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Constitution

Concerns regarding the solutions in the Constitution and the Law on Implementation of Constitution remain, of which most worrying are provisions related to: inadequate position of the MPs which are made subservient to the political parties; excessive role of the parliament in judicial appointments; unclear definition of autonomy of local governments and province; inadequate constitutional basis for independent regulatory bodies.

Position of MPs

According to Constitution the MPs are subservient to political parties as they are expected, to put their mandate at disposal of their parties; [1] Almost all leaders of the political parties admitted that their MPs have signed and submitted blank resignations which can be effected at party will in both compositions of the Assembly. Such position of the MPs jeopardize the institutional capacities of the Parliament. It also questions the real wish of voters. The Constitutional Court reached a decision in April 2010 by which "blank resignations" of the members of local assemblies are not legal, which unfortunately has no bearing at the national level. This problem has been pointed out in several EU Progress Reports and by the Venice Commission, most recently in April 2011. Venice Commission found in its opinion in April 2011 that this article has to be changed. According to statements of representatives of ruling coalition there is no mentioning of changing of Constitution.

Eliminating the widespread practice of using blank resignations by the political parties should be a priority. This does not have to take form of piecemeal changing of the constitution as it can have adverse effect on the stability of overall legal system. It could instead take a form of a political consensus not to use this institute as means of establishing party discipline. Furthermore, revision of the electoral system with this in mind could also resolve the issue until the more comprehensive revision of the Constitution is on the agenda.

Status of independent bodies

Except for the bodies explicitly mentioned in the Constitution (Central Bank, Constitutional Court, Ombudsman, High Judicial Council, State Council of Prosecutors, State Audit Institution) the

[1] Constitution of the republic of Serbia, article. 102.

Constitution did not provide grounds for the independent position of other bodies such as: Commission for Securities, Commission for Protection of Consumers* Rights, Anti-corruption Agency, Broadcasting Agency, Commissioner for Information. Their position should in principle be similar to those more traditional independent bodies which are mentioned in the Constition, such as National Bank, Constitutional Court and Ombudsperson.

Independence of Judiciary

In 2006 it changed the Constitution which, as it should be, recognizes the separation of powers as the fundamental principle of organizing and exercising state authority; particularly emphasizes that the judiciary power is independent, and in line with the good practices of the other countries in transition it founds the High Judiciary Council (HJC) and State Prosecutor Council (SPC) as independent state bodies to which it entrusts responsibilities to "insure and guarantee the independence and autonomy[2] of courts and judges", i.e. "of prosecutors and their deputies".

However, insufficient safeguards for the establishment of the judiciary as an independent branch of government are enshrined in the 2006 Constitution. By far, most serious objections concern the election of the members of the HJC and the role of the Parliament in the election of judges for the probationary period. But there are also other provision which need to be amended so as to better secure independence of judiciary.

Constitutional guarantees of human rights

Certain rights are vaguely and more narrowly defined in the **present Constitution** compared to the Constitutional Charter of SM on Fundamental Human and Minority Rights and Civic Liberties and European Convention on Human Rights:

The right to privacy: not defined as a right per se as the Article 8 of ECHR requires and as was the case in all socialist constitutions, but through the right to protection of personal data; there is no distinction between the right to protection of personal data and the right to privacy; no clear distinction between the freedom of information and the right to free access to information of public importance; freedom of association is restricted as the secret and paramilitary associations are prohibited by the Constitution (the full respect of freedom of association would require no limitations in the Constitution,

[2] By using the word "autonomy" the deliverer of the Constitution presumably intended to say that the judges, prosecutors, and deputy prosecutors exercise their work upon the Constitution, Law, usages of the profession and their consciousness.

and the procedure of assessing the legality of the work of each organization should be established by the law on a case by case basis, if and when needed in the interest of the democratic society). The right to marriage is restricted exclusively to persons of different sexes (since 1974 all constitutions theoretically guaranteed the possibility of same sex marriages).

Overall, several of the PRINCIPLES which should be included in Serbia's new constitution, and for the realization of which this new constitution should provide the necessary and solid legal guarantees, whereas any sort of political practice should forego any sort of intention to question them; stand out:

- defining Serbia as a citizens state and as a secular state (this is a condition for the reestablishment of confidence in and the acceptance of Serbia as one's own state regardless of ethnicity – this is the condition for the strengthening of cohesion of Serbia as a political community of citizens);

- guaranteeing the corpus of human rights and liberties and an establishment of efficient mechanisms of their respect and protection, including the incapacitation of their violation by the Parliament, the Government and the President of the Republic; that is, control over these organs by those bodies the primary function of which is the defense of human rights from political and legal arbitrariness and voluntarism /the position of the Ombudsman and the Commissioner for Information of Public Importance /RRA Council);

- establishing effective institutional arrangements which eliminate any possibility of political party rule (deleting the provision on blank resignations; strict respect for the provisions referring to highest state officials not being able perform other public functions, especially not that of political party leaders);

- effective enactment of the principle of separation of powers into a legislative, an executive and a judiciary (judiciary independence is questionable today), responsibility and establishment of effective mechanisms for their control; and, pertinently

- ensuring conditions for external control over power-holders by citizens and their associations and independent bodies created for this purpose (guarantees of their independence: functional, personal, financial; selection by a qualified 2/3 majority in order to prevent a politicization of selection);

- legitimization of participativeness/ consultative nature of the decision-making process (in order to alleviate shortcomings of representative democracy through the

advancement of the type of governance, that is, through good governance; Art. 11 of the Lisbon Treaty serves as a good paragon);

- acceptance of the supremacy of international legal norms over domestic law;

- ensuring Serbia's unhindered adjoining of Euro-Atlantic integrations and provision of conditions for guarantees for direct applicability of the EU's legal norms (Euro-Atlantic integrations are Serbia's only developmental chance, regardless of the existence of many reasons for being critical towards Euro-Atlantic arrangements and their effectiveness);

- provision of guarantees for the functioning of market economy, particularly the basis for effectuating freedom of competition and the establishment of efficient mechanisms for the suppression and prevention of monopolistic positions (the independence of the Commission for Protection of Competition and the Republic of Serbia Securities Commission);

- effectuation of the principle of social justice in the function of social cohesion and

National Assembly

(ref. Political Criteria, questions 8-17, additional questions 2-6)

In 2010 the National Assembly adopted the Law on National Assembly and Rules of Procedures thus completing legislative framework regulating its work. Efficiency of the Parliament has been increased considerably, as well as openness and . Most notably, the practice of MPs putting their mandate at the political parties' disposal prevents consolidation of National Assembly as the first branch of the government. This practice is made possible by the 2006 Constitution and is widely used by political parties in the form of "blank resignations". It is in fact covert institutionalization of the imperative mandate of the MPs. Furthermore, this practice has already been ruled unconstitutional on the level of the municipalities by the Constitutional Court.

Even though legislative framework is apart from the issue of mandates generally speaking adequate its implementation and institutional capacities of the Parliament need further improvement.

Legislative function of the National Assembly needs to be further improved. Even though legislative output is considerable some practices have detrimental effect on the quality of adopted legislation. Lack of coherent legislative policy is still a major shortcoming of the legislative activity of the National Assembly. Instances of unreasonably set vacatio legis and recurrence of the conflicting norms in the legal acts have negative impact on coherence of legal system. It is important to have in mind that the legislation is predominantly driven by the Government and that shortcomings in planning of the Government activities have direct bearing on the work of the National Assembly.

Proliferation of law-making by **urgent procedure** has negative effect on the quality of parliamentary scrutiny of acts (almost half of the total number of acts is submitted to be processed through urgent procedure). Efforts to speed up the process of harmonization with the *Acqui* in accordance to the should be supported, but it should be followed by the significant improvement of the planning process both on the side of Government and National Assembly and particularly of the capacities of the National Assembly.

Particularly worrying is that the laws are passed without **analysis of effects and fiscal impact** which causes poor implementation and lack of effective supervision of their implementation. As noted in the Answers to the EC Questionnaire (question 10) Rules of Procedures stipulate that such analysis is optional part of the proposed act, and that additional strengthening of the Committee for Finances is required.

Control function of the Parliament is very poorly carried out. Insufficient use of mechanisms of control of the executive branch is by far the most serious concern. Number of MPs questions has been declining since 2007 and reached the low point of only 91 in 2010 despite the institution of a special parliament hearing dedicated to MP questions.

No review or **committees for inquiry** have been formed in the last five years and no initiatives for interpellation have been submitted by the MPs. Abstaining from use of these constitutional mechanisms has negative effect on the control function of the parliament and negatively reflects on the process of consolidation of the Assembly as an effective and respectable institution.

Capacities of the Assembly to carry out its functions need more serious attention. The total number of employed expert and administrative staff is 331 (on total number of 250 MPs) while less than 40% have a university degree. Both the ratio of staff/MPs (1.3) and number of additional expert staff hired for support of parliamentary groups (only 10) demonstrates poor expert support to MPs in their work. Also, it is surprising that parliamentary groups do not optimaly their quota in hiring expert staff.

Particularly worrying is lack of capacities of **Committee for European Integration**. This committee is in charge of reviewing cross- sector legislation and establishing weather it is in line with the *Acqui*. As noted in answer to the 10 despite the provisions of the Rules of Procedure the Committee has only been capable of reviewing the draft laws in principle and not in specific details. Such practice negatively reflects on the process of harmonization and seriously downplays the role of National Assembly in the process of EU integration. Serious strengthening of capacities of parliamentary support services is needed, particularly of the Department for EU integration.

Overall, aside the issue of mandates and predominance of political parties over the institution of the National Assembly the functioning of the Parliament has been significantly improved. Areas which need further improvement are the quality of legislation, effective use of control mechanisms and strengthening of expert and staff capacities of the Parliament.

If it continues its efforts Serbia should, in the medium term, have the capacity to comply with the requirements of the EU. To that end Serbia should address the following issues in particular:

- Eliminating the widespread practice of using blank resignations by the political parties should be a priority. This does not have to take form of piecemeal changing of the constitution as it can have adverse effect on the stability of overall legal system. It could instead take a form of a political consensus not to use this institute as means of establishing party discipline. Furthermore, revision of the electoral system with this in mind could also resolve the issue until the more comprehensive revision of the Constitution is on the agenda.

- Better planning of the legislative activity both on the side of the Government and National Assembly could improve the quality of legislation while retaining the efficiency of the legislative process. Furthermore, making fiscal effect and impact analysis of the proposed

legislation a mandatory part of the draft bills would significantly improve the legislative function of the Assembly.

- Strengthening staff and expert capacities of the National Assembly, particularly of the Committee for EU integrations is of a paramount importance. This would allow for smoother process of harmonization but would also strengthen the control function of the Parliament.

Government

(Political Criteria, Questions 18-56)

In March 2011 the new Law on Ministries and the Amendments to the Law on Government have been adopted which changed the structure of the Government. This pre-composition will have very little effect on efficiency of the Government, as the restructuring did not encompass significant changes in the structure of public administration. The pace of adoption of legislation has somewhat decreased during the process of restructuring of the government, but it is picking up its pace in the last month. Answers to the questionnaire have been provided in a relatively short time, unfortunately affecting the quality of answers in several areas.

Concerns regarding the structure and functioning of the government are related to the process of **adoption of strategies and legal acts, monitoring of the implementation, control over the government agencies and internal control mechanisms**.

Strategic planning of the Government is still not on an adequate level of quality. Government has adopted aver 80 different strategies of which are some very ambitious, however most of them lack financial projection or analysis of effects which often renders them impossible to implement. The best example is Strategy for fight against corruption which had 187 priority issues.

Analysis **of the implementation of several policies** in different fields reveals that it is very hard to follow and analyze effects of some measures. Typical example is Roma policies (see Roma part of this report) where lack of these monitoring mechanisms makes evaluation virtually impossible.

Despite the detailed description of the **process of planning of legislative activity** of the government which is provided in answers to the question, the practice shows that many of the regulations described are not systematically implemented. This particularly stands for the analysis of fiscal and other effects of the proposed legislation. This analysis usually only refers to the direct calculation of additional funds needed in the budget. Furthermore, analysis of the fiscal effects of new legislation is not mandatory part of the proposal which is to be submitted to the National Assembly. The Secretariat of the Government and newly formed body for analysis of the fiscal effects need to strengthen their position within the government particularly in relation to the Ministries.

Structures for coordination of EU integrations need further strengthening. Capacities of the Office for European Integration are considerable and they have been pioneers of transparency and efficiency. It has put an additional effort in so as to include civil society in the process of compilation of the answers to the EC Questionnaire. Instruments which they developed and procedures (Question 23) are relatively adequate for ensuring harmonization. However, capcities of the individual ministries remain to be a cause for concern, particularly in the area where cross-sector consultations are needed. As mentioned in answer to question 22 inter-ministerial consultations are not regulated, which in

practice means that they are more often than not non existent. **Council for European Integration** has to take on a more active role, as his role so far has been more decorative and declarative. Analysis of their minutes from 10 meetings they had since establishment demonstrate that the discussion taking place and recommendations which were adopted were very general and rarely proactive in substance.

A considerable number of different **public agencies, commissions and offices** have been established by the government. This trend of „agencification" needs to be followed by adequate system of control of their work. Unfortunately, there is no publicly available full list of existing structures within the government and special entities formed by the government. The list provided as an answer in question 10 is not completely accurate as the one provided by the Commissioner for Free Access to Information (which is also incomplete, according to his own account) enumerates significantly greater number of different organs. Government is often not very efficient in their control (particularly of the public agencies as they often have certain autonomy in regulatory authorities), which was merely described but not evaluated, in the answer to the question 56 which often leads to poor accountability of these bodies. Public agencies are often a lot less transparent in their work than ministries and public administration bodies. Particularly worrying is the fact that National Assembly only receives reports from the Government as whole (which does not include reports on the work of agencies), which makes these agencies out of reach of control by the legislative. This decreases the accountability of the executive branch.

Control of the work of **public enterprises** is very poorly conducted, and there is no general report on their functioning prepared by the Government. The National Assembly practically has no regular information on their functioning. This leaves room for severe politicization to take place and consequently makes them very susceptible to corruption which is demonstrated by a number of big scale corruption scandals.

Overall, the government is pushing further the process of adoption of legislation in the process of EU integration. However, further efforts are needed, so as to improve overall quality of legislation and its implementation:

- The process of drafting of legislation needs further improvement so as to ensure coherency of the legal system. Analysis of the fiscal and other effects needs to be made completely mandatory and should also be part of the legislation submitted to the National Assembly. Using capcities of independent research institutes and civil societies would contribute to the quality of legislation. Government should also to the maximum reduce the number of laws submitted to be reviewed in shortened or urgent procedure.

- Significantly more efforts are need in establishment of mechanisms of monitoring of implementation and evaluation of effects of adopted legislation.

- Government should more scrupulously conduct oversight over the work of public agencies and public enterprises and should regularly report to the Assembly on their work.

Independent bodies

The number of different agencies, boards, commissions and other forms of bodies which had some form of independence from the executive or legislative branch have been introduced into the Serbian legal and political system. The specific kind of these bodies are those which were established as independent bodies either by constitution or by specific laws and whose status imply complete independence from the executive branch and whose governing boards or councils are appointed by the Parliament. Namely, these bodies include: Constitutional Court, High Judicial Council, State Council of Prosecutors, National Bank of Serbia, Commission for Securities, Ombudsmen, Commissioner for Free Access to Information, State Audit Institution, Commission for Protection of Competition, Anti-Corruption Agency, Commission for Protection of rights in Public Procurement, National Council for Education, Council for Higher Education, Agency for Energy, Agency for Electronic Communication, Republican Broadcasting Agency, Commissioner for Protection of Equality . These bodies in many cases have very important competencies either regulatory or controlling in nature and their independence and effective functioning is a prerequisite for a functioning democratic state.

Status of independent bodies

Status of these bodies significantly differs from that of agencies established by the government, as they are not part of the public administration and do not answer to the government, but directly to the National Assembly. Their governing structures are also appointed by the Assembly. Their position should in principle be similar to that of more traditional independent bodies, such as National Bank, Constitutional Court and Ombudsperson. Unfortunately, majority of these bodies do not have constitutional guarantees and the laws which regulate their status can be changed with simple majority in the National Assembly. In order to secure their true independence a general clause on establishment of independent bodies should be included in the constitution and provisions introducing qualified majority on amendments to those laws should be included.

This distinction is very important as the rationale for establishment of these bodies is to secure an arm's length distance from the executive power and all the other relevant actors such as business sector. Answer to the question 37 of the Questionnaire reflects that majority of these bodies are seen as part of public administration, including those established by the constitution. Provided list of bodies is incomplete as some bodies are left out such as Commissioner for Antidiscrimination (it is only treated in the answer to question 106, Human Rights) and newly established Fiscal Council. Furthermore, the answer to the question on state administration (37) starts with the description of the Law on Public Administration and Law on Agencies which has no bearing on these bodies, particularly on those which have constitutional guarantees, such as State Audit Institution. Attempts of the government to apply

these laws in the case of the Republic agency for telecommunications in 2008 was prevented thanks to public pressure, but unclear division between these bodies and government agencies still leave room for pressure to be exerted on these bodies.

The most serious cause for concern is the status of **Commission for Control of State Aid** as it is established as a government agency and not as an independent body by the National Assembly. Such status does not guarantee its independence sufficiently and it can not be expected that the Commission will be able to exercise its control function adequately. Even though the Law stipulates that decisions are final (Chapter 8: Competition Policy, Quest. 18) decisions of the Commission can be overruled by the Government on the basis of Law on Public Agencies. Furthermore, in every day functioning Commission is to use expert and administrative staff of the Ministry of Finances, which leaves them open for the everyday administrative pressure from the executive branch.

Personal, financial and operational independence

Personal independence is generally well regulated by the laws on the establishment of the above mentioned bodies. This includes appropriate appointment procedures and immunities. However, in implementation there were cases of highly politicized appointments, such as the Director of Commission for Protection of Rights in Public Procurement, while the election of the High Judicial Council was very problematic and lack legitimacy (see Judicary).

Financial independence, is generally guaranteed by the laws as they are either financed by their own income or from the state budget. However, the process of adoption of their budgets leaves room for pressure to be exerted by the Ministry of Finance and Government as they prepare the final draft which is submitted to the National Assembly for approval. The lack of resources, and particularly of office space which is supposed to be secured by the Government has continuously been a reason for concern. As it can be seen from the answers to the question 37 **Commissioner for Free Access to Information** is still unable to hire the total number of envisaged staff due to lack of office space (it has hired only 28 out of envisaged 69). **Ombudsmen** still did not move into the permanent premises and has been acquiring additional funding on a project bases, as it was well noted in additional questions by the EC. **Commission for Protection of Competition** also suffers from lack of qualified staff.

Particularly worrying is that some of these bodies have just recently been established and have a specific need for highly qualified staff such as State Audit Institution (SAI) and Agency for Anti-Corruption (AAC). These two institutions have very recently become operational and are struggling to establish themselves as respectable and effective institutions. They will need significantly more resources if they are to exercise their competencies in full and effectively**. State Audit institution** has not hired all the necessary staff as it has only 35 employees including 5 members of the Council while the approved systematization envisages 159 people to be employed, which explains why it is still conducting only partial revision of the state budget, and demonstrates that it does not have capacities to address the issue of purposefulness of the government spending. **Agency for Anti-Corruption** still needs to sort its own organizational structure, and hire adequate staff which will take some time.

Operational independence is directly related to the relationship of the other three branches of the government, particularly the executive in respecting decisions and recommendations and in abstaining from exerting pressure.

The Government has often obstructed functioning of these bodies, particularly of anti-corruption institutions and their attempts to fight corruption by refusing to enforce their decisions, disregarding their recommendations without explanation and postponing the adoption of by-laws and decisions that should provide them with the basis for employment of appropriate staff. Changes of legislation just to fit political parties interests is not rare (e.g. recent changes in the Law on Anti-Corruption Agency allowing multiple functions to officials, just three months upon it came into force). Former director of Agency for Protection of Competition has complained of pressures coming both from executive power and businessmen close to the Government. SAI, Commissioner for free access to information and Ombudsperson had to publicly defend increases in their budget as they were presented by the Minister of Finance as being doubled.

Generally speaking the percentage of recommendations and decisions of the independent bodies respected by the Government is in continuous increase. However, there are still instances of lack of implementation of Commissioner for free access to information and Ombudsmen. Some bodies, such as Education Council and Council for Higher Education are completely marginalized and are not sufficiently included in drafting of development policies, e.g. Serbia 2020. High Judicial Council was severely politicized and its position and authority *vis a vis* judicial branch is seriously undermined.

Overall, the position and independence of independent regulatory and control bodies has been continuously improving. However, serious concerns remain regarding their financial independence and particularly operational independence.

Serbia will have to undertake additional efforts to meet the political criteria in this area. To that end Serbia should address the following issues in particular:

- Status of the independent control and regulatory bodies needs to be clearly delineated from the status of government agencies and should be treated as a distinct group both by Serbia and the EU. This includes introducing a general clause in the constitution on principles of work of independent control and regulatory bodies and clear exemption of these bodies from the Law on Public Agencies. Status of Commission for Control of State Aid needs to be changed into that of an independent control body, which is elected by the National Assembly.

- Government should abstain from any interference into work of independent bodies, and should support their establishment as truly independent bodies thus securing their full operational independence.

- Significant resources need to be allocated to improve the capacity of these bodies. This particularly stands for State Audit Institution, Anti-Corruption Agency, Commission for protection of Competition and Commissioner for Free Access to Information of Public Importance.

Judiciary

I. The answers related to the judiciary represent a **blurred combination** of:

1) evasive description of the present practices and results achieved in implementation of the judiciary-related legislation (e.g. *I Judiciary, Independence*, question 2, para. 4);

2) vague evaluation of its capacities which is based on impressions rather than on qualitative and quantitative analyses, which is due to the obsoleteness of quality indicators (when they exist) and poor system of data collecting and analyzing (e.g. *I Judiciary, Efficiency*, question 23);

3) mere citations and retellings of newly passed norms which have not been properly tested in practice and therefore cannot yet be assessed from the point of view of their effectiveness, efficiency and suitability to move Serbia's judiciary toward effective exercise of the tasks related to the implementation of the EU law (e.g. *I Judiciary, Independence*, question 6/b, para. 4)

4) stating of plans and good intentions which are yet to be incorporated into policies and norms in order to be considered as a legitimate basis for particular practices and approaches or binding rules (e.g. *I Judiciary, Professionalism*, question 20/b, para. 10).

II. In this context and with no intention to contest any particular answer (in such a case a long and thorough analyses and elaboration of the findings would be required which are presumably much more suitable for the preparation of the platform to negotiate the particular chapter on judiciary once the talks on membership are opened, than on purpose of elaborating opinion on application for membership and the background analytical report; and, also, hoping that EC verification missions, which visited Serbia with the mandate to check the state of affairs in relevant fields, succeeded to bring more clarity in that respect) the purpose of this intervention is to shed light once again on several issues which necessarily and clearly should be emphasized in the Opinion on Serbia's application for membership of the EU and the accompanying Analytical report.

III.

1. Serbia has made certain steps toward reforming its judiciary, but has not yet entered into the process of comprehensive, over-encompassing and effective reforms.

1.1. It has passed a National Strategy on the Reform of Judiciary (NSRJ) in March 2006 which still is a solid basis for thorough reforms to be carried out. NSRJ calls for reforms which will insure independent, transparent, accountable and efficient judiciary. It well defines problems, measures to be taken and their scope (from changes of institutional arrangements; via changes of legislations - from the one regulating status of holders of judicial offices to execution of imposed sanctions; up to a sequence of steps and dynamics of their implementation) and realistically

discerns short and medium term priorities. A general timeline of 8 years required for its implementation is reasonably defined. NSRJ was developed upon fairly good qualitative analyses of the state of affairs in the Serbian judiciary, which has not considerably changed so far, and available statistical data (which was and still remains rather poor).

In general the **NSRJ has <u>two setbacks</u> which could be eliminated through the process of planning and undertaking concrete measures related to the implementation of the Strategy.** One concerns the fact that the NSRJ does not reflect Serbia's aspiration to become a member of the EU. This is why it does not envisage any particular course of action related to that which in theory and literature is defined as "Europeanization of judiciary", i.e. development of capacities of the judiciary to apply in its deliberations and adjudications the approaches and practices endorsed by the European Court of Justice, or its jurisprudence. But, this can be remedied through elaboration of concrete implementing measures. The only exception is the implementation of the decisions of the ECJ (the latter requires the change of the Constitution).

The second concerns the fact that the Strategy is not accompanied by any financial projection. Contrary to all expectations one of the last sentences of the document is the following: "No financial resources are required for the implementation of this Strategy". This can be remedied through the processes of planning annual budgets.

1.2. In 2006 it changed the Constitution which, as it should be, recognizes the separation of powers as the fundamental principle of organizing and exercising state authority; particularly emphasizes that the judiciary power is independent, and in line with the good practices of the other countries in transition **it founds the High Judiciary Council (HJC) and State Prosecutor Council (SPC) as independent state bodies to which it entrusts responsibilities to "insure and guarantee the independence and autonomy[3] of courts and judges", i.e. "of prosecutors and their deputies".**

However, insufficient safeguards for the establishment of the judiciary as an independent branch of government are enshrined in the 2006 Constitution.

By far, most serious objections concern the election of the members of the HJC and the role of the Parliament in the election of judges for the probationary period. But there are others which are of utmost importance so that the judiciary independence would be better secured and attempts of limiting it (so widely exercised throughout 2009-2011 both by the Parliament and the Government) effectively prevented and avoided.

The position of the prosecution as defined by the Constitution provokes a lot of confusion and raises questions on where exactly the deliverer of the Constitution wanted to place the prosecution in the organization of the state powers. The main question is whether it wanted to place the prosecution closer to the executive branch, i.e. to see it as a part of the executive branch, securing necessary

[3] By using the word "autonomy" the deliverer of the Constitution presumably intended to say that the judges, prosecutors, and deputy prosecutors exercise their work upon the Constitution, Law, usages of the profession and their consciousness.

autonomy for it and the holders of offices in the exercise of their duties and responsibilities. If so the issue is whether the SPC should exist as an independent state body founded by the Constitution on the same footage as the High Judiciary Council.

1.3. Serbia has passed (2008-2011) or is about to adopt (till June, according to the Government's Action plan for joining the EU, a document known to EC) **a basic legislation envisaged by the NSRJ which only shapes up a general framework for the reforms to be carried out and has only started implementing some pieces of it.** But, as a matter of fact the reforms of judiciary have not yet started in a sense of effective implementation of legislation aimed at its reforms, as the accompanying decrees, rules, a variety of regulations to be passed by the HJC and SPC (concerning financing, efficiency of the work, accountability, transparency, etc.) as well as by the Government, are still to be adopted.

The illegitimate and unconstitutional process of reappointment of all judges and prosecutors has overshadowed the plans directed toward reforms as it:

- **absorbed the capacities** of the Government, namely the Ministry of Justice which is responsible for the implementation of NSRJ. As a matter of illustration it spent the last two and a half years - 2009, 2010, 2011 somewhere in-between waiting for the decision of the Constitutional Court on some of the provisions of the two most contested laws (on High Judiciary Council and on Judges); "indefatigably" REconsulting with the Venice commission and EC and transferring to the domestic public their support for and satisfaction with the work of the Ministry; and REadjusting several norms in some of the so-called set of 6 judiciary laws necessary for the reform to start (all were passed in 2008 and then amended: the Law on Judges - two times; on HJC – once, 2010; on SPC - once, on Public Prosecution - two times, on Courts two times); of the Parliament which tirelessly voted deficient laws; reappointed judges and prosecutors who still do not fully feel secure at their positions and certainly cannot do their best at their workplace.

- **postponed** the establishment of the permanent makeup of the HJC and SPC which are to exercise a long list of competencies related to the accountability, efficiency, financing, assessment of the work, training, etc. assigned to them by the Law. The elections for members of the "permanent makeup" of HJC were completed on March 31.

- **delayed** the founding of the Administrative office of the HJC (if judged by the experiences acquired through the process of establishing other independent bodies - the process of establishing minimal working conditions allowing these bodies to resume their operations in full lasted between 1 and 4 years - it is not to be expected that the two bodies guaranteeing the independence, effectiveness and efficiency of the work of judiciary will become fully operational before 2013.

1.4. Indeed, Serbia should be encouraged to go back to the path of reforms and speed up the implementation of the NSRJ and explicitly

- **urged to eliminate and stop producing unconstitutional and conflicting norms related to the changes in judiciary bearing in mind that such a practice further deteriorates the confidence in state institutions, questions their capacity to establish the rule of law in the field, delays**

satisfactory and just solutions to be found for the problems which have already been created, and produces negative effects on the pace of judiciary reforms.

- called to make an effort to solve problems that emerged with unlawful process of re-appointment of judiciary officials as soon as possible and direct its efforts toward another two burning issues in judiciary, namely accountability and efficiency.

Bearing in mind that in fact there is no legitimate way (due to loss of public trust into the intentions of the Government and Parliament regarding the independence of judiciary because of their highly politicized behavior demonstrated throughout the process of general appointment /re-appointment of holders of judiciary offices**) the best way out of the present situation would be to recur to available legal path and instruments, that is:**

-The Constitutional Court should, acting on its initiative adjudicate on the constitutionality of the Constitutional Law on the Implementation of the 2006 Constitution, which contrary to the Constitution allows the general re-appointment thus interrupting the permanent tenure of judicial office (the principle contained in the previous and present constitution) and constitutionally prescribed term of office of prosecutors;

-High Judicial Council and State Prosecution Council should appoint all judges and prosecutors to the newly established network of courts and prosecution office seats; and,

-Dishonored, unprofessional and unqualified individuals should be removed from office by reasoned decision.

The second best approach to rectify the present situation would be to solve the created problem in conformity with the orders of its own Constitutional Court (pronounced in cases Savrljic of May 28, 2010 and Tasic of December 21, 2010) and jurisprudence of the European Court of Human Rights and following not only the letter but also the spirit of numerous recommendations issued by the Venice Commission as of 2006 and appeals of its own legal academia, professional associations and CSOs.

It is also important to underline that the Serbian political officials should not be in any way encouraged by anyone, including the European Commission, to rectify the Constitution by the law whatever the intention is (even if it is good). Certainly, the parliament should not elect the members of the HCJ/SPC. As already mentioned, its role, provided the parliament has a certain role in this process, should not go beyond being notified of/the elections of its members. But as long as the present Constitution is not in force it is utterly unacceptable to prescribe by the law that the National Assembly has a DUTY to confirm the election of members of the HCJ/SPC. And seemingly this is exactly what the Government and the Parliament want to do so as to please the public and the EC. The Serbian officials, to whatever branch of the government they belong, should first learn to respect the rule of law, including such a simple rule that the higher norm cannot be changed by the norm having a lower legal force. If someone wants to rectify something in this respect they would be better advised to take the regular path of changes than to get innocently involved in attempts to get around legal norms.

2. However, even if the legislative changes in force were fully applied and implemented in good faith, they would open only limited prospects for judiciary

- **to establish as an independent branch of government,** efficient controller of the executive power and protector of human rights and civil freedoms;
- **to exercise its powers in an accountable, transparent and efficient manner** in order to effectively secure for judicial redress of grievances inflicted on citizens by public authorities;
- **to efficiently fulfill tasks related to effective implementation of the EU law** (including SAA).

Therefore it is necessary to take additional serious steps to eliminate objections directed toward the present constitutional stipulations regulating the independence of judiciary; complete the legal framework and define concrete measures whose implementation will exert effective changes conducive to improvement of accountability, efficiency and transparency of the work of judiciary. The indispensible action would require several steps.

IV

1. The GUARANTIES OF INDEPENDENCE should be reconsidered and strengthened in a manner which would eliminate all possibilities for the other branches of government to put at stake the independent position of judiciary and/or influence its work and decision-making. As long as the Constitution is not changed and iron-grip guarantees of independence of judiciary enshrined in the Constitution, one cannot expect to see judiciary established as an independent branch of government.

It will not be possible to see either the legal academia, expert community, or general public gauging changes only on the level of legislation sufficient for the solution of problems that rose in regard to the minimal guaranties of judiciary independence. Keeping the present institutional arrangement unchanged and constitutional guarantees of independence at the present level can only further decrease citizens' confidence in the judiciary which constantly followed a downward line since the process of general appointment (re-appointment) raised suspicions about the intentions of political community toward judiciary independence. The proof of the latter are: the address of 48 law professors to political and general public of December 29, 2010 on the occasion of the latest amendments of the laws on judges, prosecutors, HJC and SPC. Until then it was literally impossible to imagine these 48 names acting together, who otherwise belong to the different legal schools of thought and are politically positioned along the line stretching in-between utterly opposed political and ideological stands; numerous interventions of the professional associations (of judges and prosecutors); and civil society organizations including think-tanks and human rights organizations.

Indeed, the attitude of the executive and legislative branches in December 2010 when they attempted once again to overplay the principle on prohibition of retroactivity and provisions of the laws on judges and public prosecutors brought all the experts and civil society together and united them in the request asking for the Constitution to be changed. Namely, the Constitution provides for the right to

lodge an appeal against the decisions of the HCJ, i.e. SPC before the Constitutional Court when it is prescribed by the law. Both laws, on judges and prosecutors from 2008 prescribed the right to appeal against the decisions of HCJ and SPC by which a candidate has not been elected for the judges/prosecutor tenure. The majority of non-elected judges and prosecutors used the right after they had not been re-appointed in 2009.

As a matter of fact, by December 29, 2010, the date when the contested laws were amended, the Constitutional Court (CC) had already passed one decision upon the appeal lodged against the "collective" and non-substantiated decision of the HCJ by which 857 judges were not reappointed at their offices ("case Savrljic" of May 28, 2010 by which the CC ordered the HCJ to pass individual, substantiated decision on the non-election through the procedure which will be in conformity with the fair trial principle, according to which every party has the right to be heard). By the same time the CC ruled the case of justice Tasic (decision of December 21, 2010) who lodged the appeal against the HCJ decision on non-reelection, which had been individualized and substantiated, but the party, namely Ms. Tasic, was not given the right to be heard by the HCJ).

When the justice finally started working (*fiat justicia),* the Parliament prevented the heaven to fall, i.e. the ruling political party to be fully disclosed in its intentions to manipulate with the judiciary and passed the amendments by which the right to lodge the appeal before the CC against the decisions of HCJ/SPC was put out of force. Instead, the holders of judiciary offices were given the right to appeal to HCJ/SPC against decisions on non-reelection. "In such a way", as stated in the Appeal of 48 law professors "the Legislator exchanged the existent legal remedy to appeal to the CC with the non-existent remedy – an appeal to be filed before the highest institution of judicial administration", that is, HCJ. "This is contrary to the very idea of the law, elementary legal security, as well as to the idea of separation of powers…; represents violation of human rights, i.e. the right to an effective legal remedy". Such a change entered into force, once again against the principles of rule of law and constitutionality just one day after they had been passed.

It is worth noticing that the Ministry of Justice misled the Parliament and general public by stating in the official explanation of the amendments that they "were developed with consent of the EC and Venice Commission". The parliamentary majority deliberated and passed decisions exclusively led by its party interest, completely ignoring the basic principles of the democratic society and warnings which came from the domestic expert community and civil society.

Even if the Constitution is changed and laws applied in good faith, a lot of efforts will be needed to turn the strengthened guaranties into practice and redress confidence toward political community and its intentions regarding judiciary. In consolidated democracy the deficiencies in institutional arrangements may be compensated by democratic practices. In the countries of transition, it is seldom the case; as for Serbia, this definitely is not a remedy for the legal voids and insufficiently clear norms.

2. In changing the Constitution, particular attention should be paid to several norms contained in the Constitution, as well as to certain provisions not comprised in it which have

proved to be and are widely understood as being reliable support to the principle of independence.

- Constitution envisages that the members of the High Judiciary Council are elected by the Parliament. This provision has been subjected to serious critics and objections. The norms related to the procedure of electing members of the HJC should be substantially amended so as to eliminate any reasonable doubt about the possibilities to politicize or influence the work of the HCJ. Should any role be envisaged for the Parliament in this process, it should not go beyond being notified or "proclaiming" that the members of the HCJ/SPC have been elected according to the Law.

-Constitution provides that the Parliament appoints judges for the probationary period of 3 years who are for the first time elected at that position. Despite the fact that the introduction of the probationary period is contrary to the legal tradition of the country, it should not by itself represent or be interpreted as a threat to the independence of judiciary**.** It could even be seen as a step forward which could contribute to a better judiciary. However, there is no reasonable explanation why the Parliament, instead of the HJC would be invested with power to exercise this duty, if the deliverer of the constitution is serious about the independence of judiciary. **This responsibility should be assigned to HCJ.**

-Constitution does not provide reasons for the termination of a judge's tenure. The reasons are stipulated by the Law. This is an exception to the long-lasting legal culture and tradition. It is contrary to the experience according to which the well-defined **reasons** for the termination of the judge's tenure **comprised in the highest legal act which is not subjected to easy changes, are a steady and reliable defense from political voluntarism and tendencies of manipulating with the judge's independence.**

The absence of such a norm in the Constitution combined with the content of the norms which are stipulated in it: the exception from the principle of the permanence of judge's tenure (probationary period of 3 years for those who are for the first time elected at the judge's office); Parliament is invested with a power to elect judges for the probationary period (which for itself is the exception to the general rule that the judges are elected by High Judiciary Council); HJC is elected by the Parliament - reasonably raises doubts about the intentions of the deliverer of the Constitution regarding the independence of judiciary. **Therefore provisions regulating the conditions for the termination of the judge's tenure should be restated as the constitutional norms.**

-The provisions related to the position of prosecution are worth giving additional thought. SPC, which is expected to ensure independence and autonomy of the prosecution office has rather a declaratory character, having in mind the position of the prosecution in general. First, the Republic Public Prosecutor is elected by the Parliament at the proposal of the Government and upon the opinion of the competent Committee of the Parliament. SPC has no say in this procedure. Second, principles of hierarchy and subordination are the main principles in the work of the Prosecution office.

In such circumstances it will be very difficult to establish criteria upon which this body and its members would be held accountable for the failures of prosecution to act independently. In general, the

question is whether this body should be envisaged in the constitution at all as an independent state body acting on the same footage as HJC.

Also the meaning of the constitutional norms stipulating who is responsible to whom within the public prosecution office and ultimate accountability of the RPP to the National Parliament requires further elaboration as their meaning escapes attempts to establish how much the prosecution is at all an independent state service.

V.

1. The ACCOUNTABILITY of judiciary, i.e. criteria upon which it should be assessed, procedures through which it should be established, measures to improve it and penalties which can be imposed in case of violation of respective rules or not meeting the required criteria concerning the quality of the work – have finally been addressed in the laws on judges, prosecutors, HJC and SPC respectively. For the first time they set solid and comprehensive foundations upon which the functional system of assessing and holding the members of judiciary accountable for the quality and results of their work is addressed in a more comprehensive way. However, a strong, applicable and effective system of accountability effectively balancing the principle of independence is yet to be developed.

There are a lot of positive features of the normatively outlined system of accountability. To mention but a few: the Law on Judges rightly stipulates the liability of the State for the damage caused by the unlawful and improper action of a judge in the exercise of her/his duties (vicarious infringement), but reserves the right of the State to seek the compensation under the condition that the judge caused the damage with premeditation or by serious negligence; for the first time it defines disciplinary liability and defines the disciplinary offence as "negligent exercise of the judge's duties and responsibilities, judge's behavior degrading the judge's office…" which is then followed with a fairly long and detailed list of actions which are considered as a disciplinary offense; distinguishes between the first and second degree offenses (offense and serious offense) thus allowing the judges to be held accountable for all kinds of inappropriate behavior and not just a serious violation which warrants dismissal; lack of accountability, namely incompetent exercise of the work as well as serious disciplinary offense are automatically provided as a basis for warrant dismissal; envisage a range of penalties to suit the seriousness of the offense; the bodies to trial the disciplinary cases; etc. The same applies to the Law on Prosecutors. The HCJ (SPC) shall appoint members of the disciplinary bodies, prescribe the length of their mandate, and the rules of the disciplinary procedure. But, these are the duties yet to be fulfilled.

2. By all means among the assignments related to accountability and more specifically:
- passing of the act determining criteria, standards and indicators for assessing dignity, qualifications (theoretical and practical knowledge) and competences (skills which make possible efficient application of specific legal knowledge in adjudicating cases / investing cases and prosecuting perpetrators);

-development of Ethics Code and establishment of a reliable system of integrity;
-completing the set of regulations which are required so that an efficient system of disciplinary liability can be put in place; and ABOVE ALL,
-their prompt and rigorous implementation - should with no further delays be the first priorities of the newly elected HJC (SPC).

The criteria set for the purpose of reelection cannot be considered as a fully pertinent and clear, coherent, well-systematized and verifiable (lack of indicators) tool which offers solid guaranties for the improvement or establishment of accountability in line with European standards and recommendations of the international and European professional associations. The functional and just system of accountability, properly balancing the independence, is a MUST in order to finally address the issue of fighting and preventing the allegedly widespread corruption, reaffirmation of the seriously deteriorated professional ethics amidst judiciary, and improve the rather low level of legal certainty and legal protection.

VI.

1. Serious dealings in relation to improving the EFFICIENCY of judiciary are by far, from the point of view of the right to access to justice, the most urgent issue. In short, the present state of affairs is alarming and as many would say it threatens to turn the guaranteed right to access to justice into a nightmare of denial of justice before the courts of general competence. The situation in the commercial courts is somewhat better. **Besides the many measures and tools which should or have been planned to be taken with the aim to reduce the immense backlog and prevent geometrical proliferation of the workload, there is room to particularly draw attention to the insufficiently employed and used potentials of mediation, cassation and information and communication technologies (ICT).**

- The legislation allowing and facilitating mediation is in place. **The State and civil society should be invited to take systemic and comprehensive actions by which they would promote mediation** as a means of setting disputes, inform citizens about the availability of this service and encourage them to recur to this instrument whenever possible.

- **The Supreme Court of Cassation could immensely help judges to improve the efficiency of the work provided it substantially intensifies the employment of its cassation role. So far it has done very little to serve this purpose. Therefore it should be called to reconsider the potentials of its cassation role and intensify it**. By passing greater number of cassation decisions it would help judges to better understand and apply hundreds, if not thousands of new laws, among which many contain legal notions, standards and institutes little known in Serbian legal tradition and practice (e.g. in the field of media law, intellectual property, competition law, human rights law, etc.). By doing so it would contribute to the length of court deliberation to be reduced; material law to be better applied and the quality of verdicts improved; and number of annulled judgments to be reduced.

- The use of ICT in judiciary does not limit to purchasing of the last generation of ICT equipment and counting the number of computers per employee as it is often discussed and understood. **Serbian officials and judiciary authorities should once again be urged to deeper reflect, from the point of view of efficiency, on computerizing case proceedings, founding and interconnecting the variety of databases, and consequently to have appropriate software for that purpose developed, and the schemes of permanent training for ICT use by employees in judiciary set up.**

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The issues related to independence have been by far, the most discussed issues by the expert community, professional organizations (Judges' Association and Prosecutors' Association of Serbia). The accountability and efficiency were not the matter of their particular concern despite the fact that the great deal of responsibility for the present state affairs in judiciary lay with them, their professional qualifications, skills and professional ethics and political obedience. **Therefore there is the need to call the members of judiciary to strengthen their professional efforts and in practice take active part in solving the problems related to the matters of accountability and efficiency.**

VII

Finally for the purpose of preparing the Opinion on application for membership there is room to examine how the potential candidate country plans to deal with **JUDICIARY HARMONIZATION which would ensure the effective and uniform interpretation and application of the European Agreements between the EU and the candidate countries.** Judging from the answers to the Questionnaire and following the domestic debates this is not a matter of high importance neither for the judiciary authorities nor for the judges. One thing is clear though. In order to directly base the court decision on the jurisprudence of the ECJ, the change of the Constitution would be needed. The interpretation in the spirit of the law of the EU would require good knowledge of the EU law, ECJ jurisprudence and good skills for teleological interpretation.

The Judiciary Academy plans to offer some trainings, but definitely the EU law in this sense is not a part of the obligatory curricula offered by the Academy. So far only two courses (one offered by civil society: local Fund for an Open Society and Legal Center, and the Luxembourg based EIPA's – Center for Judges and Lawyers (ECJL) were held. According to available data, not more than 30 justices attended it, the majority being from the commercial courts. Those courses represented a kind of a general introduction into the EU law.

With the aim to avoid a situation where the legislative branch is harmonizing while the judicial branch could be "disharmonizing", timely and welcome would be:

- a recommendation to the Constitutional Court and the Supreme Court of Cassation to use their powers and encourage through their deliberations the interpretation and application of

the law in force, in the spirit which is conducive to achieving the goals set by the EU legislation; and

-a call to HJC/SPC to include into the list of obligatory professional education the curricula related to the EU law and jurisprudence of the ECJ.

Anticorruption policies

(Political criteria, Chapters 5, 23, 32)

Serbia has adopted National Anti-Corruption Strategy in 2005. It has been followed by the Action Plan for implementation of the Strategy. Serbia has ratified all major international anti-corruption instruments. The institutional framework has been developing since 2003 and all important anti-corruption competences are covered by established institutions including control over financing of political parties, state audit, public procurement, conflict of interest, free access to information, competition. However, implementation of adopted legislation is weak due to the politicized institutions, incoherent legislation, troubled judiciary and lack of integrity and accountability in legislative and executive bodies. The Government often obstructs the functioning of anti-corruption institutions and their attempts to fight corruption by refusing to enforce their decisions, disregarding their recommendations without explanation and postponing the adoption of by-laws and decisions that should provide them with the basis for employment of appropriate staff. Changes of legislation just to fit political parties interests is not rare (e.g. recent changes in the Law on the Anti-Corruption Agency allowing multiple functions to officials, just three months upon it came into force)

The National Anti-Corruption Strategy is outdated and needs urgent revision. Its content does not fit the changed context and it can't provide guidance neither to anti-corruption bodies nor to other institutions or interested parties (business, civil society, citizens).

The Action Plan for the implementation of the Strategy has not been of much help to stakeholders even in the first years upon adoption. It **stipulates over 160 priorities which are messed in the document and complicated to refer to.** Lack of prioritization approach and absence of financial calculations of the costs of adoption and implementation of new policies diminished its function of an anti-corruption policy coordination tool which it has never become. Moreover, reporting practice by institutions in charge of implementation of the Action Plan has not been established since its adoption. Subsequently, there is no reliable data on the implementation of the Action Plan thus making the AP not usable. Obligations for concrete state bodies and steps they should undertake are vaguely defined and not easy to follow.

The idea envisaged by the Strategy to introduce Sector Anti-Corruption Plans was not implemented except in 2 cases (the Ministry of Education and Sports claimed it adopted the Sector Action Plan in 2007 and the Ministry of Interior adopted the Plan in the process of obtaining a visa liberalization agreement with the EU) even though they should have been adopted 5 years ago.

The anti-corruption institutional framework has been dynamically, though sometimes inconsistently developing (e.g. seizure of the Republican Board for Prevention of Conflict of Interest) **and is accompanied by a lack of solid guaranties for institutional independence** (except for the institutions enumerated in the Constitution). The Anti-Corruption Agency became operational in 2010 but it is still dealing dominantly with organizational issues as well as with the officials' assets declarations register and cases of incompatibility of offices and conflict of interest. Control over financing of political parties has not been brought to the Agency's agenda yet (except in cases of complete noncompliance with reporting obligations by political parties). It is of great importance that the Agency succeeded to influence the Draft Law on Financing of Political Activities in the way that it is consistent with the recommendations put forward through the years by the expert and NGO community and ensures a legislative basis for effective control of political parties financing upon its adoption. However, **the Agency still lacks capacities to conduct thorough control over political parties' financing and will need to develop its capacities in that sense rapidly.**

From the very beginning of its operation, **the Agency faced strong political pressure to suspend the implementation of the provisions related to the conflict of interest and incompatibility** until the next elections, and unfavorable changes of legislation in that sense (Agency even filed the request for assessment of the constitutionality of these changes).

Other anti-corruption institutions face similar problems in their operation but the situation has been dramatic in the case of the **Republic Commission for the Protection of Rights in Public Procurement Procedures which operated in an extralegal status for over a year creating the atmosphere of legal uncertainty** in this corruption burdened field. The head of the Commission should have been appointed by the National Assembly in 2009 but until October 2010 this post was filled by a Government appointed official thus completely neglecting the institution's independence. Decisions brought by the Commission in that period are already questioned by bidders for their legality.

The lack of coordination of anti-corruption policies is evident through the years in many aspects. This is especially evident in issues that require higher degree of coordination with the legislative and even more executive power.

There are certain **issues which are not yet covered by Serbian anti-corruption legislation** which are essential to the completion of the legislative framework. Especially important is the **protection of whistleblowers** which has not yet been properly introduced into the legal system. The high incidence of corruption is not followed by a high number of whistleblowers due to the lack of a reliable system of their protection.

Training in anti-corruption skills and integrity has been sporadic and ineffective. The Agency introduced serious steps towards providing systemic training in this area on central and local level but it does not have even nearly sufficient funds to implement these plans.

Overall, the anti-corruption legislative framework is built to the extent that enables undertaking measures to combat corruption. However, far better institutional coordination is needed in the area of policy/legislation adoption and even more in implementation. The policy/legislation adoption process is

usually conducted with severe delays and in incomprehensive ways. The Government is as a rule late in adoption of by-laws necessary for the implementation of anti-corruption legislation and both the Government and the National Assembly are usually late in appointing state bodies in charge of the implementation of anti-corruption legislation/policies. As a result of the lack of coordination among policy makers in the field there are under-regulated or not at all regulated corruption-prone areas as well as the adoption of contradicting measures such as in the case of public procurement regulated by the Law on the Assistance to Construction Industry during the Economic Crisis adopted in 2010.

Serbia will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term.

To that end Serbia should address the following issues in particular:

- Introduce constitutional reform which would introduce provisions guaranteeing independence of anti-corruption institutions and principles such as transparency of political party financing,
- Adopt a new anti-corruption strategy in an inclusive process which would envisage clear and measurable goals in the fight against corruption, providing indicators and estimating resources for its implementation.
- Adopt a new action plan for the implementation of the strategy which would envisage activities which are necessary to conduct in order to achieve goals and objectives set by the state institutions, with a defined time-frame, indicators of success, reporting rules and sanctions/consequences for disobedience and introduce tight coordination of anti-corruption efforts by the Agency.

Financing of Political Parties

(Political Criteria, question 15; Chapter 23, questions 54-55)

The Law on Financing of Political Parties had entered into force in 2004, but ever since the start of its implementation it was clear that it needs to be amended in segments that do not produce results. The financing of political parties from public sources is the only segment that has been functioning in a satisfactory way, even though even in this segment it was necessary to amend it due to unforeseen or newly emerged circumstances as well as problems in calculating funds apportioned to political parties[4]. Particularly worrying is the fact that ever since the Law on Financing of Political Parties had been adopted, no oversight over its implementation was established. Information about financing political parties was provided to the public almost exclusively by civil society organizations monitoring and in several cases when corruption scandals were revealed. The working groups for amending the existing or adopting a new law have been set up in this period during the mandate of three Ministries[5], and this state of affairs was tolerated by four consecutive Governments. The MPs in the National Assembly of the Republic of Serbia in the previous three terms in office have not found it necessary to initiate the solving of this problem, although it is one of the biggest generators of corruption in contemporary states, including Serbia.

Key problems in financing of political parties under current legislation:

Public funding

Concerning the public financing of regular operation of political parties, among numerous legal voids in the existing Law, the manner of disbursal of funds has **two basic problems that have been the source of continuous tension: calculating the exact sum of budgetary resources** (since it has been expressed as a budget percentage) **and distribution of budgetary funds in cases when members of parliament (national, provincial and local) leave a political party** on the list of which they have been elected.

As the amount allocated for public financing of political parties is set as budget percentage, it should be taken into account that this amount is variable in the course of the year since budget amendments and revisions are frequent in Serbia. Additionally, this amount is classified in the budget as „donations to non-governmental organizations“ and belongs to the budget line 481 together with donations to non-governmental, religious, sports and other civil society organizations. This impedes tracking the funds

[4] Financing of parties from public resources in the case that members of parliament, deputies or aldermen leave a political party, financing of election campaigns of political parties from public sources in cases of simultaneously holding several elections on the same level of government, financing of campaings by groups of citizens etc.

[5] In the Ministry of Finance, Ministry of State Administration and Local Self-Government and Ministry of Justice.

allocated for financing political parties from public sources. The proposal to diversify this line of classification of accounts[6] was submitted to the Ministry of Finance in April 2010, but civil society organizations which have formulated and submitted the proposal have to this day not received a response.

The next problem is the result of changes in party membership of representatives of political parties or coalitions in representative bodies and imprecise regulation about ownership of funds in case a member of the National Assembly, provincial or local assembly leaves a party the candidate of which he/she has been, regardless whether he/she will subsequently become a member of another political party or not.

The ceiling for the amounts collected from private sources in the existing Law practically makes impossible the legal functioning of newly emerged political parties which are not represented in the parliament as it is set to 5% of the funds allocated from the budget for financing of parliamentary political parties.

Private funding

The current Law on Financing Political Parties sets unrealistic limits for private donations to political parties. This has been proven several times and relates mostly to the financing of election campaigns. As a result, none of parliamentary political parties respect limits. On the other hand, for seven years now no effort has been made by controlling institutions to sanction such wrongdoings.

Reporting and transparency

Political parties do not report on donors accurately, usually providing only names of small donors. Even though most political parties report only or prevailingly donations from state, provincial or local budgets, they are not treated by the Law on Free Access to Information of Public Importance as a public body and are not obliged to provide information other then those provided in the reports which are proven to be inaccurate.

Control

Until 2010, a control mechanism had not been established. Bodies in charge of control in this period: Committee for Finances of the National Assembly and Central (Republican) Electoral Commission, comprised of members of political parties, did not conduct control over financing of political parties except formal review of reports. Even in case of detecting of incorrect reporting, they did not take any legal steps as a follow-up. From the beginning of 2010 the Anti-Corruption Agency took over the competences in the area of financing of political parties. However, **Competences of the Agency in this respect are inadequate.** Control and investigation capacities are insufficient and there are no envisaged sanctioning mechanisms available to the Agency. Since its establishment, the Agency only succeeded to intervene in cases of non-reporting the costs of election campaigns for local elections.

[6] http://www.nadzor.org.rs/Dokumenta/Inicijativa%20za%20izmenu%20i%20dopunu%20Pravilnika%20o%20standardnom%20klasifikacionom%20okviru.pdf

GRECO recommendations

It is worth noting that **the Draft Law on Financing Political Activities complies with all relevant GRECO recommendations (2010)**.

Overall, Serbia still has not established a system of transparent and accountable financing of political parties. There was a clear consensus established among major political parties to ignore legal provisions restraining them from collecting and spending funds without control. Controlling competences were inappropriately entrusted to the institutions controlled by political parties themselves.

In this regard, Serbia will have to make considerable and sustained efforts to align with the EU *acquis* and related democratic standards.

To that end Serbia should address the following issues in particular:

- Adopt the Draft Law on Financing Political Activities approved by the Venice Commission
- Make considerable efforts to raise capacities of the Anti-Corruption Agency to become equipped to undertake effective control of party financing
- Agency should create a clear and transparent strategy for the control of political party funding

The new regulation should also envisage that political parties or coalitions which win over 2% of valid votes in elections are eligible to receive budgetary funds. Such practice in other states has enabled better articulation of citizens' interests and increased possibility of choice, making the party landscape and consequently representative bodies more representative. The result would not significantly reduce budgetary funds earmarked for parliamentary parties in the view of the formula according to which distribution of funds among parties is calculated and given a very small number of parties and coalitions which have in last election cycles won between 2 and 5 percent of votes[7]. Such a provision would be particularly favorable for regional parties and parties which do not target the general population as its supporters. In the present situation, such parties have difficulty staying afloat.

One of the **problematic provisions in the Draft Law is the one introducing electoral guarantee by the election participants.** It represents a property census for participation in elections. Even though formally-legally speaking, it is possible to participate in elections without submitting electoral guaranty, this provision puts participants in elections in an unequal position from the very start. This provision thus contradicts one of the essential reasons for financing political parties from public sources – in order to ensure equal passive voting rights and create preconditions for equal chances of citizens of Serbia.

[7] The percentage of „split votes" in parliamentary elections in December 2003 was over 14%, in elections in January 2007 around 9% and in 2008 only 2.5%.

Public Procurement

(Chapter 5)

Adoption of the Law on Public Procurement in 2008 improved the legislative framework in order to secure the conduct of public procurement in a more transparent and accountable way. The public procurement portal ensured valuable information for control of public procurement by the State Audit Institution and for monitoring and watchdog activities by the civil society organizations. Control over public procurement is weak however, enabling systemic and widespread corruption. Unfortunately, until solid control by the State Audit Institution and other institutional mechanisms is established, civic oversight of public procurement remains the most effective control mechanism in this area (mostly financed by donor organizations including the EU). Professionalization and capacity building of procuring entities envisaged by the Law provide grounds for achieving such a goal in medium turn.

The Law on Public Procurement was significantly improved in 2008 creating the legislative precondition for narrowing the space for corrupt activities in this highly vulnerable area of state activities. One of the threats to the principle of the rule of law and coherence of legislative framework regarding public procurement is **the adoption of sector laws that regulate public procurement procedures as well**. Such a piece of legislation is the **Law on Support to Construction Industry in Economic Crisis introducing a negotiating procedure without public announcement as a basic public procurement procedure** in this field, spending through this mechanism millions of euro (by the end of April 2011 over 500 million EUR was spent through 244 projects in Serbia).

The same Law stipulates that formal complaints filed by the bidders do not withhold procurement procedure and conclusion of contract, unlike the Law on Public Procurement. The constitutional principles of market economy and open competition, as well as CEFTA agreement provisions related to the nondiscrimination of companies registered in other signatory countries are neglected. Thus, the Coalition for Civic Oversight of Public Finances filed the Initiative for assessment of the constitutionality of this law before the Constitutional Court. The Court is late with formal proceeding for several months now as well as with proceeding with the initiative by the same coalition to cancel contracts concluded based on this Law.

Control over public procurements especially of those of small value is extremely weak providing impetus to the procuring entities to misuse entrusted funds. Control over public procurement plans adopted by procuring entities is not applied. These documents usually indicate malpractice in public procurement and control over these plans could serve as a preventive measure to combat corruption.

Beside poor control by institutions, **bidders are discouraged to complain on PP procedures** legality especially by the possible costs of the procedure. There is **no effective control over quality of procured goods and services as well as of the actual need for such goods and services.**

Conflict of interest is rarely (if ever) examined in public procurement procedures even when such indices exist according to the research conducted by the FOSS and Regional Anti-Corruption Platform through the EU funded BACCI project. There are no regular checks or established procedures to report conflict of interest especially on the local level. Even when members of public procurement committees or other persons have doubts about a possible conflict of interest in public procurement procedures they do not have clear knowledge on procedures to be implemented or entities to which they are supposed to report.

The Republic Commission for the Protection of Rights in Public Procurement Procedures was established over 15 months after the legal deadline, in October 2010. At this point **it is understaffed and still burdened by disapproval of the election of the Head of the Commission** who had withdrawn his candidacy under pressure from some political parties and media in the first attempt to elect the Head of the Commission.

Another obstacle to establishing effective control over public procurement is **cutting out legal or natural persons other than persons having an interest to conclude a contract** on a particular public procurement, the Public Procurement Office, a public attorney and a government body or organization authorized to perform supervision over the procuring entity's business activities **from the list of entities who are entitled to submit requests for the protection of bidders' rights and public interest in public procurement procedures.**

Overall, corruption in public procurement is still a major concern. Weak and ineffective control mechanisms do not represent a sufficient guarantee for stakeholders and especially for the protection of public interest.

Serbia will have to make considerable and sustained efforts to align with the EU *acquis* and to implement it effectively.

To that end Serbia should address the following issues in particular to:

- further improve transparency and accountability in public procurement by introducing obligatory public announcements of public procurements of small value and strict control over execution of concluded contracts,
- establish internal and external control mechanisms of legality as well as of quality and purpose of procured goods and services and open space for a greater role of independent civic actors to act on behalf of public interest,
- secure independence and reliability of control mechanisms and protection of bidders rights and whistleblowers.

Conflict of interest

(Chapter 5, questions 15, 17, Chapter 23, questions 16, 41, 51, 54, Chapter 32, question 11)

Conflict of interest is widespread due to the weak control mechanisms, deep politicization of public sphere (especially of public administration, public enterprises etc.), low sensitivity of public officials as well as of wider population to this phenomenon, but also because of serious difficulties in proving the existence of conflict of interest.

Conflict of interest in public procurement is not considered. Research conducted by the FOSS and Regional Anti-Corruption Platform through the EU funded BACCI project and other researches show that in none of monitored municipalities in Serbia conflict of interest has been reported in public procurement procedures even though interviewees often knew about cases of conflict of interest in these procedures. The same results are identified in other FOSS supported researches. Even when members of public procurement committees or other persons have doubts about possible conflict of interest in public procurement procedures they do not have clear knowledge on procedures to be implemented or entities to which they are supposed to report. However, such cases are most often not reported for political reasons due to the politicized public administration. There is no statistical data on the cases of conflict of interest in public procurement reported.

Nontransparent financing of political parties make it impossible to determine whether **conflict of interest** has been in place in public procurement, state aid, issuing building permits etc.

Conflict of interest is equally neglected in public service. Deep penetrating politicization of public administration and public enterprises demonstrate that these entities are treated as a part of legitimate political pray of ruling political parties. Such approach prevents citizen's equal access to public services but also opens space to the conflict of interest which is proven to be extremely difficult to identify. Methodology developed by the FOSS and its partners happened to be less effective than it has been expected and had to be complemented with other methods such as interviews.

There are still **no adequate checks of assets declarations** in place. Agency doesn't have sufficient capacities to conduct thorough checks. In cases of conflict of interest that arose during 2010 Agency negotiated rather than sanctioned public officials who were proved to be in conflict of interest.

The way executive and legislative power treat anti-corruption legislation and anti-corruption institutions and **absence of constitutional guaranties of their independence undermines anti-corruption efforts by anti-corruption institutions** and other stakeholders. Changes in the Law on Anti-Corruption Agency introduced just a few months after the law came in power allowing MPs and members of local parliaments to keep other public offices is a demonstration of such attitude.

Similarly to the public procurement, **conflict of interest is not considered in financing of NGOs from state or lower level government budgets**. **The situation is the same with financing of media**.

Overall, conflict of interest is a major threat to the public accountability and integrity. It is difficult to assess the state of affairs in this field concerning that control over financing of political parties, NGOs and other private organizations financed from the state or local budgets as well as public procurement and state aid is not properly established. Conflict of interest can be efficiently prevented and controlled only in relation to these issues. Anti-Corruption Agency is taking steps towards establishment of the conflict of interest prevention mechanism but in order to achieve results, it's efforts will have to be continuous and more comprehensive.

Serbia will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term. To that end Serbia should:

- Build capacities of Anti-Corruption Agency and other institutions (State Audit Institution, Tax Administration, Public Procurement Office, Republic Commission for Protection of Rights in Public Procurement Procedures etc.) to identify and proceed on the cases of conflict of interest,
- Improve coordination among controlling institutions (regular exchange of information, joint control plans, introduction of conflict of interest preventive measures)
- Improve control over officials' assets declarations

Human Rights and Protection of Minorities

(Political Criteria, questions 102-147; Chapter 23: Judiciary and Fundamental Rights, questions 61 – 155)

Further development of the institutional framework guaranteeing and protecting human and minority rights in Serbia has been continued. The Parliament adopted more than 30 new laws and amended more than 60 laws related to this area in the course of 2010. Several relevant international conventions were also ratified in the same period. The Constitutional Court actively proceeded in resolving the cases of Constitutional appeals. A positive development is that the Court more and more often refers to the practice of the European Court of Human Rights. However, having in mind that there were more than 7000 Constitutional appeals (by October 2010) there is an obvious risk that the processes will take too long (in first 10 months of 2010, the Court resolved around 700 cases). The appointment of the Commissioner for the Protection of Equality by the Parliament signified an important step in anti-discrimination efforts.

In spite of undoubted progress made regarding consolidation of the institutional framework, all the existing regulations have not been implemented fully and properly. The reasons for this may vary depending on a specific topic in the wide area of human rights, but insufficiently effective mechanisms for enforcement, lack of capacities and lack of political will on part of the authorities, could be noted as the most common.

Significant change is needed in regulations related to protection of **freedom of thought, conscience and religion**, namely the Law on Churches and Religious Communities and Rulebook on content and management of Registry of Churches and religious Communities (*Chapter 23: ref. questions 74, 75, 76; Political Criteria: ref. question 119*) as the respective legal regulation itself provides the grounds for systemic violation of guaranteed rights. The mentioned regulations are not harmonized among themselves and neither one is harmonized with Constitution. They distinguish 4 types of religious communities which is consequently reflected through the provisions related to the autonomy of churches and religious communities; the right of the priests to participate in public life; the position of confessional communities; the procedure of registration of religious communities as well as the procedure of the removal from the pertinent Registry. The most illustrative example is the registration procedure where different conditions for registration (Register of Churches and Religious Communities) is anticipated for 7 churches/religious communities that are defined as traditional by the Law, and all other communities. While traditional churches have to submit only a simple entry form, others have to submit complex documentation containing numerous amounts of data and signatures from a certain number of citizens. This is specified in the response to the question 74 but without any

reflection (either there, or in responses to questions 75 and 76) indicating that such a regulation actually introduces a discriminatory approach and practices by putting non-traditional, minority religious communities in a different legal position, which, for some of them, almost completely precludes the possibility to be registered. Responses to these questions mainly convey the existing legal stipulations and only in response to question 75, there is a reference that the respective Ministry has registered a number of small, non-traditional religious/confessional communities over the last 12 months, after the wide consultation process with them, caused by the fact that the registration process was blocked. It is not clearly explained that the blockade came as a consequence of implementation of existing regulations. The point, however, is that equality in freedom of religion, in all its aspects, cannot be the subject of someone's good will or that of a consultation and negotiation process; rather it has to be coherently guaranteed and protected throughout the whole legal system.

The initial differentiation in the Law between traditional and non-traditional religious communities generates further discriminatory consequences in acts of the State administration. To give an example, the Provincial Secretariat for Education, Administration and National Communities (AP Vojvodina), announced a Call for Applications for grants for churches and religious communities for 2011, and only traditional churches and religious communities were eligible to apply.

To sum up, current regulations cause uncertainty and inconsistency in different aspects regarding the position of religious communities. This has provoked many reactions from religious communities (followed by lawsuits and requests for assessments of compliance with the Constitution in several cases), civil society, but also provincial and Republic Ombudspersons. Furthermore, the Constitutional Court deliberated the compliance with the Constitution of the Law on Churches and religious Communities in 2010, but it hasn't reached a decision yet.

Significant progress has been achieved over the past few years in establishing the institutional framework that determines and guarantees the **status and rights of national minorities**. Most relevant legal regulations, as well as the institutional infrastructure at different levels – ranging from local, through provincial to national levels, are in place. However, there is still a need for further development and improvement of the existing framework. Strong efforts should be especially put in the creation of functional links through practice, making the existing framework fully operational and effective.

Having said in mind, it is important to point out the **status and work of the Republic Council for National Minorities** *(Chapter 23: ref. question 90; Political Criteria: ref. question 142)***.** It consists of chairs of all elected national councils of national minorities, Ministers from 6 departments covering the issues relevant for the rights of national minorities, and the Prime Minister who chairs the work of the Council. Merely judging from the structure of the body, it is obvious that it could play a crucial role in articulating specific interests and needs of minorities, and in translation of these interests into national policies. It also has the potential to be the most effective and direct channel for the enforcement of minority rights implementation. In the official answer to the above noted questions, it is stated that the Council, in its current composition, was formed in July 2009. The agenda of the founding convention is also described, together with conclusions and tasks that were agreed. It is not, however, stated that it was the only time that the Council met, meaning that it hasn't met at all in almost two

years. Such a situation was the same during the "work" of the first established Council. Therefore, we could conclude that this body has been formed just "pro forma", which is harmful and unacceptable practice, especially when dealing with such sensitive issues.

The other minority rights issue which is a cause of concern is the **official use of language** *(Chapter 23: ref. questions 126 and 127)***.** In the answers to respective questions analysis of the implementation is not provided. In spite of the fact that the Law on Official Use of Languages and Scripts was adopted in 1991 and amended several times since then, so there is a need for drafting and adopting coherent and updated regulation in this matter, this law still provides a basis for the implementation of the constitutionally guaranteed[8] right to the official use of language and script. However, while AP Vojvodina adopted bylaw regulations that regulate this matter in a very precise and detailed way, and has created and developed an institutional framework and capacities to implement and monitor the implementation of this right implementation of this right in Serbia proper is poor. Examples of its direct violation, followed by both the lack of will and of efficient mechanisms for the enforcement of its implementation are numerous. The most illustrative example can be found in Sandzak where the consequences could be very serious, given the existing political instability of this multiethnic region. In spite of the constitutional and legal obligation that prescribes the precise conditions for introducing the language and script into official use at the local level, the authorities representing the majority in the local parliaments in two municipalities in Sandzak[9] simply refused to draft and adopt the decision on introducing the Bosnian language into official use and to put it in regular parliamentary procedure. Since this situation has lasted for years, a Constitutional appeal was submitted but the Constitutional Court declared itself not competent to decide in this matter, although it is clearly a violation of a Constitutional right. For years, the competent Ministry hasn't reacted in any way either, so there were simply no other legal mechanisms for its enforcement. After the reconstruction of the Government, the Ministry for Human and Minority Rights, Public Administration and Local Self-Government announced that it will itself turn to the Constitutional Court regarding the described situation in Priboj.

In conclusion, regarding the wide and complex area of fundamental/human and minority rights, it can be said that Serbia will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term.

To that end Serbian state institutions should address the following issues in particular:

- The need for more genuine and profound implementation of guaranteed freedom of religion and rights of churches and religious communities calls for change and improvement of the provisions of the respective regulations (Law on the Churches and Religious Communities and Rulebook on content and management of Registry of Churches and religious Communities), as well as for improvement of the way they are implemented.

[8] The Law on Protection of Rights and Freedom of National Minorities also guarantees this right

[9] In the meantime, Prijepolje - one of those municipalities, introduced the Bosnian into official use after the years of political fights…

- The main emphasis of future efforts related to minority rights should be placed on the creation of effective mechanisms for the monitoring and enforcement of the implementation of guaranteed rights; the activation and functional linking of all existing structures and bodies within the institutional framework towards their effective functioning represents an important step in this direction.

Roma

(Judiciary and Fundamental Rights, ref. questions 98, 101, 102, 123, 124; additional questions 58-61; Social Policy and Employment 124; Education and Culture 2, 12, 65; Political Criteria 24, 127, 143, 144, 145, 147)

The Government of the Republic of Serbia has made significant progress in the last few years in the inclusion of the Roma. New strategic documents have been adopted and existing ones upgraded, laws and regulations have been passed that directly or indirectly also regulate the fulfillment and protection of this national minority's rights in various fields. Institutional bodies have been established which deal with the advancement of the position of the Roma in Serbia, policies have been developed and concrete projects started; the Roma dimension has been integrated in general and sector policies in some fields. Budget funds for implementation of concrete inclusion measures are allocated on a regular basis and in some areas IPA funds are used for implementation of Roma policies (especially in education). Furthermore, participation of Roma community is recognized as important in this process so Roma civil society organizations as well as the National Council of the Roma National Minority participate in development and implementation of policies.

The analysis of achieved results points to the following open, unresolved issues:

Despite evident progress, it is difficult to talk about concrete **effects of ongoing policies** upon access to basic rights and integration of the Roma national minority in the society in Serbia. In almost all responses to questions from the questionnaire relative to data on Roma community's access to rights or ongoing policies/measures, it is stated that the requested data is not available or that the Constitution of the Republic of Serbia provides for the right to declare one's nationality for each citizen. Systemic methodology for monitoring of achieved results has not yet been established in almost any area pertinent to the inclusion of the Roma. Except for Action Plans of the Decade of the Inclusion of the Roma - and even there mostly on the level of measures and activities, there is no instrument incorporating precise, measurable indicators on the basis of which an analysis of the current state of affairs or effects of ongoing programs could be made. In some sectors (especially in the field of health care, also partly reflected in the responses), data is collected and policy analyses undertaken so the trend of ongoing interventions can somewhat be monitored. Sometimes however it can be difficult to clearly discern the improvement of the position of the Roma community due to a plethora of data which has not been systematized and classified for continuous monitoring. With these in mind, it can be stated that responses to EU criteria in relation to the implementation of policies aimed at advancing the position of the Roma look more like an inventory of activities in various sectors - made according to different criteria (list of strategies, laws, in some areas descriptions of activities or projects, in others data on Roma coverage by projects, etc.), than a regulated system of monitoring and evaluation. Alongside the lack of indicators to measure outcomes of ongoing policies, such state of affairs is certainly also caused by a lack of clear policy on collecting disaggregated data pertinent to Roma population. In such a

context there can hardly be any talk of quality planning and implementation of policies, or their effect on the position of the Roma community.

As regards measures undertaken to provide **accelerated and simplified access to documents** to Roma who are legally invisible persons, it can be stated that not much has been accomplished in this area. An adequate "overarching solution" still hasn't been found although specific solutions have been made in education and health care so as to ensure access to them. These solutions do not affect the still unresolved issue of registering in the birth/civil registry and obtaining official residence status which are both a condition for obtaining personal ID and citizenship. Responses to the questionnaire show that certain measures have been implemented (the possibility to register into the birth/civil registry at a later date) but procedures for fulfilling this right or analysis of this particular measure's effects are lacking. That not all necessary measures have been undertaken is shown in practice, as well as that the existing legislative improvements are not sufficient. Specifically, when the possibility to register into the birth/civil registry at a later date is concerned this process is overall still very vague, especially since the Law on Birth Registry from 2009 does not regulate it in a clear manner, which opens space for municipal services to interpret this regulation in various ways. Most difficulties in this process are still faced by persons whose parents are also unregistered in the birth/civil registry. The procedure entails financial costs but also calls for expert legal aid which is often inaccessible to Roma. The *Model Law on the Procedure for Recognition of Persons before the Law*, motioned by the former Ministry of Human and Minority Rights has not gained support and solving this issue in the present context would call for amending and aligning a number of laws which are currently in effect.[10] Adopting the *Law on Register of Residence* whose model was developed by the Ministry of Interior is stalled, and the text of the model law is still not available to the general public.

Discrimination remains a major issue, and it has been especially prominent recently in the area of housing. We are faced with **major violations of human rights in forced evictions of Roma from informal settlements**. It arose in 2009 and at present is most prominent in Belgrade. Research conducted to date in this area points to the failure of the Government to establish protective measures which would be based on international standards pertaining to procedures of displacement and adequate housing.[11] The existing practice of forced eviction shows that the Government does not have a clear policy in this field and that it reacts ad hoc, often giving in to racist reactions of citizens protesting against housing of Roma community members in their neighborhood. Responsibility for such state of affairs is shifted from the level of the republic to city/municipal authorities, regardless of the fact that international rights protection standards should exist on all levels of authority and responsibility. The responses of the Government in this field show that measures to preclude such problems have been neither planned nor undertaken, while policy in the area of Roma housing refers exclusively to pilot projects of legalization of informal Roma settlements in but a few municipalities, making reference to the document *Guidelines for Legalization of Roma Settlements* which is not legally binding in any way.

[10] *Legally Invisible Persons in Serbia*, PRAXIS, Belgrade, 2009
[11] *Home is more than a roof over your head: Roma denied adequate housing in Serbia,* Amnesty International, *2011*

The analysis of the current state of affairs shows that Serbia has made a long-term commitment to address the inclusion of the Roma and that groundwork has been set which will keep this topic on the social and political agenda. However, the diversity of Roma-related topics dealt with by the state often obscures its vision of priorities, so some burning issues are postponed or resolved without sufficient strategic deliberations. Or, in some areas such as housing, insufficient efforts are invested to advance the status of the Roma community which leads to human rights violations in some cases. Regardless of the ever-more present positive change of attitude on the side of decision-makers and general public toward the Roma issue, Serbia still has a road to cross from good will to full responsibility for ensuring equal position to this national minority.

Serbia will have to undertake additional efforts to align with the *Acquis* and to implement it effectively in the medium term. To that end Serbia should address the following issues in particular:

- For efficient monitoring of results of ongoing policies it is necessary to establish agreement/policy of collecting disaggregated data in all relevant fields of Roma rights fulfillment; in relation to that it is necessary to define key indicators, especially in the fields of education, health care, employment and housing based on which monitoring and continuous evidence-based reporting should be established, as well as gap between Roma and majority population decreased;
- It is necessary to advance legislation and institutional mechanisms which provide access to basic rights and protection from discrimination, especially in fulfilling the right to civil registration (documents) and the right to housing. Also, it is necessary to develop the strategy of legalization and displacement of informal Roma settlements.

Civil Society

As of December 1, 2010, according to the Serbian Business Registries Agency, 4.968 associations and their alliances have been formally registered, and, in addition, there are 53 foreign associations' representative offices in Serbia (Question 120). As far as the formal legal status of CSOs in Serbia is concerned, Article 55 of the Constitution of the Republic of Serbia from 2006 guarantees the freedom of political, union and all other types of association, whereas the founding and the legal status of the association, enlistment and removal from the Registry, membership, etc. are specified in the Law on Associations (Question 120).[12] In addition, the Law on Endowments and Foundations was adopted in the Serbian Assembly[13] (Question 120), as yet another step towards legal regulation in the civil society. However, matters pertaining to fiscal policies still haven't been regulated by law, so as to include tax breaks for domestic CS funding etc; although the new Law on income taxes for legal entities (Official Gazette RS no. 25/01; Question 120) regulates the tax status of non-profit legal entities, including organizations, associations and foundations as not being subject to paying VAT if they perform non-commercial activities (and vice versa). (According to the answer to Question 120, the Law on Foundations was subject to a comprehensive public debate which included a vast number of entities it pertains to).

Funding of CSOs remains diverse and relatively unstable; however, in order for the civil society to ensure sustainability, it needs further capacity-building and sustainable sources of financing, including the state budget, IPA funds and other sources. Currently, a number of CSOs which are promoting the Government's policies are being supported by the state budget, while the state still isn't prepared to provide the remaining 20% of funding for EU-related CS projects supported by EU funds; whereas many other CSOs remain largely uninformed about accessing IPA funds.

In addition, the cooperation between the Government and CSOs is also 'structured' based on the types of issues a particular NGO is specialized with, thus the Government is more likely to cooperate with those organizations dealing with 'softer' socio-political issues, whereas those NGOs dealing with more 'difficult political issues', such as dealing with the past, war crimes etc. are less likely to have a good working relationship with the authorities.

As regards **CSO participation in the EU accession process**, it is greatest at the domestic level, although cooperation encompasses Western Balkans regional partners, and, to a lesser degree, EU institutions as well as EU member-state governments. This is, in part, the result of uninformedness of CSOs about the possibilities of cooperation with their regional and EU counterparts and using other routes of cooperation.

[12] Official Gazette of the Republic of Serbia, no. 51/09; Question no. **120**

[13] Adopted on November, 23rd, 2010

Regarding the cooperation of the government's bodies and the CSOs, overall, there has been a moderate improvement. However, good institutional solutions are not, in themselves, sufficient for successful cooperation. Namely, the cooperation between government bodies and CS greatly depends on personnel choices in respective Ministries and which political party the Minister belongs to, yielding mixed results; which is exemplified in several different cases, as follows.

- The Government's Office for the Cooperation with the Civil Society was founded in 2010, which represents an important step in formalizing and increasing the role of CSOs in terms of dialogue and participation in the 'policy-making process and in the monitoring of activities of the authorities'[14] The Office's role should focus on resolving the issue of CSO participation in public consultations, given that engaging the civil society in final stages of policy-making has not been very productive (which has been common practice during the past 10 years, eg. leaving only 2 days for public debate, or inviting CSO representatives to debates without providing any prior information or agenda etc.)

- On February 2009, the Ministry for Human Rights signed a Memorandum on Cooperation with the Non-Governmental sector, which is aimed at serving as a basis for an exchange of information about the preparation, adoption and implementation of laws and strategies pertaining to the respect of human rights (also outlined in Question 105), However, there was an absence of cooperation with those civil society organizations dealing with human rights in the case of drastic breaches of the Law against discrimination (eg. in the case of collective discrimination of Roma in mid 2010 in the village of Jabuka)[15], pointing to a merely declarative nature of the Memorandum for the time being.

- The Council for European Integrations, although consisting of representatives of both the Government and CSOs, has not been the locus of real debate but rather one of acclamation, even when discussing Serbia's application for EU membership.

-Conversely, cooperation between the Serbian European Integrations Office (SEIO) and CSOs could not have been better. The SEIO has signed a Memorandum on the Cooperation in the Process of European Integrations with 76 CSOs, in addition to consulting several CSOs when answering the EC Questionnaire and to the ongoing communication and cooperation with those authorities in charge of managing IPA funds.

- Yet another positive example of cooperation between the Government and CSOs was evident in the case of the ongoing dialogue between official Belgrade and Pristina under EU auspices when representatives of NGOs were called for consultations by Serbia's negotiating team leader Borislav Stefanovic.

[14] Resolution of 19 January 2011 on the European integration process of Serbia

[15] 'Crisis of Trust Towards the Ministry for Human and Minority Rights', Pescanik, February 2, 2011 (www.pescanik.net)

Conclusion

Overall, considering the positive steps towards legal regulation of CSO status, the improvements regarding CSO cooperation with the government's bodies and representatives and the subsiding of attacks on CSOs over the past months, it can be said that there has been some improvement with regards to the civil society in Serbia. To that end, the following priorities should be addressed in order to strengthen the role of the civil society in Serbia:

- State institutions – to complete the creation of the legal context for CS status (i.e. amend the fiscal regulation) and its genuine participation in the EU integrations process; make better use of CS initiatives and of mechanisms for cooperation with the civil society.

- CSOs – to specialize further, develop and strengthen capacities, join national, regional and EU networks and umbrella organizations for the enhancement of the EU association process, in addition to increasing the participation of trade and professional associations in EU integration processes.

- EU – to continue to strengthen the dialogue with the civil society in Serbia, further support its capacity-building to do with the EU related issues and include more CS actors in the cooperation process (e.g. social partners, professional and trade associations, youth organizations, media, university etc.).

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