since ECRI's first report in 2008. The health situation of Roma, in particular Roma women, children and elderly persons is particularly alarming due to the absence of necessary medical registration. According to UNICEF, although the official estimates show a decrease in Roma child mortality rates since 2005, this rate is still at least four times higher than the national average.<sup>31</sup>

### *3.b. Access of Roma to quality education*

91. The Commissioner has noted that since his last visit to Serbia progress has been achieved in the area of Roma children's education. In September 2009 a new Law on Education was enacted that provides for inclusive education for all children. It also provides for the engagement of teaching assistants in schools. According to this law a birth certificate and the parents' registered residence are no longer required in order to enrol a child in school.
92. The 2009 Law on Education also provides the framework for better protection of children's rights, including protection against discrimination, harassment, bullying and violence. As a result of the implementation of this law, and a number of various governmental and non-governmental initiatives, the number of Roma children enrolled in primary schools in Serbia has increased. According to the Serbian government the number of Roma children enrolled in primary schools in 2010/2011 rose by 9.87%.<sup>32</sup>
93. A number of measures have been implemented within the framework of the Action Plan for Roma Education, including the project of registering Roma children in birth registration books. This project was implemented in 19 municipalities where 500 Roma children without birth certificates were identified. After registration the children were enrolled in local schools. About 180 Roma teaching assistants have been recruited and trained to provide assistance to Roma children.
94. However, it is estimated that the number of Roma children attending pre-school education is between 4% and 7%, while 66% of Roma children (as opposed to 94% of the total population) enrol in primary school.<sup>33</sup> According to the Ministry of Education only 16% of Roma enrol in secondary schools, and less than 1% of young Roma attend college or university.
95. The marginalisation of the education of adults in Serbia has left many Roma without real possibilities in the job market. In this regard the Commissioner welcomes the measures taken since 2006 in the framework of the Adult Education Strategy in Serbia. The Strategy provides for formal and informal education formats for persons over 18 years of age.
96. The Commissioner is seriously concerned by the fact that the number of Roma children enrolled in schools for children with mild mental disabilities increased from 26.7% in 2002/2003 to 31% in 2008/2009.<sup>34</sup>
97. In 2011 ECRI expressed concerns that Roma children still face hidden and overt forms of discrimination by school authorities, school staff, teachers, other children and non-Roma parents. Reportedly, as teachers have lower expectations of Roma pupils, there is a tendency to use lower criteria when assessing their performance. The Commissioner is concerned by reports indicating that due to the increase in Roma children attending schools, there is a tendency among non-Roma parents to transfer their children to other schools with fewer Roma children.

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<sup>31</sup> [http://www.unicef.org/serbia/activities\\_927.html](http://www.unicef.org/serbia/activities_927.html).

<sup>32</sup> Draft First National Report on Social Inclusion and Poverty reduction in the Republic of Serbia, 2010.

<sup>33</sup> Open Society Fund, 'Roma children in "special education" in Serbia: overrepresentation, underachievement, and impact on life', 2010, page 29, <http://www.romadecade.org/files/downloads/Education%20Resources/Roma%20Children%20in%20Special%20Schools%20in%20Serbia.pdf>.

<sup>34</sup> Idem.



98. Against this background, the Commissioner welcomes the initiatives undertaken by the Ministry of Education to fight discrimination against Roma children. In 2007 the authorities developed a special programme for safeguarding children from violence, abuse and neglect in educational institutions in co-operation with civil society. In 2009 the Ministry of Education, in co-operation with civil society, developed a manual to support the development of an anti-discriminatory culture in education. Additionally, an official instruction was issued to all primary and secondary schools to draft programmes aiming to protect children from violence and to set up teams to protect children from violence.

### 3.c. Access of Roma to employment

99. ECRI reported in 2011 that Roma in Serbia continue to suffer from a high unemployment rate, low economic activity and almost total exclusion from the public sector. There are almost no Roma in public and state-owned companies, indicating a pattern of discrimination. There are cases where Roma who present themselves for job interviews are informed that the position has been filled, and a few cases of discriminatory job advertising. The majority of Roma are outside the employment system, employed illegally and mostly registered as unemployed.<sup>35</sup>

### 3.d. Access by Roma to adequate housing

100. The majority of Roma in Serbia live in very poor housing conditions. The problems that Roma face in this field are related to the overpopulation of settlements due to the small number of available housing units, unresolved property issues and illegal constructions, and lack of access to public infrastructures.<sup>36</sup> Some studies have indicated that out of the 593 existing Roma settlements in Serbia, 72% have not been legalised,<sup>37</sup> while in Belgrade alone there are 137 informal settlements.<sup>38</sup>
101. In 2007 the Ministry of Environment and Spatial Planning adopted the Guidelines for the Upgrading and the Legalisation of Roma Settlements aimed at addressing problems related to the housing situation of Roma.<sup>39</sup> Eight municipalities were targeted and funds were provided for the legalisation of informal Roma settlements. Although certain settlements have been regularised, progress has been slow with only two out of eight municipalities completing this process by 2010.<sup>40</sup>
102. The Commissioner has noted with concern reports on the increased number of forced evictions of Roma from informal settlements in Belgrade. He is particularly concerned by the reported failure by the authorities to comply with legal safeguards during evictions. Physical attacks by state officials during evictions and destruction of personal property without compensation have also been reported in various cases such as the one concerning the evictions in the informal Roma settlement Gazela, Belgrade, on 31 August 2009.<sup>41</sup> Following these evictions 114 Roma families were provided with accommodation in metal containers in settlements scattered around the outskirts of Belgrade.
103. The Commissioner has noted concerns that the housing provided in such cases, including that of the Gazela evictions, does not meet international human rights standards, including those of the European Social Charter. A lack of effective access to legal remedies to challenge decisions on evictions has also been reported.<sup>42</sup>

<sup>35</sup> ECRI Report on Serbia, cited above, page 18.

<sup>36</sup> Strategy for Improvement of the Status of Roma in the Republic of Serbia, 2010, cited above, page 16.

<sup>37</sup> See, 2007 Country Report, Serbia in *First Decade Watch Report, Roma activists assess the Progress of the Decade of Roma Inclusion*, June 2007, see <http://www.romadecade.org/>.

<sup>38</sup> Strategy for Improvement of the Status of Roma in the Republic of Serbia, cited above, page 17.

<sup>39</sup> Advisory Committee on the Framework Convention on the Protection of National Minorities, [Second Opinion](#) on Serbia adopted on 19 March 2009, ACFC/OP/II(2009)001.

<sup>40</sup> Amnesty International, 'Home is more than a roof over your head- Roma denied adequate housing Serbia', 2011, page 7.

<sup>41</sup> Ibid, page 38.

<sup>42</sup> Amnesty International, cited above, page 40.

104. There appears to exist a negative public opinion against relocations of Roma. One specific problem is that when the Serbian authorities propose that Roma be relocated to appropriate housing, local populations protest and refuse to agree to a Roma population moving into their neighbourhoods. It thus appears that measures are still necessary to combat and eliminate intolerance and racism faced by Roma in the housing sector.
105. One certainly understands that local development plans sometimes require that Roma be moved from their current settlements. Nonetheless, the Commissioner emphasises that such measures need to be planned and implemented in accordance with agreed human rights standards. Evictions can only be carried out when alternative, adequate accommodation is available and the people affected have been properly informed and consulted. Everyone affected must be able to challenge the legality of an eviction before a competent body before the eviction takes place. Compensation for damage or loss of property must also be available when forced evictions prove inevitable.<sup>43</sup>
106. The Commissioner is particularly concerned by the housing situation of the Roma displaced from Kosovo, and Roma who are being forcibly returned from Western European countries. Reportedly they make up around 17% of the Roma populations in informal settlements. They face the harshest living conditions. Their difficult situation is aggravated by the lack of personal identity documents (see also below, sub-section on lack of birth registration and personal identification documents among Roma). Prospects for their local integration are generally bleak.
107. The Commissioner noted that the living conditions in the informal Roma settlement in Marija Burašić, Blok 61, Belgrade, which he visited on 14 June, are clearly sub-standard and may be qualified as degrading. The settlement hosts approximately forty Roma families and consists of wooden barracks, some of which have been severely damaged due to bad weather. The settlement is not connected to the public utilities system and there are no electricity, water and sanitary facilities. Parents told the Commissioner that because of these living conditions sending children to school is a very difficult task. The Commissioner saw children from the settlement washing their faces with dirty water from a nearby polluted stream. The presence of rats was also reported by inhabitants. On the positive side, the Commissioner has noted that almost all of the inhabitants had obtained personal identity documents through the UNHCR's EU-funded Roma Inclusion Project.

### *3.e. Lack of birth registration and personal identification documents among Roma*

108. Serbia has not yet acceded to the 1997 European Convention on Nationality and the 2006 Convention on Avoidance of Statelessness in Relation to State Succession. During his visit the Commissioner received assurances from the Assistant Minister for Multilateral Affairs, within the Ministry of Foreign Affairs, Mr Vuk Žugić, that Serbia is considering accession to these Council of Europe treaties. The Commissioner looks forward to receiving more information on this issue.
109. According to the 2011 UNHCR survey on persons at risk of statelessness in Serbia, 1.5% of Roma are not registered in birth registry books, 5.4% have no identity cards and 2.3% are not registered in citizens' registries. According to UNHCR 6.8% of Roma have been identified as being at risk of statelessness. This concerns local Roma and displaced Roma, and Ashkali and Egyptians from Kosovo, who find themselves without the basic documentation necessary for accessing a number of social and economic rights many years after having been displaced.
110. The Commissioner has noted that the problem of lack of personal identity documents is complicated by the lack of identity documents of Roma parents who cannot therefore register their own children. This vicious circle has created a generation of so-called 'legally invisible' Roma, perpetuating their exclusion from society at large. Without registration and personal identity documents Roma cannot register their residence which is necessary for exercising a number of social and economic rights. According to the Ombudsman, this problem also affects

<sup>43</sup> See also Commissioner's Viewpoint, 'Forced eviction of Roma families must stop', 4 September 2006.

some non-Roma citizens. The Commissioner has noted with concern that following his visit, a man who lost his residence and his identity card decided to go on a hunger strike in order to draw the authorities' attention to this problem.

111. As an initial step towards remedying the aforementioned situation the authorities have amended, in May 2011, the Law on Identity Card in order to provide the possibility of issuing temporary identity cards. However, this amendment does not resolve the problem of lack of personal documents, as a temporary ID card can only be issued once a person has registered residence. During the Commissioner's visit, the Minister of Human and Minority Rights, Public Administration and Local Self-Government, Mr Milan Marković and the Ombudsman informed the Commissioner that they proposed an amendment to the Law on Residence aimed at fully remedying this problem, whereby persons who do not have registered residence will get temporary documents with the address of the nearest social care centre. According to the Ombudsman, if enacted, this amendment would solve the problem of lack of personal identity documents. Following his visit, the Commissioner has been informed that the aforementioned amendment to the Law on Residence has not yet been adopted.
112. During the Commissioner's visit, the Minister of Human and Minority Rights, Public Administration and Local Self-Government, Mr Milan Marković, informed the Commissioner that his ministry, in co-operation with the Ombudsman, has prepared a set of amendments to existing regulations aimed at facilitating the registration of Roma at birth. In this context the above ministry has been in contact with the National Roma Council and plans to register and provide legal aid to all Roma in settlements within a timeframe of two years starting from September 2011.

#### **4. Discrimination against LGBT persons**

113. The 2009 Anti-discrimination Law, the Criminal Code, the Labour Law, the Law on Public Information and several other pieces of legislation provide for protection against discrimination on grounds of sexual orientation.
114. The Commissioner has noted with satisfaction that in 2010 and 2011 there has been increased understanding of the work and activities of LGBT organisations by Serbian politicians. This was particularly evident before and during the 2010 Belgrade Pride Parade when eminent persons and politicians supported the organisers, not least by joining the participants during the Parade.
115. Unlike the 2009 Belgrade Pride Parade, in 2010 the authorities made major efforts to ensure the success of the Pride Parade. The police played a key role in protecting the participants from hooligans and extremists who wanted to prevent the gathering. More than 6 000 hooligans provoked riots that left 124 policemen and 17 rioters injured and caused major material damage. The police apprehended more than 200 rioters and arrested the leader of an extremist group.<sup>44</sup>
116. As regards transgender persons, the Commissioner has noted that there is no legislation in Serbia regulating the issue of gender reassignment. This legal gap has created a number of serious problems for transgender persons and their partners. Transgender persons can change their personal identity documents only if they are not married. The Commissioner was informed by an expert NGO that due to a legal lacuna in this regard, the change of personal identity documents often depends on the will of municipal civil servants.
117. Notwithstanding the progress made in the fight against discrimination, homophobia remains a serious problem in Serbian society. According to the Equality Commissioner,<sup>45</sup> discrimination on the ground of sexual orientation is widely present as a result of prejudices against LGBT persons in the public. LGBT persons and many of those who speak up for the human rights of LGBT persons are still victimised. The majority of LGBT persons are still hesitant to use

<sup>44</sup> The Belgrade Centre for Human Rights, Human Rights in Serbia 2010, Report of 2011, page 317, <http://english.bgcenter.org.rs/index.php>.

<sup>45</sup> 2010 Annual report of the Commissioner for the Protection of Equality, <http://www.ravnopravnost.gov.rs>.

available legal remedies. Bullying of LGBT persons in schools has also been noted. Additional measures are therefore needed to fight violence and discrimination against LGBT persons, including vigorous implementation by courts of the criminal provisions concerning hate crimes.

118. The Commissioner encourages the authorities to continue taking strong public positions against violations of the human rights of LGBT persons and to promote understanding and respect, notably through human rights education and awareness-raising campaigns. The Equality Commissioner may play catalytic roles in this context.

##### **5. Human rights of persons with disabilities**

119. According to the Ministry of Labour and Social Policy, there are between 500 000 and 800 000 people with varying levels of disabilities living in Serbia.
120. The Commissioner welcomes the ratification by Serbia in May 2009 of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol. He encourages the authorities to give full effect to the provisions of this Convention, as well as to the Council of Europe Disability Action Plan 2006-2015.
121. The Commissioner has noted that the legal framework for the protection and promotion of the human rights of persons with disabilities has been developed in recent years. With the adoption in 2006 of the Law on the Prevention of Discrimination against Persons with Disabilities and in 2009 of the Anti-discrimination Law, Serbia equipped itself with a comprehensive body of law against discrimination of persons with disabilities.
122. In 2007 the government adopted a strategy for improving the situation of persons with disabilities for the period 2007-2015, providing for increased community housing and other related services. In 2009 the Law on professional rehabilitation and employment of persons with disabilities entered into force. The law provides for measures aimed at improving the employment of persons with disabilities, including state subsidies for companies that employ persons with disabilities. According to the law fines can be imposed on employers who refuse to employ persons with disabilities. The Commissioner was informed that since the enactment of this law about 5 500 persons with disabilities have been employed.
123. During the meeting with the Commissioner, the Minister for Social and Labour Rights, Mr Rasim Ljajić, noted that although there has been progress in this field a lot remains to be done. He informed the Commissioner that only 13% of the persons with disabilities who are capable of working are actually employed. Minister Ljajić noted that € 8 million have been allocated to employment projects that should include 8 000 persons with disabilities..
124. The process of deinstitutionalisation of children with disabilities is progressing. The Commissioner was informed by the authorities that there are currently 700 children with disabilities in institutions. Two years ago there were 2 000 such children in institutions.
125. The Commissioner has noted with satisfaction the adoption by the Parliament in April 2011 of a new law on social protection which should facilitate, among other things, the process of deinstitutionalisation of children. This law was adopted in the context of the authorities' broad reform of the social protection system. It provides for better protection for families with children with disabilities, measures of deinstitutionalisation and foster parenting.
126. The Commissioner was informed by Minister Ljajić about the government's plan to open three regional centres in Serbia to provide training for persons who would like to become foster parents to children with disabilities. These centres will also carry out the control of the foster families. The Commissioner hopes that these measures combined with the measures of inclusive education will facilitate the inclusion of children with disabilities in society.
127. The Commissioner welcomes these developments but remains seriously concerned by the situation of adult persons with disabilities, especially those with intellectual and mental disabilities. In January 2007 the government adopted a Strategy for Mental Health and a

National Plan for its implementation. The adoption of a draft law on mental health is still pending.

128. The Equality Commissioner expressed concerns in 2010 about generally poor living conditions in institutions accommodating elderly and adult persons with disabilities. She reported the problem of overcrowding in 41 public nursing homes. The capacity of public nursing homes is 7 000, while there are currently 8 100 persons accommodated in these institutions. The Equality Commissioner has expressed concerns that because of the lack of available public accommodation a number of illegal, unregistered homes have been opened in recent years. These institutions operate without a license, and are usually registered as bed and breakfast accommodation, retail shops or various service providing agencies. The Ministry of Labour and Social Policy has no inspection competence over these institutions.<sup>46</sup>
129. The Commissioner has noted the Equality Commissioner's concern that the current legal provisions for the removal of legal capacity are at variance with the UN Convention on the Rights of Persons with Disabilities. The Commissioner recalls that under this treaty there should be appropriate and effective safeguards in order to prevent the abuse of power. The human rights of the person concerned should be respected and care should be taken to ensure that there is no conflict of interest involved or undue influence being exercised.<sup>47</sup>
130. According to the Equality Commissioner the movement of persons with disabilities and their physical access to institutions (such as health care institutions, schools, administrative and other institutions) is considerably limited. She reported that only 5% of dentists' offices are accessible and equipped to provide services to persons with disabilities. Incidents of refusal to provide health care services, harassment and insults by employees of health care institutions to persons with disabilities have reportedly been registered. During his visit the Commissioner was informed and concerned that disabled university students in Belgrade are segregated from their colleagues in a separate dormitory as the dormitory for non-disabled students cannot accommodate their needs.

#### *Conclusions and recommendations*

131. The Commissioner welcomes the enactment of the Anti-discrimination Law in 2009 and the establishment of the Office of the Commissioner for the Protection of Equality. He believes that these important developments have enhanced the combat against discrimination in Serbia. He encourages the authorities to keep legislation and practice under close scrutiny, and, to this end, to make full use of his Opinion on National Structures for Promoting Equality as well as ECRI's General Policy Recommendation No 7 on National Legislation to Combat Racism and Racial Discrimination.<sup>48</sup>
132. The enactment of the Law on Minority National Councils in 2009 and the election in 2010 of the members of these councils are positive steps. However, the Commissioner remains concerned that the members of the Bosniak national minority council have not yet been elected.
133. The Commissioner welcomes the action taken by the authorities in recent years to counter hate crimes, notably those committed by extremist groups. He welcomes the decision of the Constitutional Court of Serbia in June 2011 to ban the extreme right-wing organisation *Nacionalni stroj*, and calls on the authorities to consider banning other organizations promoting racist hate speech.
134. The Commissioner urges the authorities to give priority to the prosecution of hate crimes and to undertake a comprehensive review of the sentencing policy in cases of hate crimes. Systematic training would be beneficial for all those involved in the criminal justice system,

<sup>46</sup> The Commissioner for the Protection of Equality, 2010 Annual Report, pages 95-99, <http://www.ravnopravnost.gov.rs/lat/izvestaji.php?idKat=16>.

<sup>47</sup> See also Commissioner's Viewpoint, 'Persons with mental disabilities should be assisted but not deprived of their individual human rights', 21 September 2009.

<sup>48</sup> Commissioner's Opinion on National Structures for Promoting Equality, [CommDH\(2011\)2](#), and ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, CRI(2003)8.

- including prosecutors and judges, on the investigation, prosecution and sentencing of hate crimes.
135. The authorities are called upon to amend the formulation of the criminal offence of 'incitement to national, racial or religious intolerance' so that it includes all forms of hate speech, in accordance with the Council of Europe Committee of Ministers' Recommendation No. R (97) 20 on 'hate speech'.
  136. The Commissioner commends the efforts undertaken so far by Serbia to improve the situation of Roma, in particular their access to adequate education and health care. However, there are numerous shortcomings in practice that need to be effectively addressed. The Commissioner urges the authorities to implement their action plans concerning access of Roma to employment, education, housing and healthcare, in accordance with the Council of Europe Committee of Ministers' Recommendation CM/Rec(2008)5 on *Policies for Roma and/or Travellers in Europe*. The authorities are urged, in particular, to effectively monitor and publish regular evaluation reports on the implementation and impact of their action plans, in line with the above Recommendation.
  137. The authorities should continue to look with particular care into the issue of free legal aid for those persons in need thereof, and enhance the national legal aid system so that access to justice becomes a real possibility for everyone, including socially excluded groups such as Roma.
  138. The Commissioner remains deeply concerned by the situation of Roma who remain forcibly displaced from Kosovo and still lack personal identity documents. He is particularly concerned by the related, persistent problem of non-registration of Roma children upon birth. The Commissioner welcomes the commitment shown by the Serbian government and urges the authorities to promptly follow up on their plan aimed at facilitating access of all Roma to personal identity documents. In this regard, the Commissioner urges the authorities to enact an amendment to the Law on Residence which would provide that persons who do not have registered residence will get temporary documents with the address of the nearest social care centre.
  139. The Commissioner calls on the authorities of Serbia to accede to the 1997 European Convention on Nationality and to the 2006 Convention on Avoidance of Statelessness in Relation to State Succession.
  140. Even though the increased support by Serbian politicians to the work and activities of LGBT organisations is to be commended, the Commissioner remains concerned by widely-present homophobia. Additional measures are needed to fight violence and discrimination against LGBT persons, including a more vigorous implementation by courts of the criminal provisions concerning hate crimes. The Commissioner encourages the authorities to continue taking strong public positions against violations of the human rights of LGBT persons and to promote respect on issues related to sexual orientation and gender identity notably through human rights education and awareness-raising campaigns.
  141. The Commissioner commends the adoption of legislation aimed at the protection of the human rights of persons with disabilities. He welcomes the progress achieved so far in the process of deinstitutionalisation of children with disabilities and encourages the authorities to continue these efforts drawing also upon the guidelines contained in the Council of Europe Committee of Ministers' Recommendation CM/Rec(2010)2 on *deinstitutionalisation and community living of children with disabilities*.
  142. The lack of progress in the process of deinstitutionalisation of adults with mental disabilities remain a concern to the Commissioner. Relevant measures, including legislative ones, need to be taken in order to effectively resolve these problems. Further investments should be made to build infrastructures that would enable disabled persons to access all public premises.
  143. The housing segregation of disabled university students should be remedied.

144. The Commissioner is particularly worried by the fact that a number of elderly and adult persons with mental disabilities are placed in institutional care without their consent. The reported abuse of legal capacity proceedings, often by close family members, is also of major concern. The Commissioner calls on the authorities to amend the law related to the removal of legal capacity, taking into account the Equality Commissioner's concern at this law's incompatibility with the UN Convention on the Rights of Persons with Disabilities.

### III. Freedom of the media, access to public information and personal data protection

#### 1. Freedom of the media

145. Free, independent and pluralistic media based on freedom of information and expression is a core element of any functioning democracy. Freedom of the media is in fact essential for the protection of all other human rights. The Constitution of Serbia guarantees this freedom. However, various forms of control and pressure over the diversity and content of the media hamper their independence and pluralism. Some investigative journalists who pursue investigations into sensitive issues such as corruption, war-related crimes, and failures in privatisations of state-owned companies have been subjected to violent attacks or threats (see below, sub-section on attacks on journalists).
146. It has been brought to the Commissioner's attention that a 'draft media strategy until 2016' was promoted by the Ministry of Culture, Media and Information Society and finalised in 2011 by a working group which consisted of representatives of different media associations in Serbia. The strategy covers the issues of transparency of the media, the right to public information and the transition from analogical to digital media. An action plan on the implementation of the strategy has also been prepared. The Commissioner has noted concerns that if the strategy is not adopted before the general elections in 2012 there will be further delays in its adoption.
147. Post-war justice issues, notably war-related crimes, remain a taboo in some Serbian media. There is a lack of serious public debate and most of the media have so far failed to fulfill their important role in this domain. Some media use only sensational reporting thereby undermining the prospects for open and serious discussions about these important issues in Serbia and in the region.
148. During his visit, the Commissioner met with Mr Vladimir Vukčević, Special Prosecutor for War Crimes, who informed him that his office is looking into the role of media and journalists in the wars in the 1990s, with a view to the potential prosecution of those responsible for incitement to ethnic hatred and other related criminal offences.
149. In 2011 ECRI<sup>49</sup> raised concerns regarding Serbian media manifestations of intolerance towards minority religious groups and ethnic minorities. ECRI noted that some newspapers recurrently use derogatory terms for the Albanian and Bosniak minorities, and that there is a general climate of intolerance against Roma. ECRI also noted with concern that the ethnic identity of crime suspects is often disclosed when they are of Roma origin. In this context the Commissioner would like to emphasise that media have an important role to play in countering prejudices and that they should contribute to the elimination of stereotypes by avoiding repeating them and condemning their expression.<sup>50</sup>
150. Media self-regulation is important in this context and it appears that the flaws in the self-regulatory system reported to the Commissioner during his 2008 visit still exist.<sup>51</sup> The Commissioner has noted that the OSCE together with the Council of Europe and the EU are implementing a number of projects aimed at strengthening freedom of the media and access

<sup>49</sup> ECRI report on Serbia, cited above, pages 23 and 24.

<sup>50</sup> See also the Commissioner's Human Rights Comment, 'European media contribute to xenophobia and anti-Gypsy stereotypes', 7 July 2011.

<sup>51</sup> See the Commissioner's report on the visit to Serbia, 2009, paragraph 210.

to public information. The projects include support for the work of the Press Council as the first regulatory body for printed media in Serbia.<sup>52</sup>

151. In July 2009 the Parliament of Serbia adopted amendments to the Law on Public Information prompting widespread criticism by Serbian media and international organisations, mainly due to provisions that were regarded as seriously threatening media freedom. Against this background, the Commissioner welcomes the decision of the Constitutional Court in July 2010, in proceedings initiated by the Ombudsman, to strike down most of the provisions of the new Law on Public Information, primarily those allowing excessive fines for defamation.
152. The Commissioner has noted that although the sentence of imprisonment for defamation has been abolished in Serbia, defamation remains a criminal offence. The Commissioner believes that the mere existence of criminal defamation provisions intimidates journalists and causes unfortunate censorship.
153. In June 2009 the European Court of Human Rights delivered judgments in two cases<sup>53</sup> concerning violations by Serbia of Article 10 of the Convention (freedom of expression). The applicants were journalists convicted of defamation. In these judgments the Court pointed out that the prosecution of journalists for defamation when they are raising issues of public debate, as in the present cases, should be considered proportionate only in very exceptional circumstances. The Court concluded that the interference with the applicants' rights to freedom of expression was wholly disproportionate. The Court had particular regard to the fact that the fine imposed by the courts on one applicant, involved in both cases, could be replaced by 60 or 75 days' imprisonment in case of default.

## **2. Access to public information and data protection**

154. The Commissioner has noted with satisfaction that access to public information in Serbia has been enhanced. The work of the Commissioner for Access to Information of Public Importance and Personal Data Protection has been crucial in this field.
155. During the visit the Commissioner for Access to Information of Public Importance and Personal Data Protection, Mr Rodoljub Šabić, informed Commissioner Hammarberg that his institution receives yearly approximately 10 000 complaints regarding access to public information. These complaints mostly relate to refusals of access to public information by state bodies or state-owned companies. It was emphasised that in 90% of the cases the Commissioner's intervention facilitated access to information, and that almost two thirds of the requests were resolved without formal proceedings being initiated by the Commissioner.
156. Although the decisions of the Commissioner for Access to Information of Public Importance and Personal Data Protection are binding, there appear to be cases of non-execution of these decisions. The amendment to the Law on Free Access to Information in May 2010 introduced a mechanism for the enforcement of the decisions of the Commissioner for Access to Information. According to the amendments, he may impose fines on persons responsible for the non-implementation of the decisions.
157. In this context, the Commissioner Hammarberg considers very important the issue of the opening of archives in order to shed light on and give access to the truth relating to the 1991-1999 wars on the territory of the former Yugoslavia. He has noted that some discussions about the transfer of the ICTY archives have already been initiated but it appears that there has been no discussion about this issue at regional level.
158. As regards the field of personal data protection, it remains problematic according to the Commissioner for Access to Information of Public Importance and Personal Data Protection. In 2010 the government adopted a strategy on personal data protection but an action plan to implement the strategy has not yet been adopted. It is essential that the authorities promptly

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<sup>52</sup> See OSCE Mission to Serbia, <http://www.osce.org/serbia/43351>.

<sup>53</sup> See the judgments of the European Court for Human Rights in the cases of *Bodrozic v. Serbia*, 23 June 2009 and *Bodrožić and Vujin v. Serbia*, 23 June 2009.



adopt all measures in order to fill the existing lacunae and fully safeguard personal data protection.

### 3. Attacks on journalists

159. Media plays a crucial role in the defence of human rights – as a watchdog on human rights violations as well as a forum for democratic debate. Unfortunately, media freedom has been threatened in Serbia through attacks against, and in some cases even murders of journalists by extremists. It is of the utmost importance that these crimes be effectively investigated and those guilty be promptly brought to justice.
160. National and international media reported the physical attack in public, in July 2010, on Teofil Pančić, a political columnist for the weekly *Vreme*. As a result of the attack he suffered concussion and arm injuries. The journalist was known for his critical coverage of Serbian nationalists and sports hooligans. The suspects, members of an ultra-nationalist group, were arrested and convicted on assault charges. The Commissioner has noted concerns expressed by members of civil society that the sentences of three months' imprisonment imposed on the suspects were too lenient. However, the first instance judgment was overruled by the appeal court and the appeal proceedings are still pending.
161. The Criminal Code was amended in 2009 to introduce the 'endangering of the safety of a journalist' as a crime punishable by imprisonment ranging from one to eight years. This provision was applied for the first time in 2010 when three persons were convicted for threatening Brankica Stanković, a journalist of the Belgrade-based television station *B92*. The threats stemmed from her 2009 documentary revealing that members of a nationalist sports club had escaped prosecution on drug trafficking and murder charges. The three suspects, identified as members of the club, were sentenced to imprisonment ranging from three to 16 months in connection with the threats. It has been reported that the police provided Stanković with guards throughout the year due to ongoing concerns for her security.<sup>54</sup> During his visit, the Commissioner was informed that this journalist was still under 24-hour protection by the police.
162. The Commissioner has noted reports that in some cases journalists faced risks from the authorities themselves. It has been reported that in May 2010 Belgrade District Court officers repeatedly punched a journalist of a local newspaper after he took photos of a nationalist club leader being brought into the court building. Reportedly, at the direction of a judge, court officers then erased the journalist's photographs although he had an accreditation and permission to take photographs in the court building.
163. In February 2011 the OSCE Representative on Freedom of Media condemned the intimidation campaign against the independent Serbian broadcasting company *B92* and its editors. The campaign was related to *B92*'s reporting about alleged corruption cases at a state-owned company. Numerous poster-size notices announcing the 'death' of *B92* were put up in Lazarevac. The Serbian Minister of Interior pledged to protect the *B92* journalists while investigations were launched into the case. During his visit, the Commissioner met Veran Matić, editor-in-chief of *B92*, who was under 24-hour police protection and was accompanied to the meeting by a police guard.
164. The Commissioner has noted with serious concern that there have been several unresolved cases of killings of journalists in previous years, such as those of Slavko Ćuruvija, owner and editor of the *Dnevni Telegraph* (April 1999), and of Milan Pantić, correspondent of the *Vecernje Novosti* (June 2001). The Commissioner has also noted reports that the case of the attack with hand grenades in 2007 against the apartment of Dejan Anastasijević, a journalist of *Vreme* weekly, has not been resolved.

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<sup>54</sup> Committee to Protect Journalists, Attacks on the Press 2010 – Serbia, 15 February 2011, <http://www.cpi.org/2011/02/attacks-on-the-press-2010-serbia.php>.

*Conclusions and recommendations*

165. The Commissioner underlines that freedom of expression and media freedom have a crucial role to play in the development and progress of European democratic societies. He recalls the European Court of Human Rights' case-law according to which freedom of expression, in the context of Article 10 ECHR, is applicable not only to information or ideas that are favourably received or regarded as inoffensive but also to those that 'offend, shock or disturb the State or any sector of the population'.
166. The Commissioner stresses that defamation should be decriminalised and unreasonably high fines in civil cases relating to media should be avoided. The Commissioner welcomes in this context the decision of the Serbian Constitutional Court in July 2010 to strike down most of the provisions of a new Law on Public Information, primarily those imposing excessive fines for defamation. At the same time, the media community should be encouraged to promote and apply ethical and professional standards in journalism and to develop a system of effective self-regulation.<sup>55</sup>
167. The Commissioner calls on the Serbian authorities to improve the personal data protection system by implementing the relevant legislation and the action plan concerning the Strategy on Personal Data Protection which was adopted by the government in 2010.
168. The authorities' prompt reaction nowadays to attacks on journalists are commendable but the Commissioner remains seriously concerned by the competent authorities' failure to resolve past cases of violent attacks against journalists, including the aforementioned murders that took place in 1999 and 2001. The effective investigation of incidences of violence, including murders, against journalists is of key importance. To fail to do so can only encourage impunity for human rights violations.
168. The Commissioner urges the Serbian authorities to conduct effective investigations into all of these incidents, in accordance with the established case-law of the European Court of Human Rights and the 2011 Guidelines of the Council of Europe Committee of Ministers *on eradicating impunity for serious human rights violations*.
169. Lastly, the Commissioner points out that media plays an important role in countering prejudices and should not perpetuate stereotypes through negative reporting concerning ethnic or religious minorities, in particular Roma. The Commissioner invites the Serbian authorities to promote systematic dialogue with media professionals and relevant civil society groups in order to ensure the elimination of manifestations of anti-Gypsyism and the promotion by media of tolerance and social cohesion.

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<sup>55</sup> See Issue Paper on *Ethical Journalism and Human Rights*, 1 March 2011, CommDH/IssuePaper(2011)1, and the Commissioner's thematic web page on media freedom at: [http://www.coe.int/t/commissioner/activities/themes/MediaFreedom/Default\\_en.asp](http://www.coe.int/t/commissioner/activities/themes/MediaFreedom/Default_en.asp).

## APPENDIX

**Contribution by the Ministry of Justice concerning the Report on the visit by the  
Commissioner for Human Rights of the Council of Europe Thomas Hammarberg to the  
Republic of Serbia on 12-16 June 2011**

Paragraph 10 - Negotiations were initiated with Bosnia and Herzegovina to sign an extradition treaty which would provide for the possibility of extradition of own nationals for criminal acts of organized crime, corruption and money laundering and for other serious crimes other than crimes against humanity and against other assets protected by international law (war crimes). The problem with the signing of such a treaty is the entities Constitution of Bosnia and Herzegovina which does not allow for the extradition of their own nationals.

Paragraph 11 - As regards the bilateral agreement with Bosnia and Herzegovina the signing of which was expected, it is noted that Bosnia and Herzegovina has not eventually agreed to its signature. It is hoped that negotiations to sign the treaty will soon be resumed.

Paragraphs 75 and 76 - In addition to the enumerated other laws governing this area, the attention is being drawn to the fact that the Criminal Code of the Republic of Serbia contains an Article 387 relating to racial and other forms of discrimination, in particular its sub-paragraph 4 which reads as follows:

*“Whoever disseminates or otherwise make publicly available texts, pictures or any other presentations of ideas or theories propagating or inciting hatred, discrimination or violence against other persons or groups of persons on the basis of race, colour, religion, nationality, ethnic origin or any other personal characteristic shall be punished by three months to three years in prison.”*

The wording “*any other presentations*” refers specifically to hate speech.

Paragraph 153 refers to two judgements rendered by the European Court of Human Rights in relation to the Republic of Serbia because of the conviction of a journalist for libel (Bodrozic and Bodrozic-Vujin judgments of 23 June 2009), in which ECHR found that freedom of expression guaranteed under Article 10 of the Convention for the Protection of Human Rights had been violated.

In the process of execution of the two judgements, the Agent of the Republic of Serbia insisted that the then Supreme Court took a position on the need to distinguish between value judgements and statements of fact in convictions for libel/calumny, on the basis of which the Committee of Ministers adopted its final resolution stating that the Republic of Serbia had complied with all its obligations stemming from the judgements finding violation of freedom of expression on account of convictions for calumny (Lepojic and Filipovic cases), whereas preparations are being made to adopt a final resolution also regarding the Bodrozic and Bodrozic-Vujin cases (This resolution should be adopted at the December meeting of the Committee of Ministers).

In addition, in the context of execution of the two judgements and bearing in mind also the recommendations of the Parliamentary Assembly of the Council of Europe, the Agent pointed to the need for the de-criminalization of calumny immediately following the rendering of the two judgements, which is being considered by the Working Group for Amendments to the Criminal Code.

However, despite the fact that the Supreme Court of Serbia adopted its position regarding the need for making a distinction between statements of fact and value judgements before the European Court of Human Rights, there is another case pending before this Court following the conviction of a journalist for calumny (Milisavljevic case). In this particular case, the journalist was found in contempt of court during the proceedings on calumny charges. As a result, there was no likelihood, as indicated in the Report by the Commissioner for Human Rights, of replacement of the fine with an effective custodial sentence.

In any case, a solution could be to amend criminal legislation and decriminalize calumny, but above all a solution lies in the proceedings of national courts conducted in accordance with the standards established by the case law of the European Court of Human Rights, because in the countries which have retained calumny as a criminal offence, national courts take much more account of the standards from the practice of ECHR.

We associate ourselves with the recommendation of the Commissioner for Human Rights concerning the need to elucidate cases of deaths of journalists as well as all cases of disappearances in accordance with ECHR standards. Otherwise, Serbia will find itself in a situation having to answer for violations of Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Paragraph 158 - As already indicated, the Strategy for the Protection of Personal Data was adopted in 2010 and the Ministry of Justice is making efforts to have an Action Plan on the Implementation of the Strategy adopted as soon as possible. The Action Plan is currently in the process of preparation and its adoption is expected within the shortest possible period of time.

It is recalled that the recommendations of the Report relating to the competences of the Ministry of Justice have been referred to the sections and institutions concerned for further action by them. This is primarily true of the recommendation relating to amendments to the relevant laws, the Criminal Code in the first place. These recommendations have been forwarded to the Working Group drafting amendments to these laws. Furthermore, the recommendations have also been transmitted to the Working Group drafting the Law on *pro bono* legal aid which is expected to be adopted in November 2011. As far as the training of judges and prosecutors on the subject of hate crimes, the LGBT population is reminded that the Judicial Academy is carrying out continuously training courses in anti-discrimination, including the above-mentioned fields, and that the recommendations contained in the Report will surely be transmitted to the Judicial Academy, as well.

Republic of Serbia  
OFFICE OF THE WAR CRIMES PROSECUTOR  
No. A 330/2011  
12 September 2011  
Belgrade  
VM

MINISTRY OF JUSTICE  
European Integration and International Projects Sector  
Belgrade

In reference to your letter forwarding the report on the visit by the CoE Commissioner for Human Rights to the Republic of Serbia on 12 – 15 June 2011, we would like to make the following comments which fall within the field of our activity:

The assessment of the regional cooperation on war crimes cases and the recommendation that much more should be done to sign an agreement between the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia on evidence exchange in war crimes proceedings deserve to be commented on. Namely, the Republic of Serbia, i.e. the Office of the War Crimes Prosecutor of the Republic of Serbia did its best in the past to have this agreement signed. On two occasions, the Office of the War Crimes Prosecutor agreed to the modifications forwarded by the other party and in spite of it all, the Prosecutor's Office of Bosnia and Herzegovina simply cancelled, on 22 June 2011, the already scheduled and agreed signature of the Agreement between the two parties.

Nevertheless, it should be recalled that the Office of the War Crimes Prosecutor did all it could to have the two parties sign such an agreement. So, the Office scheduled new negotiations for the conclusion of the agreement to take place on 16 September 2011, in Belgrade.

The assertion that progress on war crimes cases has been slow cannot be supported by the information presented by the CoE Commissioner himself. Sight should not be lost of the fact that since the War Crimes Prosecutor's Office was created in 2004, requests have been made for investigation of 383 persons for war crimes committed in the territory of the former Yugoslavia. Unlike the report by the CoE Commissioner which states that a decision on appeal should be passed in three cases on 15 defendants, the actual situation now is that appeals are currently pending in 5 cases for 17 defendants. As regards the statistics, it should be stressed once again that the Office of the War Crimes Prosecutor, besides the aforementioned legal proceedings, is conducting alongside pre-trial proceedings against several hundred persons involved in many events where attempts are made to track down the perpetrators. Bearing in mind the staffing of the Office of the War Crimes Prosecutor, i.e. that the Prosecutor and his seven deputies perform these functions, that the crimes occurred more than 15 years ago, that after such a long period material evidence is scant, that victims and witnesses are located in the territory of other former Yugoslav Republics, that it is difficult for them to agree to give evidence in another country in particular and relive again their traumatic war experience, that the present legal framework was defined in precise terms only after

problems have been detected in the prosecution of war crimes, and that war crimes are much more complex than common crimes, it is clear that the conclusion that progress on war crimes cases is slow in the Republic of Serbia, is based on incomplete information and on misunderstanding of this complicated subject-matter. Besides these results, as also indicated in the report by the CoE Commissioner, the War Crime Prosecutor, effective from July 2006, coordinated simultaneously the activity of the state authorities regarding the arrest of ICTY fugitive war criminals, including the last two of them Ratko Mladic and Goran Hadzic.

By comparing such accurate statistical information on war crime trials in the Republic of Serbia with the statistics of ICTY which has been working on such cases for much longer, as well as with those compiled by the Prosecutor's Offices in the region, it is clear why the results in trying war criminals in the Republic of Serbia have made the justice of the Republic of Serbia stand out as the region's leader in this respect.

The Office of the War Crimes Prosecutor was commended for its work and cooperation by the Office of the ICTY Chief Prosecutor and it is still an important part of the daily activities relating to war crimes.

Finally, with regard to the part of the report dealing with the problem of witness protection, it should be noted that this is a very sensitive issue and that ICTY has had and still has (Haradinaj case) many problems with successful witness protection. In general, witness protection is an issue addressed in the past by the Office of the War Crimes Prosecutor too, and our opinion is that problems in this regard will be successfully resolved once the competence for it transfers to the Ministry of Justice.

DEPUTY WAR CRIMES PROSECUTOR  
Veselin Mrdak

Republic of Serbia  
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Ref: 337-00-99/2011-16

15 September 2011

**Comments on the Report on the Visit of Council of Europe’s Commissioner for Human Rights, Mr. Thomas Hammarberg to the Republic of Serbia, 12-15 June 2011**

We wish to inform that, regarding our field of activities, we have no objection to above referenced the Report. However, with reference to para 128 regarding the work of centers for the infirm, elderly or senior citizens, we wish to add following comments:

Para 128 of the Report states: “The Ministry of Labour and Social Policy in relation to these centers”, and a reference is made to private homes for the accommodation and care for the infirm, elderly or senior citizens, “there is no inspection work”.

According to the records of the Ministry of Labour and Social Policy, there are 77 such licensed private institutions operating in the Republic of Serbia and 13 operating in the autonomous province of Vojvodina.

After the inspection conducted in 2010, the Ministry of Labour and Social Policy closed 13 of those institutions in 2010 and 8 in 2011. We suggest that this information be attached to the Report as a commentary.

**THE MINISTRY OF HUMAN AND MINORITY RIGHTS,  
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Human and Minority Rights Directorate  
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15 September 2011**

**COMMENTS ON THE REPORT ON THE VISIT OF COUNCIL OF EUROPE'S  
COMMISSIONER FOR HUMAN RIGHTS, MR. THOMAS HAMMARBERG, TO  
THE REPUBLIC OF SERBIA, 12-15 JUNE 2011**

Regarding the Report on the visit of Council of Europe's Human Rights Commissioner to the Republic of Serbia, 12-15 June 2011, we hereby submit our comments to the following paragraphs:

109. According to the 2011 UNHCR survey on persons at risk of statelessness in Serbia, 1.5% of Roma are not registered in birth registry books, 5.4% have no identity cards and 2.3% are not registered in citizens registries. According to UNCHR 6.8% of Roma have been identified as being at risk of statelessness. This concerns local Roma and displaced Roma, and Ashkali and Egyptians from Kosovo, who find themselves without the basic documentation necessary for accessing a number of social and economic rights many years after having been displaced.

110. The Commissioner has noted that the problem of lack of personal identity is complicated by the lack of identity documents of Roma parents who cannot therefore register their own children. This vicious circle has created a generation of so-called "legally invisible" Roma, perpetuating their exclusion from society at large. Without registration and personal identity documents Roma cannot register their residence which is necessary for exercising a number of social and economic rights. According to the Ombudsman, this problem also affects some non-Roma citizens. The Commissioner has noted with concern that following his visit, a man who lost his residence and his identity card decided to go on a hunger strike in order to draw the authorities attention to this problem.

111. As an initial step towards remedying the aforementioned situation the authorities have amended, in May 2011, the Law of Identity Card in order to provide the possibility of issuing temporary identity cards. However, this amendment does not resolve the problem of lack of personal documents, as a temporary ID card can only be issued once a person has registered residence. During the Commissioner's visit, the Minister of Human and Minority Rights, Public Administration and Local Self-Government, Mr Milan Marković and the Ombudsman informed the Commissioner that they proposed an amendment to the Law on Residence aimed at fully remedying this problem, whereby persons who do not have registered residence will get temporary documents with the address of the nearest social care centre. According to the Ombudsman, if enacted, this amendment would solve the problem of lack of personal



identity documents. Following his visit, the Commissioner has been informed that the aforementioned amendment to the Law of Residence has not yet been adopted.

112. During the Commissioner's visit, the Minister of Human and Minority Rights, Public Administration and Local Self-Government, Mr Milan Marković, informed the Commissioner that this ministry, in co-operation with the Ombudsman, has prepared a set of amendments to existing regulations aimed at facilitating the registration of Roma at birth. In this context the above ministry has been in contact with the National Roma Council and plans to register and provide legal aid to all Roma in settlements within a timeframe of two years starting from September 2011.

138. The Commissioner reminds deeply concerned by the situation of Roma who remain forcibly displaced from Kosovo and still lack personal identity documents. He is particularly concerned by the related, persistent problem of non-registration of Roma children upon birth. The Commissioner welcomes the commitment shown by the Serbian government and urges the authorities to promptly follow up on their plan aimed at facilitating access of all Roma to personal identity documents. In this regard, the Commissioner urges the authorities to enact an amendment to the Law of Residence which would provide that persons who do not have registered residence will get temporary documents with the address of the nearest social care centre.

#### **Comments:**

**The Ministry of Human and Minority Rights, Public Administration and Local Self-Government has meanwhile taken significant steps in order to clarify all disputable issues related to exercising rights of inscription of the fact of birth of Roma national minority members in birth registers. Inter alia, the following activities have been undertaken:**

**1) The Ministry of Finance has been sent a proposal to amend the Law on Republic's Administrative Taxes in the part referring to exemption from payment for administrative taxes on writs and acts pertinent to exercising the right of subsequent inscription in birth registers. Regarding this motion, after a procedure aligned to the Government's Rules of Procedure, on June 16 2011 the Government established the Bill on Amendments to the Law on Republic's Administrative Taxes, and the National Assembly of the Republic of Serbia passed the Bill on July 5 2011.**

**2) The Ministry of Justice has been sent a request to amend legislation under its competences prescribing adequate court procedure for establishing the fact of birth and birth register inscription in case when the fact cannot be proven before administrative bodies.**

**3) The Ministry of Justice has been sent a request to amend the Law on Administrative Taxes in order to exempt from payment all cases before courts regarding establishment of the fact of birth necessary for birth register inscription.**

**4) In order to harmonise working practices and to expedite and facilitate the access of Roma national minority members to birth register inscription, all bodies executing the affairs of birth registers (local and municipal administrations) have received:**

- opinion on implementing the provisions of the Law on Civil Registers and by-laws passed pursuant to this Law, defining the procedure of subsequent inscription of the fact of birth in birth registers;

- instruction on the way of proceeding for the bodies managing the first-instance procedures for birth registers upon requests for subsequent inscription of the fact of birth in birth registers, with addenda – a sample of certificate issued to persons submitting the request for subsequent inscription in birth registers in order to exercise the right to exemption from paying the legally-envisaged administrative taxes for writs and acts regarding exercising this right and the Information on the Procedure of Exercising the Right of Subsequent Inscription of the Fact of Birth in Birth Registers that the body is obliged to deliver to the applicant of the request for subsequent inscription of the fact of birth in birth register;

- opinion of the way of managing the cases where evidence of the fact of birth before the body competent for the subsequent inscription of the fact of birth in birth register entails disproportional costs.

5) Остварена је сарадња са локалним координаторима за ромска питања ради пружања помоћи свим лицима која нису у уписана у матичну књигу рођених да остваре то своје право пред надлежним органом.

6) In order to implement the Action Plan for Implementing the Strategy for Improvement of the Roma position in the Republic of Serbia, the Ministry has called for project proposals meant to provide legal aid in the procedures of subsequent inscription of the fact of birth in birth registers.

With that, it should be emphasised that the procedures for exercising right to subsequent inscription of the fact of birth in birth registers, envisaged by the Law on Civil Registers and by-laws adopted pursuant to this Law, enabled 9,573 persons to exercise that right in 2009, while 7,996 persons exercised this right in 2010. It is impossible to determine how many Roma national minority members were among these persons, given the fact that the Constitution of the Republic of Serbia guarantees the freedom of expressing nationality and nobody is obliged to declare one's nationality, so the fact of national appurtenance is not inscribed in the birth register.

Regarding the note that Roma from the Autonomous Province of Kosovo and Metohija still do not possess personal documents, and bearing in mind that certain number of registers for Kosovo and Metohija have been destroyed or lost, by Law on Civil Registers and Instruction on Keeping Civil Registers and register forms comprehensively define the area of renewing the inscription of a certain fact in a register, before relevant authorities, by Article 6 Paragraph 4 of this Law. This way, all internally displaced persons and other persons inscribed in these books, including the Roma national minority members, are enabled to exercise these rights without any impediment. This can be illustrated by the fact that only in 2009 and first half of 2010 559,379 birth certificates were issued from registers kept for local self-government units in that territory. Also, according to the data provided by local administrations keeping the registers, by the end of 2010 more than 120,000 inscriptions on civil registers were renewed. In this case as well, due to the above-stated reasons, it is impossible to give the figures of Roma national minority members covered by this. It should be emphasised

**that according to the civil register regulations, a person who cannot get a renewed inscription through administrative procedure, due to the lack of evidence, can file a complaint to competent court regarding the establishment of relevant facts and once the enforceable decision is taken, the fact will be entered into civil register.**

**The Government of the Republic of Serbia has adopted a proposal of the new Law on Residence and Sojourn. The proposed Law on Residence and Sojourn enshrines the provisions that will enable the persons without a registered stay to obtain provisional documents with the address of the nearest social work centre. It has been pending for adoption in the Parliament since 6 September 2011.**

135. The authorities are called upon to amend the formulation of the criminal offence of “incitement to national, racial or religious intolerance” so that it includes all forms of hate speech, in accordance with the Council of Europe Committee of Ministers’ Recommendation No. R (97) 20 on ‘hate speech’.

**Comment:**

**The legislative profile according to the so-far Penal Code has been harmonised with the principles of the European Convention on Human Rights, so regarding hate crime and hate speech incrimination (legislative capacity) has been expanded and sanctions are applied not only to dissemination of racial, national or religious intolerance, but also to any other intolerance resulting in violence motivated by different convictions, life style, sexual orientation or other differences. Monitoring by the Republic’s Public Prosecutor has been institutionally provided in the scope of the competences for criminal acts in the domain of violation of human and civic rights guaranteed by the Constitution of the Republic of Serbia, the criminal justice protection of which has been transposed into our domestic legislation from the international criminal law.**

**Also, the new Penal Code is being drafted, with innovation in the area of hate crime.**

REPUBLIC OF SERBIA  
COMMISSIONER FOR THE  
PROTECTION OF EQUALITY

Belgrade  
Ref: 995/2011

12 September 2011

**Comments on the Report on the Visit of Council of Europe's Commissioner for Human Rights, Mr. Thomas Hammarberg to the Republic of Serbia, 12-15 June 2011**

- Chapter II comprises, on its second page, personal characteristics contained in the Anti-Discrimination Law of the Republic of Serbia. Bearing in mind that it is a quotation, we wish to draw your attention to the fact that the Anti-Discrimination Law includes a large number of personal characteristics and therefore we suggest that you quote all of them or indicate, in some other way, that the enumerated characteristics are not the only one, pursuant to the Law. The Anti-Discrimination Law contains race, colour, ancestry, nationality, national affiliation, ethnic origin, language, religious or political affiliation, sex, gender, sexual orientation, property, birth, genetic characteristics, health, disability, marital and family status, criminal record, age, appearance, membership of political, trade union or other organizations and other real i.e. presumed personal characteristics.

From:mis serbia strasbrg 0388360949 To:0390215053

20/09/2011 12:15 #193 P.004/008

REPUBLIC OF SERBIA  
COMMISSARIAT FOR REFUGEES

Comments of the Republic of Serbia  
on the Report by Thomas Hammarberg  
Commissioner for Human Rights of the Council of Europe  
Following his visit to Serbia  
on 12-15 June 2011

The Republic of Serbia welcomes the Report by the Commissioner for Human Rights of the Council of Europe following his visit to Serbia, and we consider that the opinions expressed within the document are both relevant and accurately portray the situation in the Republic of Serbia regarding the refugees and internally displaced persons.

In the aim of offering further clarification and precise data on certain issues, we are submitting the following comments:

1. Regarding the paragraph 51. that provides data on Serb refugees that have applied for Housing Care Programme in Croatia:

Based on the results of the bilateral data exchange that is conducted between Republic of Serbia and Republic of Croatia and carried out by the UNHCR, within the Regional process of finding durable solutions for refugees, the data on Housing Care Programme in Croatia differ from those mentioned in the report. Namely, according to the UNHCR's Data Exchange Report, out 14 367 applications that were filed for this programme, 8 085 applications were filed by the refugees from Croatia residing in Serbia and out of them 2 555 or 31,6% have received a positive decision.

2. Regarding the paragraphs 52 and 53 that state the joint initiatives undertaken by the Governments of Serbia, Bosnia and Herzegovina, Croatia and Montenegro and Regional project that aims at closing the displacement chapter in the region:

Republic of Serbia would like to emphasize that the regional project targets only the displaced persons from the period 1991-1995, and it does not include internally displaced persons from Kosovo residing in Serbia.

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