

BALKAN HUMAN RIGHTS NETWORK
Knowledge and respect for human rights in all spheres of society



Regional Human Rights Report

2007



This publication was supported by the Neighbourhood Programme of the Danish Ministry of Foreign Affairs. Views expressed in the publication are those of the individual authors.

IMPRESUM

Series

Reports

Regional Human Rights Report 2007

Publisher

Association for the Democratic Initiative Sarajevo, serving as the Secretariat of the Balkan Human Rights Network (www.ballan-rights.net, www.adi.org.ba)

Editors-in-Chief:

Snježana Ivandić

Aida Vežić

Thematic Editor:

Bojan Djurić, Belgrade Centre for Human Rights

Design by

Adnan Jasika

Printed by

Nezavisne Novine, Banja Luka

REGIONAL HUMAN RIGHTS REPORT 2007

Sarajevo, 2008.

Content

Introduction by Bojan Djuric	9
---	----------

Contributors to the issue.....	13
---------------------------------------	-----------

Articles

Human Rights in Albania 2007 by Altin Hazizaj.....	20
--	----

Human Rights in Bosnia and Herzegovina 2007 by Faris Vehabovic.....	46
---	----

Human Rights in Bulgaria 2007 by Teodora Tsanovska and Tania Tisheva.....	87
---	----

Human Rights in Macedonia 2007 by Albert Musliu and Jonuz Abdullai.....	126
---	-----

Human Rights in Montenegro 2007 by Tea Gorjanc Prelevic and Aleksandar Sasa Zekovic.....	168
--	-----

Human Rights in Serbia 2007 by Ana Jerosimic.....	207
---	-----

Introduction

This is the third successive year in which the Balkan Human Rights Network (BHRN) prepared and published a unified report on the state of human rights in the region. All texts in this publication were prepared by authors who in each of the respective societies in the region have been consistently and persistently observing and analysing the state of human rights. They are esteemed theoreticians and activists in the field of human rights.

It seems that this year the preparation and publishing of the report unfolded more smoothly and more efficiently. Among others, this is no doubt attributable also to the experience gained in previous similar activities. However, whether or not the state of human rights in countries covered by this report has also improved, and did their protection become more efficient, is for the readers to decide. We present you here just a short survey of themes contained in the presented national reports, with no intention to offer “binding instructions”.

Albania. – The report on the state of human rights in Albania is starting with a common judgment that, generally speaking, the government is respecting the human rights of its citizens. Nevertheless, it is noted that many institutions within the public administration are not sufficiently aware of their obligations regarding respect and protection of human rights. The authors claim that corruption, poverty, non-transparent procedures and an insufficiently developed independence of the judiciary represent major challenges facing the Albanian society. It is stressed that there is still a significant number of complaints regarding the conduct of the police, although there is certain progress in the field of procedural and substantive guarantees for a ban on abuse. Widespread child labour and exploitation of children are yet another problem noted in 2007. There was progress regarding protection of the right to education, but there are still relatively frequent examples in which this right was breached, particularly in

cases of discrimination. The authors also conclude that for the time being the ombudsman remains the only institution directly assigned to promote and enhance the state of human rights.

Bosnia and Herzegovina. – Authors of the report on the state of human rights in Bosnia-Herzegovina are stressing in this edition, too, the specific features of this state's constitutional arrangements and their influence upon the realization and violation of certain guaranteed rights and freedoms. The report is specifically pointing at the fact that, despite being very frequently an issue in all political and legal discussions in Bosnia-Herzegovina, the realization of the right to education and equal treatment within it has not yet produced adequate legal and substantive results. As regards access to law and justice, the report presents a survey of legal provisions and the real scope of the work of institutions dealing with the protection of human rights: the institution of the ombudsman and constitutional courts. Finally, the report paid special attention to the legal and physical situation of the discriminated and endangered groups, particularly disabled persons. Analyzed are the most important aspects of the situation related to members of this population regarding the realization of the right to work, the right to education, the right to adequate health care, social security and access to objects.

Bulgaria. – The Bulgarian report starts from the fact that the year under review is also the first year of this country's full membership in the European Union. Mentioned are the basic challenges, which are important both for satisfying EU's standards and for adequate and efficient guarantees related to the respect of human rights. Among these issues particularly important are those related to suppression of corruption and of organized crime, the independence of the judiciary and the efficiency of state administration. The authors of the report hold the view that certain positive developments were achieved regarding demands for respect of provisions on equal pay for equal work, the realization of the right to go on strike in certain state institutions and sectors, and the increase of civil activism regarding environmental protection –

the Ombudsman and the Commission for Protection from Discrimination.

Macedonia. – According to the authors of the Macedonian report, the authorities in this state are generally respecting human rights, and the most important problems are the misuse of police competences, widespread corruption, trafficking in human beings and discrimination of ethnic minorities. In the last year Macedonia has made progress in fulfilling (political) the necessary criteria for associating with the European Union, and has entered a period of consolidation of institutions in the transition process. In 2007 there was a negligible decrease in complaints regarding violation of civil and political rights, particularly those allegedly performed by the police. On the other hand, the number of complaints regarding violation of the right to education is somewhat bigger than before, and mainly related to violation of certain rights in higher education. The report gives a detailed survey of the functioning of institutions which protect human rights, and presents the situation regarding the right to work of members of marginalized groups.

Montenegro. – For the context in which human rights are implemented in Montenegro of substantial importance is the fact that during 2007 this state acquired full membership in the Council of Europe, and that in the same year the state signed the Stabilization and Association Agreement, and also got a new Constitution which implies full capacity of institutions of an independent state. However, the authors point out that the negative consequences of previous armed conflicts, and of the policies and legal instabilities which for many years were present in Montenegro, can still be felt and were not fully removed. Reminding of conclusions of institutions which follow the reform processes in Montenegro, it is stressed that major concerns are caused by a lack of genuine and efficient reform of the judiciary, by the fact that there are no efficient mechanisms for suppressing discrimination (particularly of Romas and displaced persons) and no punishment of torture, by inadequate protection of the right of access to

information of public importance and by failures related to guarantees and the realization of the right of children.

Serbia. - The state of human rights in Serbia were strongly influenced and frequently overshadowed by the turbulent political events. The National Assembly was inactive from October 2006 until mid-May 2007 which led to delays in the adoption of laws – the Assembly adopted only 70 or so laws by the end of 2007. Only about 20 of them were totally new and nearly all of them were merely fulfilling the formal obligations laid down in the Constitutional Act on the Implementation of the Constitution. The main problems hindering the effective enjoyment of this right lie in the absence of oversight over the implementation of the Act and in mere misdemeanour penalties for its violation. Tolerance of discrimination in practice is above all reflected in inefficient investigation, prosecution and punishment of its perpetrators and in the lack of systematic and comprehensive legislation.

Contributors to this issue

Altin Hazizaj

Altin Hazizaj is one of the founders of the Children's Human Rights Centre of Albania / Defence for Children International – Albanian Section in 1997. Since November 2002 he is also the Director of CRCA/DCI Albania. He has given an important contribution for the protection of children's rights in Albania by promoting the establishment of new laws and policies on child care and protection.

Altin Hazizaj holds a Master Degree on European Studies from the University of Tirana, while since 2007 he is a PhD candidate of Law School of University of Tirana. He is co-author of many research and reports on children's and youth rights situation in Albania such as: 'The Vicious Circle', 'Forgotten Children', 'Awaiting Trial', 'Youth Employment Opportunities in Albania', 'Albania: Alternative Report for the implementation of CRC', 'No One to Care', 'Children Living with HIV/AIDS in Albania' etc. He is also the Editor of the Review for Children and Youth Rights in Albania, a quarterly publication of CRCA / DCI Albania.

Altin Hazizaj graduated, with excellent marks, Law School of University of Tirana in 1995. Since 1993 to present he has dedicated himself to the protection of children and human rights. He has been working and assisting several organisations in Albania and abroad such as: Albanian Helsinki Committee, Albanian Family Planning Association, Albanian Human Rights Group, Albanian Civil Society Foundation, ILO Turin, Save the Children, World Vision and UNICEF in Kosovo.

From 1993 to 1999 he has been working as journalist covering political and social issues for major national daily newspapers such as: "Koha Jonë", "Gazeta Shqiptare", "Dita Informacion", "KLAN" Magazine, and National Television "KLAN". Altin Hazizaj has prepared, written and presented many articles and papers that have been included in national and international publications and

magazines on sensitive issues such as child abuse, juvenile justice, children in conflict with law, street children, child labour, child trafficking, children's rights situation in Albania etc. He has been a member and a consultant of several policy of working groups of the Albanian Government for the preparation of National Strategy for Children in Albania, National Strategy for Youth in Albania, National Human Rights Treaty Reporting Committee etc.

Faris Vehabović

Faris Vehabović was born on 23 May, 1967 in Sarajevo. Graduated and passed the judiciary exam in Sarajevo. Became the Master of Arts in 2005 at the Interdisciplinary Post-Graduate Studies of the University of Sarajevo, the University of Bologna and the London School of Economics, and obtained the European Studies MA title.

In October 2007, appointed as judge at the Constitutional Court of the Federation of BiH. Since February 2008, a member of the Council for the Protection of the Vital Interest at the Constitutional Court of the Federation of BiH.

From January 2001 to October 2007, employed at the Constitutional Court of the Federation of BiH as registrar of the Constitutional Court of the Federation of BiH. As registrar, approved draft decisions for the sessions of the Constitutional Court of the Federation of BiH and participated with equal rights in debates before the BiH Constitutional Court. Managed a team of 35 senior legal advisors and expert associates as well as the team of translators/interpreters.

From 1996 till the end of 2000 employed as a lawyer at the Office of the Human Rights Ombudsman of BiH. Represented subjects forwarded by the Office of the Human Rights Ombudsman for BiH before the Human Rights House. Worked at the European Court for Human Rights in Strasbourg during that period.

Delivered a series of lectures on the protection of human rights and European Convention for the Protection of Human Rights and Fundamental Freedoms and constitutional law at seminars and in projects: delivered lectures to judges, prosecutors, attorneys, state officials at seminars organised by the Council of Europe, OKO, the Court of BiH, BiH Constitutional Court, the Centre for the Education of Judges and Prosecutors of both entities, the Centre for Human Rights of the University of Sarajevo; lecturer at the Centres for Education of Judges and Prosecutors of the Federation of BiH and Republika Srpska; delivered lectures to international officials dealing with the protection of human rights in BiH, participated in OSCE projects related to democratisation and providing legal assistance in respect of human rights and seminars on minority rights and the General Convention on Minorities in Budapest in July 2000 organised by the International Minority Right Group of the Council of Europe, the University in Bologna and seminars of the Balkanica Institute in the field of human rights and democracy.

Author of the book „Relations between the BiH Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms “, BiH Constitution analysis and initiatives for the change of BiH Constitution, and a series of articles in different law periodicals on the protection of human rights and the BiH Constitution. Participated in the project of preparation and translation of 93 key adjudications of the European Court for Human Rights organised by the Council of Europe, available to lawyers all over BiH. Editor of the Report of the BiH Constitutional Court. Speaks English actively.

Teodora Tsanovska

Teodora Tsanovska is a Legal Advisor of the Bulgarian Gender Research Foundation. Since 1999 year she is working in the sphere of human rights protection with a special focus on violence against women and children and discrimination. She is providing legal consultancy and support to women victims of domestic violence and sexual crimes. Teodora Tsanovska is implementing projects in the

sphere of human rights, reproductive health, and gender and youth researches, reports and publications. Participation in lobbying campaigns on women's rights and legislative changes in the sphere. At the present period she is specializing international humanitarian law in the Women's Human Rights Training Institute.

Tania Tisheva

Tania Tisheva is working in the Bulgarian Gender Research Foundation since 2001 as a researcher and project coordinator. Responsible for research activities and coordination of projects in the field of gender and youth issues, related information campaigns and activities, publishing activities. Experience in the Bulgarian civil society sector and worked for the Institute for Regional and International Studies (Sofia). In the period 2004-2006 participated in advocacy projects, development of advocacy methodology for trainings of civil society organisations. Advocacy trainer at seminars for NGOs and civil society activists in Bulgaria, Macedonia, Bosnia and Herzegovina. Education: Bachelor in Political science (Sofia University, 2002) and Master degree in "National policies and European policies of the EU member states" (University of Paris III, Sorbonne nouvelle, 2004).

Albert Musliu

Albert Musliu is the Executive Director of the Association for Democratic Initiatives (ADI) in Gostivar, Macedonia. He is a Chairman of the Balkan Human Rights Network (BHRN) Steering Committee and represents the network in front of other institutions, partners and donors. He also serves as the sub-regional coordinator for the UN-NGO IRENE Network for South East Europe (SEE), Member of the Remarque Forum of the New York University – New York and the Director of the South East European University Centre for Human Rights in Macedonia. He has testified experience in organizational development in the areas of human rights, minority rights, policy, administration, and research in South East Europe. Also he facilitates the process of cooperation of civil society

organizations form SEE with UN agencies and specialized institutions, and promoting their involvement and interaction with UN. Albert Musliu has testified as an expert, a teacher and activist in the field of human rights throughout his career and has provided a valuable international dimension to the work of ADI.

Jonuz Abdullai

Jonuz Abdullai PhD is a deputy dean of Public Administration Faculty, at SEEU in Tetovo and professor at Southeast European University in Tetovo who teach "Sociology of Law"; "Planning and controlling in private and public administration"; Political-law changes in East and Central Europe" and "Public policies management". He has worked as an expert on human rights in national and regional level and has lectured international academic and professional gatherings in the region. He also has been involved as an expert in different projects related to human rights, minority rights, gender mainstreaming. Professor Abdullai has participated in different conferences and working groups related to human rights issues, policy development and democracy. Also he has been a reviewer of number of academic publications.

Tea Gorjanc Prelević

Tea Gorjanc Prelević is program editor of the NGO Human Rights Action (HRA) based in Podgorica, holding an LL.M. degree in international law from American University - Washington College of Law with specialization in international human rights law. From 2000-2004 she acted as the first executive director of the Judicial Training Centre of the Republic of Montenegro and since 2004 works on human rights related cases in the Prelevic Law Firm and on NGO projects aiming to improve the system of human rights protection in Montenegro.

Aleksandar Saša Zeković

Aleksandar Saša Zeković is an independent researcher of Human Rights violations and the executive director of the Roma Scholarship Foundation of the future Institute of Social Inclusion based in Podgorica. He is a member of the state Council for Civilian Control of the Police. Zeković holds an M.A. degree in Political Science from the University of Montenegro and has authored several publications on human and minority rights, European integrations, democracy and development of social economy.

Ana Jerosimić

Ana Jerosimić is an associate of the Belgrade Centre for Human Rights. She graduated at the Law Faculty in Belgrade in 2004. She has been working as the assistant to the director of the Belgrade Centre and as coordinator of many educational programmes. From 2001, she has participated in compiling the annual human rights report the Belgrade Centre has been publishing since 1998 and in 2007 she was the editor of this report.

Articles

Human Rights in Albania 2007

By Altin Hazizaj

Children's Human Rights Centre of Albania

Abstract

This report represents the situation of human rights in Albania during year 2007. The respect of human rights remains a challenge for the Albanian government and society. The Government generally respected human rights, but still many branches of public institutions, especially law enforcement agencies remain largely unaware of the application of human rights in practice.

Albania even during year 2007 remained a country in transition. Although there has been a generally positive economical prosperity, the fight and lack of communication between two major political parties keeps on hold the civic and political development of the country. Corruption, poverty, lack of government transparency and of an independent judiciary are among the biggest challenges that Albania faces in its road towards Nato membership and EU integration.

This report was prepared during the period January-March 2007 and is mainly based on data and information provided by different institutions and organisations such as European Commission Progress Report 2007 on Albania, US State Department Report on Human Rights Practices 2007 – Albania, Albanian Helsinki Committee, Albanian Human Rights Group, Children's Human Rights Centre of Albania and Ombudsman Office in Albania.

All these report focus on positive and negative aspects of the respect of human rights in Albania during 2007 and they are a valuable tool of information and awareness for the improvement of situation. The role of civil society and human rights organisations as a watch-dog in review of the actions of the government towards its citizens serves not only to protect the people's rights, but at the same time to strengthen the ability of citizens to report the abuse of their rights by people vested with power that hold a public office.

Nonetheless there seem to be a general perception at the international community that human rights in Albania are generally respected by the Government. This in itself has been working against the respect of human rights, since the perception largely undermines the real human rights practices in the country. Major human rights organisations often are faced with lack of funding, which limits their ability to monitor, report and follow up human rights violations and complaints. If there is not a major challenge to such perception many human rights violations will go unreported.

Moreover the report analyses the constitutional context that human rights take a central role, while providing more information on legislation and practices on specific aspects such as education of human rights, minorities or marginalised groups, the organisation and functioning of independent institutions such as Ombudsman Office (known as People's Advocate in Albania).

Introduction

1. Political and social situation.

The Republic of Albania is a parliamentary democracy with a population of approximately 3.6 million. Legislative authority is vested in the unicameral People's Assembly (parliament), which elects both the prime minister and the president. The prime minister heads the government, while the presidency is a largely ceremonial position with limited executive power.

Albania even during 2007 still remains a country in transition. This year has been marked by positive and negative developments in the area of good governance and respect for human rights. Apart from the political instability, Albania faced one of the worst power shortages in its history that nearly got the country at the brink of collapse. Lack of electricity was again a major threat to the economical situation in Albania. Between August and December massive blackout between 10-18 hours a day, were part of everyday life in all areas of the country, including Tirana.

In February local elections were held nationwide, with the presence of international election monitors. As the previous elections they were marked with irregularities. In itself the local elections were a test for the policies of the governing party. The new political configuration of the local administration promises to bring change to political participation of all the societal groups. As the country moves ahead with its development, which

was stated to be at around 6 percent, continuously shows the lack of politicians to reach to the people who need most the assistance of the Government, especially children, women and elderly.

During June – July 2007 a new conflict arose between the two main parties. The issue in dispute was the election of the new President of the Republic, since it is a constitutional requirement that the President shall be elected with the votes of the opposition. Some bitter infighting within the socialist party caused a split in two groups and six of its MP's voted for the proposed name of the president by Democratic Party (DP). This allowed the selection of Mr. Bamir Topi, vice-chairman of DP to be elected by the Parliament as the new Albanian President.

There was little progress towards constructive consensus between political parties on implementing reforms necessary for progress in the Stabilisation and Association Process. Parliamentary work was often dominated by a short-term political agenda which polarized debate. Parliamentary decisions were often delayed due to disputes focused on narrow party interests or rushed without proper preparation and discussion. This held back reform, particularly in the electoral and judicial fields.¹

The political instability keeps the development of the country on hold, especially at the local level, where most of the reforms are needed. Poverty is still wide spread in Albania, especially in northern and informal areas of the country. Many people complain that they lack access to the most basic services such as health, employment and education. Although human rights abuses are closely and publicly scrutinised by NGO's and Ombudsman, still is widely known that the respect of human rights is still a challenge for the public institutions in the country. Both European Commission and US State Department continue to criticise Albanian Government for the lack of respect of human rights.

Judicial procedures generally remain slow and lack transparency. Government measures to combat corruption in the judiciary led to continued conflict between the executive and the judiciary, in particular the General Prosecutor. Judicial infrastructure remains poor, especially in the Tirana district court and court of appeal, the country's largest. Courts continue to lack adequate space for courtrooms, archives and equipment. This hinders transparency, with the public unable to attend trials held in

¹ European Commission Progress Report 2007 on Albania, see http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/albania_progress_reports_en.pdf.

judges' offices. Enforcement of court rulings in cases involving state institutions often takes longer than the six months allowed by law. Plans to reform the bailiff system have not yet led to new laws.²

Albania aims to become a member of the European Union and NATO. A Stabilisation and Association Agreement (SAA) between Albania and the EU was signed in June 2006 and is currently under implementation. The country often is criticised for high levels of corruption, lack of transparency and cooperation among political parties. By the end of the year, two major parties seem to have found a common language on two major reforms, the justice and electoral one.

In September 2007, the EU signed an agreement on visa facilitation with Albania. The new arrangements are important to facilitate people-to people contacts. They will simplify procedures for issuing visas for certain categories of citizens of Albania, including students, academics, businesspeople, journalists, and tourists. This will allow more interaction between citizens of the EU Member States and the citizens of Albania.³

The country has maintained high economical growth and has enjoyed macroeconomic stability over the past few years and average real Gross Domestic Product (GDP) growth rates of over five percent – the highest in South-eastern Europe – underpinned by rising exports (albeit from a low base), and continuing improvements in productivity.

Corruption is widespread and constitutes a very serious problem in Albania. The government has drafted a new anti-corruption strategy for 2007-2013. A strategy covering an extended period shows a positive change in approach from short-term solutions to more effective and sustainable measures. Albania has made progress in implementing new public procurement legislation, measures to strengthen the independence and transparency of the Public Procurement Agency and the appointment of a public procurement ombudsman.

Nonetheless, Albania still suffers from a high perceived level of corruption, as several studies and reports indicate. According to the Transparency International 2006 annual survey, Albania ranked 105th out of 179 countries

² European Commission Progress Report 2007 on Albania.

³ Ibid.

with a CPI Score of 2.9,⁴ when country has made progressive improvement with 0.3 from last year, 2006.

2. Situation of Human Rights in the country.

Albania has ratified all major UN and European Conventions on human rights. However the situation of human rights in the country remains fragile and many times major human rights violations go unreported. NGO's and the Ombudsman have complained on several occasions the lack of improvement of human rights situation, despite the fact that the Government officials have sufficient knowledge about human rights laws and practices.

With regard to prevention of torture and ill-treatment, the Criminal Code definition of torture was amended in accordance with Article 1 of the UN Convention against Torture. The Prosecutor General issued formal instructions to prosecutors and judicial police underlining the need to observe human rights in criminal proceedings. Progress was made in implementing European Committee for the Prevention of Torture (CPT) recommendations. In particular, the transfer of responsibility for pre-trial detention facilities from the Interior Ministry to the Justice Ministry is now largely complete.

However, allegations of ill-treatment of suspects by police during arrest or questioning are still frequent. There has been little progress on application of basic safeguards against ill-treatment during pre-trial detention, such as access to a lawyer and doctor and notification of detention to relatives. Prosecutions for ill-treatment do not always make reference to an appropriately serious offence. Legislation setting criteria for compensation to victims is not yet in place. The Code of Ethics for the prison system is not always followed. Cases of arbitrary arrest and mistreatment of homosexuals by the police still occur.⁵

Freedom of expression and of the press is constitutionally guaranteed in Albania, but many media outlets remain subject to political or economic interests. However, current legal guarantees on freedom of expression are not yet implemented fully, particularly regarding the print media and respect of journalists' independence by media owners. Government-

⁴ The 2007 Transparency International Corruption Perceptions Index. See http://www.transparency.org/policy_research/surveys_indices/cpi/2007

⁵ European Commission Progress Report 2007 on Albania.

proposed legislation removing custodial sentencing for defamation has not yet been adopted.

The legal framework for civil society organisations remains open and non-restrictive. Civil society actors have been actively involved in discussions on important new laws such as the state police law and the law on higher education. Albania would benefit from greater involvement of citizens in governance through civil society groups. This requires more effective channels for dialogue and greater transparency, in particular regarding public finance information.

With regard to women's rights, Albania is progressively bringing its legislation on working conditions and equal opportunities into line with EU standards. Amendments to the 2004 Gender Equality Act gave the Ministry of Labour, Social Affairs and Equal Opportunities exclusive responsibility for gender equality. However, the Gender Equality Act does not ensure full protection against discrimination on grounds of gender and has in any case remained largely unimplemented. A new law addressing domestic violence has been adopted. It provides new protection measures for victims, for example protection orders issued by courts. The new domestic violence law does not make domestic violence a specific offence and does not cover the issue of forced marriages. Albania continues to be a source country for the trafficking of women, often minors, for sexual exploitation.

As regards children's rights, the government is making efforts to gather the data required to assess needs. New juvenile sections at six district courts should improve treatment of juveniles as regards criminal justice. Further progress on juvenile justice is limited by lack of a specific legal code.

Five new local Child Rights Units have been set up. The Ministry of Education has begun a "second chance" programme to help reintegrate children who have dropped out of school. Regarding children kept at home and thus deprived of their right of education, the number of children involved in blood feuds decreased from 104 in 2005 to 95 in 2006 and 87 in 2007. However, a draft law on birth registration, which is vital for widening children's access to education and primary healthcare, has still not been adopted by the government. Government resources are not sufficient to guarantee children their right to education. The child protection mechanism remains relatively weak. The many children not registered at birth, particularly from the Roma community, remain at greater risk from traffickers.

Child labour and exploitation remains widespread, with an estimated 32 percent of children aged between 6 and 17 working. Amendments to the Penal Code concerning exploitation of children through forced labour, sale and pornography have been proposed but not yet approved by parliament.

Human rights in legislation

1. Constitutional provisions.

The Albanian Constitution was approved in November 1998 through a public referendum. The Constitution recognizes and guarantees all the rights and fundamental freedoms recognized from human rights international instruments adopted by the Parliament. Part 2 of the Constitution (Articles 15 to 63) outlines fundamental human rights and freedoms.

Basic human rights and freedoms are guaranteed at the Constitution, as follows: Chapter I - General Principles, Chapter II - Personal Rights and Freedoms, Chapter III - Political Rights and Freedoms, Chapter IV - Economic, Social and Cultural Rights and Freedoms, and Chapter V - Social Objectives. Chapter VI provides for an ombudsman (People's Advocate).

The Constitution provides that, human rights and freedoms are supported by the state, which has to protect and respect them (article 3).

Article 15 of the Constitution states that human rights and freedoms are inseparable, unchangeable, and inviolable and they stand in the foundation of all the juridical order.

Article 18 states that "all are equal before the law" and no one will be discriminated for reasons such as sex, race, faith and ethnical origin, language, political believes, religious or philosophical, education, economic or social situation. This article does not prohibit positive discrimination and allows special treatment or support for certain categories of individuals, as for example educational stimuli for talented students from families with low incomes.

Article 7 of the Constitution establishes that "the system of government in the Republic of Albania is based on the separation and balancing of legislative, executive and judicial powers".

Under Part Four of the Constitution, the President is the Head of State and represents all citizens (Article 86). He may not exercise powers besides those recognised expressly in the Constitution and granted by laws issued in compliance with it (Article 94). He is not responsible for acts carried out in the exercise of his functions and may be discharged from serious violations of the Constitution, and for the commission of a serious crime. In these cases, a proposal for the discharge of the President may be made by not less than one-fourth of the members of the Assembly and must be supported by not less than two-thirds of its members. The decision of the Assembly is sent to the Constitutional Court, who then verifies the guilt of the President, and then declares him discharged from duty (Article 90).

Part Five of the Constitution provides that the Council of Ministers consists of the Prime Minister, the Deputy Prime Minister and the ministers. The Council is responsible for performing those state functions that are not delegated to other state bodies or to local governments (Article 95). The Council also defines the principal points of the general state policy and makes decisions on proposals from the Prime Minister or the other ministers. Acts of the Council of Ministers are enacted when signed by the Prime Minister and the proposing minister. The Council also issues decisions and instructions (Article 100).

In cases of necessity and emergency, the Council of Ministers is authorised to purpose temporary measures. These measures are immediately submitted to the Assembly, which if not in session, is convened within 5 days. These acts are revoked retroactively if the Assembly does not approve them within 45 days (Article 101).

Part Three of the Constitution provides that the Assembly of the Republic of Albania, which consists of 140 members and is elected for a 4-year term, exercise legislative power. Its mandate may only be extended in special cases, such as during wartime (Articles 64 to 66). Only political parties, coalitions of parties and voters can nominate deputy candidates (Article 68 §1). Deputies represent the people and are not bound by any obligatory mandate; however, they may not simultaneously exercise any other public duty except as a member of the Council of Ministers.

Part Nine of the Constitution assigns judicial power to the High Court, the Courts of Appeal and First Instance, which are all established under the law. The Assembly may set up courts for particular fields. The activities of the judicial power are regulated by law no. 8436 dated 28 December 1998,

“On the Organisation of the Judicial Power in the Republic of Albania,” amended by law no. 8546, of 5 November 1999 and by law no. 8656, dated 31 July 2000.

The High Court is both a Court of First Instance and an Appellate Court. It acts as a Court of First Instance when adjudicating criminal charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, deputies, judges of the High Court, and judges of the Constitutional Court (Article 141 §1). It consists of civil, criminal and military courts. 17 judges belong to the High Court and are appointed by the President, with the consent of Parliament, for a non-renewable 9-year mandate.

Appeals Courts are Courts of Second Instance, which consist of three judges who hear appeals from the Courts of First Instance. They adjudicate all aspects of cases not just the issues mentioned in the complaint. The courts are organised in districts selected by the President of the Republic, which are based on proposals from the Minister of Justice. These proposals are in turn based on a recommendation from the High Council of Justice.

Courts of First Instance are located in every judicial district and have jurisdiction over their respective districts. Although, the majority of hearings are presided over by one judge, there are some cases that are heard by a panel of three judges.

Under Part Eight of the Constitution, the Constitutional Court is responsible for ensuring that the Constitution is complied with. They have the exclusive authority to make final constitutional interpretations, however, their decisions must be in compliance with the Constitution (Article 124). The Constitutional Court renders decisions on: the compatibility of laws with the Constitution or with international agreements as provided in Article 122 (Article 131 a); conflicts of competences between branches of power, and as between central government and local government (Article 131 d) and makes final decisions on individual complaints regarding violations of due process rights but only after all legal means for the protection of such rights have been exhausted (Article 131 i). The decisions of the Constitutional Court are final and generally binding. The Constitutional Court only has the right to invalidate the acts it is asked to review. The decisions of the Constitutional Court come into force the day of their publication in the Official Gazette (Article 132).

Individual rights

1. Human Rights and Education: Right to Education Legal provisions.

The Constitution of the Republic of Albania, Article 54 guarantees the right to every individual for free and compulsory education.

Article 57

- “1. Everyone has the right to education.
2. Mandatory school education is determined by law.
3. General high school public education is open for all.
4. Professional high school education and higher education can be conditioned only on criteria of abilities.
5. Mandatory education and general high school education in public schools are free.
6. Pupils and students may also be educated in private schools of all levels, which are created and operated on the basis of law.
7. The autonomy and academic freedom of higher education institutions are guaranteed by law.”

The Education system in Albania is organised in several levels starting from preparatory phase such as kindergartens and then continuing into the pre-university education. In itself the pre-university education is divided into primary education (Classes 1-4), secondary education (classes 5-9), all compulsory. It starts at age of 6 and ends when the child has reached 16 years of age. During the previous year the Albanian Parliament approved changes in the law that makes it possible for the secondary education to change from 8 to 9 years. This is considered a major achievement for Albania, which aims to extend the compulsory education to 12 years.

The pre-university education also includes the High School which is developed through a four year period and is not compulsory. This can be

followed either in Classical Gymnasium or through professional vocational schools. All students are required to pass a state exam once they have completed all the subjects of High School. No one can study to University if such an exam is not passed. During 2007 for the first time, the Ministry of Education carried out a major reform on the state examination at the end of high school, a reform which still sparks many debates in Albania. The reform, apart from very strict scoring points in the exam, provides all the young people with the choice of university they would study.

At the same time another major educational reform is underway, starting from 2007. It deals with the reformation of national school curricula at all levels and schools are allowed to choose themselves the school-text-books to study for each of the obligatory subjects, from an approved list of books provided by the Ministry of Education. Nonetheless many children and young people complain about the heavy load of lessons that they have to face every day at school.

The budget for education, which was at a low level, has been significantly increased in the last year. The government has started implementing the national strategies for pre-university education and pre-university vocational education and training up to 2015. The implementation of the scheme on final and entry exams for Albanian universities (State Matura) continues. The quality of teaching has been improved through the continued professional development of teachers and improvement of school management.⁶

The Law for Pre-university Education of 1995 guarantees public compulsory education is free for all. It provides the basic legal standards of the organisation of educational system in Albania and guarantees the right to education to every child without discrimination. Nonetheless during the recent years many public officials and civil society organisations have voiced their concern that the Law is outdated and a new law shall be prepared. At the time of writing of this report there were no new initiatives for such a change thus the law remains in force.

The sole authority of educational system in Albania is the Ministry of Education and Science (MoES). During the recent years the budget of the ministry and in general of the educational reform has been increased year by year. In 2004 the Ministry of Education issued a new policy paper the

⁶ European Commission Progress Report 2007 on Albania.

new Education Strategy 2004-2015, which is to be used a guiding document towards a qualitative and inclusive education in Albania.

The Strategy provides a clear vision not only of the organisation of system of education in itself, but also provides guiding principals to the respect of human rights and children's rights in schools, inclusion of human rights and gender education, while aiming to strengthen the quality of education through a set of major reforms some of whom have been described above.

Practice.

Transition to democracy brought about radical changes in the principles that governed education in Albania. Transformation aimed at bringing education into line with the general social and political changes. From the very beginning, it was considered to be a long term process, though imperative. Of the subjects taught at school, social studies were the most affected by the old ideology. In the last few years, it has undergone a profound change. The content of history taught in schools was thoroughly revised. New subjects like "Knowledge of Society" and "Citizenship Education" were introduced.⁷

The education of human rights in schools was introduced after the collapse of communist regime. The Albanian Human Rights Center, a major civil society organisation, has played a major role in introducing and funding such reformation of educational system. Important international human rights standards such as Universal Declaration of Human Rights, Convention on Children's Rights, The Convention on Civil and Political Rights as well as the Convention on Social, Economic and Cultural Rights, European Documents on Human Rights etc were introduced to children in primary and secondary education. National and local capacity building measures aimed to train teachers on these topics. School work in teaching these topics was further supported by the new Law on Pre-university Education in Albania that was passed by the Parliament in June 1995. It provided a legal basis for the social development and citizenship education of the young generation.

⁷ Education for Peace, Stability and Democracy in Albania, Country Report, By: Fatmira Berberi. See http://www-gewi.kfunigraz.ac.at/csbsc/country_reports/Education_Albania.htm

Articles 2 and 21 of the law states:

"The mission of education is the spiritual emancipation, material progress and social development of the individuals."

"Compulsory public education aims at developing the intellectual, creative, practical and physical abilities of students, at achieving basic elements of cultural and citizenship education."

The Constitution of Albania prohibits discrimination based on race, gender, religion or political views; still the country lacks a law to protect people from discrimination, especially those from minorities or poor and marginalised groups.

In 2006 the Albanian Human Rights Group in cooperation with other civil society organisations prepared a draft-law against discrimination. The draft deals specifically with the issue of discrimination and exclusion from education of children from different backgrounds and offer them several mechanisms of protection. However the draft is still awaiting approval by the Albanian Parliament. The lack of such a law limits the mechanisms of complaints by the people in cases of discrimination, especially to the justice system.

Although there has been a development of laws and policies, cases of violations of the right to education of children have persisted even throughout 2007. These violations come in different forms and mainly directed towards the ones excluded from the society and most deprived of wealth such as poor children, Roma and Gypsy minorities and in some cases children living with HIV/AIDS.

In September 2007 two children living with HIV/AIDS in Albania were enrolled in a public primary school in Tirana. Although the law requires the protection of personal data for children living with HIV/AIDS, their registration at school didn't go unnoticed. Moreover during the previous year the same children were denied their right to pre-education in kindergarten by the Educational Authority of Tirana.

Two weeks after their registration at the first grade parents of non-Hiv children requested the management of the school to dropout of school the two children living with HIV/AIDS under the justification that they were a public health concern for other children. The Educational authority at the

beginning didn't act in either side hoping that the situation would calm. However few days later the protest of the parents took a more severe form by threatening the family and the two children. The case became a public issue and was widely reported at national media. Parents of other children requested from the Minister of Education to expel the children with HIV/AIDS or otherwise they would drop their children off school. In support of two children came the Minister of Education himself, explaining publicly to the parents of other children that children living with HIV/AIDS in the same school premises with other children did not present any danger or health concern. Because of a public support from authorities, media and civil society somehow the case was left at rest. Nonetheless there are concerns that if such a case happens to another city, different from Tirana, the right to education of children who suffer from different diseases that do not constitute a public health concern could be seriously undermined.

The constitution and law prohibit discrimination against persons with disabilities; however, there was some discrimination against persons with disabilities in employment, education, access to health care, and the provision of other state services. The law mandates that new public buildings be made accessible for persons with disabilities, but the government only sporadically enforced the law. Widespread poverty, unregulated working conditions, and poor medical care posed significant problems for many persons with disabilities.⁸

Disable children often do not find friendly premises in schools throughout Albania, which are still unprepared to care for them. Most of the schools do not provide even the most basic services for disable children, especially fiscally disabled ones thus making it rather impossible for them to attend school. Some special schools in Albania provide special education to children with disabilities; however most of the children attend the non-special education. A National Strategy for Persons with Disabilities and a following law provide clear guidelines for educational authorities and schools in Albania for the integration of disable children in the so called "normal" classes. However teachers and pedagogical staff are not fully trained or prepared on how to deal with these children thus lacking capacities to enable such integration.

The right to education for disable children often is hindered by their families, especially in poor or rural areas. Often these children are fully

⁸ Albania: Country Reports on Human Rights Practices 2007. Released by the US State Department, Bureau of Democracy, Human Rights, and Labor.

deprived of their right to education and the obligation to attend primary and secondary pre-university education, by their parents.

When it comes to the right to education of children from minorities, Albania makes a difference between ethnic minorities and the linguistic ones. The Ministry of Education provides free access to primary education only for children of Greek and Macedonian minorities, while other minorities such as Serbian-Montenegrin, Roma or Vlachs can not study in their language at public schools.

The government signed memoranda of understanding with local governments to promote the use of minority languages in relations with the administrative authorities and to display traditional place names in areas inhabited by persons belonging to national minorities. The Constitution provides that persons belonging to minorities have the right to be taught in their mother tongue. Updated syllabuses now allow members of minorities to include subjects in their mother tongue in their curricula.

Schools specifically for members of the Greek and 'Macedonian' minorities have significantly higher teacher-pupil ratios than the national average. The Ministry of Education and Science issued an instruction allowing Roma children to enrol in schools without being registered. The Ministry of Tourism, Culture, Youth and Sports supports publication of a magazine focusing on the culture and social issues of the Roma and organises⁹ annual national festivals to promote the cultural heritage of all Albania's minorities.

When Roma children reach school age the effects of the disadvantages they experienced since birth are more visible and some of them are not even called to enrol in school since they were never registered. Although Roma children face serious challenges throughout their first years of life because of the poverty, exclusion and discrimination, they grow up in a family and community environment that they belong to and that protects them and helps them to develop their personality. However, when they start school they have to confront the outside world. Will they be sufficiently prepared for school and will they get the support they need from teachers and classmates and from the surrounding society, to have a successful experience? In most cases they will not. Roma children who, in addition to

⁹ European Commission Progress Report 2007 on Albania.

the challenges of being in a strange environment, will most probably experience harsh discrimination.¹⁰

Children have the right to their culture and identity and to be proud of themselves and their family. However, school systems in the region rarely promote appreciation of diversity or practise intercultural learning and understanding. Teachers have limited capacities and tools to facilitate such learning. The Roma culture is often seen as negative and of less value by teachers, school personnel and by non-Roma children and their parents. Diversity is not seen as an advantage, to be different is negative. This is the kind of hostile environment small Roma children confront when they start their first year in school.

Child labour remains one of the major challenges for the right to education of children. A CRCA research¹¹ estimates that more than 50 thousand children work for their families and they are the only source of family income. Most of those children work in service and farming sector mainly employed by their families. Employing children although creates short advantages for families in long term it affects their well-being and specifically their education. Although the official data shows that school dropouts in a year are below 3 percent, is largely believed that the dropouts because of child labour are higher. A CRCA survey estimated that 17 percent of children country-wide dropped out of school, while being involved in some form of labour and exploitation by their families.

2. Access to rights: National Human Rights Institutions in the country

2.1 Legal provisions.

The People's Advocate (Ombudsman) was established in 2000 to protect individual rights and freedoms from unlawful activities or acts by the public administration. The authority and functions of the People's Advocate are defined in the Constitution, the Law on the People's Advocate, as well as in the Internal Regulations of the Code of Ethics.

¹⁰ Breaking the cycle of exclusion. Roma children in South East Europe. Unicef 2007.

¹¹ Child Labour and Street Children in Albania, a research from Children's Human Rights Centre of Albania. CRCA 2004.

Article 60 of the Albanian Constitution

“1. The People's Advocate defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration.

2. The People's Advocate is independent in the exercise of his duties.

3. The People's Advocate has his own budget, which he administers himself. He proposes the budget pursuant to law.”¹²

Law No. 8454, of 4 February 1999, "On the People's Advocate", regulates the right to complain¹³, the initiation of the proceedings¹⁴, the procedure after admission of complaints for review¹⁵, the obligation of organs of state administration to respond to recommendations of the People's Advocate¹⁶ and case follow-up¹⁷.

People's Advocate is an institution, independent and not referring to any organs of public administration, judicial ones included. It gets financed from the state budget and is foreseen to protect and safeguard the rights, freedoms and lawful interests of both Albanian and foreign individuals,

¹² Article 63 of the Constitution states, "1. The People's Advocate presents an annual report before the Assembly. 2. The People's Advocate reports before the Assembly when asked to, and he may ask the Assembly to hear him on matters he deems important. 3. The People's Advocate has the right to make recommendations and to propose measures when he observes violations of human rights and freedoms by the public administration. 4. Public organs and officials are obligated to provide the People's Advocate all documents and information requested by him".

¹³ Article 12, §1, Right to Complain. "Every individual, group of individuals or non-governmental organisation, claiming that his/her/their rights, freedoms or lawful interests have been violated by the unlawful or improper actions or failures to act of the organs of the public administration shall have the right to complain or notify the People's Advocate and to request his intervention to remedy the violation of the right or freedom. The People's Advocate shall maintain confidentiality if he deems it reasonable as well as when the person submitting the complaint, request or notification so requests."

¹⁴ Article 13, Initiation of the Proceedings. "The People's Advocate, upon finding or suspecting that a right has been violated, shall initiate an investigation of the case, upon the complaint or request of the interested or affected person, or on his own initiative if the particular case is in the public domain and provided the interested or injured party consents."

¹⁵ Article 18, Procedure After Admission of Complaints for Review. "Following admission of a complaint, request or notification, the People's Advocate shall proceed in one of the following ways: a) shall conduct an investigation; b) shall request explanations from the organs of public administration, as well as from the public prosecutor in cases of custodial detention and arrest; c) shall make a recommendation to the High State Control to exercise its powers."

¹⁶ Article 22.

¹⁷ Article 23.

being or not permanent residents in Albania, from unlawful or improper actions or failures to act of public administration bodies.¹⁸

The services provided by the People's Advocate assists the individuals in offering equal opportunities, so that they could be treated as equals in their relations with the Public Administration. That is attainable mainly through negotiations, impartiality, and broader standards of justice. In the meantime, the role of the People's Advocate shall not be simply restricted to protecting the citizens' human rights in confrontation with injustices and abuses of the public administration and public servants.

The fundamental features for the Institution of the People's Advocate are independence from the Government, or any other political bias, ease of contacts, speed of performance, flexibility, effectiveness and powerfulness of his recommendations. We would like to highlight the "powerfulness of recommendations", since it is the very absence of the compelling powers, which stipulates even the existence of the argumentative power to the highest degree possible.¹⁹

According to the People's Advocate, of all complaints addressed to this institution, those dealing with the mistreatment of citizens receive the most attention. This is because when they are proven to be true, they are viewed as serious violations of Article 25 of the Constitution of the Republic of Albania, which prohibits torture and other cruel, inhuman or degrading treatment or punishment.

Meanwhile the Law No. 8454, of 4 February 1999, describes the main duties of the Ombudsman related to the protection of human rights. Specifically Article 2, states specific duties such as the below ones²⁰:

Article 2 - Duties of the People's Advocate

"The People's Advocate shall safeguard the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration or third parties acting on their behalf.

¹⁸ People's Ombudsman, publication of the People's Advocate, for more please see:

<http://www.avokatipopullit.gov.al/English/People's%20Advocate%20in%20Albania.pdf>

¹⁹ *ibid.*

²⁰ For more information on the work of People's Advocate in Albania, please visit:

<http://www.avokatipopullit.gov.al/>

The People's Advocate, guided by the principles of impartiality, confidentiality, professionalism and independence, shall exercise his activity for the protection of human right and freedoms as defined by the constitutional provisions and by the laws. The provisions of this Law shall also apply to protect the rights of foreigners, whether they are residing lawfully, in Albania or not, refugees, as well as stateless persons within the territory of the Republic of Albania, pursuant to the terms set forth by law.”

There is an agreement of cooperation between the People's Advocate and the domestic courts but the implementation of this agreement is still in its first phase because of the partiality and lack of independence of the domestic courts from the executive and legislative branches.

2.2. Practice.

Every individual, group of individuals claiming that their legitimate rights and freedoms have been violated by an act, action or omission on the part of the central or local governmental bodies, or any other body vested with public authority are entitled to lodge complaints, requests, or notifications with the People's Advocate demanding the examination of the case concerned. In special publicly known cases, it is possible for him to initiate the examination procedure at his discretion; taking at a later stage the consent of the individual concerned or inflicted the damage.

Every year during the period March-April the People's Advocate, although an independent institution, shall report to the Albanian Parliament on the work carried out by his office. During the period of writing of this report the Albanian Parliament had not yet approved his report, thus there were no data available during year 2007.

Nonetheless the last year report presents major challenges and issues dealt by and solved by the Ombudsman of Albania²¹. During the period of January - December 2006, the People's Advocate Office handled 3609 complaints, requests and notifications (including the complaints and requests immediately responded by the People's Complaints Office).

²¹ ANNUAL REPORT - On the activity of the People's Advocate (1 January – 31 December 2006). For more, please see <http://www.avokatipopullit.gov.al/English/Reports/Report%202006.pdf>

Out of 3609 there were completed 2623 complaints of which 1192 or 45.4 percent of them were beyond the jurisdiction and competence, however, citizens were advised regarding the path they had to pursue to have their complaints resolved. More than 725 or 27.6 percent of the complaints resulted as groundless whereas 554 or 22 percent of them were solved in favour of the complainants. For the complaints accepted as grounded, there have been formulated recommendations or written proposals for 100 complaints of them to public authorities with a view to enhancing public administration, thereby safeguarding, and ensuring the standards of good governance.²²

The People's Advocate is entitled to demand from the Administration bodies the availability of any information or document associated with the case under examination, or conduct independent on-site investigations, retrieve any file or material related to his investigation, to interrogate any person he considers to be involved in the case under investigation, likewise carry out or demand the performance of a legal survey. The People's Advocate is entitled to request access even to information or documents classified as state secret.

The People's Advocate also is entitled to access to any of the above-mentioned administration offices; he can inspect prisons, pre-detention sites, or other establishments wherein the individuals' human rights have been restricted. In addition, he is entitled to private talks with the individuals held in these institutions. These rights derive from the interpretation of the Constitution and the Law "On People's Advocate", as well as the international practices of the Ombudsman's performance. But, it would be advisable, in the event of supplementing the Law "On People's Advocate", to be explicitly included in this law, with a view to avoiding misinterpretations and imposition of unjust restrictions for this Institution.

According to article 22 of this law, the bodies the People's Advocate has addressed a recommendation, request, or proposal for dismissal should reply within a deadline of 30 days from the day the recommendation, request, or proposal for dismissal has been delivered. The response should contain sensible and well-grounded explanations relevant to the issue concerned, as well as the actions, omissions or measures taken by the respective body.

²² Annual Report 2006 - On the activity of the People's Advocate.

In case the People's Advocate does not deem the responses and measures taken by the respective body as being sufficient, he is entitled to proceed with the highest body in the administration hierarchy. If there is recurrence of cases, as well as in the event of failure on the part of the respective body to react towards the recommendations made by the People's Advocate, the latter could approach the Parliament by submitting a report wherein concrete measures are proposed with a view to remedying the rights violated.

The right the People's Advocate is entitled to as regards legislative recommendations constitutes an important and efficient tool in preventing the violation of human rights. Whenever the People's Advocate notes the content of the law itself and the normative acts, not their implementation, as being a source of premises resulting to human rights violation, as recognized by the Constitution, or other laws, he is entitled to recommend the law-making bodies to make proposals with respect to amending and improving the legislation; to propose the administration bodies amendments or improvement for the normative acts; to recommend the Constitutional Court the invalidation of such acts.²³

3. Disadvantaged, Marginalized and Vulnerable Groups

The right to work - Minorities and development of equal opportunities for employment

3.1. Legal provisions.

Albania recognises three national minorities (Greek, Macedonian and Serbian-Montenegrin) and two ethno-linguistic minorities (Aromanian and Roma). A climate of respect and tolerance generally prevails regarding minority groups.

The Constitution of Albania of 1998 has classified national minorities as an integral part of Albanian society, recognizing their rights as equal to other Albanian citizens and guaranteeing conditions to preserve and develop their national, cultural and religious identity.

²³ People's Ombudsman, publication of the People's Advocate, for more please see: <http://www.avokatipopullit.gov.al/English/People's%20Advocate%20in%20Albania.pdf>

Article 20 of the Albanian Constitution

“1. Persons who belong to national minorities exercise in full equality before the law the human rights and freedoms.

2. They have the right to freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop it, to study and to be taught in their mother tongue, as well as unite in organizations and societies for the protection of their interests and identity.”

Meanwhile the Labour Code of Albania does not make references to minorities, but its implementation covers all employment relations for all citizens.

However Albania does not have a specific legislation related to minorities. It is a signatory party of international human rights instruments such as UN Convention against Racial Discrimination, ILO Conventions and also Council of Europe Framework Convention on National Minorities.

Albania ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which has now entered into force. Albania is endeavouring, within its budgetary limitations, to fulfill its commitments under the Council of Europe Framework Convention for the Protection of National Minorities.

However, the development of protection policies requires up-to-date statistical data on minorities. No progress has been made in strengthening the presence in the police force of people belonging to national minorities in areas in which they live.

Albania has not signed the European Charter for Regional and Minority Languages as it cannot yet afford the attendant expenditure. The number of Roma children in schools has not substantially increased and the literacy rate of the Roma population remains low. Further action is required to overcome barriers to minority education, such as poverty, language

difficulties, temporary migration and discrimination, particularly for the Roma minority.²⁴

3.2. *Practice.*

Albania remains a relatively poor country. The national minimum wage was \$169 (14,000 lek) per month. However, it was not sufficient to provide a decent standard of living for a worker and family. The average wage for government workers was approximately \$384 (31,850 lek) per month. According to a 2005 report by the UNDP, 25 to 30 percent of the population lived under the official poverty line of \$57 (4,720 lek) per month, while an additional 30 percent lived close to that line.²⁵

The Government has established a State Committee for Minorities, with the main aim to bring minorities issues and problems nearer to the Government works. This Committee since last 3 years is headed by a representative of Greek minority in Albania. The Committee oversees the development of public policies in the area of minorities in Albania, while aiming to develop new legislation for their protection. Secondly the Committee shall also respond to complaints and concerns of members of minorities, when their rights are violated, including employment.

The State Committee for Minorities cooperates with central and local government structures, with organizations and associations dealing with minority issues, to improve standards in respecting the rights of minorities in Albania. It proposes concrete measures for the economic, social and educational development of minorities...²⁶

The economic and social situation of the Greek, Macedonian, Serbian-Montenegrin and Aromanian minorities is generally good. People belonging to these minorities fully participate in the economic, social and political life of the country and often have organisations representing their interests.

²⁴ European Commission Progress Report 2007 on Albania.

²⁵ US State Department Report on Human Rights Practices on Albania, 2007.

²⁶ Second state report submitted by Albania on The Framework Convention for the Protection of National Minorities, 18 May 2007.

The National Strategy for the Improvement of the Roma Living Conditions is being implemented. Steps have been taken to improve housing, employment and business opportunities for Roma people.²⁷

However, the Roma minority still faces poverty, discrimination, extremely high illiteracy rates and very difficult living conditions. Less than half of all Roma children go to primary school, and only about 25% complete primary education. The Roma population's very low level of education and professional qualifications limits access to the formal labour market, which exacerbates poverty.

The Roma often work in informal sectors, and begging is widespread among women and children. Many Roma families are not registered with the authorities. This excludes them from social assistance, impedes access to basic services, including education and health, and increases the risk of human trafficking.

At the end of 2006, the Ministry of Labor, Social Affairs, and Equal Opportunity signed a one-year project agreement with UN agencies present in Tirana to support the ministry's Roma Monitoring Committee. The initial data collected by the committee showed that the average Roma household earned less than half of non-Roma families living in the same area, that 62 percent of Roma were illiterate, and that only 28 percent had access to water.

Albania is not participating in the 2005-2015 Decade of Roma Inclusion. Implementation of the national Roma strategy is slow and fragmented. No state budgetary resources are currently allocated for its implementation - the Ministries of Health, Culture, Education, Transport and the Interior allocate funds annually from their budgets. Other contributing factors include weaknesses in the strategy's priorities and indicators, poor coordination and lack of effective local government participation or dialogue with the Roma community, which itself has weak organisational capacity. There is still only three staff from the Ministry of Labour and Social Affairs monitoring implementation of the strategy.

As there is no recorded data on the employment opportunities of national or linguistic minorities in Albania it is rather very difficult to access the standing issue. Apart from the Roma minority that clearly lacks

²⁷ Ibid.

employment opportunities for several reasons, most of the other minorities face the same concerns and opportunities as the native population.

Conclusions

The respect of human rights remains a challenge for the Albanian government and society. The Government generally respected human rights, but still many branches of public institutions, especially law enforcement agencies remain largely unaware of the application of human rights in practice.

Albania even during year 2007 remained a country in transition. Although there has been a generally positive economical prosperity, the fight and lack of communication between two major political parties keeps on hold the civic and political development of the country. Corruption, poverty, lack of government transparency and of an independent judiciary are among the biggest challenges that Albania faces in its road towards Nato membership and EU integration.

There seem to be a general perception at the international community that human rights in Albania are generally respected by the Government. This in itself has been working against the respect of human rights, since the perception largely undermines the real human rights practices in the country. Major human rights organisations often are faced with lack of funding, which limits their ability to monitor or report and follow up human rights violations and complaints. If there is not a major challenge to such perception many human rights violations will go unreported.

Laws and public policies during the recent years have improved and they respect human rights standards. However the lack of strong law enforcement agencies in many cases undermines the implementation of laws and policies, while increases the frustration of the general public towards the government at national and local level. This in itself translates into public apathy or in some cases public disobedience. In order to guarantee the full respect of human rights Albania needs to further strengthen the law enforcement agencies while increase transparency and communication with the public opinion.

The right to education is not only a basic human right, but also a very important tool for prosperity and reduction of poverty. Most of the people that dropout of education are the ones who most need it such as children

from poor background, Roma minority etc. At the same time the quality of education needs to be improved and made available to all children of Albania especially those are most in need of it. Discriminatory practices against children in schools shall end once and for all, by the approval of a new antidiscrimination law and introduction of anti-discrimination policies in schools. Educational Authorities also shall make available tools that facilitate the process of reporting of child rights violations in schools, which if they go unnoticed can undermine the right to education to every child.

Children have the right to their culture and identity and to be proud of themselves and their family. However, school systems rarely promote appreciation of diversity or practise intercultural learning and understanding. Teachers have limited capacities and tools to facilitate such learning.

Child labour remains one of the major challenges for the right to education of children. Most of the children work in service and farming sector mainly employed by their families. Employing children although creates short advantages for families in long term it affects their well-being and specifically their education.

The Peoples' Advocate is the only public independent institution that protects and promotes the respect of human rights by state institutions. Such a responsibility is a heavy weight on any institution that deals with public complaint on human rights violations. The work of the Peoples' Advocate is widely appreciated by the public at large and measures shall be taken to ensure its independence and accountability not only towards the Albanian Parliament, but also the public.

Albania remains a poor country. Although the economy is progressing the development often neglects the most disadvantaged groups of society such as the poorest, marginalised groups or minorities such as Roma and Gypsy. Nonetheless there are no discriminatory practices or laws that undermine equal opportunities for minorities in Albania. One major factor that undermines the employment opportunities for some minorities is their access to education. The Government shall seek new paths to promote not only the employment of minorities in public positions, but at the same time to promote further education and vocational training for those groups that are left out of education.

Human Rights in Bosnia and Herzegovina 2007

By Faris Vehabović

Abstract

This report will concentrate on surveying the protection of human rights in Bosnia and Herzegovina with special focus on the right to education, the right to work with the disabled, marginalised and vulnerable groups, as well as the right to accede to practice of rights through institutions which primarily deal with the protection of human rights in Bosnia and Herzegovina.

The principal issue of effective protection of human rights in Bosnia and Herzegovina is reflected in the legal nature of the Constitution of Bosnia and Herzegovina (hereinafter: the BiH Constitution), but also in relations between the BiH Constitution and ratified international documents for the protection of human rights, primarily the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention). This is because the answer to this question will give an answer to how efficient institutional protection of human rights can be established in the material sense, but also, psychology-wise, mirrored in the citizens' trust to state institutions as well as institutions which primarily deal with the protection of human rights.

Introduction

1. Political and social situation.

1.1. General.

In 2007, Bosnia and Herzegovina went through the most turbulent period after the War had ended in December 1995. In the first quarter of 2007, the Council of Ministers and the Federal government were formed and the legislative administration was established on the state and federal level, after the elections, held in October 2006. The President of the Council of

Ministers resigned at the end of the year, and the mandate of the Council of Ministers expired. At the same time when the government was formed, negotiations on signing the Stabilisation and Accession Agreement with the European Union (hereinafter: EU) were continued, which was initialled in December 2007, but not signed. The decision with special severity was the decision of the International Court of Justice regarding the BiH's prosecution for genocide, proclaimed in February which nobody was satisfied with because some questions only partly answered in the above verdict were opened, and they were related to the nature of the War in Bosnia and Herzegovina but also the roles of local communities in conflict. At the same time, political leaders continued to negotiate the police reform as one of the basic pre-conditions for signing the Stabilisation and Accession Agreement with the EU. The issue on Kosovo status represented an additional problem for Bosnia and Herzegovina since some political powers persistently attempted to connect the issue with the status of Republika Srpska in Bosnia and Herzegovina. It seems that the source of such attempts were the domestic politicians in Republika Srpska, but also in Serbia.

Though it is absolutely certain that 2007 was not the year in Bosnia and Herzegovina when protection of human rights was an important topic, one could rather say that it was a year when there were efforts to maintain the current situation without strong political will to change the constitutional system, which proved ineffective so many times despite the discriminatory nature of the BiH Constitution which was stressed by the Venice Commission in its reports and the Parliamentary Assembly of the Council of Europe as well. Although the issue of change of the BiH Constitution is a priority task for further integration processes, political parties were not ready to face the problem.

Like in the past years, the basic problem of Bosnia and Herzegovina is the constitutional structure of the state. BiH Constitution established the legal continuity of the Republic of BiH which became independent from the former Yugoslavia, under the name Bosnia and Herzegovina with modified legal structure. Two *de facto* existing entities, Republika Srpska and the Federation of BiH, were confirmed as BiH's entities. Bosniaks, Serbs, Croats (others) and citizens, are described in the BiH Constitution preamble, as *constitutional nations*. By the BiH Constitution, the state was assigned with extremely restricted competences, while most of the competences were transferred to the two entities. On the state level, such decision-making mechanisms were introduced that it is practically

impossible to adopt any decision without the approval from the representatives of any of the constitutional nations. Apart from the House of Representatives, the House of Commons was established, veto was introduced based on vital interests for all the three constitutional nations at both Houses, as well as the collective Presidency of three members, with a Serb from the RS, and a Bosniak and Croat from the Federation.¹

Like in all other constitutions, created after armed conflicts, the key section in the text refers to the protection of human rights due to fresh memories of the past period of mass violation of fundamental human rights. According to the Preamble of the European Convention, fundamental human rights and freedoms are best reflected in *efficient political democracy*.² This term and the like should be observed from the aspect of the contents additionally charged with public authorities' actions.

It can be deduced from the above that, with classic democratic inheritance – tripartite power division – into legislative, executive and judicial, as a principle of a state's power organisation, the European Convention and the human rights in general have the value of a civil and democratic society requiring a functional state power mechanism for implementing taken principles, and that it therefore represents the basic common factor of democratic societies.

1.2. Legislative and executive power.

The basic characteristic of the BiH Parliamentary Assembly's work, as the highest legislative authority in the state, but the Council of Ministers as an executive authority, in the past period, is the absence of development plans and plans for overcoming economic/social problems in the country, as well as insufficient engagement in the plan of implementation of international requirements and obligations of the state. Engagement in performing “daily obligations” was dominant, which is necessary, but not sufficient for eliminating key causes of the present crisis. Moreover, throughout the entire 2007, there was a high percent of disagreement between the parties constituting the parliamentary majority, which imposes not just the question how they entered the relations at all, but also the upsetting warning for their future work. As far as integration processes are concerned, the only thing the BiH Parliamentary Assembly has done is give

¹ Faris Vehabović, „Relations between the Constitution of BiH and the European Convention for the Protection of Human Rights and fundamental Freedoms“, Sarajevo, ACIPS, 2006.

² During 2007, Bosnia and Herzegovina could hardly boast of efficient political democracy.

its approval for signing CEFTA and adoption of the Law on Higher Education, which are more than humble results.

According to the BiH Constitution, decisions at both BiH Parliamentary Assembly Houses are made by the majority of votes of representatives/delegates, subject to the majority not being smaller than one third of the members from both entities. If that is not the case, the House President, along with his/her two Deputies, working as a Commission, tries to achieve agreement within three days from making the decision or law. If the House Collegiums does not manage to achieve agreement, the decision is made by re-voting and majority of con votes which may not constitute two thirds or more of votes from each entity.

During debates on issues in the agenda, a great number of delegates gives priority to his/her national and personal interests, over existential problems of citizens who voted for them. The ultimate result is a small number of adopted laws (40 in total throughout the entire year), as well as the absence of concrete development plans and programmes with clearly defined dynamics for realising the goals mentioned by the President of the BiH Council of Ministers in his talk when he was taking over this critical function.

The promise given by the President of the BiH Council of Ministers Nikola Špirić in his talk when taking over his duties is that, in his work, he would primarily invest his efforts in realising necessary economic reforms which would ensure international economic sovereignty and a unified economic area, which would result in faster provision of new vacancies and increase of employment, has remained just a promise.

For instance, according to the data from the Labour and Employment Agency of BiH, the number of unemployed people in April 2006 was 512.052, while in April 2007 the number increased up to 532.834 unemployed people. Continuance of such trends is threatening with BiH losing four more years.

However, in their discussion on such an important issue, some delegates isolated themselves within national and entity frames. The basic remark was why the discussion is held at all since employment is the competence

of entities, so concrete conclusions which might lead to solving the unemployment problem could not be agreed upon³.

1.3. Judicial power.

The judicial reform in Bosnia and Herzegovina, which has been implemented since 2001, reflected all the difficulties of implementing necessary and comprehensive changes in a politically and organisationally fragmented country burdened by social, economic and political transition. An additional difficulty is surely the turbulent post-war period and the lack of resources, particularly the expert potential, which was irreversibly lost because of the War. Advocates and creators of the reform vision knew it would not be easy at all to organise the juridical sector in accordance with European standards as well as that the chosen journey is cumbersome and long.

Most courts in Bosnia and Herzegovina face a large number of unsolved cases, and currently there are 2.000.000 unsolved subjects at regular courts, while the biggest number of unsolved issues refers to the so-called „communal“ issues, that is, non-payment of bills for communal services. Lots of effort was invested and strategies developed in order to mitigate the problem, including the attempts to increase the number of back-up judges and expert associates. Unfortunately, the application of these methods when attempting to reduce the number of unsolved cases is, in a way, prevented by the lack of financial resources. The problems related to processes of executing legal decisions are still a serious problem in the BiH's judicial system. Execution proceedings subjects comprise over 60% of all unsolved cases at all courts in Bosnia and Herzegovina. There are estimates that it would take the judiciary system in Bosnia and Herzegovina five years to solve all the cases pending in execution proceedings, provided that no other subject is received in that period. The permanent judiciary problem in Bosnia and Herzegovina, which is the result of a complex constitutional structure of BiH to a great extent, is a fragmented and bulky court financing system. Currently, the courts in Bosnia and Herzegovina are financed by 14 different budgets, and 14 different ministries of justice and finance are involved in the process. The proposal of the High Judiciary and Prosecuting Council of BiH is to establish a uniform court financing source in Bosnia and Herzegovina, but it has not encountered positive reactions and has not been transformed into concrete legal proposals. Inadequate functioning of

³ Civil Initiatives Centre: „Monitoring the BiH Parliamentary Assembly's Work for the Period 01.01. – 31- 12- 2007“, 9 February 2008, available at <http://www.ccibh.org/data/ParlamentBiH2007.pdf>

the budget system in relation to the courts implies that the High Judiciary and Prosecuting Council must often seek financial help from international donors. Finally, insufficient funds for courts' work means that the judicial system is often unable to solve the issue of a large number of unsolved cases and other tasks, which considerably encumber the work of a great number of courts, negatively reflecting on the compliance with the principle of the rule of law, as the foundation stone for a democratic society.⁴

Human rights in legislation

1. Constitutional provisions.

Article II of the BiH Constitution

1. Human Rights

Bosnia and Herzegovina and both entities will ensure the highest level of internationally acknowledged human rights and fundamental freedoms. For that purpose, Human Rights Commission for BiH was formed, as stipulated in Annex 6 of the General Outline Agreement.

2. International Standards

Rights and freedoms stipulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in its protocols are directly applied in Bosnia and Herzegovina. These acts have the priority over any other law.

3. Rights Catalogue

All persons on the Bosnia and Herzegovina territory practice human rights and freedoms under Paragraph 2 of this Article, which includes:

- a) The right to life.
- b) The right not to be subjected to torture and inhuman or degrading treatment or punishment.

⁴ Reports on the work of the High Judicial and Prosecuting Council of BiH are available at <http://www.hjpc.ba/pr/?cid=3329,2,1>.

- c) The right not to be kept as a slave or subject, or in forced or compulsory labour.
- d) The right to personal freedom and safety.
- e) The right to fair hearing in civil and crime issues and other rights related to penal proceedings.
- f) The right to private and family life, home and correspondence.
- g) Freedom of thought, conscience and faith.
- h) Freedom of expression.
- i) Freedom of peaceful gathering and the freedom of associating with other people.
- j) The right to marriage and starting a family.
- k) The right to property.
- l) The right to education.
- m) The right to freedom of movement and residence.

4. Non-Discrimination

Practice of rights and freedoms, set forth in this Article or in international agreements mentioned in Annex I of the Constitution, is ensured to all persons in Bosnia and Herzegovina without discrimination on any basis, such as sex, race, skin colour, language, faith, political and other opinion, national or social origin, relations with the national minority, property, birth or another status.

5. Refugees and Displaced Persons

All refugees and displaced persons have the right to return freely to their homes. They have the right, pursuant to Annex 7 of the General Outline Agreement, for their property they were deprived of during 1991 hostilities to be returned, and to be compensated for all the property, if it cannot be

returned. Any obligations or statements associated with such property given under compulsion are null and void.

6. Implementation

Bosnia and Herzegovina, and all courts, institutions, administrative bodies, and organs indirectly managed by entities or operating within entities are subject to or they comply with human rights and fundamental freedoms mentioned in Paragraph 2.

7. International Agreements

Bosnia and Herzegovina will remain or become a contracting party in international agreements listed in Annex I of the Constitution.

8. Cooperation

All competent administrative bodies in Bosnia and Herzegovina shall cooperate with and provide unlimited access to:

all international observation mechanisms for human rights established for BiH; supervisory bodies established by any international agreement under Annex I of the Constitution; International Tribunal for the former Yugoslavia (and they shall especially comply with orders issued based on Article 29 of the Tribunal Statute); and any other organisation authorised by the UN Security Council with a mandate associated with human rights or the humanitarian law.

Article X – Modifications and Amendments

...

2. Human Rights and Fundamental Freedoms

No right or freedom under Article II of the Constitution can be eliminated or reduced or this provision modified by any amendments to this Constitution“

However, with such provisions, there are still dilemmas regarding the relation between the BiH Constitution and, above all, the European convention.

In addition to these rights, and the rights under the European Convention as a whole, the Annex I of the BiH Constitution provides the possibility of protection of other 15 international instruments for human rights protection. The key to applying these instruments is in Article II/4 of the BiH Constitution, not mentioned earlier, based on which there is a possibility of referring to one of the above instruments for human rights protection, in case of any form of discriminatory behaviour by public authorities.

Annex I of the BiH Constitution

Additional Agreements on Human Rights to be Applied in Bosnia and Herzegovina

1. Convention on Preventing and Punishing Genocide Crimes (1948)
2. Geneva Conventions I-IV on the Protection of War Victims (1949), and Complementary Protocols I-II (1977)
3. Convention Concerning Refugees' Status (1951) and the Protocol (1966)
4. Convention on Citizenship of Married Women (1957)
5. Convention on the Reduction of the Number of Stateless Persons (1961)
6. International Convention on Eliminating All Forms of Racial Discrimination (1965)
7. International Pact on Civil and Political Rights (1966) and Optional Protocols (1966 and 1989)
8. International Pact on Economic, Social and Cultural Rights (1966)
9. Convention on Eliminating All Forms of Discrimination towards Women (1979)

10. Convention against Torture and Other Kinds of Brutal, Inhuman or Degrading Treatment and Punishment (1987)
11. European Convention on Preventing Torture, Inhuman or Degrading Treatment and Punishment (1987)
12. Convention on the Rights of the Child (1989)
13. International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families (1990)
14. European Charter for Regional Languages and Minority Languages (1992)
15. Outline Convention for the Protection of National Minorities (1994).⁵

Individual Rights

1. Human Rights and Education: the Right to Education

Year after year, the right to education is a top issue in political debates in the BiH's political life. Nevertheless, the debates have not resulted in an adequate legal framework which would prevent civil rights violation. On the other hand, where there is a legal framework, it is not good enough to prevent discriminatory behaviour of public authorities in this field.

1.1. Legal provisions.

The right to education is included in the Constitutional text as one of the basic rights. Article II/3.1 stipulates that the right to education is ensured to all persons on the territory of Bosnia and Herzegovina.

⁵ *Bosnia and Herzegovina, Essential texts* (2nd revised and updated edition), OHR. Conclusions on the correctness of the translation of the BiH Constitution are to be made based on the foreword by the High Representative for BiH, Carl Bildt, on Constitutional texts of the OHR (publ.) Sarajevo, 1996 which is, in any case, a good bases for clarification: «The English language contained in this booklet is the agreed text contained in the Peace Agreement. The Bosniac, Serb and Croat texts which the parties have been using themselves. sudski A legal expert from Sarajevo has looked at these texts, and believes that each of them represents an accurate translation of the English» (sic).

Article 2 of the Protocol no. I attached to the European Convention, which is an integral part of the constitutional system of Bosnia and Herzegovina also defines the scope of this right.

Article 2 of the Protocol no. I attached to the European Convention:

“No individual may be deprived of the right to education. In performing its functions in the field of education and teaching, the state respects the right of parents to ensure such education and teaching in accordance with their own religious and philosophical beliefs.”

Based on the European Convention on the Protection of Human Rights and Fundamental Freedoms and its court practice, the right to education covers all forms of education provided by the state¹. The right to education includes:

- *the right to access* educational institutions at any moment;
- the right to *efficient education*;
- the right to *official recognition* of the studies the student had successfully completed.

The last two rights imply that an individual has to have the possibility to take advantage of his/her acquired knowledge, and that any form of a pupil's acquired education has to be recognised. That implies the right to be provided with an official recognition on completed studies, in one form or another.⁶

As stated above, the European Convention on the Protection of Human Rights and Fundamental Freedoms also protects parents' “*religious and philosophical beliefs*”. The court practice expanded the clause by stressing that its aim is “protection of pluralism possibilities in education, which is essential for the maintenance of a 'democratic society', as conceptualised by the Convention”, and stipulates that “the state shall make sure the information or knowledge included in the teaching plan and programme are transferred in an objective, critical and pluralistic manner. The state is forbidden to pursue the goal of indoctrination [implemented by the state or a teacher], which may be deemed as disregard for parents' religious and philosophical beliefs”⁷.

⁶ European Human Rights Tribune, *Belgian Linguistics Case*, A 6, 1968.

⁷ European Court for Human Rights, *Kjeldsen, Busk Madsen and Pedersen*, B 21, 1975, paragraph 53.

We shall especially remind of the already mentioned international instruments for human rights protection, set forth in Annex I of the BiH Constitution.

1.2. International Covenant on Economic, Social and Cultural Rights.

On March 6 1992, BiH formally ratified the International Pact on Economic, Social and Cultural Rights, and the basic features of the education system should include:

- *Availability.* Education has to exist, has to be sufficient and has to be in an appropriate context.
- *Accessibility.* Education has to be non-discriminatory and physically accessible to any individual.
- *Acceptability.* The form and content of education, including teaching plans and programmes and teaching methods have to be relevant and have to be culturally adjusted to students and parents.
- *Adjustability.* The education system has to be adjustable to the needs of the changing society and meet students' needs in their diverse social and cultural environments.

As regards the right to education, the state has three obligations: to respect, protect and implement the right. In order to do so, the state has to supervise education carefully, including all relevant policies for action, institutions and programmes, in order to identify and take measures to eliminate any *de facto* discrimination, and establish and maintain an efficient supervision system for achieving the above goals.

1.3. Convention on the Rights of the Child.

Convention on the Rights of the Child, which Bosnia and Herzegovina ratified in 1993 and confirmed by Annex 4 of the General Outline Agreement for Peace, deals with education set forth in two different Articles. Article 28 of the Convention deals with the right *to* education (the right to elementary, secondary (general and professional) and higher education, while Article 29 (1) deals with rights *within* education. It should be noted that the general commentary on its implementation further explains that “*the right of the child is not just the question of approach, but content*», and it stipulates that Article 29 (1) “*stresses individually and subjectively the right to specific quality of education... therefore the*

teaching plan and programme has to be directly relevant for the child's social, cultural, environmental and economic context”⁸.

1.4. Post-Admission Obligations to the Council of Europe.

Upon being admitted in the Council of Europe on 24 April 2002, Bosnia and Herzegovina took over a couple of obligations in the field of education. The so-called post-admission obligations of Bosnia and Herzegovina order that Bosnia and Herzegovina should adopt, pursuant to the Council of Europe standards, the Law on Schools, both on the state level and entity level⁹. Bosnia and Herzegovina also obliged to „*maintain and continue the reform in the field of education and eliminate all segregation and discrimination aspects based on ethnic origin*”¹⁰. At last, Bosnia and Herzegovina assumed the duty of signing and ratifying Convention of the Council of Europe and the UN Education, Science and Culture Organisation (UNESCO) on acknowledging qualifications related to higher education in the European region, pursuant to the Lisbon Convention on Degree Recognition.

1.5. Practice.

1.5.1. Nine-year education.

Article 16 Paragraph 3 of the Outline Law commands that “*competent education authorities in Bosnia and Herzegovina are obliged, not later than June 2004, to ensure all the conditions necessary for normal commencement of nine-year elementary school education*”. This is a very strong obligation imposed in the RS and cantons, which includes meeting a deadline.

Republika Srpska fully introduced the nine-year education at the beginning of the 2003/04 school year, even before it was established as an obligation based on the Outline Law. In the Federation of BiH (hereinafter: the Federation of BiH), at the beginning of the 2004/05 school year, the

⁸ See the Committee on the Rights of the Child, Article 29 (1): Aims of Education: 08/02/2001, CRC General Commentary I, Paragraph 9.

⁹ Parliamentary Assembly of the Council of Europe, “Opinion on BiH's Membership in the Council of Europe”, Opinion no. 234 (2002) (adopted as of 22 January 2004), Paragraph 15, Item iv(d).

¹⁰ *Id.*, Paragraph 15, Item v(k). It should be noted that most conventions dealt with in this report have non-discriminatory clauses (Article 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, Article 2.2 of the International Pact on Economic, Social and Cultural Rights, Article 2 of the Convention on the Rights of the Child).

Ministry of Education of the Federation of BiH coordinated the preparation of the concept of the nine-year education model and the plan and programme model for the first grade of the nine-year education, with data and approval from cantonal ministries and their pedagogical institutes. In respect of the nine-year education on the cantonal level, the process was conducted with great difficulty – most cantons claimed that the lack of funds is the reason for untimely introduction of nine-year education.

The consequences of the absence of uniform duration of education are numerous. The most dramatic fact is that it might be a serious obstacle to student mobility, which might, on the other hand, be an obstacle for the freedom of movement.

1.5.2. Professional education and training.

Inconsistent implementation of education law and reforms in different parts of the country, as well as the effects on student mobility, is an issue in the professional education and training. Due to the absence of strong coordination mechanisms and authorities for ensuring quality, as well as appropriate legislature which would establish uniform standards in whole BiH (such as departments for professional education and training within the Standards and Assessment Agency and the Agency for Education Plans and Programmes, as defined in the Outline Law on Elementary and Secondary Education), there are huge differences among schools regarding the quality of education the students are provided with.

1.5.3. Higher education.

Late adoption of the legal framework in the field of higher education (on 30 July 2007) is a serious hindrance for implementing a reform within the state as well as for implementing the state's international obligations. Due to this vacuum on the state level, university representatives on all levels, as well as the entity and cantonal Ministries of Education, require the adoption of additional amendments of existing laws on higher educations on lower levels, in order to help the universities apply the programmes in accordance with the Bologna Process.

1.5.4. Education has to be acceptable to any individual.

The principle that education has to be acceptable to any individual especially refers to rights *within* education. According to the international law, education needs to be not just accessible and available, that is, the state

cannot simply ensure the existence of education which is opened for all individuals without discrimination. The international law also includes obligations regarding the content of education. First of all, the state needs to make sure that what is taught is culturally relevant for students and their parents and that neither the state nor the teachers indoctrinate the children in such a manner which might be deemed as disregard for parents' religious and ideological beliefs.

As stated in the Report of the European Commission for Racist and Intolerance Issues for BiH: *“According to reports, schools are still very often mono-ethnic, students and teachers speak one language only and they use just one type of letters depending on ethnicity and political position of local authorities, including the issue of religion”*¹¹. Furthermore, it is also stated that, often, teaching plans and programmes of neighbouring countries are used. This issue is especially significant for children of returnees and minority community members. In general, respecting the principle of acceptability will make sure that education achieves one of its primary goals: *“development and respect for human rights and freedoms”* and *“building respect for the child’s parents, his/her cultural identity, language and values, for national values of the country the child lives in..”* (Article 29 (1) of the Convention on the Rights of the Child).

1.5.5. Common Basis of Teaching Plans and Programmes.

Article 59 Paragraph 4 of the Outline Law on Elementary and Secondary Education defines that all schools in Bosnia and Herzegovina have to start applying the Common Basis of Teaching Plans and Programmes, not later than the beginning of 2003/2004 school year. Although the Common Basis of Teaching Plans and Programmes does not solve the problem of presence of ethnic element in teaching plans and programmes throughout the whole country, it can still be regarded the first step in the right direction. The Common Basis of Teaching Plans and Programmes *“consists of teaching plans and programmes with as broad common basis as possible for all subjects of elementary and general secondary education”*.¹²

¹¹ ECRI Report, Paragraph 30.

¹² Article 43 Paragraph 1 of the Outline Law on Elementary and Secondary Education.

1.5.6. Differences between teaching plans and programmes, national group of subjects and schoolbooks.

As mentioned above, the Common Basis of Teaching Plans and Programmes is not a single plan and programme, but common elements which have to be included in all teaching plans and programmes effective in the country. In most cantons and in Republika Srpska, there is just one valid teaching plan and programme, and that is the plan of the ethnic majority in the canton/entity. In practice, this means that teaching plans and programmes are still ethnically charged in the whole country. The ethnic element is evident, first of all, in the subjects such as the mother language, literature, geography, history, nature and society and religion. For example, in some plans and programmes for history, the country referred to is still one of the neighbouring countries, and not Bosnia and Herzegovina.

Based on the plans and programmes inspected, and schoolbooks used in Bosnia and Herzegovina, we can currently only deduce that *“the needs of children not belonging to the majority ethnic community have not been met in BiH schools yet”*¹³.

1.5.7. Education has to be accessible and available to any individual – without discrimination and segregation.

Education accessible and available to any individual is the foundation stone of all BiH's international obligations related to education.

It can be stated that discrimination in employment and education is still a key obstacle to sustainable return. The European Commission on Racism and Intolerance “expresses its concern for BiH students still facing segregation in accessing education”. The Venice Commission mentions *“the existence...of a highly segregated education system...which still represents the main obstacle on the path to better future”*.¹⁴

In most examples there is a certain aspect associated with discrimination. For instance, as regards the issue of education efficacy, the fact that some teachers in the Mid-Bosnian Canton use services of the Pedagogical Institute is discriminatory to the students whose teachers do not have that kind of support. The issue of discrimination is most reflected in the two

¹³ ECRI Report, Paragraph 44.

¹⁴ Opinion of the Venice Commission, Paragraph 20.

most prominent types of discrimination: school names and symbols and *“two schools under one roof”*.

1.5.8. School names and symbols.

The issue of school names and symbols has been mentioned by now mainly in the context of returnee students¹⁵. The Coordination Committee for the Implementation of the Temporary Agreement adopted the School Names and Symbols Criteria and elaborated the prototypes of bylaws regulating the issue. In a nutshell, the Criteria were established for the school names and symbols present in school buildings, schoolyards and school property in order to make sure the names and symbols stimulate the feeling of inclusion and welcoming for all returnee students, constitutional nations and national minorities¹⁶.

There were efforts to remove inappropriate symbols in schools in the area of Ljubuški, Foča, Bratunac and Zenica. In most mono-ethnic areas, school symbols are still present in school corridors and classrooms (religious icons in some schools in Republika Srpska, photos of political leaders in the West Herzegovina Canton and Sarajevo Canton, photos of the Pope in some schools in the Herzegovina/Neretva Canton). In addition, some schools in the Una/Sana Canton recently participated in sending students to assemblies celebrating events from the past War or stopped working in schools so that students and professors could participate in demonstrations against Kosovo independence proclamation, and justified their decisions with students' safety, which is in opposition with the provision of the Criteria that schools may not organise or lead students in an unorganised manner to assemblies celebrating war or political events.

Though the returnee population gives significance to school names and symbols, the question of culturally adjusted education is important for all constitutional nations and minorities in Bosnia and Herzegovina.

¹⁵ The Plan for the Implementation of the Temporary Agreement as of 5 March 2002, on meeting special needs and rights of returnees' children ensured the conditions for meeting educational needs of the children.

¹⁶ For instance, the Criteria stipulate that the name of the school is regarded appropriate if it refers to the name of a recognized scientist, writer or another artist from the teaching plan used in schools throughout the whole BiH and if it does not represent a date of an event, a military unit or a person from a war.

1.5.9. “Two schools under one roof”.

The phenomenon “two schools under one roof” might be the most apparent example of segregation in schools in Bosnia and Herzegovina and has been the object of numerous observations and pressure exerted by the international community, and delay and obstructions local authorities have been to blame for, for more than two years. Despite intensive appeals by the Peace Implementation Council¹⁷, interventions from the Office of the High Representative (OHR) and pressure by the international community, there are still 54 “two-schools-under-one-roof” cases¹⁸. In many of these schools, Bosniak and Croatian children, as well as their teachers, have no contact with each other. Students often enter the schools through separate entrances and have separate breaks, while the teachers do not use the same staff rooms.

After intensive pressure exerted by the international community, in July and August 2003, all the three Ministries of Education of these cantons issued instructions on administrative and legal unification of these schools¹⁹. Though the situation on site somewhat varies in each canton, the final result is the same: there is almost no progress.

This issue directly refers to the post-admission obligation of BiH to the Council of Europe to eliminate segregation in its education system and, though the Council of Ministers is obliged to make sure Bosnia and Herzegovina meets its international obligations, it has neither resources nor competences in cantons to ensure their implementation. The Ministry of Education of the Federation of BiH also played an insignificant role in the process, while cantons did not coordinate their work in any way so as to agree on how the problem can be solved in a sustainable and uniform manner.

1.6. Main issues.

In addition to constitutional provisions, Bosnia and Herzegovina signed numerous international agreements on education obliging the state to implement certain education standards in the country. In general, the agreements promote

¹⁷ During its session in June 2003, PIC appealed to administrative and legal authorities regarding „two schools under one roof“.

¹⁸ See the combination under Article 2.(2), prohibiting discrimination, and Article 13 (the right to education) of ICESCR. The state is obliged to «*guarantee*» that the right to education will be “*practiced without any kind of discrimination*”.

¹⁹ Registration of existing schools as a legal entity and uniform administration.

the same principles: accessibility, availability, acceptability, efficacy and official recognition of degrees, non-discrimination, non-segregation in education, and the obligation to maintain and continue the reform. With 13 Ministries of Education and state Ministries of Civil Affairs²⁰, with competences in education for estimated 3,8 million people, the system remains highly fragmented. Although the state is taking over international obligations, such as the Lisbon Convention on Degree Recognition, it has no capacities for ensuring the implementation of the obligations, or for efficient coordination of education initiatives, and ensuring certain agreement among different education initiatives throughout the country.

2. Access to Rights: National Human Rights Institutions in the Country

Introduction

2.1. BiH Constitution.

Human rights protection in Bosnia and Herzegovina is defined in the Dayton Agreement. In the past period, human rights in the former Yugoslavia were protected by Yugoslavian law and international contracts the country had acceded to. State structure transformation created a new situation. It was necessary to wait for the armistice, which was ensured by the Dayton Agreement for the human rights protection to be redefined simultaneously with the Constitution. In Article II/6 of the BiH Constitution it is stated that:

„Bosnia and Herzegovina, and all courts, institutions, authorities, and organs indirectly managed by or operating within entities are subject to or they comply with human rights and fundamental freedoms mentioned in Paragraph 2.“²¹

Pursuant to the previous provision, though there are institutions with the basic competence of observing alleged violations of human rights, such as (state and entity) constitutional courts and (state and entity) ombudsmen, all public authorities are obliged to protect citizens' human rights.

²⁰ Formally speaking, there are 12 Ministries of Education (of the RS, of the FBiH and of ten cantons) and the Education Department in Brčko District.

²¹ *Bosnia and Herzegovina, Essential texts* (2nd revised and updated edition), OHR.

2.2. Human Rights Protection System.

Starting from the BiH Constitution, human rights are also defined in constitutions of both entities of Bosnia and Herzegovina (of the Federation of BiH and Republika Srpska), but in the Statute of Brčko District of Bosnia and Herzegovina as well and in constitutions of 10 cantons in the Federation of BiH. Republika Srpska Constitution, however, unlike the above-mentioned, does not touch upon international standards for the protection of human rights or the Ombudsman institution. If we take into consideration the existing framework, it can be said that citizens of Bosnia and Herzegovina enjoy the greatest human rights protection standards, at least in theory. The system of human rights protection in Bosnia and Herzegovina also has institutional framework where the following institutions represent exclusive human rights protectors:

- Ombudsman Office for Human Rights in Bosnia and Herzegovina
- Ombudsman Institution of the Federation of BiH
- Ombudsman of Republika Srpska
- Constitutional Court of Bosnia and Herzegovina
- Constitutional Court of the Federation of BiH
- Constitutional Court of Republika Srpska

These national institutions for human rights protection can be divided into two subgroups: (1) institutions passing legally binding decisions (regular courts, entity constitutional courts and the Constitutional court of Bosnia and Herzegovina) and (2) institutions passing decisions not legally binding and made in the form of recommendations (all ombudsman institutions). These items are not the only ones on the list of national institutions for human rights protection, since, pursuant to Article II/6 of the BiH Constitution, all state, entity, judicial, legislative and executive authorities are obliged to respect and protect human rights.

2.3. Human Rights Ombudsman Office of Bosnia and Herzegovina – Legal Framework.

As of 3 January 2001, the Law on Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH no. 32/00) replaced the Annex 6 of the Dayton Peace Agreement and became the legal foundation for this institution's work. However, the basis of the above Law is in the provisions of the Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina. Therefore, it should be noted that it stipulates founding of the Human Rights Commission in Article 2 of Chapter II.

2.3.1. An Overview.

Ombudsman institutions functioning currently in Bosnia and Herzegovina, or the Human Rights Ombudsman for BiH, ombudsmen of the Federation of BiH and ombudsmen of Republika Srpska, were founded based on the peace treaty (except for the Republika Srpska Ombudsman). The Dayton Agreement, effective as of 14 December 1995, established BiH as an extension of the Republic of Bosnia and Herzegovina, consisting of two entities, the Federation of BiH and Republika Srpska.

Last year, activities of electing three new Ombudsmen of Bosnia and Herzegovina were started but the announced competition was cancelled by the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina due to the impossibility of obtaining a sufficient number of representatives' votes for nominated candidates. Though it does not seem a political issue, the election was burdened exactly by weak functioning of the governing coalition which could not agree on the common list of candidates for the three positions, since one of the three ombudsmen is a Bosniak, one is a Serb, and one is a Croat. Whoever gets elected as Ombudsmen on the level of Bosnia and Herzegovina, their work is, due to such developments, doomed to fail since it became more than obvious (and this is how it was with the earlier election as well, which was also accompanied with deep involvement of politics) that politicians want eligible ombudsmen who will not be independent and impartial. In this way, the authorities want to avoid possible criticism on its work. This is what it managed to do in the past since the present three ombudsmen were also appointed by the Presidency of Bosnia and Herzegovina in a non-transparent way with direct political involvement in the process. On the other hand, the legal obligation is to unite the three ombudsman institutions, but the process has been halted till new BH ombudsmen are

appointed for almost the whole year. The very fact that citizens there are ideas in the citizens' awareness that entity ombudsman institutions "are just about to perish" did not contribute to the citizens' trust for their work, but the contrary.

Due to all the above stated, the only proper and exclusive protectors of human rights in the last year were regular courts and entity constitutional courts with their "abstract" jurisdictions, and the most important role, nevertheless, belongs to the Constitutional Court of Bosnia and Herzegovina (hereinafter: the Constitutional Court of BiH), since it has appellate jurisdiction which brings it much closer to the system of human rights protection before the European Court for Human Rights.

2.4. The Constitutional Court of BiH.

The Constitutional Court of BiH has existed in Bosnia and Herzegovina since Bosnia and Herzegovina was one of the former Yugoslavian republics. It was founded on 15 February 1964, pursuant to the 1963 Constitution, and continued to exist based on the 1974 Constitution. The jurisdictions of the originally formed Constitutional Court of BiH were primarily directed to abstract normative control such as the assessment of the compliance of republic zones with the Constitution and regulations of other general acts, self-governance acts as well as solving disputes between the Republic and other social/political communities and conflicts between the jurisdictions of courts and social/political community authorities.

Having defined the preconditions for further development of democratic political system and market economy and having modified the internal state structure, the 1995 BiH Constitution (Annex 4) also established the institutional framework of the BiH Constitutional Court on completely new and different political and legal bases in relation to the previous period. Upon changes made, the constitutional position and jurisdictions made the BiH Constitutional Court compatible with constitutional judiciary standards – and an independent „constitution guardian“ as well as an institutional arbitrator for protecting human rights and freedoms.

2.4.1. Constitutional Position.

The BiH Constitution (as Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina), effective as of 14 December 1995, provides constitutional/legal framework for the establishment and

functioning of the Constitutional Court on completely new political and legal bases in relation to the previous period.

2.4.2. Jurisdictions.

Generally speaking, the Constitutional Court's jurisdictions are defined in Articles VI/3 and IV/3 of the Constitution. Within its basic task – supporting the BiH Constitution, according to these constitutional provisions, there are five types of jurisdictions, which ultimately include differentiated actions, as well as specific decisions depending on the kind of jurisdiction and the nature of disputes.

Basically, the differentiation of the jurisdictions is based on the fact to which extent the Constitutional Court, apart from its classic mission related to the protection of constitutionality, manages to establish even more direct relations with judicial or legislative authorities in some disputes

1. Disputes related to jurisdiction conflicts and abstract control of constitutionality (Article VI/3.a of the BiH Constitution)

a) Disputes related to jurisdiction conflicts

The Constitutional Court has exclusive jurisdiction of ruling upon all disputes arising from the Constitution between two entities, or between BiH and one of or both entities, or between BiH institutions. Basically, here the Court decides upon positive or negative jurisdiction conflicts, as well as on any other disputes that may arise in relations between state and entity authority structures or BiH institutions.

b) Law constitutionality assessment

The Constitutional Court is competent to decide if any provision of the Constitution or entity law is in compliance with the BiH Constitution.

Although the Constitution explicitly only talks about "entity law provisions", the next general task of the Court to support the BiH Constitution, this does not exclude assessment of constitutionality of BiH laws as well.

As a special case of supporting the Constitution, the Court is also competent to check if the entities' decision to establish special parallel relations with the neighbouring country in compliance with this Constitution, including the provisions related to the BiH's sovereignty and territorial integrity as well.

c) Raising disputes

In both above-presented cases, according to the Constitution, disputes can be raised only by a certain circle of entities authorised for raising disputes: a member of the BiH Presidency, the President of the Council of Ministers, the President or Vice-President of either of the Parliamentary Assembly Houses, one fourth of members/delegates of either of the Parliamentary Assembly Houses, or one third of members of any House of an entity's legislative authority.

Within its total jurisdiction of supporting the Constitution, the Constitutional Court is not restricted to engaging in constitutionality assessment of any law by its own initiative. However, in the Constitutional Court Rulebook, the principle of self-restriction is applied, so the Constitutional Court's work is not regulated by its own initiative when assessing the law constitutionality.

2.4.3. Appellate jurisdiction (Article VI/3.b of the BiH Constitution).

The appellate jurisdiction of the Constitutional Court was established based on the constitutional provision according to which the Court "has appellate jurisdiction in constitutional issues which arise based on the adjudication of any court in Bosnia and Herzegovina"²².

This means that the Constitutional Court represents the highest legal instance in relation to BiH courts, which confirms its role as a special institutional guarantor of protection of human rights and freedoms defined by the Constitution. It should be stressed that there are two basic formal conditions for an issue submitted to the Constitutional Court to be

²² The application of the appellate jurisdiction of the BiH Constitutional Court in practice is similar in contents to the decisions of the European Human Rights Court in Strasbourg, since the BiH Constitutional Court directly applies the European convention and organisation-wise, the BiH Constitutional Court „copied“ the solutions of the European Human Rights Court and introduced the registrar function and enforced additionally the consultants' function at the Secretariat, or at the Registrars' Office in a similar manner the system functions at the European Human Rights Court.

acceptable – exhausting effective remedies, which means that the person who wants to submit an appeal to the Constitutional Court has to first exhaust all effective remedies before regular courts and only then submit an appeal to the Constitutional Court within 60 days from the day of receiving the last decision which defined the main matter.

The Constitutional Court's rules provide a constitutional provision defined in such a manner that the Constitutional Court, if it finds the appeal well-founded, it can act in two ways: the Court can act as a court with full jurisdiction or decide upon the main case, or annul the adjudication and return the case to the court which made the adjudication for reprocessing. The court of which adjudication was annulled is obliged to make another one urgently, and it is bound with legal judgement of the Constitutional Court on the violation of the appellant's rights and fundamental freedoms guaranteed by the Constitution.

Appellants, or individuals regarding an adjudication or another decision of any court infringes their rights, have the right to submit an appeal upon exhausting all effective remedies, while the Constitutional Court also takes the efficiency of possible remedies and if the appeal was submitted within 60 days from receiving the last decision which defined the main matter²³.

2.4.4. Issues forwarded by other courts (Article VI/3.c of the BiH Constitution).

The Constitutional Court has jurisdiction in cases forwarded by any court in Bosnia and Herzegovina regarding the issue if the law effectiveness of which its decision depends on is compatible with the Constitution, European Convention or BiH laws; or regarding the existence or reach of a general rule of the international public law.

According to the general rule, the Constitutional Court can support a law relevant for the decision of a lower court or proclaim it void and null. The above lower court is then obliged to act pursuant to the decision of the Constitutional Court.

²³ The BiH Constitutional Court's decisions are available at www.ustavnisud.ba.

2.4.5. Un-Blockage of the Parliamentary Assembly (Article IV/3.f of the BiH Constitution).

The Constitutional Court's jurisdiction in case of "blockage" of the BiH Parliamentary Assembly House of Commons in respect of the vital interest represents, on many bases, an atypical form of activity of a constitutional/judicial instance, since, practically, in this manner "close contact" between "constitutional/judicial" and "legislative" authorities is established.

Here, the Constitutional Court solves a dispute where a Parliamentary Assembly's decision is proposed, based on the majority opinion of delegates of one of the constitutional nations, destructive of the vital national interest, while all parliamentary resources for solving the issue are exhausted at the House of Commons.

Non-execution of the BiH Constitutional Court's decisions is sanctioned by Article 239 of the *BiH Criminal Law* 30. An official at an institution of BiH, entities or Brčko District who refuses to execute the final end executive decision of the BiH Constitutional Court or prevents its execution, or obstructs its execution in another manner shall be sentenced with six months to five years of prison.

2.5. Work of the BiH Constitutional Court in 2007.

Pursuant to its Orientation Work Plan for 2007, the BiH Constitutional Court planned, in the first half of 2007, to invest maximum efforts in solving the remaining unsolved issues of the Human Rights House/Commission²⁴. To be precise, the Human Rights Commission at the BiH Constitutional Court did not manage to solve all cases inherited from the former Human Rights House for BiH till the end of its mandate – 31 December 2006. In January 2007, a new Agreement was signed pursuant to Article XIV of Annex 6 of the General Outline Agreement for Peace in Bosnia and Herzegovina, according to which the Human Rights Commission at the Constitutional Court BiH ceased to work as at 31 December 2006, and the unsolved subjects were taken over by the Constitutional Court for solution. There were 526 unsolved issues.

²⁴ Human Rights Chamber, available at <http://www.hrc.ba/bosnian/home.htm>.

Pursuant to the above Agreement, the BiH Constitutional Court, in January 2007, adopted a Decision on Establishing a Temporary Department for solving the remaining issues of the Human Rights House/Commission within the Secretariat of the BiH Constitutional Court, by which, among other things, actions and conditions for performing work, the number of workers and other issues related to the Department's work were defined. Also, in January 2007, rules for taking action for solving the cases were passed and all activities necessary for realising adopted decisions and starting of the Department's work were carried out²⁵.

The above Department worked on a temporary basis, starting from 1 January 2007 to 30 June 2007, in which period 6 sessions of the Minor Council and 3 sessions of the Senior Council were held. Great efforts were invested and the planned goal was achieved, that is, all 526 cases were solved.

Starting from 1 January 2007, the total number of unsolved issues at the Constitutional Court, *without unsolved cases at the House/Commission taken over by the Constitutional Court in its work*, was 2967 cases (12 U cases and 2955 AP cases).

During 2007, from 1 January to 31 December, the Constitutional Court *received the total of 3666 cases*, of which *18 requests for constitutionality assessment and 3648 issues under the appellate jurisdiction of the Constitutional Court*.

It can be deduced from the above that there were 6633 *issues* in total at the Constitutional Court during 2007, transferred from the earlier period and received during the year.

Out of the above number of issues, till 31 December 2007, the Constitutional Court *solved the total of 2051 cases (20 U cases and 2031 AP cases)*, as follows:

- out of the number of cases it had on 1 January 2007 – cases from 2005 and 2006 (2967), it closed 1715 cases (8 U cases and 1707

²⁵ More information on the Human Rights Commission at the Constitutional Court of BiH available at <http://www.hrc.ba/commission/bos/default.htm>.

- AP cases*), while 1252 cases remained pending from the above period (*4 U cases and 1248 AP cases*),
- out of the number of cases it received after 1 January 2007 (3666), 336 cases were closed (*12 U cases and 324 AP cases*), while 3330 cases remained pending from the above period (*6 U cases and 3324 AP cases*).

After 31 December 2007, *the total of 4582 unsolved cases remained at the Constitutional Court (10 U cases and 4572 AP cases)*.

In 2007, the Constitutional Court adopted 1014 decisions out of which 165 decisions on main cases and 849 decisions on admissibility. In 797 cases, it was established in the decision that the rights of appellants were violated, out of which 683 cases were connected, and related to missing persons, foreign currency savings, non-execution of the decision due to war damage.

The Constitutional Court continuously monitored the execution of adopted decisions of the Constitutional Court, as well as of the Human Rights House/Commission, took adequate measures for achieving their execution and passed 21 resolutions on decision non-execution; out of which 3 refer to the Constitutional Court's decisions and 18 to the decisions of the Human Rights House/Commission.

During 2007, there were 112 requests for revising decisions at the Constitutional Court, out of which 48 were transferred from 2006, a and 63 received in 2007. Out of this number, during 2007 42 requests were solved, and on 31.12.2007, 70 requests remained unsolved.

During 2007, there were 273 requests for passing temporary measures out of which 212 were solved, 5 requests for passing a temporary measure were adopted, while 61 of them remained unsolved, as at 31.12.2007.

It can be deduced from the above statistic data that the Constitutional Court solved 2051 cases of those received and 526 cases inherited from the Human Rights House/Commission as at 31 December 2007, while the total of 4582 cases remained pending.

The Constitutional Court's maximum focus on and engagement in solving the cases inherited from the Human Rights House/Commission in the first half of 2007, despite great efforts invested, resulted in the prolongation of the framework period of 12-13 months for solving the cases from the

moment of their receipt at the Constitutional Court, which it managed to maintain, with minor exceptions in the earlier period. This was also certain at the time of adopting the Orientation Plan of the Constitutional Court for 2007. In order to have as good performance as possible, the Constitutional Court continuously monitored and analysed its work during the year, and took specific steps accordingly. For instance, at its plenary sessions, it considered information on Constitutional Court Rulebook, with proposals of its modifications and amendments. The above information aimed at drawing attention to gaps in the existing Rulebook, as well as the possible guidelines for action in view of modifications and amendments of the Rulebook. A Work Group was formed, which would prepare the initial Draft of modifications and amendments of the Constitutional Court Rulebook, pursuant to suggestions and proposals submitted, in order for the proposal to be confirmed by the Commission and adopted by the Constitutional Court. Preparation of modifications and amendments of the Rulebook, which will, among other things, contribute to the increase of work efficacy, is to be completed next year, 2008.

Furthermore, by monitoring incoming cases and the work on the subjects, by analysing the existing Secretariat organisation, the Constitutional Court modified/amended its organisation with a new department – the Department for Considering Admissibility, as a new organisational unit which would work on the admissibility of requests for initiation of proceedings, appeals and other submissions. This is how foundations for taking steps for engaging the department in the process of work on the cases were made, which will ensure higher promptness and efficacy in work.

In this reporting period, the Constitutional Court held 50 sessions - 9 plenary sessions, 14 sessions of the Five-Member Council and 27 sessions of the Minor Council. Easy work of the Constitutional Court at its plenary sessions is ensured by engagement of the team of interpreters who interpret sessions simultaneously, as well as translate cases and other materials considered at the above sessions. In respect of the above, it should be noted that, with a limited number of interpreters, which is inadequate in relation to the workload, the team of interpreters managed to ensure easy work of international judges and the Constitutional Court in the whole. In order to make the work of the interpretation department easier and better, but maintain the same number of interpreters, in 2007, persons from the Constitutional Court Secretariat with many years interpreting/translating experience were engaged as well.

The work of the Constitutional Court took place through the work of its regular commissions as well, within their competences defined by the Court Rulebook – the Redaction Commission, Administrative Issues Commission and Publication & Information Commission, as well as through the work of periodic commissions trained for performing concrete duties.

2.6. Benefits and Obstacles – the BiH Constitutional Court.

2.6.1. Decision-Making Procedure.

As apparent from the overview, the most serious problem in the Constitutional Court's functioning was an increased number of incoming cases which keeps rising each year, while the Constitutional Court's capacity to „absorb“ the number remained the same. Therefore, the Constitutional Court needs to be reformed as soon as possible. The number of judges needs to be increased from nine to at least 13 or 15 members. The reason for such a radical increase of judges is the need for more efficient Constitutional Court's work.

In addition, the decisions in Annex 4 envisaged a bulky and inefficient decision-making system by stipulating that the quorum should consist of half the number of judges, meaning that each decision, even the decisions denying appeals or a request, has to be adopted by at least five judges. When we add the interpretation by the Constitutional Court itself, this implies that each decision needs to be adopted with at least five votes pro or con the proposed decision, then we get a rather inefficient institution reflected in the number of unsolved cases at the end of 2007 (around 4600 unsolved cases). This practically means that, according to present solutions, the Constitutional Court can make decisions only at a plenary session or at the session of a council of at least five judges, and there is no possibility to form other councils, e.g. a three-judge council who would solve cases within appellate jurisdiction. By now, the Constitutional Court has managed to solve efficiently a great number of incoming cases even with that sort of decision-making system, and primarily thanks to the extremely well-organised and very professional Secretariat of the Constitutional Court. However, due to the increasing inflow of cases because of citizens' enhanced trust for its work and the obligation to accede to the proceedings at the Constitutional Court prior to addressing the European Court for Human Rights, the work of the Constitutional Court reached the stage when the problem is not the number of workers in the Secretariat but the number of judges and their ability to deal with the large number of received cases in

a proper way (in the last couple of years, the Constitutional Court has solved 2300 cases, and it receives around 3800 cases a year). It is therefore necessary to make sure the number of judges at the Constitutional Court is increased from 13 or 15 in order to form three-member councils to solve cases within appellate jurisdiction, which comprise 99% of total cases. In this way, judges would have equal workload, while the major burden would be concentrated on the Secretariat's ability to increase the Constitutional Court's productivity by increasing the number of workers, which would not require Constitution changes but only acts defining the organisation of the Constitutional Court's Secretariat.

In that respect, the Constitutional Court always has to take into consideration one of the basic requirements – to meet the requirement of efficient proceedings before the Constitutional Court which would result in avoidance of establishing the accountability for violating human rights for court proceedings within a reasonable period for trial by the European Court for Human Rights, which can require considerable expenditures for the state. Finally, the quality of the Constitutional Court's decisions would definitely reach a higher level.

The Constitutional Court's judges should be appointed by the Parliamentary Assembly of BiH (it has been decided by now that four members should be elected by the FBiH Parliament, two by the National Assembly of the RS and three foreign members by the President of the European Court for Human Rights in consultation with BiH Presidency members).

2.6.2. The BiH Constitutional Court's Judge Appointment Procedure.

What is very important in order to respect the principle of independence and impartiality of the Constitutional Court's judges is reflected in the procedure of appointing the Constitutional Court's judges. Unlike the earlier manner of appointing the Constitutional Court's judges, appointed by entity parliaments without any prior professional candidate testing resulting in politically recognisable personnel such as the Constitutional Court's judges, the future solutions should require prior professional candidate testing and the so-called negative selection system, for instance through the High Court and Prosecution Council and only then give politics a chance to select politically the most acceptable candidate among those filtered in such a manner (similar to entity constitutional courts). In this manner, the advocates of the appointment, directly dependent on authority

structures and the need to maintain the professional structure of the Constitutional Court's judges as well as the necessary quality of decisions free from unnecessary political effect in the decisions it makes, would be reconciled. As a precondition and guarantee of full professionalism and selection of candidates by the High Court and Prosecution Council, it is necessary to change the structure of the High Court and Prosecution Council in such a manner that judges of entity constitutional courts and the BiH Constitutional Court participate with equal rights. Only thus would the professional assessment of applied candidates be ensured.

3. Persons with Disabilities, Marginalised and Vulnerable Groups

3.1. Legal provisions.

There are persons with disabilities in the whole world and on all levels of any society. The number of such people keeps constantly rising. They are still the poorest of the poorest; they still live in isolation, without adequate support. They still do not have the access to public places, either due to architectural barriers or discriminatory attitude. Most of public transport modes are still inaccessible, and a great number of children with disabilities have no access to education or education is isolated and inadequate. Their needs have not been recognised properly yet and they are not included in development initiatives. In creating policies and programmes referring directly to them, their democratic voice is often not heard. That is exactly because the protection of persons with disabilities and practice of these persons' rights is one of the most delicate and complex issues of a society's social policy. The affirmation and development of the policy cannot be achieved without a clear social approach and cooperation among competent authorities and organisations for the disabled in all segments of the social policy.

When analysing the situation in the field of protection of the persons with disabilities and the present possibilities and perspective in that sphere in Bosnia and Herzegovina, the fact that this field is within the competence of entities and the District, according to the BiH Constitution, should be considered first, as well as the fact that Bosnia and Herzegovina is the legal successor of the former Yugoslavia, where the field was very well-organised. It has to be taken into consideration that war took place in this area as well as that there were changes in all spheres of social, economic and political life, which unavoidably affected the creation of policies

concerning disabilities in Republika Srpska, the Federation of BiH and Brčko District of Bosnia and Herzegovina²⁶.

The Constitutions of Republika Srpska and the Federation of BiH treat disability issues in the context of human rights stipulated by the 1 Declaration on Human Rights, practiced by all citizens without discrimination on any basis. Also, the International Convention on Economic and Social Rights as well as the International Convention on Civil and Political Rights, treating some issues of essential consequence for this category of BiH citizens, are especially important. Special attention should be drawn to the right to work, health insurance, the right to access the public service under the same conditions for all citizens etc. Although international instruments in Annex I of the BiH Constitution are applied only in respect of the practice of the right to non-discrimination in Article II/4 of the BiH Constitution, almost all possible cases of violation of these rights are closely related to discrimination in their background.

The BiH Constitution, as the state's highest legal act does not give the definition of a person with disability, but in Article II, it stipulates that Bosnia and Herzegovina and both entities should ensure the highest level of internationally recognised human rights and fundamental freedoms, that the rights and freedoms defined by the European Convention are directly applied in Bosnia and Herzegovina, and that these acts have priority over all other laws. Moreover, the BiH Constitution also stipulates that the practice of rights and freedoms, defined by this Article, or by international agreements set forth in Annex I of the Constitution, is ensured for all persons in Bosnia and Herzegovina without discrimination on any basis, such as sex, race, skin colour, language, faith, political and other opinion, national and social origin, relations with the national minority, property, birth or another status. Thus the human rights category also refers to persons with disabilities or persons of this status. The state authorities are those most responsible for the protection and respect of human rights, therefore the BiH Constitution primarily binds all BiH institutions and both entities to ensure a higher level of internationally recognised human rights and fundamental freedoms.

²⁶ State report related to disabled persons in BiH, by Edhem Trnka and Zoran Dobraš, December 2006 – June 2007.

3.2. Practice.

The jurisdiction divided in such a manner results in inequality of the rights of persons with disabilities considering the cause of disability, the place of residence and the absence of common criteria based on which the rights are practiced. Therefore, there are huge discrepancies in rights, regarding the status of particular categories of persons with disabilities. Some categories practice their rights with 20%, some 30% and some with 60% of disability. Also, there are big differences in determining principals for the allowances: personal disability allowance, assistance and care by another person, and the orthopaedic allowance.

3.2.1. Employment.

Persons with disabilities, be they young or adult, at the age of full ability for work represent one of the socially excluded groups, or at a high poverty risk and social exclusion in general, and they usually receive lower income in the labour market, and can rarely keep their job for a longer period (in terms of a permanent job). Furthermore, a low education level together with a low level of professional knowledge and skills which the disabled have when they enter the labour market (if they enter the labour market at all), contribute to the existing situation. Some of the causes of a low employment rate of disabled persons are inadequate work conditions and work environment for the persons' needs, weak motivation by the employer, and influence of prejudice and distorted attitudes on employment and work of the persons with disabilities. Many years of dependence on social income, absence of equal opportunities and independence when choosing an adequate job, as well as passivity (or other cases of failure) in the process of job-seeking cause exclusion of persons with disabilities from the labour market. Challenges disabled persons face when attempting to integrate in the labour market and the situation of the disabled in respect of employment and social security is extremely difficult. The lack of employment opportunities and the absence of an adequate social security system is an obstacle for the disabled to lead a dignified life. Such issues require complementary work with real involvement of authorities, the disabled and the NGO sector in order to define appropriate policies.

Employment is the best defence from social exclusion and one of the main ways of achieving disabled persons' full participation in the society. Employment is the main avenue of including the disabled in all spheres of life, their full and real integration. Both BiH entities are trying to redesign

and reform its programmes and laws in the field of employment in general. The parts of policies associated with the employment of the persons with disabilities indicate the resolution to take measures based on which persons with disabilities are given priority in employment and the employment of these persons is promoted. However, there is, virtually, very little evidence in the general systematic policy or programmes directed to this part of the population.

One of such institutional models is the Law on Professional Rehabilitation, Training and Employment of Disabled Persons in Republika Srpska, adopted in 2004. The main purpose of the Law is providing an institutional framework which would ensure the development and application of specific programmes related to Professional Rehabilitation, Training and Employment of persons with disabilities in the open market, and under special conditions, supported by the state, measures of which ensure relief stimulating disabled persons' employment. The entire process is organised in one place: from the definition of the term disability and restricted work ability, through a new approach to professional rehabilitation organised and conducted in the regular education system as well and by applying specialised measures and activities, to the employment of the disabled in the open market under general conditions with clearly defined responsibilities of social and state structures and under special conditions in enterprises and institutions founded for these purposes.

This model stipulates founding of a special Fund for Professional Rehabilitation and Employment of the Disabled as a public institution founded by the Republika Srpska Government, with a mission to implement policies of development and improvement of professional rehabilitation and employment of the disabled, co-finance or finance the agents involved in the work, execute monetary transactions when paying financial stimuli and supervise the implementation of programmes using resources for the employment of persons with disabilities.

During the two-year implementation of the law, first results were registered. The number of enterprises employing the disabled increased by a number of times.

In addition to this institutional change, the employment agency's policy was also changed for the purpose of achieving better services in job-seeking, consulting services and support of programmes of employment of vulnerable groups to which the labour market is insensitive.

The Law on Professional Rehabilitation, Training and Employment of Disabled Persons can be considered a special regulation for persons with disabilities because it defines in one place several important issues for this category of persons. These are the rights, the conditions and the process of professional rehabilitation, training and employment of persons with disabilities and the restricted work ability for all disabled persons regardless of the causes of disability and the time when the disability was caused. The Law also defines issues of foundation, organisation and function of institutions, enterprises and other organisations dealing with professional rehabilitation, training and employment of the disabled.

3.2.2. Employment of Disabled Persons under General Conditions (Obligatory Employment).

According to the *quoting system*, organs and other entities are obliged to have a certain number of disabled persons employed in relation to the total number of employees, at an adequate work place, based on its own choice, in adequate work conditions. It was originally determined that out of 49 employees one disabled person should be employed, while what happened after a period of five years was that one disabled person was employed among 16 employees.

The entity which does not fulfil its obligation of employing disabled persons, is obliged to pay a special contribution of 0,2% of the gross salary paid to all employees to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities each month when paying salaries.

3.2.3. Employment under Special Conditions.

Employment under special conditions means employment in an institution, enterprise or workshop founded for the purpose of employing the disabled who cannot be employed in the open market or maintain their employment by using relief.

Enterprises and other organisations employing disabled persons have to meet special requirements defined by law, apart from the percent of employed disabled persons, and in respect of the premises and equipment which have to be adjusted to the disabled, their work ability as well as the professionalism of workers required for performing the work.

In order to ensure the social impact on enterprises' fulfilment of obligations to disabled persons, organs and organisations directing the disabled to work training and employment, the enterprise is obliged to regulate and ensure, by the statute and other acts, the participation of these organs and organisations in the work of their management board or another appropriate organ.

3.2.4. Self-Employment of Disabled Persons.

By the normative framework, self-employment and employment in the family or independent business was first dealt with as one of the ways of employment of the disabled under special conditions. This solution contributes to increased employment of the disabled thanks to the increase of the possibility of employment in alternative ways, in addition to usual ways of employment in the public sector and by other employers. Mediation services offered by employment services, such as the public Employment Service of Republika Srpska, treat all unemployed persons equally. The resources by which employment services stimulate employers to employ people and provide new vacancies are higher by 50% for admission of persons with disabilities or for providing a vacancy for such a person.

Persons with disabilities are no longer entitled to receive the disability allowance or the allowance for physical impairment once they are employed. However, the situation is different if the person received the disability pension based on his/her loss of work ability for certain kinds of work. Once such person is employed by concluding an employment contract, he/she does not lose the right to the disability pension. While he/she works and keeps paying the contribution to the Pension and Disability Insurance, he/she only cannot receive the disability pension. Upon the termination of the employment contract, he/she is paid the disability pension if he/she completed the work experience of less than a year when working. In case he/she completed more than a year of work experience, the person with disability has the right to establish a new basis for pension based on the paid pension and disability contribution for the period.

3.2.5. Problems.

The process of education, professional rehabilitation and employment of the disabled in Republika Srpska, apart from good solutions in practice and

individual policies, has its weaknesses which primarily reflect in system incompatibility, non-existence of an adequate education plan and professional rehabilitation in relation to the requirements of the labour market, insufficient information on the possibilities offered by normative and institutional frameworks, general conditions of economic life, and prejudice and stereotypes associated with persons with disabilities. The current situation in these fields is made additionally complex by the poverty rate, a low education level of persons with disabilities and the non-competitiveness of their profession and qualification structure in the labour market and unequally developed capacities in local communities.

In the Federation of BiH there are laws ensuring the inclusion of persons with disabilities in the labour market and laws protecting persons with disabilities from discrimination at work. Inclusion of persons with disabilities in the labour market is defined by the Law on Employment Mediation and Social Security of Unemployed Persons. The Law stipulates that no person may be put in a less favourable position due to physical or psychological impairment. The Federal Employment Service is authorised by the Law to monitor and propose measures for the improvement of professional rehabilitation and employment of persons with disabilities and provide conditions for their employment in cooperation with local employment services.

However, in the earlier practice, the above provisions did not show particular results regarding the employment of persons with disabilities. Recently, the situation has changed and the Federal Employment Service and mediation services allocate some funds for the employment of persons with disabilities stimulating employers to employ these persons. Since, in this manner, considerable funds are allocated for this purpose, there is considerable interest by employers to employ persons with disabilities.

According to the Law of the Federation of BiH, in respect of discrimination of persons with disabilities and other employed persons, a person with disability trained for performing particular work is considered to have health ability for performing the work, which is a significant form of protection of such persons from disability-based discrimination. Furthermore, the Law stipulates that an employer cannot terminate an employment contract for an employee who suffered an injury at work or got an occupational disease, while he/she was temporarily unable to work, and that an injury at work, disease or professional disease cannot negatively affect the practice of the employee's rights based on the employment

contract, as well as that the employee has the right not to return to work he/she had performed before the temporary inability to work occurred, or other relevant kind of work. In case the employee's ability to work was restricted or there was direct danger of disability, the employer is obliged send him/her a written offer of other work the employee is capable of performing. The employer may not terminate the employment contract for an employee whose work ability was restricted or there was direct danger of disability without prior consent by the council of employees.

Employment and work of persons with disabilities are also defined by the proposed Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities, which defines issues of employment of persons with disabilities under general and special conditions, or in the open labour market and in institutions or enterprises founded for the employment of persons with disabilities. Quotas based on which employers are obliged to have and increase the number of employed persons with disabilities within defined periods were defined, as well as the obligation of employers who do not fulfil the above quotas to calculate and pay the contribution for encouraging the rehabilitation and employment of persons with disabilities to the Fund for Professional rehabilitation and Employment of Persons with Disabilities on a monthly basis when paying salaries, at the level of 40% of the average salary in the Federation of BiH, for the appropriate number of persons which they were obliged to employ based on the defined quota. Issues related to employment of persons with disabilities under special conditions in enterprises and institutions for the employment of these persons, as well as protection workshops and work centres as forms of enterprises and institutions for employment, or engagement of persons with disabilities, were also defined.

The legal project defining the system of professional rehabilitation, training and employment of persons with disabilities mentioned earlier, which the FBiH Parliament originally supported, and which is expected to be adopted soon, apart from the above mentioned, defines the following matters:

- conditions for practicing the right to professional rehabilitation and training,
- foundations and work of professional rehabilitation institutions,
- obligations of enterprises for the employment of persons with disabilities to employ at least 40% of persons with disabilities,
- that a person with disability can work at home,

- that the protection workshop has to employ at least 40% persons with disabilities who practice the right to assistance and care by another person,
- work centres as public institutions for the employment of persons with disabilities which cannot be employed in another manner,
- records on employed persons with disabilities,
- allocated funds for the employment of persons with disabilities,
- relief for the employment of persons with disabilities (tax and customs relief, privileges based on the employer's status, allowances, the stimulus based on the employment contract)
- financing of the Fund for Professional Rehabilitation and Employment of persons with disabilities (income of the Fund on seven bases).

Persons whose disability was caused during the working period of their life have appropriate rights set forth in the Law on Pension and Disability Security. If a person becomes completely incapable of work, the person is considered a disabled person of category I and can have the right to disability pension under certain conditions. However, in case of change of work ability occurs, and the person can no longer perform his/her work, the person becomes a disabled person of category II, and has the right to be employed by the same employer to perform some other kind of work in accordance with his/her abilities. The person whose right to disability pension was recognised loses the right once he/she is employed.

3.2.6. Main Issues.

The very fact that this is a complex problem, which, apart from the work engagement of this category of citizens, includes other segments as well (health insurance, transport, access to buildings etc.), in a state constitutional structure which is complex anyway, it does not leave much hope for a quick progress. However, it is possible to take some steps which can include the development of an inclusive labour market in the social environment, where socially-excluded groups or those at risk of being socially excluded would be provided, through integrated services, with, for instance, better secondary education, consulting services, mediation, on-the-job training and lifelong learning, work environment adjustment services etc., get a well-paid job in accordance with the person's needs, desires, possibilities and capacities and keep it. Moreover, activation, as one of the measures, represents a wide range of activities, such as job training, re-qualification etc., which should ensure the development of an

individual's capacities, skills and potential in order to ensure social and economic participation, and reduce dependence on material assistance. It is also possible to develop employment possibilities, especially through policies for promoting lifelong skill acquisition and learning, or create conditions and promote professional rehabilitation as a significant precondition for employment and social integration. The state would need to organise public campaigns in order to inform the employers and the disabled themselves on the existence of relief and possibilities offered by law, and in order to stimulate employers to employ disabled persons and develop a state strategy for employing disabled persons. The strategy would also include the development of all positions for employment of persons with disabilities at employment agencies (acquiring knowledge by which they would help persons with disabilities find a job, develop their own business and by which they would raise awareness of disability issues as far as employers are concerned). Competent and entity organs have to ensure monitoring of the application of existing laws and the development of repression measures in case of avoidance of or disregard for obligations, but define measures in the tax and customs system which would stimulate employment of the disabled, as well as donations for disabled persons.

Human Rights in Bulgaria 2007

By Teodora Tsanovska and Tania Tisheva

Bulgarian Gender Research Foundation

Abstract

The Bulgarian report contains information and analyses about the situation of human rights in the country in 2007. In the first year of full membership of Bulgaria in the EU, the realization of the human rights guaranteed in the Constitution and the compliance with international instruments in the field were not of satisfactory concern for the State. The main problems pointed out by the European Commission are corruption, organized crime, inefficiency of the judiciary and the administration, which impeded to the realization and full enjoyment of human rights by the Bulgarian citizens.

In 2007 the main challenge for public reforms was the provision of consistent policy for better protection of citizens' rights, and mainly socio-economic rights, for inclusion of disadvantaged groups and the better access to education, employment, health, housing, decent standard of living. The educational sector is still under reforms.

A general positive trend in 2007, resulting from the EU membership, were the expressions of civil disobedience of different groups in society aimed at a more just remuneration for their work, as the teachers' strike, strikes of health professionals, public transport drivers, etc. Actions of solidarity with concrete causes for preservation of the environment, especially by young environmentalist groups, characterized the first year of European accession as well. There was overall positive impact of the practice of the national human rights institutions - the Ombudsman and the Commission for Protection from Discrimination.

Introduction

1. Political and social situation

In the first year of full membership of Bulgaria in the EU, the realization of the human rights guaranteed in the Constitution and the compliance with international instruments in the field were of minor concern for the State. The main problems pointed out by the European Commission are corruption, organized crime, inefficiency of the judiciary and the administration, which impeded to the realization and full enjoyment of human rights by the Bulgarian citizens. As a matter of fact – scandals related to corruption practices, inefficiency of the judiciary, the conditions of orphanages and specialized institutions for children with disabilities had a negative impact on the image of Bulgaria as a new member State of the EU. These issues provoked national debates for improving the guarantees for the protection of human rights of citizens and on the mechanisms for their implementation. The reforms in 2007 made further obstacle to the convergence of incomes in Bulgaria with the level of incomes in the other EU countries.

In 2007 the main challenge for public reforms was the provision of consistent policy for better protection of citizens' rights, and mainly socio-economic rights, for inclusion of disadvantaged groups and the better access to education, employment, health, housing, decent standard of living. Instead of focusing on the rights of the Bulgarians, the government at national and local level showed appetites for "more efficient" absorbing the EU structural funds. The local elections which took place in the fall of 2007 turned into a fierce battle for access to such funds and were marked by unprecedented corruption practices.

The overall positive impact of the practice of the national human rights institutions- the Ombudsman and the Commission for Protection from Discrimination cannot compensate the still negative trend in the fulfillment of socio- economic rights caused by lack of adequate governmental policies.

In 2007 the budget surplus amounted to 3,8 % of the GDP and the surplus planned for 2008 is again quite high - 3%. The strict financial policy of the Bulgarian government was commended by the European Commission which came to replace the monitoring by the IFIs in the previous years. The

recommendations are for keeping and tightening the existing macro- frame which means keeping the citizens' income as low as possible and this means, as the Confederation of the Independent Trade Unions says, ensuring the continuum of lack of "socialization of the economic growth" and "freezing" the income levels. Financial deficit is envisaged again in sectors like education and health, the allocation for which will lag far behind the so needed 5 to 6%. It thoroughly means at least "freezing" and stagnation, if not deterioration of the realization of basic human rights.

The situation with the right to education and the right to work, with focus on ethnic minorities and gender, are very indicative for the level of commitment and respect of human rights. The deficit of commitment to the compliance with the internationally recognized standards of human rights is illustrated by the alerting number of overdue reports of the Bulgarian government before the treaty bodies by the end of 2007 two reports due before the Committee on Economic, Social and Cultural Rights, 3 reports before the CEDAW Committee, until very recently - five reports under the CERD (UN Convention for the Elimination of Racial Discrimination). A consolidated report under CERD was presented with considerable delay only in February 2008.

The budgetary constraints imposed by the adopted micro- economic frame are an additional challenge to the realization of socio- economic rights of the Bulgarian citizens.

In this context, in 2007 Bulgaria, as a New Member State, adopted its first Concept on Development Cooperation aiming at fighting poverty and protecting human rights in third countries. The main goal of the Bulgarian Development Cooperation policy will be poverty eradication through, namely, good governance, protection of human rights, gender equality. Priority countries will be those in the region of South-East Europe and in the region of Black Sea. In parallel, Bulgaria will support the African development initiatives. Priority areas of support will be, among others, education, economic, social and health reform, cultural diversity and tolerance, preservation of environment, etc.

A general positive trend in 2007, resulting from the EU membership, were the expressions of civil disobedience of different groups in society aimed at a more just remuneration for their work, as the teachers' strike, strikes of health professionals, public transport drivers, etc. Actions of solidarity with concrete causes for preservation of the environment, especially by young

environmentalist groups, characterized the first year of European accession as well.

Human rights in legislation

1. Constitutional provisions.

The Bulgarian Constitution provides the legal framework of the basis human rights and freedoms. According to Art. 6 (1) - all persons are born free and equal in dignity and rights. The Constitution stipulates that all citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status.

The provisions of the Constitution shall apply directly and it shall be the supreme law, and no other law shall contravene it. The direct application of the Constitution does not exclude the need for the creation of concrete additional guarantees and mechanisms for the proclaimed human rights. On the other hand any international instruments which have been ratified by the constitutionally established procedure, promulgated and come into force with respect to the Republic of Bulgaria shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise. This provision is an additional guarantee of the full enjoyment of the catalogue of human rights, proclaimed in the international documents. According to Art. 57 the fundamental civil rights shall be irrevocable. Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others.

Chapter II of the Constitutions contains the “Basic Rights and Obligations of Citizens” (Art. 25 and following). Family, motherhood and children are protected as well in the frame of the basic principles. The sets of civil and political, and social, economic and cultural rights are guaranteed in the second chapter: right to life, right to freedom from torture, right to personal security and integrity, right to respect for private life, right to freedom of thought, freedom of conscious and religion, right to freedom of expression, right to freedom of assembly and of association, right to work and to social security, right to health insurance and accessible health services, etc.

The Constitution postulates that everyone has the right to education. School attendance up to the age of 16 shall be compulsory. Primary and secondary

education in state and municipal schools shall be free. In circumstances established by a law, the higher educational establishments shall provide education free of charge. The state shall promote education by opening and financing schools, by supporting capable school and university students, and by providing opportunities for occupational training and retraining. It shall exercise control over all kinds and levels of schooling.

2. Rights and freedoms of Bulgarian citizens in the legislation:

The right to life: Constitution, Penal Code, the Law for Child Protection;

The right to freedom from discrimination, to respect and protection of human dignity: Constitution, Penal Code, Family Code, The Law on Protection Against Domestic Violence, The Law on Protection against Discrimination, The Law on Combating Trafficking in Persons, The Law of the Ombudsman;

The right to liberty and security of person: Constitution, Penal Code, Family Code, The Law for Protection of People at Risk in Relation with Penal Procedure, The Law on Protection of the Private Data

The right to equal participation in political and public life: the Law on Protection against Discrimination, The Election Law, Penal Code, The Law on Access to Public Information

Freedom of assembly and association: Constitution, The Law on the Political Parties, Penal Code, Family Code, Election Law, Labour Code, Law on Protection against Discrimination, The Law for the Legal Persons with Non-profit goals

The right to asylum: The Law for the Asylum and for the Refugees, The Law on Foreigners in the Republic of Bulgaria

Protection against removal, expulsion, and extradition: Constitution, The Law on Extradition and the European Order for Arrest, Penal Code, The Law on Bulgarian Citizenship, The Law on Bulgarian Identity Documents, The Law for Foreigners, The Law for the Refugees

The right to equality in education: Constitution, The Law for Education, The Law on Professional Education and Training, The Law on Protection and Development of Culture, The Law on Protection of the Child, Law on Protection Against Discrimination

The right to be free from torture or other cruel, inhuman or degrading treatment or punishment: Constitution, Penal Code, Penal Procedure Code, The Law on Execution of the Penalties, The Law for the Ministry of the Interior, The Law for Protection of People at Risk in Relation with Penal Procedure, The Law on the Bulgarian Red Cross, The Law on Protection Against Domestic Violence, The Law on The Liability of the State for Damages Caused to Citizens

The right to equal protection under the law: Constitution, The Civil Procedure Law, The Penal Procedure Law, Law on Protection Against Discrimination

The right to fair trial

No punishment without trial

The right to effective remedy

Constitution, Penal Procedure Code, Civil Procedure Code, the Law on Protection against Discrimination, the Taxation Procedure Code, Ethic Code for the Lawyers, Code on the Professional Ethics

The right to respect for private and family life

The right to marry

The right to equality in family

Constitution, Family Code, The Law on Family Support for Children, Penal Code, the Law on Protection against Domestic violence

Right to property: Constitution, Civil Procedure Code, The Law on Property, The Law on Municipal Property, The Law on State Property

The right to just and favorable conditions of work, equality in employment

Prohibition of slavery and forced labour

Freedom to conduct a business

Constitution, Labour Code, Commercial Law, The Law of Encouragement of Employment, The Law on Healthy and Secure Working Conditions, The Law on protection against Discrimination

The right to Health, Reproductive Health and Family planning

The right to Decide the Number, Spacing, and Timing of Children

Constitution, The Family Code, The Law for Health

Freedom of thought, conscience, and religion

The Constitution, The Law on the Political Parties, The Law on religions and Beliefs

The Election Laws

Freedom of expression and information

Constitution, The Law on Suggestions, Signals, Claims and Applications, The Law on the Access to Public Information

Freedom of assembly and association

Constitution, The Law on Persons and Family, The Law on Legal Persons with Non-profit Goals

Individual rights

1. Human Rights and Education: Right to Education

1.1. Legal provisions.

The Law for protection against discrimination has a separate section named “Protection of the right to education and training”. It stipulates that the Minister of Education and Science and the local self-governments shall take the necessary measures to avoid racial segregation at educational institutions. The Head of an educational institution shall take effective measures to prevent from all forms of discrimination in the educational institution, committed by a member of the pedagogical or non-pedagogical staff, or a student. The Head of an educational institution having received a complaint from a student considering oneself of being a subject to harassment committed by a member of pedagogical or non-pedagogical staff or another student, shall immediately conduct an enquiry and undertake actions to terminate the harassment, as well as to impose disciplinary measures. The educational institutions shall take appropriate measures to provide equal opportunities for effective exercising of the right

to education and training for disabled persons, unless the expenses needed for it are unjustifiably excessive and would seriously encumber the institution. The law goes further and states that individuals conducting education and training, as well as authors of textbooks and manuals for learning, shall provide information and apply educational and training approaches enabling the overcoming of stereotypes referring to the roles of women and men in all spheres of public and family life. Kindergartens, schools and higher schools shall include in their educational curricula and syllabuses training on gender issues. Above mentioned measure should be apply also to overcome the negative stereotypes referring to individuals belonging to racial, ethnic and religious groups, as well as individuals with disabilities.

According to the Convention of the elimination of all form of racial discrimination, the States parties submit reports under Article 9 of the Convention before the Committee on the Elimination of Racial Discrimination. The latest Bulgarian report¹ was published on 30 January 2008 and it contains the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth periodic reports of Bulgaria, due on 4 January 1998, 2000, 2002, 2004 and 2006, submitted in one document.

According to above mentioned report², the Strategy for Educational Integration of Children and Pupils from Ethnic Minorities and the Action Plan for its implementation until 2009 were adopted in 2004. The Strategy contains several important priorities concerning Roma pupils:

1. Guaranteed right of equal access to high-quality education for children and pupils from the Roma community;
2. Preservation and development of the Roma cultural identity at schools; Transformation of cultural diversity into a source and factor of mutual knowledge and spiritual development of young people, as well as development of an atmosphere of mutual respect, tolerance and understanding;
3. Full integration of Roma children and pupils through the reorganization of kindergartens and schools in the separate Roma neighbourhoods and creation of conditions for equal access to high-quality education outside them;

¹ See CERD/C/BGR/19 - 30 January 2008.

² CERD/C/BGR/19 - 30 January 2008.

4. Optimization of the school network in municipalities comprised of small and dispersed settlements through, *inter alia*, support to the main schools there with a view to ensuring high-quality education in them.

The results from the implementation of the Strategy are as follows:

- The Ministry of Education and Science and Regional Education Inspectorates /REIs/ have further enhanced their partnership with non-governmental organisations and municipalities in Vidin, Stara Zagora, Montana, Pleven, Sofia, Plovdiv, Sliven, Haskovo and other cities undertaking a reorganization process of the Roma attended schools, with over 3000 children of Roma origin transferred by the beginning of the 2006/2007 school year to mixed schools to learn together with their Bulgarian classmates;
- Over three thousand Roma children have actually been taken out of separated schools and now they attend mixed schools together with their Bulgarian peers;
- More than 100 assistant teachers help the educational integration of Roma children at mainstream schools;
- Over two thousand teachers have been trained in various forms to work with Roma children in their adaptation to an ethnically mixed environment. A Deputy Minister has been appointed at the Ministry of Education and Science to specially deal with the education integration of children and pupils from ethnic minorities, as well as with the integration of children from minorities with specific educational needs;
- The Ministry of Education and Science has established a specialised department wholly dedicated to working for the integration of children and pupils from minorities.

1.2. The Right To Education: Status - Overlooked.

Regular school education and one year of pre-school education are free of charge, but parents are expected to pay for additional activities that are not covered by the obligatory state educational criteria. These extra activities may include additional teaching of foreign languages, additional sport activities, improvement of class furniture, etc. This money is collected

through the system of school trustees. Some schools also organise special courses for candidate students who are preparing for entry examinations in secondary and tertiary education. These courses are also not included in the obligatory state educational criteria and are paid for by the parents.

There are three types of schools in Bulgaria (according their financing and not according their activities), state, municipal, and private. The majority of the schools are municipal. Private schools cater to less than 0.7 percent of the total number of pupils, according to data for the 2004-2005 school year. The state schools (mostly the Gymnasia and special schools) and kindergartens are managed by the Ministry of Education and Science. Until 2007 the state schools were financed directly from the state budget, and they were included in the budget of the ministry that oversees them. Municipal schools were financed from the municipal budget.

The State management of the higher education comes down to setting up of general framework and conditions for the system functioning. The Higher Education Act gives full academic independence to higher education institutions. The state encourages the autonomous higher education institutions in their efforts to build strong and sustainable university structures with enough independence and transparency of process of decision making. At the present time Bulgarian institutions are exploring good European practices and possibilities of implementation of new managing models, models that are connected with the adoption of modern forms of managing, leading to further financial stabilization of universities.

1.3. Measures to widen access to quality higher education.

In the last several years it is clearly outlined the trend of transition from elitarian to mass system of high quality higher education. Higher schools simplify the models of admission aiming to attract more students (participation in preliminary entrance examinations is allowed, double entrance examination dates are announced, more rankings are introduced, entry tests are employed except for the traditional written examinations).

Persons with double citizenship, one of which is Bulgarian, pay half of the fixed fee when they apply and are admitted according to terms and provisions, determined by the Council of Ministers. Students and doctoral students, admitted according to international agreements, do not pay fees when this issue is reciprocally settled. With decision of the academic

council higher schools are entitled to enroll candidate students without examination if they have successfully taken the matriculation examinations according to the Public Education Act, the comprehensive studies minimum and the curriculum.

After Bulgaria's EU accession the opportunities for free admission of students, doctoral students and postgraduate students - citizens of EU and EEC member-states is widened. For groups at risk and groups in unequal social status special terms and conditions for admission to the higher schools are implemented. These groups comprise candidate students, who have successfully taken the entrance examinations and are: disabled with long-term disabilities and reduced capacity to work; disabled soldiers; complete orphans; mothers with three or more children.

Tuition fees are not due by complete orphans; disabled persons with long-term disabilities and reduced capacity to work; disabled soldiers; candidates from orphanages; cadets from military higher schools and doctoral students during the last two years of doctoral studies. They are entitled to additional relieves, regulated by the regulations of the higher school.

Systems for social support and credit financing for students are in progress. Additional special relieves, are regulated in the regulations of the higher school for orphans, blind, deaf and long-term disabled persons of reduced ability 70 and more percent, disabled soldiers, mothers with children below 6 years of age and hospitalized persons.

National unions of blind, disabled persons and deaf persons render specialized advises and information to students with specific educational needs, related to provision of additional opportunities for their financial and social support. Students are directed to non-governmental organizations, providing additional financial or specialized support to students. Ministry of Labor and Social Policy proposes to disabled graduating students also participation in special employment programmes, aiming at ensuring jobs in the public administration.

During the last years higher schools have implemented sustainable and target policy of improving the training conditions for students with specific educational needs, which to a great extent have already positive implications. At a number of premises there are established platforms for access to educational halls, library places are adapted for the needs of

disabled persons. A fund of scanned literature is provided to blind students, studying at different higher schools. In a number of universities, especially of humanities and economy, blind students are provided with specific library places, equipped with Brile displays, scanner, talking computer software and Brile printer.

Despite the measures adopted for accessible and quality ducation, in the first year of the EU-memebership the right to education is entitled with an overlooked status. The empowering character of the right to education as a basic social-economic right, indispensable for realizing the other human rights and for protection from poverty and exploitation was underestimated in the governmental policy in 2007.

This is expressed of the very low percentage of the GDP allocated in Bulgaria for education- the critical 3,9% for 2007 and the planned 4,22 % for 2008. The slight increase is due to the teachers' strike in the fall of 2007 in Bulgaria. It was a unique civil action of the teachers from all over the country who for about 40 days were at strike for improving their low economic status and for increasing the budget allocations for education. An additional result was the promised increase of the average teachers' salary to up to 650 leva- BGN /about 325 EURO/, starting from the middle of 2008.

Despite these results, the Bulgarian government, which is not used to the citizen pressure, adopted a package of decisions for further reforms of the educational system, which will turn into a sort of punishment for the civil disobedience. The measures are based on the prevalence and progressive adoption of the principles of efficiency and competitiveness in this highly sensitive sector. A shift in the mechanism for financing public education was introduced and since 2008 the budget will be fully delegated through the municipalities to the schools which will decide how to survive within the tight financial parameters. The salaries of the teachers will depend on the "efficiency" of their work and on the "entrepreneurship" of the school directors. It will entail further closing down of "non-efficient" schools and further insecurity for the remuneration and the overall status of the teachers.

During the first year of the EU-membership low salaries have become a synonym for teachers' pay in Bulgaria. The latest reform proposed by the Government met serious resistance by the teachers, although the system of "money following the pupil" was copied from some European Union

countries, where it has proven a success. This system was the Government's answer to the problems of Bulgaria's teachers among which is low salaries.

The reforms started on January 1, 2008, when this year's budget came into force. According to an act adopted by Parliament every year, schools will adhere to a devolved system that should enable school directors to become managers rather than simply executing Education Ministry directives. The ministry has effectively introduced a "money follows the pupil"-type system, meaning that an annual allowance is awarded to each pupil by the ministry. Each school director will receive a budget dependent on the number of pupils in his or her school. As of January 1 2008, the allowance is pegged at 1100 leva per pupil.³

The money, however, will not reach schools directly from the budget. Instead, it works as follows: the Finance Ministry transfers the money to municipalities that will, in turn, allocate resources to schools in their catchment area. Municipalities are given the right to top up sums when needed - but at their own expense. Once the money is received by the school then it can be used for salary increases and other expenses. That way, headmasters are asked to act as managers and use the budget as they think is best for the school. The municipalities will receive unified per student allocation which covers for school maintenance and teacher salaries. This change will create a big difference in the Bulgarian education system, given also the fact that Bulgaria is a country with a very steep population decrease. The introduction of per student financing and the associated decentralization to the municipalities of allocating resources to schools opens an opportunity for extending enrollment of Roma students, albeit with a caveat. The new system will create a strong incentive for municipalities to raise the number of students in schools, which would benefit the vulnerable groups of Roma. At the same time, real attendance and outcomes will need to be monitored.

1.4. Access to education for disadvantaged, marginalized and vulnerable groups.

³ *Education in Bulgaria*, Sofia echo, 16 may 2008.

In the middle of 2008 will be issued the second Bulgarian Millennium Development Goals progress report. The Millennium Goal No 2: “Achieve universal primary education” has been adjusted to “Improving the primary and secondary education for all” as the real challenge is not only the access to education but the access to quality education. This goal should become a focus of the efforts of all institutions and stakeholders.

The issue of quality of education has drawn the attention of the Ministry of Education and science and more specifically in the context of the teacher’s strike in 2007. The results of the TIMS study (Trends in International Mathematics and Science Study) for Bulgaria showed steep decrease both in mathematics and science achievement over the eight-year period covered by the TIMSS assessment. According to these data, educational reform efforts on improving student achievement, implemented in last decade, seem to have been less successful. There is clear evidence that students’ socio-economic background factors have a significant impact on performance.

In the EU Bulgaria has the lowest percentage of GDP spendings on education and combined with the poorest economic situation, this leads to serious problems in the education sector. Bad educational infrastructure (old material basis in the schools), bad image of the teachers, whose remunerations are below the average salaries for the country – all these issues reflect on the quality of Bulgarian education.

After the EU accession Bulgarian education system is still in reformation process and the main problems remain the following:

- the low level of effectiveness,
- the big share of school drop-outs,
- the high number of schools does not correspond to the process of constantly decreasing number of students (not optimized educational network)
- lack of independent system for assessment of the quality of education
- ineffective system for the teachers’ qualification and for career development.

Access to education is more problematic for Roma children and for children from rural and marginalized areas (children from high-mountain villages are studying in mixed classes, where kids from 1st to 4th are studying together and pupils in high schools do not have access to classes/school during winter time). These problems result in raising the illiteracy rate. Higher education is accessible for all citizens but the problem with illiteracy and school drop-outs requires adequate State measures. The report “Economic report of the President of Republic of Bulgaria 2007: Bulgaria – Social challenges and Eurointegration” acknowledges that the participation of the society in the development of the education system is raising but simultaneously the share of school drop-outs is remaining high. Official data reveals that about 3% of all students drop-out from school, which equals to 28 000 – 23 000 students per year. There is also a “hidden” problem with non-reported number of pupils who miss the majority of the classes during the year. The Ministry of Education and science is implementing in partnership with UNICEF a project “Prevention of school drop-outs” and a National plan for action (2007-2010) for decreasing the number of school drop-outs. Another measure is the regular collection of data for the students who don’t attend classes. The Regional inspectorates on education are responsible for the summarizing of the data and for reporting before the MES two times per year.

Access to education is serious problem for pupils with disabilities. As in the developed European countries 80% of youngsters with disabilities are integrated in the school system, this share in Bulgaria is only 12%⁴ In Sofia there are 180 schools and 196 kinder gardens, of which about 44 are in some extent accessible for students with disabilities (only four have elevators).

Discriminative attitudes towards disabled students have been measured in the survey “Multiple discrimination in Bulgaria”, conducted by Sociological agency “Scala” in partnership with the BGRF on the occasion of the European Year of Equal Opportunities for All (2007). 60% of Bulgarians consider that children with disabilities should study in special classes.

The MES is implementing a National plan for integration in the education process of children with special needs/or with chronic diseases and reports

⁴ <http://www.monitor.bg/bulgaria/article?sid=&aid=159327&cid=20&eid=1387>, 7.06.2008.

that 2356 sets of free textbooks (for I-IV grade) have been secured during 2007. The MES statistics report a slight increase of the number of schools and kindergardens, where children with special needs have been integrated in 2007: 770 schools (in 2004 this number was 130) and 183 kindergardens⁵. Another progress is reported in relation to the growth of the number of constructions of accessible architecture in the schools for disabled students: for 2007 were accessible 153 schools and 22 kindergardens. In the framework of the module “Creation of accessible architecture” of the National program “Modernising the material base in schools” have been developed and approved projects for access to education of children with special needs in 55 schools in the country. More than 500 teachers passed specialised trainings for working with students with special needs for their integration in the education system. Apart of the public statistics though, the functioning of the system for integration of children with special needs is not so effective.

Integration of Roma in the education process remains a serious problem. Some of the most serious issues regarding Roma haven’t been solved yet in 2007: the existence of segregated schools, the enrollment of Roma children without disabilities in the schools for mentally retarded children, often with the support of the regional structures of the Ministry of Education⁶. Roma access to pre-school is limited. Many indicators highlight the poor quality of education received by Roma children, especially in the crucial first years of school. Segregation is a pervasive problem, and, along with other quality issues, it contributes to high dropout rates and very low enrolment in secondary and university education. Adult education and vocational training is currently only available on a project basis, and the experience with the majority of these programmes has not been positive. These projects did not manage to improve the education level or employability of the Roma participants, because they did not reflect the real needs of the labour market or the education system.⁷ Reliable data and evaluations of the problems related to Roma education are still missing.

Roma NGOs are working for the elimination of these obstacles.

⁵ Report on the implementation of “National program for development of school education and pre-school upbringing and preparation (2006 – 2015)” for 2007, available at the web site of MES: http://www.minedu.government.bg/opencms/export/sites/mon/documents/doklad_ns-2007.pdf.

⁶ <http://amalipe.com/en/index.php?nav=news&id=29>.

⁷ Advancing Education of Roma in Bulgaria. Country Assessment and the Roma Education Fund’s Strategic Directions, Roma Education Fund, 2007

There are not special legislative and administrative provisions for Roma in Bulgaria's laws. All legislative and administrative norms are applied equally with regard to all citizens of Bulgaria. For most of the Roma, however, education is just a right granted on paper. The illiteracy rate among the Roma is between 12% and 20%, with a significant part of the illiterates being a second generation out-of-school people. The children start school without the necessary pre-school training. The first "seven years" in their lives children take place in a closed environment where the "mutual education" method is being employed - the older ones take care of the younger ones. As a result, the majority of them does not speak Bulgarian well, has no studying habits and completes grades due to the leniency of the teachers. Many do not manage to complete the respective grade.

Of 100 children at least 70 drop out of school before completing primary school and even in the cases when they finish primary school, they rarely continue onward. A large number of the Roma perceive school not as an educational, but as a predominantly social assistance institution: it provides what most Roma families are not able to offer. Most of the children in the special schools and the institutions for orphans are Roma. Many of them are there because the school provides shelter and food - they are otherwise physically and mentally healthy children with living parents.

About 10% of the Roma receive a relatively good professional education and employment (mostly drivers and mechanics for men and seamstresses, hairdressers and orderlies for women); 3-4 of every 100 manage to finish secondary education.

The Roma with university degrees are very few - about 0.5% of all the Roma (Bulgarians are 21% and Turks - 5%). As a rule the Roma who have completed higher education do not live in the ghettos and have studied in mixed groups with Bulgarians.

1.5. Lack of Effective Implementation of Policy in the Sphere of Roma Education.

This problem is predominantly a problem of the Bulgarian state. There is no adequate financing from the state budget to support the Action Plan of the Framework Program for Equal Integration of Roma into Bulgarian Society, the Action Plan for the Decade of Roma Inclusion, the Strategy for

the Equal Educational Integration of Ethnic Minority Children and Students, and plans for the establishment of the Center for Educational Integration of Minority Children. Consequently policy documents are only very partially implemented⁸.

The approximate amount of finances flowing annually in Bulgaria for Roma education is about EUR 2-3 million from all donors in the last few years. But it is not easy to raise the question of budget allocations for Roma, or to effect change in the distribution of the state budget to fund the Roma Decade Action Plan, because there is neither an existent mechanism to play this role nor a strong Roma lobby.

Despite the need and confirmed benefits demonstrated at the local level, just over 100 Roma teaching assistants have been appointed to work as classroom facilitators throughout the country. Many municipalities, however, do not have the resources to hire such assistants. Likewise, there are very few teachers of Romani language working in schools at present. While Roma traditions and culture are presented in some textbooks, stereotypical or even biased material about Roma still appears in classroom materials.

1.6. Good practices for integration of Roma.

According to the statistics, the inclusion of Roma in the education system has recently raised. 75,2% of Roma aged 15-35 years have completed their elementary education in 2007. 6,4% are without education, in comparison to 2001, when the share of Roma without education was 37,1% and the share of Roma without education was 42,9%. Regional education inspectorates account that for the school year 2006/2007 16 557 Roma pupils studied in 262 schools outside of the Roma neighbourhoods.

In 2007 a Consultative body to the Minister of Education and science on the issues related to religious education in schools has been established. In order to improve the educational level of children of Roma origin and ensuring their access to mixed schools outside the Roma neighbourhoods, the Ministry of Education and Science (MES) has taken the following measures:

⁸ Ibid.

- The MES has developed and adopted a long-term strategy and action plan for the gradual and complete elimination of segregated schools in the Roma neighbourhoods and for not allowing the segregation of Roma children in separate classes in the mixed schools.

- In order to ensure real access for Roma children to all schools in any settlement by residence, the compulsory division into districts for children at enrolment in school was eliminated. Currently in force is only Article 9 (1) of the Public Education Act which gives the parent/guardian the right to choose the school which his child will attend.

- An amendment to the Public Education Act for the purpose of better preparing the Roma and Turkish children for school, introduced compulsory one-year preparatory pre-school training at kindergartens or schools for all children before enrolling in first grade.

- Early vocational training was eliminated and Roma children, just like all the rest, are taught according to uniform general education programmes.

- In the segregated schools teachers without the necessary educational qualifications were removed.

- The kindergartens and schools with a segregation problem and subject to desegregation were identified.

- The MES developed and presented to the municipalities recommended models for the desegregation of separate schools for Roma children in the Roma neighbourhoods.

All principal government instruments specify as priority implementation of policy for “retaining the availability of higher education system and increase of equality” for the various social and ethnical groups. As a result from the target national policy in respect to involvement of Roma minority the University of Veliko Tarnovo has developed bachelor programmes for teachers in Roma mother tongue. During the last two years a number of international projects were implemented, aiming to ensure relieves and additional opportunities to young people from isolated groups and provide them with chance and access to higher education. In result from this activity in 2007 people from Roma minority were provided with

opportunities to attend specially elaborated pre-admission preparation courses, organized by university lecturers, whereas the condition is candidates to hold diplomas of secondary education with very good results.

In 2007 a few universities started training of students under one-year master programme, as well as will launch specialized post-graduate training for teachers, willing to work within multicultural and multiethnic educational environment.

Two Roma are employed in the Ministry of Education and Science. A new Center for Educational Integration of Minority Children is currently being established. The staffing of the Center began in summer 2006, but the real work of the Center is still forthcoming. In addition to this, a Consultative Council on the Education of Children and Pupils from Ethnic Minorities, 14 within the Ministry of Education and Science, is operating as a think-tank in the field of education of ethnic minorities. As a permanent consultative body, it is in charge of advising the Minister of Education in such key matters as development and implementation of national educational policy for integration of ethnic minority children and the elaboration of relevant strategies and measures. Among its main activities it is supposed to plan the process of desegregation.

2. Access to Rights: National Human Rights Institutions in the Country

2.1. Ombudsman.

The Law on the ombudsman, promulgated in State Gazette No. 48 of May 23, 2003, is in force since January 1, 2004. It regulates the legal status, organization and activities of the Ombudsman in Bulgaria. The Ombudsman intervenes when citizens' rights and freedoms have been violated by actions or omissions of the state and municipal authorities and their administrations as well as by the persons assigned with the provision of public services⁹. The Ombudsman shall be independent in his/her

⁹According to the additional provisions of the law - "public services" are educational, healthcare and social activities, activities related to water, heat and electricity supply, postal and telecommunications activities, commercial activities, activities related to security and transport safety as well as other similar services, provided for satisfying public needs and in relation to which administrative services may be performed.

activities and shall obey only to the Constitution, the laws, and the ratified international treaties to which the Republic of Bulgaria is a party. He/she shall be guided by his/her personal conscience and morality. The activities of the Ombudsman are public. The Ombudsman is elected by the National Assembly for a term of five years and may be re-elected for the same office only once. The Ombudsman enjoys the same immunity as a Member of Parliament.

According to the law the Ombudsman shall:

1. receive and consider complaints and signals regarding violations of rights and freedoms by the state and municipal authorities and their administrations as well as by persons assigned with the provision of public services;

2. make examinations upon the complaints and signals received;

3. reply in writing to the person, who has lodged the complaint or signal, within one month; if the case requires a more thorough examination, this term shall be three months;

4. make proposals and recommendations for reinstatement of the violated rights and freedoms before the respective authorities, their administrations, and persons under item 1;

5. mediate between the administrative authorities and the persons concerned for overcoming the violations admitted and shall reconcile their positions;

6. make proposals and recommendations for eliminating the reasons and conditions, which create prerequisites for violation of rights and freedoms;

7. notify the authorities, listed under article 150 of the Constitution, for approaching the Constitutional Court, when he/she is of the opinion that it is necessary the Constitution to be interpreted or a law to be declared unconstitutional;

8. notify the Public Prosecution Office when data exists that a crime, prosecuted on indictment, has been committed.

The Ombudsman may act on his/her own initiative as well when he/she has established that the necessary conditions for protecting citizens' rights and freedoms have not been created.

The Ombudsman shall have the right:

1. of access to the authorities and their administrations, including the right to be present when they discuss and make decisions;

2. to request and receive timely, accurate and comprehensive information from the authorities and their administrations ;

3. to publicly express opinions and statements, including in the media.

The Ombudsman shall maintain a public register on the received oral and written complaints and signals and their movement and shall submit an annual report on his/her activities to the National Assembly by March 31 every year.

2.1.1. Submission of complaints and signals.

Complaints and signals to the Ombudsman may be submitted by natural persons, irrespective of their citizenship, gender, political affiliation or religious beliefs. Complaints and signals may be written or oral, submitted personally, by post or by other traditional means of communication. The complaint must contain the name and permanent address of the sender, description of the violation, the authority, administration, or person against whom the complaint is lodged. Written evidence may also be enclosed to the complaint. Anonymous complaints and signals and complaints for violations committed before more than two years shall not be considered. The submission of complaints before the Ombudsman is free of charge. The complaints and signals received shall be entered into the register and the measures undertaken on each case and the results thereof shall also be entered into the register. The authorities and the persons to whom the opinions, proposals and recommendations have been addressed shall be

obliged to consider them within fourteen days and to notify the Ombudsman on the measures undertaken.

The administrative penal provisions of the law stipulate fines between 300 and 600 BGN for not obeying to the legal regulations if the violator is not liable to a more severe penalty.

2.1.2. Ombudsman's activities in 2007.

According to the annual report 2007 the number of the complaints and signals is 3.367, in 2006 the number was 2 516 and in 2005 – 548. According to the type of violations the complaints and signals can be categorized in the following directions: social (public) services, which as central-heating supplying, electricity supplying, telephone services, public transport, est. – 937; property problems – 764; social activities such as social security, labour rights and employment, social support, rights of children and youngsters, people with disabilities and other social services – 476; fundamental rights and freedoms – 361; administrative attendance – 181; healthcare – 137; public order and security – 119; education – 67; non-fulfillment of court acts – 63, protection of the environment – 54; other type of violations – 208. Fifteen foreign citizens submitted complaints to the Ombudsman office in 2007.

The number of the complaints and signals has progressively increased in 2007. One of the reasons is the higher popularity of the public role and activities of the institution of Ombudsman. On the other hand, it is a mark of the citizens' discontent of the administrative attendance and services, the low confidence in the institutions and continuing violation of human rights and freedoms.

In 2007 the main accents of the Ombudsman's policies and activities were: the good governance and administration, the decentralization of the power, human rights and the right to health, children's rights, independent control over the penitentiary system, the right of the citizens' right to clean environment, customers' rights to public services, participation in anti-corruption policy of the state, independent control over the court administration. The Ombudsman also prepared recommendations in the certain areas and prepared reports and positions.

2.1.3. Local Ombudsmen in Bulgaria.

Local ombudsman type institutions in Bulgaria have been established for the first time in late 1998. Due to the lack of legislation, since 2003 local ombudsmen have operated in the framework of pilot projects based on special agreements between civil society organizations and local authorities. In 2003, with the adoption of the amendments to the Law on Local Self-Government and Local Administration, municipal councils have been entitled to elect public mediators (article 21a of the law). Based on this legal framework since the beginning of 2004 a new process of establishing municipal public mediators has started. The Law on Local Self-Government and Local Administration stipulates that the Municipal Council may elect a Public Mediator. The Public Mediator shall promote the observance of the rights and legal interests of the citizens before the local self-government authorities and the local administration. The organization and activities of the Public Mediator shall be regulated by Rules, adopted by the Municipal Council. The Public Mediator shall be elected and removed from office by a majority of 2/3 of all Municipal Councilors.

2.1.4. Practice of the Public Mediator of the municipality of Sofia as an examples of the activities of the local ombudsmen.

According to the report of the Public Mediator of the municipality of Sofia for 2007, there were 1170 consultations given to natural and legal persons, 244 of them though Internet. There were three main directions in his work in 2007 in accordance with the mission and vision of the local public mediator - collaboration to the citizens in connection with their complaints and signals, collaboration for the development and strengthening of civil society and increasing the legal culture of the citizens; resource of connection and communication in the process of the municipality governance.

2.2. Commission for protection against discrimination.

The Bulgarian Law for protection against discrimination (LPFDD), promulgated SG, No. 86 of 30 September 2003 is in force since 01.01.2004 and was amended in 2005 and 2006. It regulates the protection against all forms of discrimination and for a first time in Bulgarian legislation gives definitions of direct and indirect discrimination, sexual harassment and

persecution. According to the law the Commission for protection from discrimination is an independent specialized state body for prevention of discrimination, protection against discrimination and ensuring of equal opportunities. In the selection or appointment of the Commission members the principles of balanced participation of women and men and participation of persons belonging to ethnic minorities shall be respected.

In 2007 the Commission for protection against discrimination worked on 569 complaints, 80 signals and 9 self-referrals by Commission's own initiative¹⁰. The tendency is towards the increasing the number of cases - the complaints and signals in 2007 are 66, 8 % more than the ones in 2006 - 389. Only 5 % of the complaints were based on gender discrimination in 2007. One of the reasons for the increase is the flexible and socially friendly procedure which is free of charge for the claimants. All the costs in the framework of the procedure before the Commissions according to the law are on Commission's account budget. On the other hand the Commission for protection against discrimination organizes informational campaigns all over the country and its activities became more visible for the people.

The complaints were divided among the specialized panels of the Commission, which are:

I specialized panel – specialized in discrimination on the base of ethnic and race belonging;

II specialized panel – specialized in discrimination on the base of gender, human genome, protection in exercising the right to work, harassment in the working place when in exercising the right to work, trade union belonging and trade union membership;

III specialized panel – specialized in discrimination on the base of nationality, citizenship, origin, religion and faith;

IV specialized panel – specialized in discrimination on the base of education, beliefs, political belonging, personal and public status, property status;

¹⁰ Annual report 2007 of the Commission for protection against discrimination.

V specialized panel – specialized in discrimination of the base of disability, age, sexual orientation, family status;

5 members` panel – specialized in cases of multiple discrimination, based on more than one ground;

ad hoc panel (for specific cases) - specialized on case of discrimination on the grounds which are not mentioned above;

Prevention is an important factor in the Commission's long-term plan for combating discrimination. In this respect, in an attempt to cope with the need for taking coordinated actions to pursue the policy of prevention and protection against discrimination, the Commission adopted a long-term Plan of Action against Discrimination, 2006-2010. The Plan of Action includes the following priorities:

1. Conducting studies and analyzes of the different forms and manifestations of discrimination;
2. Carrying out information campaign to explain the implementation of the anti-discrimination legislation;
3. Establishing a data-base to assist the anti-discrimination law-enforcement;
4. Entering into partnership with non-governmental organizations, law-enforcement institutions and state bodies;
5. Setting up a stable long-term practice for effective application of the anti-discrimination law;
6. Conducting thematic monitoring.

In the end of March 2008, along with its Annual Report for 2007, the Bulgarian Equality body announced important decisions under the Law on Protection from Discrimination and concerning equal treatment of men and women.

The cases decided by the Second Specialized Panel of the Commission for Protection from Discrimination (CPFD) and confirmed by the Supreme Administrative Court, are the Devnya Cement case and the Sofia University gender quota case.

In the first case (Decision of the CPFD No. 29/4. 07. 2006, confirmed by Decision No. 10594/ 1. 11. 2007 of the Supreme Administrative Court),

instituted by a female worker in Devnya Cement – Varna, a Joint Stock Company, continuous unequal treatment of the applicant was found in the form of unequal pay for work of equal value, compared to her male colleagues. The Commission declared that it constitutes a violation of Art. 14 para 1 (the equal pay provision) of the Law on Protection from Discrimination. (LPFD). Furthermore, the CPFD found that the violation represents direct discrimination based on gender within the meaning of Art. 4 para 2 of the LPFD. The arguments of the Commission were that the applicant was continuously discriminated against in the period January 2003 until the moment of her retirement- May 2006 - through receiving unequal pay in comparison with her male colleagues appointed to the same position of “mill operator”, and performing work of equal value. The defendant could not justify the monthly difference in pay of BGN 45 (around EUR 23) made to the applicant, which was at her detriment compared to her male colleagues. Moreover, the defendant confirmed that, during the period under consideration, the company failed to ensure equal pay for its workers. Subsequently, the Commission ordered Devnya Cement to discontinue the practice of unequal treatment based on gender in the enterprise, and to amend the Collective Agreement to include guarantees for equal pay, irrespective of gender and any other grounds, as required by Art. 14 pp. 1 - 2 of the LPFD.

The second case (Decision of the CPFD No. 53/14.11/2006, confirmed by Decision No. 11457/ 20. 11. 2007 of the Supreme Administrative Court) is an interesting case about gender quota for admission of students practised by Sofia University, brought to the Commission in 2006 on the initiative of the Association for European Integration and Human Rights- Plovdiv and finalized by a decision of the Supreme Administrative Court. The arguments for discrimination based on gender were the following: in 2004 Sofia University applied an admission quota system of 40 % men and 60 % women for the Subject “ Bulgarian Philology”; as a result, male candidates were discriminated against because they had to compete for fewer places; on the other hand, female candidates were discriminated against too because in practice, as women generally perform better at exams, the minimum score of women admitted was higher than the minimum score of the men admitted. As a consequence, it was argued, the quota system practised by the University, represented discrimination based on gender and the measure could not be justified as a “legitimate aim”,

under the meaning of Art. 7 para 2 p. 12 of the LPFD.¹¹ The Commission and the Supreme Administrative Court did not consider the quota to be a discriminatory measure, and based their decisions on the following arguments: the quota practised represented differential treatment based on the objective criterion of difference in the biological development of women and men and in these circumstances represented a measure for ensuring balanced representation of the two sexes in university education; such a measure is perceived by the Commission and the Court also as a means of avoiding full feminization of the given academic subject and thus of the related professions.

The above mentioned cases are unique for the practice of the Bulgarian administrative jurisdictions and Bulgarian courts on gender discrimination issues. The Devnya Cement case is the first case related to equal pay which benefited of the final sanction of the Supreme Administrative Court. The gender quota case is of key importance with the considerations for gender segregation of the labour market, which is a real problem in Bulgaria in the field of teaching professions and the professions related to languages. Both cases have the potential to generate further case law and debates in society.

The practice of the Commission in this direction is confirmed by the case of a woman, medicine doctor who has been an employee of a hospital. The claimant complains that the manager of the hospital has entered a new workplace schedule according to which she has to work mainly at the afternoon. The female doctor is a radiologist. There are some specific requirements for the radiological examinations of the patients, one of which is that this type of medical examinations should be held before noon. This facts places her in a less favourable position as compared with the other MD - Radiologist /a man/. Commission's decision: CPAD ascertains that there was a direct discrimination against the claimant based on public status.

The Claimant is a woman who works in the company Lukoil Neftochim Bourgas. She complains of gender based discrimination by the employer. She holds that she was transferred to work in worse conditions because she is a woman. She complains as well against the promotion and qualification

¹¹ According to this provision, the measures adopted in education and training are not considered discriminatory if they are aimed at a balanced representation of men and women, as long and as much as these measures are considered necessary.

system of the company. The reason she was transferred in another work position was because her position was redundant. As a result of the gender discriminative system of qualification of the company's staff she was granted with lower grade of qualification than her colleagues men who had less work experience than her. The lower grade led as a consequence to her replacement. Commission's decision: CPAD ascertains that there was a direct discrimination against the claimant based on her gender.

3. Disadvantaged, Marginalized and Vulnerable Groups

3.1. Main issues of discrimination.

In the framework of the 2007 – the European Year of Equal Opportunities (EYEO) the Commission for protection against discrimination in a joint project with the Bulgarian Gender Research Foundation conducted with the assistance of an independent sociological agency national representative research “Attitudes towards minority groups and discriminative behaviour in Bulgarian Society”. The results of the research showed that for the Bulgarians the presence of discrimination is a problem which must be solved. Almost 1/3 of the interviewed answered that they were a victim of discriminatory attitude. Often the victims of discrimination feel that they are discriminated on the base of more than one ground. Most of the respondents who have been victims of discrimination, have suffered from multiple discrimination. Discrimination on ethnic ground is most widespread, followed by age discrimination (30%), discrimination on the grounds of disability (25%). Very negative attitudes were measured towards people with homosexual orientation. According to the research people become victims of discrimination on the street and almost ¼ of the interviewed are afraid of discrimination on the working place. Women feel more threatened to be an object of discrimination than men.

3.2. Protection from Discrimination – the role of the Court.

The Law for protection against discrimination provides the opportunities to choose between the procedure before the Commission for protection against discrimination and the other possibility - to initiate a lawsuit before the District Court. The claimant may request for: determining the infringement; convicting the defendant to terminate the infringement and to restore the initial situation, as well as to refrain from further violations in the future; damage compensation. Trade unions and their divisions, as well

as legal non-profit entities with public profit, may lay claims on behalf of individuals whose rights were violated, upon their request.

The courts issued at least 40¹² judiciary acts (decisions and rulings) on cases of discrimination of different types, including disability (physical and mental), gender, ethnic origin, age, sexual orientation, social status, religion, political convictions, personal status (including domicile), etc.

Some interesting court decisions.

3.2.1. Disability.

In March, 2007 the Pazardzhik District Court issued a ruling against a private company, Optima Group Ltd. The company manages the public pool in the city and its staff prevented a group of people with mental disabilities from entering the pool, saying they would “scare” the other clients. The court held that this constitutes direct discrimination on the basis of a health condition and adjudicated that a compensation for non-material damages (humiliation, anxiety, a feeling of isolation) be paid to the plaintiffs. The compensation is in the amount of BGN 200 (100 Euro) for each of the seven plaintiffs. The application was filed with the support of an association in the public benefit, Chovekolyubie [Empathy] - Pazardzhik, which provides educational and rehabilitation services in the field of mental health.

In May 2007, the Sofia District Court ruled against the Ministry of Education and Science (MES) in a lawsuit for direct discrimination against children with disabilities and special educational needs. The occasion was the MES omission to provide a supportive environment for the integrated education of these children, as well as to secure the funding necessary for the creation of such environment. The court ruled that MES must put an end to its omission of providing a supportive environment, and to abstain from such violations in the future. The court, however, dismissed the claim to have MES put an end to its omission with regard to the provision of the necessary funding for the creation of a supportive environment. The court, on the grounds of the division of power, held that “it is beyond the legal

¹² According to the annual report of the Bulgarian Helsinki Committee “Human rights in Bulgaria in 2007”.

competences of the civil court to oblige any state body to implement the powers assigned to it by normative acts”, and that “there are no legal mechanisms of convicting a state body to perform an action [required by law]” and “there is no procedure for involuntary implementation of such a verdict”. This is the main deficiency of this decision. In reality, the court announced that there is no legal means in the country protecting the citizens against the refusal of a state body to perform its statutory obligations – a very weak interpretation of the law. At the same time, the court rightly stated that “the imminent consequence from failure to perform obligations aimed at ensuring equal treatment is the violation of the right to equal treatment; therefore, the more unfavourable treatment is not subject to being proved in any other way than by establishing the unlawful omission”. The court held also that “the obligation to provide [supportive] environment as a condition for the integration, and hence for the provision of education equal to that available for the children without disabilities, would be completed only if such environment is provided in each and every school in the country (regardless of whether state or municipal)”. The court thus indirectly said that the segregation in education based on disability is equal to discrimination – a great achievement in the protection of the people with disabilities’ right to equal treatment. According to the court, “assuming the reverse, i.e. that the provision of a supportive environment only in certain schools is sufficient, [...] would contradict each citizen’s [statutory] right to exercise his or her right to education in a [...] school chosen by him or her, and would restrict the choice of the children with disabilities only to the schools in which a supportive environment exists. On general grounds, the latter would be a manifestation of more unfavourable treatment of these children vis-à-vis the children without disabilities, i.e. it would constitute discrimination.” The lawsuit was filed by two non-profit legal entities operating in public benefit.

3.2.2. Gender.

In March 2007, the Sofia District Court ruled that gender-based admission quotas for the major in Theology at the Sofia University constitute direct discrimination, as they deprive the representatives of one of the sexes of admission as students, despite their better test results vis-à-vis the representatives of the other sex and only on the grounds of their sex. The court held that applicants from one of the sexes, who have received higher marks at the tests, have not been admitted to the university as the quota for the respective sex had been reached. At the same time, applicants from the opposite sex, who have received lower test marks, were admitted. The court

held that the right to equal access to the educational institutions means not only access to the application procedure regardless of sex, but also admission regardless of sex. Insofar as the Sofia University invoked the exclusion stipulated by PADA / Protection against Discrimination Act/ with regard to measures to ensure gender balance in the universities, the court held that a specific need of such a measure must be proven – which the university failed to do. This ruling is a very good example of practical implementation of the important principle of proportionality in deciding cases in which human rights are at stake. The court ruled that the Sofia University put an end to the use of admission quotas, and the MES – to stop proposing such quotas. The lawsuit was filed by a non-profit legal entity operating in public benefit.

In May 2007, however, another composition of the same court ruled differently on an identical case for the major in Law at Sofia University. The court held that the quotas are “necessary” measures in reaching a gender balance between the students, although it acknowledged that “the division by quota has hindered the admission of women who have received higher admission grade-point average than the minimal for the men”. In this case, the court did not apply the principle of proportionality and did not study the alternative ways of reaching the desired balance – which is a significant deficiency of the decision. The court also demonstrated a lack of understanding of the essence of direct discrimination, ruling that the more unfavourable treatment is not in itself discrimination. This interpretation directly contradicts the definition of direct discrimination, according to which a more unfavourable treatment based on protected attributes is always illegal discrimination, except in the very few cases listed explicitly in the PADA.

3.2.3. Ethnic origin.

In January 2007, the Sofia District Court ruled against the Sofia Electricity Distribution Company for installing an electric meter box at inaccessible height, thus preventing the Roma plaintiff from visually controlling the electric meter readings. The court held it established that the plaintiff did not owe the unjustly calculated amounts for electricity that he had not used. The decision is remarkable, both in terms of this unusual form of protection and with regard to some aspects of the anti-discrimination law stipulations.

In November 2007, the Supreme Court of Cassation (SCoC) confirmed a decision of the Plovdiv Regional Court. The decision of the latter was

against the Plovdiv Electricity Distribution Company, on a case in which the court held direct ethnic discrimination against Roma comprised of a chaotic electricity supply regime for a period of three years, despite the fact that they were paying their bills. SCoC justly increased from BGN 3,000 (1,500 Euro) to BGN 5,000 (2,500 Euro) the compensation awarded by the district court.

The courts also ruled against suppliers of other public services, such as cafeterias, restaurants and swimming pools, deciding that denial of access to such services to Roma constitutes direct discrimination.

In June 2007, the Sofia City Court (SCC) confirmed an unprecedented decision of the Sofia District Court in which the court had ruled against Bulgaria's Prosecutor's Office for racial discrimination against a Roma demonstrated by a prosecutor in the performance of his magistrate duties. The SCC held that dispositions issued by the prosecutor, containing insulting words about the Roma, are an indication of slighting and different treatment of this community. The SCC ruled that "every person of Bulgarian, Roma or other ethnic origin has the right to be treated by everyone, including by officials, without restrictions, [...], with due respect to [his] person." In essence, the Prosecutor's Office was convicted of anti-Roma official hate speech by a magistrate. The plaintiff is a Roma whose brother died in an accident; the discrimination occurred during the investigation of his death.

3.3. Women's Rights and Gender Discrimination.

Political will for the implementation of a clear, continuous and consistent policy on women's rights and gender equality continued to be lacking in Bulgaria in 2007. No funds were, again, allocated for such a policy in the 2007 national budget. This is why the awareness and training campaign had to be once again initiated and managed by the non-governmental organisations. Despite the fact that in 2006 the Equal Opportunities for Women and Men Bill was submitted to the National Assembly, it is still under review. The Bulgarian Gender Research Foundation announced that there is a probability that the parliamentary committee responsible for the review of the bill may have started work on a new gender equality bill. This new text, unlike the previous one, was to provide for the creation of a special body with the Council of Ministers that would implement the gender equality policy. By the end of 2007, such a bill had not been submitted to the National Assembly.

The state policy on domestic violence issues was much more proactive and responsible. 2007 was marked by the Council of Europe's campaign against violence against women, including domestic violence. In this respect, the Ministry of Labour and Social Policy, the coordinator of this campaign for Bulgaria, created a work-group comprised of representatives of governmental and non-governmental organisations; a plan on combating violence was adopted in implementation of the Ministry's obligations under the Prevention and Protection from Domestic Violence Program. The Methodological Guidance for Police Actions in Domestic Violence Situations was published in the beginning of the year, national and regional coordinators for domestic violence were defined and a database of violence cases was initiated.

There is certain progress in the work of the court as well, especially with regard to the issuing of immediate protection orders, which creates greater guarantees for the life and the health of the victims and their children. This year the non-governmental organisations once again reported an increase in the number of people who addressed them for help on domestic violence cases. The statistics of the Conjugal Division of the Sofia District Court for 2007 shows that 316 lawsuits were initiated under the Domestic Violence Act; of these, 91 were terminated (mostly withdrawn), 20 were dismissed, and the remainder ended with the issuance of orders. For the same period, 132 domestic violence lawsuits were filed in Plovdiv: 92 have been completed, 50 were terminated by request of the plaintiff, and 32 final protection orders were issued by November, 2007. 48 lawsuits were filed in Pernik in the first ten months of the year; 32 orders were issued, 31 of them for immediate protection. The court and the police work the best in places with functioning non-governmental organisations in the same field. Unfortunately, the amendments to the legislation needed to make its application more effective have not been effected. The main deficiency of the law continues to be the lack of an explicit text in the Penal Code containing penalties for failure to implement a court protection order. The shelters, 24-hour hotline and other activities for domestic violence victims, included in the program, are still being provided completely and only by non-governmental organisations at their own expense, through the already functioning centres for support to the victimized women and children.

With regard to the state policy on combating the sexual exploitation and human trafficking, the non-governmental organisations reported the existence of resolve on behalf of the Commission on Combating Human Trafficking to adopt and really implement the human trafficking prevention

and combating plan. Bulgaria was among the first ten countries to ratify the Council of Europe's Convention on Action against Trafficking in Human Beings¹³, which is in force for the country since February 1 2008. This is the first European convention in this area to become effective. The convention includes measures not only for the prevention of human trafficking, but also for the prosecution of traffickers and for the protection of the victims. The Commission on Combating Human Trafficking's plan calls for achieving compliance with the convention at local level. However, the local commissions for combating trafficking, as required by the Combating Human Trafficking Act, have not been formed yet, although there are serious talks about the initiation of the first five. The temporary shelters and the protection and assistance centers for human trafficking victims have not been created yet.

The non-governmental organisations note that the media continue to create the image of the woman in the light of the gender stereotypes. The woman is represented as the object of men's sexual desires and in an unequal position in family and society.

3.4. The right to work – Minorities and development of equal opportunities for employment

3.4.1. Practice and main issues. - Ineffective policies for guaranteeing the right to work and to adequate standard of living of disadvantaged groups.

In 2007 the women's employment rate in the 15-64-year age group is 57,6%, which is 8,4% lower than the employment rate of men. The employment rate of the 55-64-year age group has increased with 3% in 2007 compared to 2006, and has reached 42,6%, respectively 51,8% for men, and 34,5% for women. The total number of the economically active unemployed persons is 240 200, of whom 120 700 men, and 119 500 women. The ratio of youth unemployment (15-24 years of age) is 15,1%.¹⁴

In August 2007 the Ministry of Labour and social policy reported that the jobless rate had dropped to a record low of 7 per cent and predicted the trend would continue. More than 90 per cent of the unemployed in Bulgaria

¹³ Bulgaria signed the Convention on November 22 2006 and ratified it on April 17 2007.

¹⁴ http://www.novinite.com/view_news.php?id=91375

are Roma. During the last 15 years, many Roma from poor rural areas have migrated to the towns for a better life. One of the most serious problems caused by the transition in Bulgaria is the social and economic situation of the Roma. Regardless of the fact that the Roma receive social assistance, their situation does not improve. Many of them live in extreme poverty, they are isolated in ghettos, they lack adequate education, and they have few opportunities to find a job. This closes the vicious circle in which generations of Roma live only on welfare. Everyday communication and willingness for communication between Roma and Bulgarians is constantly receding, and the problems with the limited access to education, jobs and quality of life are growing deeper.

In 2006, 58 per cent of Roma households were receiving some form of social aid, according to the labour ministry. From 1 January 2008, new rules are entering into force to limit the period under which anyone can receive welfare to 18 months. While designed to reduce abuse of the system, critics insist the development will have been in vain if it is not accompanied by policies that target poor education and unemployment.¹⁵ A 2007 poll reveals that half of Bulgarians, over 36% of Turks and only 6% of the Roma agree with the statement: "People should take care of their own lives". Conversely, 94% of the Roma agree with the statement "The government must guarantee a decent life for all" (compared to 63% Turks and half of Bulgarians).¹⁶

Roma have no regular job, and all members of every fourth Roma household are unemployed. Women are worst affected by unemployment - most of the Roma women do not go to schools and do not work. They take care of their younger siblings, get married early and some become mothers before turning 16. Thus while boys usually attend school till 6-7th grades, girls rarely complete more than fourth grade. A large number of women and children from the ghettos never leave their birthplace. In fact, in the regions with concentrated Roma population, 65% to 75% of people are still out of work. Unemployed Roma women are 71% and this rate is 49% for the men of the same ethnic group, which reflects the gender differences in

¹⁵ No maths and no water in Stolipinovo. The jobs boom in Bulgaria has left the Roma behind, <http://www.eurozine.com/articles/2008-04-22-popkostadinova-en.html>

¹⁶ http://www.csp-sofia.org/pub/?entry_id=1159

labour market trends and the absence of concrete, gender-sensitive measures.

And all these trends and results are in place despite the adoption in March 2006 by the Council of Ministers of a National Programme for Improvement of the Living Conditions of Roma for the period 2005-2015 /aimed mainly at ensuring the right to housing for Roma/; despite the activities under the National Action Plan on the Decade for Roma Inclusion and other initiatives for promoting training, job opportunities and entrepreneurship of Roma people. The effect from the appointment of twenty seven experts of the National Council for cooperation on Ethnic and Demographic issues (NCCEDI) on minority issues in the regional administrations and the nomination of respective experts in half of all 264 Bulgarian municipalities is still not visible.

The Decade for Roma inclusion has not been properly resourced and implemented in Bulgaria, and there is no effective state and administrative apparatus for coordination of Decade activities. The National Decade Action Plan is not backed with financial means from the national budget.

With the accession to the EU the European social fund is opened for Bulgaria. The funds will be used for development of the workforce and strengthening its public administration. The European Social Fund will finance two Operational Programmes (OPs) in Bulgaria from 2007-2013: the first to ensure ‘Human Resources Development’ and the second to boost “Administrative Capacity”. The Human Resources Development Operation Programme seeks to raise skills levels and productivity among the country’s workforce by providing better training and easier access to lifelong learning. Among the main priorities of the ESF programmes in Bulgaria is: *Setting up tailored training schemes for vulnerable groups, particularly in sought-after skills like foreign languages and information and communications technologies (ICT); and then arranging work placements for participants. Providing better access to education, training and career guidance for minority ethnic groups, disabled people and young school leavers.*¹⁷ In compliance with the latter, it is needed to provide more opportunities for lifelong learning among the older 25-64 age group, raising participation from the mere 1.3% today closer to the EU-27 average of 9.6%.

¹⁷ http://ec.europa.eu/employment_social/esf/members/bg_en.htm.

3.4.2. Programs and measures aiming the integration of disadvantaged groups at the labour market.

- Along with the existing programs for qualification of Roma of the Ministry of Labour and social policy from 2008 there will be a new measure. In the framework of a new programme “Activativisation of unemployed citizens” will be occupied 45 “labour mediators”, who will work as intermediaries between labour bureaus and Roma. They will present and give information about the available employment and qualification programs and will assist Roma with the preparation and filling of the documentation for application.¹⁸ 19 new regional programs will be launched in 2008.
- The MLSP is cooperating with Roma NGOs within the established Council for integration of Roma. In 2007 the Ministry implemented throughout the country four seminars for the problems of Roma women.
- To unemployed Roma are provided various qualification courses and in the same time they receive social assistance benefits. The scope of the program is expected to be limited. In 2006 82 000 people have been involved (the majority of whom were Roma) and their number will be decreased four times in 2008¹⁹. The program will then target the regions having the highest unemployment rates.
- 10 Labour exchanges in regions with high Roma population took place in 2007. The results according to data of MLSP show that: the labour exchanges gave the opportunities for employers and unemployed to meet, 4560 free positions have been announced and 3000 people started work; 308 people participated in the education programs of the component “Roma employment” of the project “Employment through support of the business”, 190 Roma have been employed, of whom 41-self employed²⁰.
- The state budget for support of unemployed and integration to the labour market for 2008 will be 190 mln. leva, with the plan to include 74 000 Bulgarians.

Along with the state programs, NGOs and companies are developing projects for raising the qualification of Roma: such as the JOBS project, the

¹⁸ *Monitor* newspaper, 7 may 2008.

¹⁹ *Sega* newspaper, interview with D. Dimitrov, Deputy minister of Labour and Social Policy, 22 February 2008.

²⁰ <http://www.duma.bg/2007/0607/120607/obshtestvo/ob-5.htm>.

programme for microcredits for Roma of Catholic Relief Services in partnership with USAID etc.

Conclusions and recommendations

Bulgaria aspired for years the accession to the EU. One year after joining the Union, the country is criticised for non-compliance with EU standards on human rights, employment, housing of Roma and education on paper. The deficit of effective integration policies for children and students from minorities, despite the strategies developed and the efforts deployed by the government, remains a severe human rights issue.

The EU membership poses challenges to the development of skilled and productive workforce as well as quality education. Studies reveal that quality education is a fact in the countries where education is a State priority. For Bulgaria this sector is still under reforms. Educational development, similarly to the incomes rate, is threatened by differentiation: between rich and poor, between children from urban and rural areas, between Bulgarians, Turks and Roma, and last but not least between physically healthy children and those with disabilities/or with special needs.

The reforms in the education in the context of the EU membership should be focused on guaranteeing its quality and good governance of the resources in order to be competitive in the new context. The structural funds if the EU, yet available for the country should be properly used for raising the qualification and skills of the Bulgarian workforce. Further reforms are expected to be developed for integration of the unemployed and of the vulnerable groups. Bulgarian government's general, society-wide social policies should become more inclusive.

Further programs and campaigns of the relevant institutions for prevention of discrimination and raising awareness among the general public is needed, as well as spreading more information about the mechanisms for protection against discrimination. These measures should be focused at the fight of the stereotypes in the Bulgarian society.

Human Rights in the Republic of Macedonia 2007

By: Albert Musliu & Jonuz Abdullai

Association for Democratic Initiatives

Introduction

1. Political and social situation.

1.1. General information.

The Republic of Macedonia is situated in South-East Europe, in the central part of the Balkan Peninsula. It covers an area of 25,713 square kilometers (the entire area of Macedonia covers approximately 66,000 square kilometers) and borders with Bulgaria to the east, Greece to the south, and Albania to the west and Serbia to the north. Macedonia has 850 kilometers of frontiers with its neighbors. The longest is the border with Greece-262km; that with FR Yugoslavia is 232km in length, that with Albania is 191 and that with Bulgaria is 165. The significance of the geographical position of Macedonia as a central Balkan state bordering with four countries, different in their economic potentials and development is especially underlined by the fact that they are directed towards each others in terms of trade, complementariness of their economies, with the main routes passing exactly through the territory of the Republic of Macedonia.

The Republic of Macedonia has 2,022,547 inhabitants according to the 2002 census. Macedonia is a country with a multiethnic and multi-confessional population. According to the last official census, the ethnic composition of Macedonia's population is as follows:¹

64.18% Macedonians
25.17% Albanians
3.85% Turkish

¹ Population data from, State Statistical Office of the Republic of Macedonia. *Statistical Yearbook of the Republic of Macedonia*. Skopje, 2003.

2.66% Roma
 1.78% Serbs
 0.84% Bosniak
 0.48% Vlach
 1.04% Other

The country has two major religions: Orthodox Christianity and Islam. Nominally, 66 percent of the population is Macedonian Orthodox, 30 percent is Muslim, 1 percent is Roman Catholic, and 3 percent is of other faiths (largely various Protestant denominations). There is also a small Jewish community in Skopje.

The capital of the Republic of Macedonia is Skopje. The official language in the Republic of Macedonia is the Macedonian language, written using its Cyrillic alphabet. In the units of local self-government where the majority or a considerable number of the inhabitants belong to a nationality, in addition to the Macedonian language and its Cyrillic alphabet, their language and alphabet are also in official use, in a manner stipulated by law.

1.2. Political situation.

The Republic of Macedonia is a parliamentary democracy and a political system with a strict division into legislative, executive and judicial branches. The president, who is popularly elected, is head of state and commander in chief of the armed forces. A unicameral parliament (Sobranie) exercises legislative authority. Parliamentary elections in July 2006 generally met international standards, although the pre election campaign and Election Day procedures were marked with irregularities and isolated instances of violence. Prime Minister Nikola Gruevski, who headed a multiethnic governing coalition, was confirmed in August 2006.

In general, the government respected the human rights of citizens, besides there were some problems in different areas such as the police abuse, corruption, trafficking in persons, the societal discrimination against ethnic minorities etc. The country made a progress towards meeting the Copenhagen political criteria, which require stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

Macedonia is now entering into a period of completing the consolidation of its transition to democracy, after long years of status quo that stood on mistrust and pessimism in political stability and national institutions in the post-conflict period. It also monitors regional cooperation, good neighborly relations with enlargement countries and Member States, and respect for international obligations. Macedonia has pursued political reforms in 2006, although at a slower pace. To some extent, this was due to formation of a new government. Since the election of the Government in 2006 has seen positive changes, which could be a result of the confidence in the Government that may be addressing the primary concerns of the citizens, are sluggish economy and unemployment. Yet the unfinished reforms for a stronger rule of law present greatest danger for disturbance for this positive trend.

The country has continued to play a positive political role in the region. An important reform of the judicial system has been initiated, and needs to be fulfilled while the decentralization process has moved forward. However, additional efforts will be needed to build consensus in order to achieve further progress and pursue the implementation of the Ohrid Framework Agreement, which was signed in 2001 in order to help to somewhat stabilize the interethnic relations.

Yet, a few positive developments occurred within the period of 2007. Certain progress was achieved in the relations between President Crvenkovski (SDSM) and Prime Minister Gruevski (VMRO-DPMNE) trying to improve the image of the country abroad prior to the issuance of the European Commission (EC) Progress Report on Macedonia, both executives initiated various meetings with the leaders of major political parties in an attempt to secure political consensus needed to implement the pending reforms. Through developing a new governmental action plan that aims to speed up the implementation of the provisions of the Framework Agreement. Also, increased efforts to fight corruption resulted in Macedonia improving its placement by 21 places on the corruption ranking scale of Transparency International. However, its corruption perception Index remains low 3.3 (on a scale of 0 “highly corrupt” to 10 “clean”). Moreover, the World Bank, in its “Doing Business 2008” report recognized the significant reform efforts of the country aimed at improving its business by placing it at the 4th place among the top 10 reformers in 2006/2007.

1.3. Parliament.

The Parliament is an institution that enjoys respect and has a great dignity in most of the democratic countries. Over the past years, the Parliament of the Republic of Macedonia demonstrated abundance of weaknesses as a result of which it was marginalized as the work of Parliamentary Bodies became invisible and as a result, plenty of systemic laws were blocked in the past. Its work was mainly transformed into an arena for verbal warfare between the Government and the Opposition. The general impression was that laws were pushed through rather than passed by the Parliament. Moreover, the absence of discipline within political parties when the work of the parliamentary caucuses is concerned (frequent absence from sessions, unbecoming behaviors etc) only resulted in the lack of parliamentary control.

This period was marked by exceptional tensions between the ruling and the opposition parties of the political blocks of the ethnic Macedonians and the ethnic Albanians. The antagonistic atmosphere was most visibly expressed in the work of the parliament and was intensified during this reporting period due to the efforts of the government to prosecute high profile executives and officials of the former government for alleged corruption.

The function of the Parliament was interrupted because disagreement between the government and the main ethnic Albanian opposition party (Democratic Union for Integration) over the application of the double majority mechanism and the appropriate function of the committee on relations among communities. The double majority mechanism is a constitutional principle and a key guarantee for the non-majority communities. The disagreement caused a boycott of parliament by DUI for 4-months and all the work of the three committees chaired by DUI members, on finance and budget, culture and health was put on hold. Following the intensive political dialogue between VMRO-DPMNE (*Internal Macedonian Revolutionary Organisation-Democratic Party for Macedonian National Unity*), DUI returned to the Parliament by the end of May. Though, establishing an inclusive dialogue within the Parliament remained difficult and several major items of legislation were held up, particularly in relation to judicial reform.

September 25, 2007 marked the confrontation in the parliament that escalated into physical violence between the ethnic Albanian parties. Clashes among members of parliament from DUI, PDP and DPA broke out

during the debate on the amendments to the Electoral Code. Also, other people were injured, including journalists.

Parliament failed to enact new rules of procedure that would streamline parliamentary procedure and clarify the use of the Albanian language by committee chairs. Not much attention has been given in providing adequate budget and staffing for the parliament, in particular to support the work of the committees.

Generally, efforts were made to pace the legislative process. Nevertheless, the functioning of the parliament was seriously disrupted by insufficient consultation between government and opposition, the boycott of parliament by DUI and political wrangling, which slowed down legislative activity.

1.4. Government.

The government coalition remained stable but tensions were occasionally apparent between the coalition partners, which pointed to a lack of effective internal coordination. The Party for Democratic Prosperity (PDP) joined the government coalition, taking over the local self-government portfolio. While, two of the three PDP deputies decided to stay in the opposition. The government underwent three minor reorganizations, involving mainly the ethnic Albanian coalition partners. The government's work focused on the process of EU integration and NATO accession, as well as on the implementation of the Ohrid Framework Agreement. The government adopted a national plan for adoption of the *acquis*, which was subsequently endorsed by the parliamentary committee on EU affairs.

Decentralization has continued to make progress, notably thanks to a spirit of cooperation between the central authorities and municipalities. A law on regional development was enacted.

The second phase of the fiscal decentralization process was launched in July 2007 with 42 of the 85 municipalities considered ready. The grants currently planned to fund education, welfare, fire and rescue services and cultural institutions will be replaced with block grants. Municipalities will henceforth have to manage funds and decide on priorities themselves. The debts of the municipalities have been substantially reduced. The approach to financing education has been improved but remains inadequate. Municipal tax collection has also improved, though it is still far from satisfactory. Internal audit units have been established in some 20

municipalities. However, funding of the tasks decentralized to the municipalities remains insecure. Some municipalities still have sizeable debts and have had their accounts blocked. No steps have been taken to develop the capacity of the municipalities to manage state-owned property. The qualitative and quantitative capacities of some municipalities are rather low. Coordination and information sharing between municipalities remains limited.

According to the “Report for the process of fiscal decentralization in Macedonia” ... in view of increased competences of municipalities in numerous spheres, accompanied by great difficulties to many of them (especially to smaller municipalities), efforts should be made on the part of both the central and local governments to foster inter-municipal cooperation. Rapid legal amendments are required in this context.²

1.5. Judicial system.

Progress was achieved in implementing the strategy on judicial reform, as one of the key priorities of the European partnership and the new court structure is gradually being established. Five specialized court departments were established to deal with organized crime and corruption, and only one of which is fully operational. Furthermore, steps have been taken to make it more functional the academy for training of judges and prosecutors. Also, new IT systems have entered into use. The implementation of the laws on litigation procedure and on enforcement of civil judgments is gradually having an impact on the enforcement of court decisions. Ministry of Justice statistics point to an increase in solved cases by 8% in the first six months of 2007.

With regard to judicial system, the U.S. Department of State reports that the judiciary was weak, inefficient, and occasionally appeared to be influenced by political pressure, intimidation, and corruption.³ Though, the judiciary continues to suffer from serious deficiencies, in particular as regards lack of independence and low efficiency. Completing the legislative framework through the enactment of laws on the public prosecutor's office and the council of public prosecutors is needed to improve the functioning of the judiciary. The Public Prosecutor was dismissed immediately after the new

² Report for the process of fiscal decentralization in Macedonia, Urban Rural Consulting – URC, Skopje, October 2007.

³ U.S Department of State, Country Reports on Human Rights Practices – 2007, Released by the Bureau of Democracy, Human Rights and Labour.

government took office, and the position remained vacant for four months due to difficulties in reaching a consensus on the nomination.

The reformed Judicial Council began operating in January with 10 of its 15 members in place. The deadlock on the appointment by parliament of the 5 remaining members of the Judicial Council disrupted its functioning, limiting its capacity to play a more active role in strengthening the independence and impartiality of the judiciary, hindering important judicial reforms. Broad political consensus is required to proceed with the reform and its implementation. In October 4 additional members were appointed. Eight procedures have been initiated against 10 judges. One judge has been dismissed and the remaining procedures are ongoing.

In addition, steps were undertaken to gradually address the deficiencies of the judicial system. The courts' budget remains insufficient. Efforts on training will have to be sustained to allow for the effective implementation of the reform. The new law on misdemeanors has applied since the end of May 2007, because of necessary amendments to laws remains pending, its application has not been fully implemented. The continuing delay in setting up the Administrative Court, created a gap in jurisdiction over second-instance appeals in administrative cases.

As regards the appointments to the Judicial Council and the reform of the prosecution service, numbers of delays encountered. Proceeding with reforms, a broader consensus is required. Judicial reform remains a major challenge, and a sustained track record of implementation has yet to be established.

1.6. Socio-economic situation.

During the last decade, a profound and complex social transformation from socialism and centrally planned economy towards the establishment of market economy, democratic institutions and a vibrant civil society has been underway in Macedonia. It was expected that the transition in Macedonia would have been ended by now. The prolonged transition in Macedonia resulted in intensive changes in the socio-economic life and the social structure of the population that led to the impoverishment and social exclusion of a large portion of population. There is evident of lasting and clear divergence between the actually achieved modest economic growths of the significance of the unfavourable socio-economic situation (specifically expressed through the unemployment and impoverishment) in

Macedonia. Though, Macedonia must develop a strategy for poverty and a strategy for increasing its competitiveness (through technological development, transfer of technology, and similar) that will result in an increase of exports and revenue from exports.

Even that fact that Macedonia is achieving a certain rate of economic growth, it nevertheless is not enough to start changing the general picture and situation in the socio-economic plane. Generally, the Republic of Macedonia has further moved towards establishing a functioning market economy. The country, which for a long time has lagged behind its neighbours and experienced a government crises in 2001, managed to recover ever since and seems not only to catch up in the nearest future, but to develop even further. In addition, the country has maintained a broad consensus on economic policies that has contributed to macroeconomic stability. With ambitious reforms, capital inflows and investment (including FDI) should strengthen, thus causing the growth to accelerate. During the first half of 2007, FDI inflows returned to the previous levels of around 1% to 2% of GDP. The main foreign investors are from the EU. The new government has launched a program to attract FDI, for example by establishing free economic zones. So far the impact of these zones on FDI has remained limited. In general, unclear property rights, slow legal procedures and fragmented responsibilities between the central and local governments are impeding FDI. Overall, infrastructure continues to require repair and modernisation.⁴

Also, it has been seen a lot improvement in the last three years: economic growth stabilized at around 4%, the inflation rate remained under control, the current account deficit has narrowed, international reserves have increased, and the fiscal position was sound. Moreover, the country has introduced a flat rate taxation system and has further liberalized the trade environment. Despite recent progress, a number of structural weaknesses still constrain the economy's ability to increase employment and achieve a more rapid growth. Adoption of prudent policies has made it possible to improve the macroeconomic situation even if there are still many structural weaknesses including insufficient diversification of exports (still centered on metals and clothing), a relatively inflexible labour market, inelastic public spending and a weak legal system.

⁴ COMMISSION STAFF WORKING DOCUMENT; The former Yugoslav Republic of Macedonia 2007 Progress Report, p. 23.

According to the survey of the public opinion done by the UNDP, the perceptions of citizens with regard to the most acute problems that Macedonia is facing – unemployment, corruption and poverty – remain unchanged throughout the entire period between 2002 and the first quarter of 2007.⁵

The modernised labour code, which has been in force since 2005, had a positive impact on job creation. Labour contracts have become more flexible. But, the current system of calculating social contributions does not yet take into account the newly introduced concept of part time work, which creates a significant disincentive of registering low wage or part time employment. Overall, active labour market has become more flexible and measures have also been intensified. These have helped to increase employment.

In particular, a large part of unemployment is structural, mainly affecting the young and poorly qualified that result on the duration of unemployment in this age group, which is long. The emerged pool of younger people unable to secure employment, due to both the relatively low demand for new employment, itself the result of the slow economic growth, and/or due to their inadequate educational and skills background to meet the labor market demand additionally increased the number of unemployed people. However, a considerable part of the unemployment is structural, as confirmed by the weak link between economic growth and the level of employment.

Unemployment is very high at some 36% of the labour force and declined only by about a ½ percentage point over the last year (to 35.8% in the first quarter of 2007). However, employment increased by some 3% during the last year, raising the employment rate from some 35% in mid-2006 to about 36% in mid-2007.⁶

Observed from a European perspective and measured in terms of GDP, the country belongs to a group of countries with lowest GDP per capita at PPP terms, since Macedonian GDP in 2005 was equivalent to (only) 26 percent of the EU-25 average. At the same time, the GDP per capita is in a similar range to the GDP levels of the neighboring countries – very similar to the GDP per capita of Serbia and slightly higher than Albania, Bosnia and

⁵ United Nations Development Programme. Early Warning Report Macedonia June 2007.

⁶ COMMISSION STAFF WORKING DOCUMENT; The former Yugoslav Republic of Macedonia 2007 Progress Report, p. 19.

Herzegovina and Montenegro. However, in contrast to its neighbors, the country was granted status of a candidate country for EU accession at the end of 2005. But, this position creates specific issues for the country in the near future.

The country is eligible for pre-accession assistance from the EU. These funds are widely considered as an important tool for fulfilling the EU accession criteria, as well as for improving the economic situation of the country in general. They have been formally available since the beginning of 2007, but given the low absorption capacity, it is unrealistic to expect that these funds will become fully effective before (early) 2009. Hence improving the capacity to design and implement projects is a particular challenge already.

However, despite growing numbers of unemployed people seeking work, specific skill mismatches and shortages have come to the fore. Agriculture/food processing, textiles, construction, tourism, hotel and catering services, as well as newly emerging sectors such as IT, may now be considered as strategically important sectors. However, this does not necessarily imply that all these sectors have considerable potential for employment growth.

Workers in Macedonia continually work under conditions that are considered unacceptable under the law due the difficult economic situation in Macedonia. Even though the government comments on the increasing education of the labour force, there are few jobs for well-educated youth to enter into. Therefore, many well-educated youth remain either unemployed or underemployed.

Despite all these efforts, the overall level of education and training of the labour force still need to be upgraded in order to improve not only labour mobility but also the competitiveness of the country as a whole. Furthermore, equal access to education in all regions is not yet guaranteed in practice. Overall, substantial measures have been taken to improve education, which will have positive effects on human capital.

In addition, the influence of political parties in the public administration means job competitions are frequently not based on merit, but on one's political connections. This not only poses a problem for sustainability within public institutions, but also jeopardizes the effective delivery of essential social services by competent authorities and individuals. The

problem of political patronage continues to put the development of Macedonia at risk and has lead to corruption.

As usually is the case, the country has ratified the European Social Charter and it Protocol No. 2, however as obvious from the statistics above it cannot fulfill its obligations toward the legislation imposed by the document. The biggest problems lie in the fulfillment of the appropriate standard of living, labour-related rights, personal security, economic, social and cultural development and finally dignity and pursuit of happiness, this undermining the very concepts standing in the basis of the human rights system.

The previously discussed presents actually the very contour of the state in Macedonia and its incompatibility with the human rights system, standards and non-existence of human rights culture and values. Therefore, these problems do not and will not disappear on their own, especially if there are positive, but relatively weak economic results achieved, as was the case thus far. What is required is another type of action.

Human rights in legislation

1. International human rights standards.

Macedonia has ratified almost all major rights treaties on the international and European level. Establishing binding legal obligation, Macedonia is a state party to the following UN human rights treaties:

- International Covenant on Economic, Social and Cultural Rights (CESCR)
- International Covenant on Civil and Political Rights (CCPR) – competence for inter-state complaints Art.41 not accepted
- Optional Protocol to the CCPR
- Second Optional Protocol to ICCPR
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) – competence for inquiry procedure, individual/inter-state complaints (Arts.20, 21, 22 accepted)
- Convention on the Rights of the Child (CRC)
- Optional Protocol to the CRC on the involvement of children in armed conflict

- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography
- Convention on the Elimination of all forms of Discrimination against Women (CEDAW)
- Optional Protocol to CEDAW – no opting-out of inquiry procedure, Art.10
- International Convention on the Elimination of all Forms of Racial Discrimination (CERD) – competence for individual complaints Art.14 accepted

Macedonia has ratified the following Fundamental ILO Conventions:

- Freedom of association and collective bargaining
- Elimination of forced and compulsory labor
- Elimination of discrimination in respect of employment and occupation
- Abolition of child labor

Concerning relevant UNESCO Conventions, Macedonia has ratified the following treaties:

- Convention against Discrimination in education
- Convention on Technical and Vocational Education
- Convention on the protection and promotion of the diversity of cultural expressions

Establishing binding legal obligations, Macedonia is a State party to the following treaties established under the auspices of the Council of Europe relevant for human rights protection:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- Protocol to the ECHR
- Protocol No. 2 to the ECHR, conferring upon the European Court of Human Rights competence to give advisory opinions
- Protocol No. 3 to the ECHR, amending Articles 29, 30 and 34 of the Convention
- Protocol No. 4 to the ECHR, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto

- Protocol No. 5 to the ECHR, amending Articles 22 and 40 of the Convention
- Protocol No. 6 to the ECHR concerning the Abolition of the Death Penalty
- Protocol No. 7 to the ECHR
- Protocol No. 8 to the ECHR
- Protocol No. 11 to the ECHR, restructuring the control machinery established thereby
- Protocol No. 12 to the ECHR
- Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances
- Protocol No. 14 to the ECHR, amending the control system of the Convention⁷
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- European Social Charter
- Additional Protocol to the European Social Charter
- Protocol amending the European Social Charter⁸
- European Convention on the Adoption of Children
- European Convention on the Legal Status of Children born out of Wedlock
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children
- European Convention on the Exercise of Children's Rights
- European Charter for Regional or Minority Languages
- Framework Convention for the Protection of National Minorities
- Council of Europe Convention on Action against Trafficking in Human Beings⁹

⁷ Protocol not yet in force.

⁸ Protocol not yet in force.

⁹ Convention not yet in force.

2. International monitoring in relation to Macedonia.

Due to the acceptance of a wide range of international responsibilities under human rights treaties, Macedonia is also subject to a corresponding variety of international monitoring mechanisms; these include state reporting obligations (e.g. under UN treaties, the European Social Charter, the Framework Convention on National Minorities), complaint mechanisms (provided for in some UN conventions and the European Convention on Human Rights) and inquiry procedures (e.g. under the regime of the European Convention for the prevention of Torture). In addition, several non-treaty based mechanisms exist, for instance in the area of the special procedures (Working Groups, Special Reporters, etc.) of the UN Commission on Human Rights or the Council of Europe's European Commission against Racism and Intolerance (ECRI); moreover, the activities of the Organization for Security and Cooperation in Europe (OSCE) may be subsumed under this category.

3. Constitutional provisions on human rights.

According to Article 118 of the Constitution of Republic of Macedonia the international agreements ratified in accordance with the Constitution are part of domestic legal order and cannot be changed by law. In this manner, in the hierarchical position of the legal norms, the international agreements take precedence over the domestic laws. This gives rise to the obligation to harmonize the legal order and the current practice of the courts, the public administration and other state agencies with the standards arising from the conventions and practice of their agencies and bodies. The procedure of ratification of an international document follows the examination of the compatibility of the legislation and regulations, after which the legal implications are determined.

The international agreements are sources of law in our legal system, which means that individuals-subjects in the law may automatically invoke the provisions of the international agreements, and the courts and administrative agencies are under the obligation to apply them directly. The human rights agreements have a stronger legal effect than the other international agreements. This is unambiguously inferred in Article 8 (paragraph 1, item 1) from the Constitution of the Republic of Macedonia, which stipulates the respect of the basic human and civil freedoms and rights, recognized in the international law and laid down in the

Constitution, as one of the highest values of the constitutional order of the Republic of Macedonia.

The Constitution of Republic of Macedonia regulates human rights in the second chapter (BASIC FREEDOMS AND RIGHTS OF THE INDIVIDUAL AND CITIZEN), with 51 provisions which are systemized in 4 sections:

1. Civil and political freedoms and
2. Economic, social and cultural rights
3. Guarantees of basic freedoms and rights and
4. Foundations for economic relations

All citizens over whom the jurisdiction of the Republic of Macedonia extends enjoy the rights and freedoms guaranteed by the Constitution of the Republic of Macedonia, and further elaborated in the domestic legislation. According to Article 9 of the Constitution, *"citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law."*

In the domestic legal system, human freedoms and rights represent a basic constitutional postulate. As a rule, they are realized directly on the basis of the Constitution, while the conditions and manner of their realization may be prescribed by law only if explicit constitutional authorization for this exists, and only within the framework of such authorization.

The protection of human freedoms and rights is guaranteed in Article 50 of the Constitution of the Republic of Macedonia, according to which: *"Every citizen has the right to invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of the Republic of Macedonia, through a procedure that is based upon the principles of priority and urgency. "Judicial protection of the legality of individual acts of the State administration, as well as of other institutions carrying out a public mandate, is guaranteed; "A citizen has the right to be informed on human rights and basic freedoms, as well as actively to contribute, individually or jointly with others, to their promotion and protection."; "The human right*

to life is irrevocable. The death penalty shall not be imposed on any grounds whatsoever in the Republic of Macedonia”¹⁰; “The human right to physical and moral dignity is irrevocable. Any form of torture, or inhuman or humiliating conduct or punishment, is prohibited.”¹¹

The freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution. The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution. The restriction of freedoms and rights cannot discriminate on grounds of sex, race, color of skin, language, religion, national or social origin, property or social status.

The restriction of freedoms and rights cannot be applied to the right to life, the interdiction of torture, inhuman and humiliating conduct and punishment, the legal determination of punishable offences and sentences, as well as to the freedom of personal conviction, conscience, thought and religious confession (Article 54)

Constitutional provisions on Civil and Political Freedoms and Rights guarantee classical rights and freedoms, such are: right to life, right to physical and moral dignity, right to freedom, presumption of innocence, right to appeal, freedom of speech, right to fair trial, freedom of religious confessions, right to assemble peacefully, inviolability of home, right to movement and the defense of Republic of Macedonia which is the right and duty of every citizen.

As far as the constitutional provisions on Economic, Social and Cultural Rights are concerned, those guarantee: the right to ownership and inheritance, also foreign subjects may acquire the right to ownership of property under conditions determined by law, right to work, right to free choice of employment, protection at work, material assistance during temporary unemployment, the right to social security and social insurance, the right to establish trade unions, the right to strike¹², right to health care, etc.

The Republic provides particular care and protection for the family. Law regulates the legal relations in marriage, the family and cohabitation.

¹⁰ Article 10 of the Constitution of R Macedonia.

¹¹ Article 11 of the Constitution of R Macedonia.

¹² Article 38 p.2 of the Constitution of R. Macedonia: “The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies.

Parents have the right and duty to provide for the nurturing and education of their children. Children are responsible for the care of their old and inform parents. The Republic provides particular protection for parentless children and children without parental care (Article 40).

In the Republic of Macedonia everyone has a right to education. Education is accessible to everyone under equal conditions. Primary education is compulsory and free¹³. Citizens have a right to establish private schools at all levels of education, with the exception of primary education, under conditions determined by law. The autonomy of universities is guaranteed. The conditions of establishment, performance and termination of the activities of a university are regulated by law. The freedom of scholarly, artistic and other forms of creative work is guaranteed. Also are guaranteed the rights deriving from scholarly, artistic or other intellectual creative work

The Republic stimulates, assists and protects the development of scholarship, the arts and culture. The Republic stimulates and assists scientific and technological development as well as the technical education and sport.

Members of nationalities have a right freely to express, foster and develop their identity and national attributes. The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of the nationalities. Members of the nationalities have the right to establish institutions for culture and art, as well as scholarly and other associations for the expression, fostering and development of their identity. Members of the nationalities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in the language of a nationality, the Macedonian language is also studied (Article 48)¹⁴.

Everyone has the right to a healthy environment to live in. The Republic of Macedonia provides conditions for the exercise of the right of citizens to a healthy environment. Therefore, everyone is obliged to promote and protect the environment.

¹³ The amended law on secondary education provides that from the academic year 2008/9 onwards, secondary education, which includes Vocational Education and Training and general education for students aged 15 to 18, will become compulsory.

¹⁴ Article 48 of the Constitution of R. Macedonia has been replaced with the VII Amendment, p.1.

3.1. *Civil and political rights.*

Statistical data show that in 2007, compared with the previous one, insignificantly smaller number of complaints refereeing to acts, activities or non committing actions by the Police was submitted to the Ombudsman. A smaller number of them refer to activities of a violent kind as a result of physical force and forcing methods used by police officials, and the majority of them refer to various acts and activities of non-violent kind which still, resulted in violation of *basic freedoms and rights* of the complainants.

As a result of the inquires conducted and the violations of human rights ascertained with elements of punishing offences, the Ombudsman submitted reports on criminal activities violating human and citizens' rights and freedoms, against police officials to the authorized public prosecutor on several cases. They were all accepted and processed by an authorized investigative judge, and in one of the cases a procedure for violation of working discipline was initiated.

During this report year, there were cases of violating the constitutional and legal principle of presumption of innocence, guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms, as well.

The police action conducted in the village of Brodec on Shara Mountain left room and suspicion that the Police exceeded its power. The fact that a number of family members, concerned about the destiny of their beloved ones, sought intervention by the Ombudsman adds to this opinion.

In order to clarify this case, the Ombudsman conducted a voluminous inquiry. After that, the Ombudsman considered that there was a need, in accordance with article 30, paragraph 1, lines 4 and 5 of the Law on Public Prosecution, for submitting the complete gathered documentation during the course of the inquiry to the Basic Public Prosecution in Skopje for their estimation and further proceedings.

Regarding the Brodec case, the Ombudsman, prepared detailed information on actions and measures undertaken and submitted it to the Parliament of the Republic of Macedonia – Permanent Survey Committee for protection of citizens' rights and freedoms.

These negative examples in which the Police is involved, i.e. because of the nature of job responsibility mostly members of Special Police Unit for fight against crime and members of the Unit for Rapid Deployment, indicate that education of police officials should be a continuous and permanent progress which should lead to adoption of good police standards and practice of the European police systems (institutions), which would further on take us to higher standards in terms of respecting fundamental freedoms and rights.

There is still limited *access to justice* for appeals against acts and decisions by civil servants affecting individual citizens' rights and obligations. There are long delays in the review of administrative decisions carried out by second-instance administrative commissions. The quality of decisions is poor – the Supreme Court accepted 42% of the appeals. The majority of the recommendations made by the Ombudsman that has not been followed up relate to these commissions.

As regards the *prison system*, the Government adopted a programme to improve conditions in prisons. However, no significant progress has been made. During 2006 there were 6 deaths and 3 suicides in prisons, compared with 6 and 5 respectively in 2005. Limited progress has been made in the implementation of the recommendations of the Council of Europe's Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment on the conditions of detention.

The report by the European Parliament's temporary committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, which was approved by the European Parliament, noted a lack of thorough investigation of the Khaled El-Masri case by the authorities. It urged the authorities to carry out investigations and parliament to set up a committee of inquiry. At a special session of the oversight committee on security and intelligence issues, the Government maintained that it had not been involved in any illegal detention.

The legal framework on *freedom of expression* and the media now meets most international standards. However, despite new legal procedures to ensure the independence of the Broadcasting Council and the public service broadcaster, these bodies remain vulnerable to political interference. The economic and financial independence of the public service broadcaster and the regulatory body has not been sufficiently ensured. The quality of the service provided by the public service broadcaster is inadequate; that of the

private broadcasters is satisfactory. The broadcast media are dominated by a large number of private TV stations, while the public broadcasters are weak. Ownership of the leading print media is highly concentrated, while the remainder is financially fragile. The media continue to be subject to significant political influence.

As regards *freedom of assembly and association*, the Law on civic associations and foundations has been amended to provide for such bodies to be registered in the Central Registry. In May 2007, 40 trade unions were registered in accordance with the Labor Relations Law.

The Government adopted a strategy for cooperation with *civil society organizations* and developed an action plan. One of its aims is to involve civil society more in the policy development process and in legislative drafting. The activities of civil society are still hampered by lack of finance and heavy dependence on foreign sources of financing. The transparency of the criteria for allocating grants from the state budget to NGOs remains to be strengthened.

As regards *freedom of religion*, the Law on the Legal Status of Churches, Religious Communities and Religious Groups has been enacted. The revision provided for more liberal procedures for registration of religious institutions. Compulsory religious education was introduced for primary school pupils, who can choose between religious instruction and history of religion.

According to the 2007 Progress Report of the EC, overall, further steps were taken to strengthen civil and political rights. However, continued efforts are needed.

3.2 Economic and social rights.

As regards *women's rights*, parliament adopted a declaration, which condemned all forms of violence against women and within the family and committed parliament to give these issues priority and to strive towards greater gender balance. Implementation of the 2006 legislation on equal opportunities is slowly progressing. Some progress has been made in areas such as education, health care, political participation and the non-governmental sector. Equal opportunities have been set up in a number of municipalities. 33 out of 120 members of parliament as well as 3 members of the government out of 23 are women. However, the situation of women

in rural areas and of women from minorities or who are victims of domestic violence or trafficking remains a cause for concern. The definition of rape in criminal law remains very narrow thus making successful prosecutions highly unlikely. Stronger measures against sexual harassment are needed.

A sector dealing with *human trafficking* and *illegal migration* was set up within the organized crime department in the Bureau for Public Security. Also a memorandum of understanding was signed between the Ministry of the Interior and an NGO to give new impetus to the fight against trafficking. However, progress has been limited in this field.

Implementation of the action plan for the protection of *children's rights*, adopted by the government in 2006, is slow. By increasing the citizens' awareness of children's rights and the need for their protection from various damages and violations, the number of complaints filed to the Ombudsman on children's rights protection increases every year. However, satisfaction with the treatment of children as subjects with special rights, interests and responsibilities not only by their parents, but also by their teachers, and especially by the state institutions responsible for children's rights, cannot be expressed yet. This is due to the fact that while reaching a decision referring to children, their best interest is not always considered, although it should be a prior issue. Children's insufficient education and self-awareness on the rights and obligations still contributes to the inappropriate status they have, which can be concluded from the fact that still a small number of children request protection of their rights by the Ombudsman or some other institutions. Children have insufficient knowledge of their rights, and they are even less capable of recognizing violation of rights and requesting protection, which was proved by the Ombudsman's survey.

As regards *socially vulnerable and/or persons with disabilities*, the mental health strategy, which defines and protects the rights of patients, has been adopted. Conditions in psychiatric hospitals remain a matter of concern. There is too few qualified staff with appropriate training. The deaths of six patients at the Demir Kapija special institution for the mentally disabled in early 2007 underlined the urgent need to improve the institutional care provided for socially vulnerable and disabled people and to further develop community-based alternatives.

As regards *labor rights and trade unions*, tripartite social dialogue remained very formal and bipartite social dialogue is very weak. The

criteria laid down by law for determining who should take part in the social dialogue are not implemented. The lack of representativeness is currently one of the factors hindering the development of an all-inclusive social dialogue. It is also suffering from a lack of capacity of the social partners.

In the area of *anti-discrimination policies*, further efforts are required to fight against all forms of discrimination. A comprehensive law on anti-discrimination should allow for more effective mechanisms to identify, pursue and penalize all forms of discrimination by state and non-state bodies against individuals or groups.

As regards *property rights*, the process of return of property confiscated during the Yugoslav regime still has not been completed. No progress has been made on the issue of return of properties of the Orthodox Church and the Muslim community. Overall, there has been limited progress. Significant additional efforts are needed.

3.3. *Minority rights, cultural rights and protection of minorities.*

As regards *cultural rights*, the parliament ratified the UN Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

As regards *minorities*, inter-ethnic tensions have remained at a low level. The government made several constructive gestures. These include the Prime Minister's address to students at the South-East Europe University in Tetovo, the authorization to erect a statue of Skenderbeg in Skopje and the Law on Public Holidays, which recognized the different ethnic and religious holidays. Dialogue and confidence building among communities is slowly progressing. The Ohrid Framework Agreement remains a crucial guarantee of the rights of the ethnic communities in the country. Further progress has been made on its implementation, for instance regarding equitable representation, local self-government and use of languages.¹⁵

In 2007 the Ombudsman's office received a very limited number of complaints concerning *discrimination and equitable representation*. The small number of complaints in which the citizens claimed deprivation of certain rights, meaning they were not able to realize certain rights, does not represent the real picture in terms of discrimination, i.e. it should not lead

¹⁵ Commission of the European Communities, Commission Staff Working Document, The former Yugoslav Republic of Macedonia 2007 Progress Report

to a wrong conclusion that in the Republic of Macedonia there is no discrimination. The difficulty for identifying and expressing discrimination publicly derives mainly from the non-existence of appropriate legislation on this issue. In everyday life, cases of discriminatory behavior appear, but the attempt to ascertain discrimination remains unsuccessful since there is no separate law on discrimination prohibition, there are only provisions for discrimination prohibition scattered through several separate laws which are not precise enough and do not represent a consistent unit. The lack of legislation is an obstacle for persistent realization of citizens' rights.

Some steps have been taken to ensure equitable representation across the public sector. The government adopted a comprehensive strategy on equitable representation, along with an action plan. Increased resources have been allocated for implementing the strategy. 3 of the 8 members of the Judicial Council elected by the judges are from the non-majority communities. The army has made some progress on implementing its strategy on equitable representation.

Some of the committees for interethnic relations set up at local level to promote the concerns of the various communities are contributing effectively to participation by all communities in public life. Introduction of bilingual road signs has been initiated.

However, integration of ethnic minorities is quite limited. Most of them remain at a disadvantage with respect to education and employment. The increase in representation of the non-majority communities remains uneven among individual ministries. The number of non-majority communities' members in the army remains low. Slow progress has been made within the police overall, and none in senior ranks, in particular within the criminal police and the department for security and counter-intelligence. The strategy for equitable representation is not yet fully satisfactory, notably in terms of its targets and sanctions. Committees for interethnic relations have not been set up in all the municipalities concerned and are often not effective. Sustained commitment to implementing the regulatory framework for use of minority languages is required. There are not enough qualified interpreters for fully effective implementation of the law on use of minority languages in criminal proceedings and in local and central government.

As of August 2007 there were 1,907 *refugees/asylum seekers* in the country, of whom the vast majority were Roma from Kosovo. The number who received recognized refugee status since the Law on Asylum entered

into force has remained unchanged (28). Most applicants have been granted humanitarian protection for up to 12 months. Concerns persist regarding the independence of the government commission that deals with appeals against first-instance decisions on refugee status. The Supreme Court's handling of appeals is often perfunctory. The number of registered *internally displaced persons* (IDPs) remained fairly stable (755). The government decided to pay the rent for IDPs accommodated in private houses and to grant them monthly allowances.

As regards the *Roma*, the implementation of the four action plans prepared by the Ministry of Labour and Social Policy in the framework of the 2005-2015 Decade of Roma Inclusion has continued. Some projects were approved for financing under the Roma Education Fund set up as part of the Decade. However, efforts to meet the objectives of the National Strategy for Roma have yielded no visible results. Discrimination against Roma people continues. The enrolment rate in primary education is below 30 %, and high dropout rates are still recorded, in particular among girls. There is evidence of police violence and targeting against the Roma. Unemployment among the Roma remains extremely high, and social and civic marginalization is common. No specific measures have yet been taken to promote access to the general employment programmes. No solution has yet been found to address the issue of lack of legal status of Roma without citizenship or with denied refugee status.

Individual rights

1. Human Rights and Education: Right to Education

1.1. The right to free and compulsory primary education and equal access to all kinds of secondary and tertiary education.

The Constitution of the Republic of Macedonia states in Article 44 “Everyone has a right to education. Education is accessible to everyone under equal conditions. Primary education is compulsory and free.” In practice this right has been implemented with various degrees of success with regard to the different ethnic groups. The schooling system in the Republic of Macedonia is composed of: pre-school education, primary education, secondary education and tertiary education.

1.1.1. Pre-school education.

The care and education of pre-school children is of public interest and in accordance with the Law on Child Protection it can be organized and implemented in institutions for children: kindergartens (private and public).

The gross rates of enrolment at pre-school level are estimated at approximately 60%. The practice shows that the children who have not attended pre-school education face difficulties in the first year of their primary education.

1.1.2. Primary education.

The Law on Primary Education (Official Gazette of the Republic of Macedonia No. 44/95 from 20.09.1995), prescribed primary education in duration of eight years, compulsory for all children from 7 to 15 years of age.

With the changes and amendments to the Law on Primary Education (Official Gazette of the Republic of Macedonia No. 63/04 from 20.09.2004) primary education became compulsory for all children as a rule from 6 – 15 years of age and included: preparatory year, four years of grade teaching and four years of subject teaching.

With the Law on changes and amendments to the Law on Primary Education (Official Gazette of the Republic of Macedonia No. 51 from 24.05.2007) primary education is compulsory for all children from 6 – 15 years of age. Primary education lasts for 9 years and is organized in three periods.

In the regular primary education at the end of the school year 2006/2007 were functioning 1005 schools, with an attendance of 231 491 pupils. In the special primary education (for the pupils with disabilities), by the end of the school year 2006/2007 were functioning 25 schools, with an attendance of 1016 pupils¹⁶. In the primary education for adults were functioning 16 schools, with an attendance of 608 pupils.

¹⁶ Education data from, State Statistical Office of the Republic of Macedonia. Statistical Yearbook of the Republic of Macedonia, 2007

1.1.3. Secondary education.

Secondary education, in accordance with the Law on Secondary Education (Official Gazette of the Republic of Macedonia, No. 44/95 from 20.09.1995), is implemented on study plans and programs for: gymnasium, vocational, secondary art education and secondary education for students with special educational needs. The secondary education enables the students to acquire knowledge and develop skills for work and further education. Gymnasium and secondary art education last for four years, while secondary vocational education lasts either 3 or 4 years. Vocational education and training may also be implemented according to study plans and programs for two-year vocational training.

With the Law on changes and amendments to the Law on Secondary Education (Official Gazette of the Republic of Macedonia, No. 49 from 18.04.2007) secondary education is compulsory for every citizen under equal conditions defined by the Law. In accordance with this Law secondary education in public schools is provided free of charge.

In the regular secondary education were functioning 101 schools with 95 366 students. In the special secondary education (for the students with disabilities) were functioning 4 schools, with an attendance of 329 students. The religious secondary education is being carried out in 2 schools (Orthodox religious school and Muslim religious school) with an attendance of 271 students¹⁷.

1.1.4. Tertiary education.

In accordance with the Law on Higher Education (Official Gazette of the Republic of Macedonia, No. 64/2000 from 03.08.2000) higher education institutions in the Republic of Macedonia offer undergraduate, postgraduate and doctoral studies, continuous education and studies for increasing, deepening or broadening of certain areas of knowledge.

In accordance with the changes and amendments to the Law on Higher Education (Official Gazette of the Republic of Macedonia, No. 44 from 25.07.2005) the graduate studies at the universities (faculties), last at least three and at most five years. Graduate studies at higher vocational schools last maximum three years.

¹⁷ The State Statistical Office of the Republic of Macedonia. Statistical Yearbook of the Republic of Macedonia, 2007

The Bologna Declaration has a remarkable impact on the development of higher education in the country. Awareness of the Bologna Reform Process is present among academics in Macedonia. The Bologna Process is mostly discussed as a structural reform however the universities in Macedonia are successfully coping with a new spirit of teaching and learning.¹⁸

According to the official State data the number of enrolled students at the University in Skopje, Bitola and Tetovo (South Eastern European University) at the beginning of winter semester in the academic year 2006/2007 was 57 011 which shows an increase of 17.8% in comparison to the previous academic year, or 8 625 students more. From the total number of enrolled students, the participation of female students is 5.5% or 31 052 persons. There were 15 527 freshmen, from whom 13 771 were full-time students and 1756 part-time students¹⁹. The number of students enrolled at private universities is not complete.

1.2. The Constitutional right to education, respectively the equal access to education.

The law provides for primary and secondary education in the languages of the ethnic minorities, and primary education was available in Macedonian, Albanian, Turkish, and Serbian. The number of ethnic minority students who received secondary education in their native languages continued to increase; however, ethnic Albanians complained that distribution of public educational resources was not proportional to ethnic groups' representation within the general population.

Ethnic minorities remained underrepresented at the university level, although there has been progress in increasing the number of minority students since the 2004 recognition of the predominantly ethnic Albanian Tetovo State University.

Most of the educational institutions are public. Citizens have a right to establish private schools at all levels of education, with the exception of primary education, under conditions determined by law. Therefore, in the Republic of Macedonia there are also few private secondary institutions and private tertiary institutions. Two secondary institutions are international

¹⁸ Bologna Process National Report 2005-2007, Macedonia, available at:

<http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/National-reports>
2007/National_Report_The-Former-Yugoslav-Republic-of-Macedonia2007.pdf.

¹⁹ The State Statistical Office of the Republic of Macedonia. Statistical Yearbook of the Republic of Macedonia, 2007.

schools where instruction is carried out in English. These are the “Nova” Private American High School – Skopje and the American International School of Macedonia – Skopje. There is one private high school in a minority language. In 1996 the first private high school education institution; the College “Yahya Kemal” in Skopje was founded. Later, this high school was opened in Gostivar and Struga. The college is a private school founded by a Turkish institution, and has instruction in Macedonian, Albanian and Turkish. The private tertiary institution is the South Eastern European University in Tetovo. Instruction is given in Albanian, Macedonian and English.

Ethnic Turks also complained of governmental, societal, and cultural discrimination. Their main concerns were slow progress in achieving equitable representation in government institutions, the absence of Turkish majority municipalities in the 2004 municipal redistricting, and the inadequacy of Turkish-language education and media.

Roma complained of widespread societal discrimination. NGOs and international experts reported that Roma were often denied job opportunities, access to public welfare funds, and entrance to establishments such as restaurants and cafes.²⁰

The state has not undertaken sufficient activities to advance the representation of the Turkish and the Roma community in education. The Turkish in Eastern Macedonia are making requests to attend schools in their own language in primary schools. However, up until now the state has not undertaken any concrete measures to respond to this request. This also applies for the Roma population. A major stumbling block has been that there is an insufficient number of professors to teach the students in those languages. Instead, these children are indirectly forced to study in the Macedonian language. This is despite the obligation of the state according to the Constitution and the laws, to create equal conditions for all children, regardless of their nationality and religion. Yet this does not apply in practice. There have been many requests by the Turkish and Roma community members to solve these problems of access in their language but the state institutions have been very slow to respond to such requests.

Even though, as stated previously education is mandatory through the eighth grade or to the age of 16, however some children did not enter the educational system at all. The Ministry of Education reported that 95

²⁰ UNHCR/Refworld/2007 Country Report on Human Rights Practices – Macedonia.

percent of children were enrolled in school; no official data was available on school attendance or the number of children who did not access to education.

One of the biggest problems in Macedonia is the high dropout rate of Roma and Albanian girls that live in rural areas. It is not unusual for girls to stop attending school by the age of 14 years old. This is due to custom and traditional practices that believe girls do not need an education. For Roma girls the statistics are the most staggering. In primary education the ratio of girls to boys for Roma is 0.87, and for secondary school the ratio decreases to 0.51. State Statistical Office states that the dropout rate from primary to secondary school is 18%. Furthermore, the same census indicated the illiteracy rate among Turks was 8% and over 20% for Roma. 39% of Romani women have no or incomplete education. Therefore, despite 'free' compulsory education there are tremendous obstacles to girls and those in the minority communities from exercising this right to education. The percent of educated Roma is incredibly small. After graduating elementary school, the number of Roma students that enroll in high school is very low.

Following elementary education most Turkish look forward to continuing their studies in high school, but limited Turkish language classes in high schools has reduced the number of Turkish students. In Gostivar, Debar, Zhupa, Skopje and eastern Macedonia (as in Radovish) there is a big demand that new classes in Turkish language be opened. In Radovish, Turkish students can study in their own mother tongue only during their first four years of primary education – after that they are indirectly forced to attend school in Macedonian language. Furthermore, there are no books in the Turkish language at all for first and second year students in secondary schools. This problem is exacerbated by the fact that the Ministry of Education and Science does not have any staff (Turkish experts) that can help create solutions to these problems.

In Gostivar and Tetovo the high schools are working with 40 students per class, and in three shifts with reduced classes. Despite this problem, the Albanians in western Macedonia face another problem in that they request that the state opens more secondary schools because there has been a significant increase in the number of students. The state is slow in responding to this.

In a similar example the Albanians were highly discriminated against in Bitola in September 2003, when Albanians requested that they get

secondary school classes in the Albanian language but they forced to attend classes in Macedonian language despite a considerable number of Albanians in Bitola. Macedonian high school students from all over Macedonia, with the support of their professors and a few political parties protested in September 2003 to demand that the state not allow the Albanians to attend classes in their own language. Due to the highly politicized environment in Bitola during these protests, the Ministry of Education abandoned its decision, and the Albanian students in Bitola are still attending classes in the Macedonian language.

The number of young Albanians who continue their studies every year is increasing both in the country and abroad. But the percentage of educated Turkish with high school or college degrees is very small. The current proportion of Turkish students in higher education in the country is 4%. This is a reason why many Turkish students leave the country and study abroad (mostly in Turkey) because they cannot obtain training in their national language, but only in Macedonian or Albanian. The state has not undertaken any concrete activities to hire and develop additional Turkish or Roma language speaking staff for primary and secondary schools. The existing Department for Turkish Language in the Faculty of Philosophy in Skopje lacks staff and technical expertise. Also, there continues to be discrimination when the Ministry of Education of the Republic of Macedonia grants scholarships for high school students and undergraduate students.

In higher tertiary education there has been some positive direction to solving the problem of a lack of minority education opportunities. This is due largely in part from the difficulties that minorities encountered when applying in the University of Skopje and the University of Bitola. Both of these institutions are in the Macedonian language and as a direct consequence some minorities had insufficient proficiency in the Macedonian language and experienced discrimination by the professional staff. The University of Bitola does not provide any studies of the minority languages nor in the language of minorities. On the other hand, the University of Skopje provides specialized departments in the study of two minority languages – it is the Albanian and Turkish Cathedra in the frame of the Philology Faculty of the University of Ss. Cyril and Methodius in Skopje. Therefore, both universities did not provide any degrees in any minority language.

Until recently, both the University of Bitola and the University of Cyril and Methods in Skopje were the only two university options available to citizens of Macedonia. Changes to the Law on Higher Education recognized minorities the right to found private higher education institutions. With the help of the international community, the South Eastern European University in Tetovo was founded and later the government legalized the State University in Tetova, which was in the Albanian language. This primarily aided the problem of tertiary education for the Albanian minority since SEE University provided education in Albanian, Macedonian and the English language. Some problems have not been resolved with this solution considering the higher tuition fees that students must pay to go to SEE University, particularly for minorities who are in a worse social and economic position. Another problem was the need for good knowledge and understanding of the English language, which is not a precondition in the less expensive state run universities.

The government has tried in the past to find ways for positive measures to offer some benefits to national minorities for enrolling at faculties through passing a bill that would establish a quota for minorities to enrol in high schools and universities. Unfortunately, this bill did not improve anything regarding the number of Roma that enrolled in faculties. In addition, this benefit was possibly “misused” by non-Roma individuals who upon enrolment declared themselves Roma or Vlachs in order to gain admission. This occurred because the government of Macedonia did not work out a method, which would prove that a candidate who enrolls in the faculty is a Roma, Vlach or from other minority communities. More significantly, the Roma in relation to all other nationalities in Macedonia has stagnated in achieving and developing their educational and cultural rights in this regard.

The government has admitted to the decaying state of educational facilities in Macedonia. They are in terrible and dangerous condition for attending students. Given the attention prisons have received in recent years, many schools do not meet or surpass current conditions of Macedonia’s prisons. In schools it is common to have students using broken desks, in classrooms with insufficient heating or no heating at all, incorrectly attached light fixtures and dangling electrical wires, holes in classroom walls, massive peeling of paint from walls, cracked foundations, collapsed ceilings, unsanitary conditions, garbage on floors and throughout the schoolyard, mold and water damaged walls and ceilings. In addition, there is a lack of space, materials and supplies for teachers and students.

Human rights education is occasionally implemented in Macedonia, however a majority of it is through NGOs and supported by international donors. Some success is slowly being implemented through the publication and introduction of more tolerant and ethnically inclusive educational materials.

Some obstacles remain in regard to the promotion of understanding, tolerance and friendship among all ethnic groups in Macedonia. In most of the schools in Macedonia, they operate using a shift system due to the lack of classrooms and space in schools. However, there are schools in the Western region of Macedonia (primary and secondary) that apply a shift system in which Albanians and Turkish minority pupils attend classes in different shifts than the ethnic-Macedonian pupils. These schools have started applying these methods since there have been disputes between students based on ethnic matters. However, this organizational method based on ethnicity is not necessarily a common practice, as there are schools where this method is not used.

The Ombudsman of the Republic of Macedonia reports that the number of complaints received in the field of protection of education rights, especially in the higher education institutions in 2007 was increased in comparison with the previous year.

The majority of complaints referred to realization of the right to rewarding student scholarships and loans. In a part of these complaints the Ombudsman ascertained that by the Announcement for funding pupils and students and awarding student scholarships and loans for the academic 2006/2007, the right to equality of citizens was violated, since according to the announcement, scholarships can be awarded only to students at the state universities, which excludes the students at private universities.

2. Access to Rights: National Human Rights Institutions in the Country

As stated before the protection of human freedoms and rights is guaranteed in Article 50 of the Constitution of the Republic of Macedonia, according to which: *"Every citizen has the right to invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well*

as before the Constitutional Court of the Republic of Macedonia, through a procedure that is based upon the principles of priority and urgency.

The country has a three-tiered court system composed of trial courts, appellate courts, and the Supreme Court. The Constitutional Court is not considered part of the judicial branch and deals with matters of constitutional interpretation and certain human rights protection issues. Namely, according to Article 110, paragraph 1, sub-paragraph 3 of the Constitution of the Republic of Macedonia, the Constitutional Court protects the freedoms and rights of the individual and citizen relating to the freedom of belief, conscience, thought and public expression of thought, political association and activity, as well as of the prohibition of discrimination among citizens on the grounds of sex, race, religion or national, social and political affiliation.

The procedure for protection of the freedoms and rights before the Constitutional Court is regulated by the rules of procedure of the Constitutional Court, according to which the citizen may demand protection of his freedoms and rights before the Constitutional Court within two months from the day the effective decision is delivered, i.e. from the day when a person learns that a violation has been committed, but not later than five years from the day when it was committed. With a decision on the protection of freedoms and rights, the Constitutional Court shall determine whether they have been violated, and depending upon this, it shall revoke the individual act, prohibit the action causing violence, or it shall reject the demand. The Constitutional Court may make a decision to suspend an individual act or action pending the final decision.

Apart from the direct constitutional and judicial protection, and within the framework of its basic competence (control of constitutionality and legality), the Constitutional Court ensures permanently a so-called abstract protection of human rights through the possibility to annul or revoke provisions of the laws and by-laws which are in contradiction to the Constitution, i.e. by which the constitutionally guaranteed rights are violated. In the period 1993-1997, the Constitutional Court of the Republic of Macedonia, in deciding on the conformity of laws with the Constitution, revoked in numerous cases specific provisions of laws and other regulations by which the rights guaranteed by the Constitution were violated.

2.1. *Ombudsman.*

The Constitution of the Republic of Macedonia also includes the institution of Public Defender, commonly referred to as ‘Ombudsman’. Namely, under Article 77 of the Constitution, it is foreseen that the Assembly of the Republic of Macedonia shall elect the Ombudsman with competence to protect the constitutional and legal rights of citizens when violated by the agencies of state administration and other agencies and organizations with public mandates.

Under the Ombudsman Law, the Ombudsman is defined as body acting for the protection of the constitutional and legal rights of the citizens violated by the agencies of state administration and any other agencies and organizations with public mandates, whereby the Ombudsman pays particular attention to protection of the principle of non-discrimination, appropriate and fair representation of the members of the communities in the agencies of the state administration, the agencies of the units of local self-government and in the public institutions and services.

Under the provision of Article 29 of the Ombudsman Law, the Ombudsman may exercise this competence with on-site visits and examinations in the agencies of the state administration and the other agencies and organizations with public mandates, as well as in the agencies of the state government, the agencies of the units for local self-government and the public institutions and services. Regarding the protection of the rights of citizens, in addition to protecting the constitutional and legal rights of citizens when violated by the agencies of the state administration and other agencies and organizations with public mandates, the Ombudsman acts upon the petitions, among other things, of the members of the communities who consider that their special rights, guaranteed by the Constitution and the laws of the Republic of Macedonia, have been violated.

In 2007 the Ombudsman acted upon 4.068 complaints, 3029 of which were submitted within the reporting period by 3271 citizens. In 8 cases the Ombudsman initiated a procedure on its own, more than 4800 citizens were accepted for a discussion in both Skopje office and the regional offices, and more than 6000 phone calls were answered.

In this report year the number of complaints was approximately the same as the number of complaints in the previous two years.

The majority of complaints by which the citizens requested protection were in the fields of: Judiciary 824 or 27,20%; labour relations 365 or 12,05%; in the field of protection of rights during police procedures and other interior affairs 347 or 11,46%; property rights 304 or 10,04%; in the field of urban planning and construction building 202 or 6,67%; pension and disability insurance 196 or 6,47%; in the field of social rights 126, respectively 4,16%; protection of children's rights 88 or 2,91%; housing relations 85 or 2,81%; in the field of consumers' rights (communal and other taxes) 76 or 2,51%; in the field of finances and financial issues 73 or 2,41%; health protection 67 or 2,21%; in the field of education, science, culture and sport 51 or 1,68%; in the field of environment protection 19 or 0,63%; in the field of discrimination and appropriate and equitable representation 6 or 0,20%; rights of military personnel and military conscripts 3 or 0,10%; as well as in other fields in which 197 or 6,50% complaints were submitted.

The greatest number of complaints refers to the inefficiency of courts, meaning the delay of judicial procedures, and the rest of them were in terms of acts and activities undertaken and passed by the appeal committees of the Government of Republic of Macedonia, the Ministry of Finance, the Ministry of Interior Affairs, the Ministry of Transport and Communications, the Ministry of Labour and Social Policy and by other bodies, as well as bodies which do not have public mandates.²¹

The reform of the judiciary system that was in progress for a long period of time represented one of the basic conditions implied to the Republic of Macedonia by the international community for its full membership in the EU and NATO.

During 2007 the reform process, at least the part referring to the organizational structure of the judicial system, accompanied by all difficulties during the process, gained its shape with the establishment of the Judicial Council of the Republic of Macedonia and by the initiation of the functioning of the Administrative Court in Skopje and the Appellate Court in Gostivar.

With the new organizational structure of the judicial system, which resulted from the long-term reform process, it is certain that the accumulated problems connected with the long duration of judicial procedures will not disappear over night but, parallel with the changes in the process

²¹ Annual Report 2007, Highlights in the work of the Ombudsman in 2007.

legislation, they should represent a good starting point for a better guaranty for obeying and realizing the right for trial in a reasonable time frame, guaranteed by article 6 of the European Convention for Protection of Human Rights and Fundamental freedoms.

Passing laws on public prosecution and public prosecutors council, the expectation of the basic courts to finally stop acting upon executive cases at the end of the year, the termination of the Supreme Court of the Republic of Macedonia in acting upon cases in the field of administrative procedure and the transfer of cases among basic courts according to the modified legal competences, during 2007 were additional reasons for complicated realization of constitutional and legal rights of the citizens in front of the judicial bodies, as a result of which they addressed the Ombudsman.

Since the course of the long-term reform has created the basic conditions for a more effective judicial system, what remains is for the judicial officials to monitor permanently and to apply the legislation coherently in the area of material and process legislative, to apply the accepted international legal acts, to monitor and apply the judicial practice in the European Court for Human Rights and to show and prove that they have not always been the only ones to blame for the long-term and inefficient judicial procedures, and for the violation of the principle of a trial in a reasonable timeframe.

In Macedonia it also functions the independent office of the European Network of Ombudsmen for Children (ENOC) in order to promote children's rights and to encourage the fullest possible implementation of the UN Convention on the Rights of the Child.

For the protection of the freedoms and rights of the individual and citizen, the Parliament of the Republic of Macedonia established the Permanent Survey Commission for the protection of freedoms and rights of citizen (Art. 76, item 4, of the Constitution). Its findings are the basis for initiating a procedure for determining the responsibility of holders of public office who have endangered or violated the freedoms and rights of citizens. In its work, the Commission cooperates with scientific and professional organizations, relevant foreign and international bodies, as well as with the relevant working bodies of the Parliament.

By a Decision of the Government of the Republic of Macedonia adopted in January 1997, a Department for Gender Equality Promotion (DGEP) was

established, at the Ministry of Labor and Social Policy. The basic function of the DGEP is to positively impact the advancement of the position of women and to promote gender equality, in accordance with international conventions that the Republic of Macedonia has ratified, ensuring all women full enjoyment of human rights. The DGEP fulfills this function by initiating specific activities under the National Gender Equality Action Plan that the Government of the Republic of Macedonia adopted in 1999, aiming at attaining the objectives and priorities set forth in the said Action Plan. Implementation of the law on equal opportunities for women and men has progressed only slowly. The definitions provided for in the law are not yet in full compliance with the *acquis*. Equal opportunity committees have been established and equal opportunity co-coordinators designated in 30 municipalities.²²

3. Disadvantaged, Marginalized and Vulnerable Groups

3.1. The right to work – Minorities and development of equal opportunities for employment.

3.1.1. Legal framework.

In accordance with the Constitution of the Republic of Macedonia (Article 32, paragraph 1) everyone has the right to work, to free choice of employment, protection at work and material assistance during temporary unemployment, and every job is open to all under equal conditions, i.e. without any discrimination, including gender based discrimination.

In pursuance with these constitutional provisions, several laws have been adopted and collective agreements have been concluded, in full compliance with the above referred to constitutional rights in the field of labor. Namely, the following laws have been adopted: Law on Labor Relations, Law on Employment and Insurance in Case of Unemployment, Law on Employment Promotion, and Law on health and safety at work.

Two Collective Agreements have been concluded at the national level: General Collective Agreement for the Economic Branches in the Republic of Macedonia and the General Collective Agreement for Public Services, Public Enterprises, State Bodies, Local Self-Government Bodies and Other

²² These Gender Equality Committees have been established in accordance with the Statute of the Local Self-Government

Legal Entities Performing Non-Economic Activities. Almost all branch collective agreements have been concluded, based on these two collective agreements.

Issues pertaining to labor relations are regulated in the Law on Labor Relations adopted in 1993, which has been amended and supplemented on several occasions within the framework of reforms in the area of labor market and under other projects. Issues in this area are also regulated in several other legislative documents, collective agreements and employment contracts.

In accordance with the Stabilization and Association Agreement that the Republic of Macedonia and the EU signed on 9 April 2001, the Government of the Republic of Macedonia adopted a Program for approximation of the legislation of the Republic of Macedonia with that of the EU. These documents refer to labor related Directives with which the national legislation is to be harmonized, defining as well the schedule and stages for harmonization of the national legislation with the EC Directives. In the first stage there has been harmonization of the labor regulations with several directives of the EC: Council Directive 75/117/EEC on the principle of equal pay for men and women, Directive 76/207/EEC on the equal access to work, education and equal conditions for work and to a certain extend with Directive 97/80/EEC on the burden of proof in cases of discrimination. These Directives relate to the Law on Labor Relations and some of them apply to other labor related laws.

Hence, Article 8-a of the Law on Labor Relations (Official Gazette of the Republic of Macedonia No. 25/2003) sets forth that the employer must not place the employment seeking person or the employee in an unequal legal position on grounds of race, color of skin, gender, age, health status, i.e. disability, religion, political or other belief, membership of trade unions, national or social origin, family status, property status or on grounds of other personal circumstances.

Man and women must be ensured equal opportunities and equal treatment in employment, promotion, insurance at work, working hours and employment contract termination. Furthermore, according to Article 70-a of the Law on Labor Relations, another Article 70-a is added (Official Gazette of the Republic of Macedonia, No. 25/2003) which reads as follows: *“In respect of equal jobs with equal demands of job performance, the employer shall be obliged to pay employees equal salary regardless of*

the gender.” The provisions of the employment contracts and the provisions of the collective agreements, which run contrary to paragraph 1 of this Article, shall be deemed null and void.

According to the Law on Labor Relations, i.e. Article 58 of Section 4 of this Law entitled -Special protection of Women, Juveniles and Disabled Employees-, female employees have the right to nine months continual leave from work during pregnancy, delivery and maternity, and one year leave for birth of more than one child (twins, triples etc).” However, once again this provision in law has not been implemented well in practice. The dismissal of women when they become pregnant or during maternity leave is occurs in practice in Macedonia.

3.1.2. Labor relations and social policy.

Process of realization of rights in the area of labour relations has several particular conditions, as well as conditions occurring through years and still continuing, without any changes in activities.

Specific example of violating labour relations rights appeared in procedures when the employer did not conduct the employment procedure completely, so the applicants employed were not registered with the competent registration body; or in spite of a completely conducted procedure, the employers did not select an applicant. There were also cases of not acting upon a second instance body’s implications, meaning the decisions made by a higher body were not conducted, which forced the employees to seek protection before a competent court. Another evident issue was violation of labour relations in conducting the appointing procedure because, appointments from a higher to a lower post were more frequent without respecting the legal provisions stipulated by the Law on Public Servants and the Law on Labour Relations.

In this report year, citizens continued complaining on violation of labour relations rights in the process of appointing, i.e. violation of public servants’ right appointed to posts on with a lower title, without respecting the provisions of the Law on Public Servants. One again, like in the previous year, the second instance commission for settling appeals and objections for public servants at the Public Servants Agency, did not reach a decision for accepting an appeal by an appointed public servant for any case, which allows a free conclusion that the competent commission acts in

an incompetent and unprofessional manner in terms of protection of public servants' rights.²³

Like in the previous years, the majority of complaints referred to a request for protection of labour relations right with the teaching personnel in the education system, whose problems about full-time or part-time employment, transformation of working terms procedure, reappointment to available posts and adding number of classes did not only remain unimproved, on the contrary, they are constantly moving downwards without any hope for improvement. The competent inspection bodies neither utilize the competences provided by the Law on Labour Inspection, the Law on Labour Relations and the Law on Education Inspection, nor they have a will for undertaking concrete measures for protection of teaching personnel's rights, although they are aware of the fact that their labour relation rights are violated, and they advise the complainants to realize the protection in court procedures.

Having in mind the above mentioned, it can be concluded that in the field of labour relations the situation has not been changed, that the employees in order to realize their rights are forced to address the competent judicial bodies. Because of the inability to initiate a court procedure, some of them continue suffering the consequences of the subjective and illegal behaviour on behalf of the employers, accepting the reality that their labour relation rights remain violated and unprotected.

Some progress can be reported with the enactment of the law on health and safety at work. The law aims at transposing in particular the Framework Directive on Health and Safety. The degree of alignment with the *acquis* in the area of health and safety at work remains to be confirmed. Administrative capacity, including that of the state labour inspectorate, which is understaffed and lacks proper facilities for normal working, is insufficient to ensure proper implementation and enforcement of the legal provisions.

There has been no progress in the field of social dialogue, which remains very formal owing to the weaknesses of the social partners. The Economic and Social Council (ESC) met only once during 2006, when the national strategy for employment was discussed. In the first half of 2007 the ESC met three times. The composition of the members of the ESC was not completely in accordance with the labour law provisions, since the

²³ Annual Report 2007, Highlights in the work of the Ombudsman in 2007

representativeness criteria of the trade union representatives have still to be clarified. The public sector collective agreement remained unsigned. The main reason is the confusion surrounding the eligibility of the trade union representatives in the ESC. This has also a very negative impact on bipartite social dialogue. The definition of representativeness criteria therefore currently hinders the development of social dialogue structures.

Some progress has been made in the area of employment policy through the adoption of the National Employment Strategy 2010 and the National Action Plan for Employment 2006– 2008 with ambitious objectives. However, unemployment remains extremely high. The reforms in the unemployment benefit system, which were intended to encourage employers to recruit more people, are not yielding satisfactory results, in particular with regard to older "redundant" workers. A few specific initiatives have been undertaken to create new employment opportunities, and there are plans for improving the delivery of active labour market policies by the Employment Service Agency (ESA). Overall, however, the available capacity in this area remains poor and therefore insufficient to match the ambitious employment strategies and plans.

No particular progress can be reported in the field of *social inclusion* that remains a key challenge. Implementation of activities related to the strategy for inclusion of Roma and the action plans prepared by the Ministry of Labour and Social policy has not advanced, apart from the opening of two Roma centers by the Ministry in cooperation with local Roma nongovernmental organizations. Coordination among the institutions involved in implementing social inclusion policies is inadequate. Municipalities have insufficient institutional capacities to assume the responsibilities in the social area that have been transferred to 42 of them as part of the second phase of decentralization. Generally, statistical information on monetary and non-monetary poverty and the evaluation of policies in place is not satisfactory.

Some progress has been made as regards *social protection*. The second pillar of the pension system is operational, and the preparation of the voluntary pension insurance funds, as part of the third pillar, has started. The section for the inspection of social protection, which employs 13 staff, is operational. However, administrative capacity in the area of social protection within the relevant ministries is weak.

Implementation of the law on *equal opportunities* for women and men has progressed only slowly. However, women remain vulnerable to discriminatory practices and further efforts are needed to promote women's rights notably in rural areas and to increase female participation on the labor market. The administrative capacity in this area needs to be further strengthened. Action remains insufficient in the areas of employment, the situation of rural women, the situation of women from ethnic minorities, and violence and the fight against trafficking in women. The situation of rural and ethnic minority women needs to be improved.

Human Rights in Montenegro 2007

by Tea Gorjanc Prelević & Aleksandar Saša Zeković

Human Rights Action

Abstract

In its second year since establishment as an independent, internationally recognized state, Montenegro progresses on its way to European integration. However, a special concern in view of respect for human rights in Montenegro is a climate of impunity surrounding controversial murders, war crimes, torture incidents, threats and physical assaults on NGO activists and journalists.¹ There has been some progress towards improvement of the position of members of vulnerable social groups, but without satisfactory pace and effective results.² Montenegro still does not have a comprehensive general anti-discrimination law, providing for effective suppression of and redress for discrimination.

Elementary education has still not been provided for significant population of Roma children and not enough has been done to suppress a regular and massive school drop-off. Education in other minority languages apart from Albanian has not yet been provided. Children and students with disabilities still suffer exclusion from officially proclaimed inclusive education at all levels.

In addition to the judiciary, Constitutional Court and the police, national human rights institutions exist in terms of Ombudsman, parliamentary committees for Human Rights, gender equality, defense and security, and the Council for the Civilian Control of the Police. Although the abilities and impact of those institutions vary, from the police and judiciary on rather negative side of the scale and the Ombudsman on a positive one, none deserved a title of an uncompromised promoter of human rights. Reform of the judiciary is on its way, judges are no longer to be appointed by the Parliament but by a Judicial Council. However, the appointment of prosecutors and Constitutional Court judges still waits to be disburdened from decisive majority vote of politicians. Judiciary is inefficient and

¹ See Chapter Judiciary – courts and the state prosecutor.

² See Chapter III.3.

largely ineffective in protection of human rights, as the focus is still profoundly not pointed to that perspective, and as many observe, independence and professionalism are still exceptional.

As women outnumber men, 10% of population lives with some form of a disability, 3% of inhabitants are Roma, app. 25,000 are refugees and IDPs, the state provided strategies for improvement of status of those vulnerable groups that remain profoundly discriminated. Sexual minorities remain publicly non-visible, out of fear from maltreatment.

Montenegrin lively civil society, NGOs and media, played an important role in shifting the focus on the rule of law, combating corruption, impunity, discrimination, facing the recent war past and remain irreplaceable motors for strengthening the European and international human rights standards and values in contemporary Montenegro.

Introduction

1. Political and social situation.

1.1. Political situation.

The events of highest relevance for Montenegro in 2007 were its admission to the Council of Europe (CoE), signing of the Stabilization and Association Agreement with the European Union (EU) and adoption of the Constitution of the independent state of Montenegro.

The ruling political coalition in Montenegro is made of Democratic Party of Socialists (DPS, president is Milo Djukanovic) and Social Democratic Party (SDP, president is Ranko Krivokapic).³ President of the State, Prime Minister and Speaker of the Parliament are members of the ruling coalition.

A special concern in view of respect for human rights in Montenegro is a climate of impunity surrounding controversial murders, war crimes, torture incidents, threats and physical assaults on NGO activists and journalists.⁴

³ The coalition holds Parliament majority (41.81%); DPS has 34 seats (1 representative of the Croatian Citizens Initiative was also elected on the DPS list) and SDP 7 seats. Democratic Union of Albanians participates in the government with the Minister for Protection of Human and Minority Rights.

⁴ See Chapter III.2, Judiciary – courts and the state prosecutor.

There has been some progress towards improvement of the position of vulnerable social groups, but without a satisfactory pace.⁵

Montenegro was haunted also in 2007 by its recent war past that the state had not yet adequately faced.⁶ The award of peace prizes to Svetozar Marovic, the DPS Vice-President and former President of the State Union of Serbia and Montenegro (S&M) and Milo Djukanovic, the DPS President and former Montenegrin Prime Minister⁷ by the NGO International League of Humanists (ILH) seated in Sarajevo,⁸ triggered numerous protests due to the fact that these two laureates were political allies of Slobodan Milosevic during the war years in Croatia and Bosnia & Herzegovina until 1997.⁹

The Liberal Party (LP) presented a Proposal of the Lustration Law („law on protection against human rights abuses“) to the Parliament on 16 March 2007, but it was not included in the Parliament’s agenda by the end of the year.

The International Court of Justice in the case of Bosnia & Herzegovina vs. Federal Republic of Yugoslavia (FRY), has ascertained that it had no jurisdiction over Montenegro after the dissolution of the State Union of Serbia and Montenegro (SCG).

Despite the fact that Montenegro confirmed in October 2006 the ratification of the Rome Statute of the International Criminal Court (ICC), the Ministry of Foreign Affairs entered in April 2007 into the bilateral agreement with

⁵ See Chapter III.3.

⁶ For war crimes prosecution, see Chapter III.3, *State Prosecutors Office in Practice*, or www.hraction.org.

⁷ M. Djukanovic was not the Prime Minister (PM) in 2007. He was the PM in 1991-1998 (three terms of office), then President of the State 1998-2002, then PM again from 2002 to October 2006 when he left the office to return to it in February 2008.

⁸ ILH Secretary General, Z. Surlan, subsequently explained that M. Djukanovic was not given a recognition for his lifetime achievement and his commitment to humanism, as formerly announced, but solely for his contribution to the peaceful resolution of the statehood issue. “I am not ashamed of anything – the evil time is to be blamed”, *Vijesti*, 29 May 2007.

⁹ A group of 19 Montenegrin intellectuals protested against the award and called other laureates not to receive the recognition. The Professor of the Faculty of Law in Sarajevo Z. Grebo and the President of the Association of Women Victims of War from B&H B. Hasecic returned their prizes, while the Banja Luka Bishop F. Komarica and the Professor of the Faculty of Political Sciences from Podgorica M. Popovic abandoned the ILH membership due to same reasons. Presidents of Czech Republic, Slovenia, Croatia and the former President of Macedonia, all laureates of the ILH peace prizes, did not attend the official award ceremony in Montenegro. The ILH President publicly opposed the award of prizes to Marovic and Djukanovic and accused the organization’s leadership for embezzlement. Dailies *Vijesti* and *Dan*, Podgorica, May 2007; „Ceremony of the International League of Humanists in Becici – Peacemakers’ Mission Unaccomplished”, Monitor, www.monitor.cg.yu.

the United States of America (USA) on guaranteeing immunity for citizens of USA and Montenegro from the Court's jurisdiction, what was criticized by the EU.¹⁰

The Agreement on Stabilization and Association of Montenegro to the EU (SAA) was signed in October 2007. Provided by the SAA is establishment of a free trade zone and strengthening of relationships between EU and Montenegro by means of implementation of European standards, improvement of dialogue and enhancement of cooperation. The first objective of the Agreement is to support Montenegro building its capacity for further development of democracy and rule of law, whereas the respect for human rights, rule of law and cooperation with the ICTY and ICC are set out as primary objectives of internal and foreign policy of the parties to the Agreement.¹¹

The EC Montenegro Progress Report from November 2007¹² stated that a serious judicial reform is yet to be conducted in Montenegro, that anti-discrimination legislation is yet to be adopted and that the respect for and protection of human and minority rights is still unsatisfactory in practice, particularly concerning the Roma and displaced persons, prevention and punishment of torture and ill-treatment, right to free legal aid, implementation of the Law on Free Access to Public Information, children's rights, etc.

Following the signing of the SAA, the European Parliament adopted in December the Resolution on Montenegro emphasizing, *inter alia*, that corruption still persists as a serious problem.¹³

Montenegro was admitted to the membership of the CoE in May, after having committed itself to the fulfillment of requirements of this organization in respect of the constitutional reform, ratification of the CoE's conventions, reform of national laws and efficient protection of human rights.¹⁴ The Constitution of Montenegro was adopted in October by a two-third majority of the votes cast, following an agreement reached by the ruling coalition with some opposition parties.

¹⁰ *Ibid.*

¹¹ Art. 1, par. 2, item a) and Art. 2 of the Agreement.

¹² *Montenegro Progress Report 2007*, Commission of the European Communities, Brussels, 11/6/2007.

¹³ European Parliament Resolution of 12/13/2007 on the conclusion of the SAA between the European Communities and their Member States of the one part, and Montenegro, of the other part.

¹⁴ PACE, Opinion No. 261 (2007) *Accession of the Republic of Montenegro to the Council of Europe*.

According to the public opinion polls, the largest confidence of the Montenegrin public in 2007 was in Vanja Calovic, the director of the NGO MANS (The Network for Affirmation of the NGO Sector) whose efforts stood out in suppressing corruption.¹⁵

1.2. Social situation.

According to data of the Statistical Office of Montenegro, on 1 January 2007 population of Montenegro was 625.000, with 10.000 more women than men. According to 2003 census, the largest number of citizens was of Montenegrin nationality (43.16%), then Serbian (31.99%), Bosniak (7.77%), Albanian (5.03%), Moslem (3.97%), Croatian (1.1%), Roma (0.42%), and 4.34% were of undeclared affiliation.

An average salary (without taxes and contributions) in December 2007 was € 376, and average pension € 165.6.¹⁶ The unemployment rate in the beginning of 2007 was 14.8% and by the end of the year it was reduced to 11.92%.¹⁷ In 2007, some 22 thousand Montenegrin workers were socially endangered, 6 thousand received salaries irregularly or did not receive salaries at all, 12 thousand workers were left with their length of service discontinued, while some 4 thousand waited to be paid severance pay.¹⁸

As officially reported by the Ministry of Health, Labor and Social Care, 11% of Montenegrin population lives in absolute poverty. Roma people, internally displaced persons and to some extent rural population live in extreme poverty and social exclusion. A fifth of the overall population is economically endangered and in the zone of increased risk of poverty. The Government adopted the Strategy of Development of Poverty Reduction in 2003, at the time when it was estimated that 12.2% of its population were completely impoverished and one third economically endangered.

Although Montenegro was declared an ecological state in 1991, NGOs and international organizations express concern for environmental devastation,

¹⁵ "Political Public Opinion in Montenegro", Center of Democracy and Human Rights (CEDEM), February 2008.

¹⁶ Data on salaries by the Statistical Office of Montenegro (MONSTAT), Monthly Statistical Journal No.1, 2008; data on pensions reported by the Republican Pension and Disability Insurance Fund on 11/9/2007.

¹⁷ According to the data of the Employment Agency of Montenegro.

¹⁸ According to the data of the Trade Union Organization of Montenegro (CG Ekonomist, *A Social Crisis Threatens Montenegro?*, February 2008).

particularly in Montenegrin national parks and coastal belt.¹⁹ NGOs mostly criticized the postponement of adoption of the National Strategy of Sustainable Development and implementation of strategic laws on the assessment of environmental impact, non-compliance with the existing laws, as well as the governmental Proposal of the Spatial Plan, Mountain Tourism Development Strategy and Master Plan of Tourism Development.²⁰

Human rights in legislation

1. New Constitution of Montenegro.

New Constitution failed to attain the level of human rights guarantees previously provided by the Charter of Human and Minority Rights of Serbia and Montenegro (i.e. Small Charter) and provide for effective guarantees of independence of judiciary, as was promised to the Council of Europe.²¹

Montenegro was admitted to the Council of Europe in May 2007, the Constitution was adopted in October 2007 and the Venice Commission (V.C.)²² assessed it generally positive, although the above mentioned requests were not fully incorporated and majority of the Commissions' recommendations were not respected.²³

The Constitution omits: the right of *habeas corpus*, prohibition of imprisonment due to non-fulfillment of contractual obligations, prohibition of inhuman and degrading punishment, express guarantee of the right to life, full guarantees of the right to defense and fair trial in compliance with the European Convention of Human Rights, right to an *effective* legal remedy in case of breach of human rights, while it *guarantees* the right to compensation of damage caused by publication of incorrect information, in

¹⁹ *World Bank Outlines Cooperation with Montenegro, Approves Environmentally Sound Tourism Investment*, 6/7/2007, http://www.portofentry.com/site/root/resources/industry_news/4764.html; Resolution of the European Parliament on Montenegro, December 2007; NGOs MOST, MANS, et al.

²⁰ 2007 archives of daily press and of the NGO Most.

²¹ PACE, Opinion No. 261 (2007) Accession of the Republic of Montenegro to the Council of Europe

²² *The European Commission for Democracy through Law* is the Commission's full title.

²³ According to assessment of the HRA working group, some 60% of recommendations were not accepted.

variance with the European standard of freedom of expression and the national Law on Obligations.²⁴

Direct implementation of international human rights standards in Montenegro is provided, although with an unjustifiable restriction, as ratified international treaties and generally accepted principles of international law shall be applied directly only “in case of conflict with domestic legislation”. The primacy of international standards has been provided in respect to “legislation” and not “law”, which would comprise the Constitution and by-laws, and thus misunderstanding should be expected concerning obligatory implementation of international standards in the practice of courts and other state institutions. As an explicit instruction that ratified international human rights treaties should be applied in compliance with the practice of international bodies in charge of their interpretation has been omitted from the text of the Constitution adds to the expectancy of the problem of implementation of international human rights standards.

Although special rights of identity protection and prohibition of assimilation “to minority nations and other minority, national and ethnic communities” have been guaranteed, the Constitution fails to define which one is to be regarded a minority nation or national minority in Montenegro.²⁵

NGOs particularly criticized the removal from the Constitution of a formerly existing right of 6.000 citizens to file a legislative initiative to the Parliament. Citizens may now use such initiative only through an MP, which renders this right meaningless.

Criticism of insufficient guarantees of the independence of judiciary is presented in 2.2.2.

²⁴ For more details, see the *HRA Comments on the Guarantees of Human Rights and the Independence of the Judiciary in the new Constitution of Montenegro*, on http://www.hraction.org/wp-content/uploads/hra_opinion_november_2007.pdf.

²⁵ The Preamble contains the statement that members of nations and national minorities who live in Montenegro are „Montenegrins, Serbs, Bosniaks, Albanians, Moslems, Croats and others“.

Individual rights

1. Human Rights and Education: Right to Education

1.1. Constitutional and Statutory Provisions.

Constitution guarantees the right to education under equitable conditions for everyone, as well as the right to free primary education and autonomy of the University. The General Law on Education foresees the right of equal access to education regardless of national origin, race, gender, social background or other status, as well as the right of national minorities to study their language, history and culture.²⁶ The Law on Primary Education prescribes obligatory elementary nine-year-long education for all children aged 6-15 and penalties for parents who do not enroll their child in school or whose child does not attend school, but it does not provide a penalty for municipal bodies or schools that do not report such cases to the competent inspection body.²⁷

Prescribed objectives of general education are: provision of possibility for a complete individual development, development of the awareness and capabilities for the preservation and enhancement of human rights, rule of law, natural and social environment, multi-ethnicity and cultural diversity, as well as to develop awareness of state affiliation to Montenegro, of its culture, tradition and history.²⁸ The primary education aims at the education for respect toward the national, historical and cultural values, as well as for cultural and other characteristics of other nations, education for mutual tolerance, critical thinking, respect for differences and development of the abilities for life in a democratic society.²⁹

Montenegro applies the European Charter for Regional or Minority Languages as of June 2006 with regard to Roma and Albanian languages, which were recognized as minority languages upon ratification of the Charter.³⁰ According to the Constitution, the official language is Montenegrin, whereas Serbian, Bosnian, Albanian and Croatian are in official use. In the municipalities in which the majority or a significant part of population is composed of the members of national minorities, the

²⁶ General Law on Education, *Official Gazette of RoM*, No. 64/02, 49/07, arts. 9 and 11.

²⁷ Law on Primary Education, *Official Gazette of RoM*, No. 64/02, 49/07, arts. 4 and 81.

²⁸ *Ibid*, Art. 2.

²⁹ Law on Primary Education, Art. 2..

³⁰ For further details, see the chapter Protection of national and ethnic minorities.

teaching is to be conducted in the language of these national minorities. Schools are obligated to provide students attending the lessons in non-mother language with adequate assistance in learning the language in which the teaching is carried out.³¹ The state subsidizes textbooks of small circulation, as well as textbooks for education of national minorities.³² Members of national minorities are entitled to education in their own language, as well as to relevant representation of their language in the general and vocational education, depending on the number of students³³ and financial abilities of the state, through special schools or classes in regular schools. The Law on Evaluation and Validation of Educational Certificates has been adopted this year and is expected to contribute to the resolution of problems, particularly those of members of national minorities who obtained higher educational qualifications in the countries of the region.

Introduction of a new course, *Civic Education*, in 2005, as mandatory for primary and optional for secondary schools, was intended to specifically contribute to the development of human rights culture in Montenegro.³⁴

The SAA with the EU envisages partnership to upgrade general and vocational education, as well as in the policy towards young population and their employment and in respect to access to all levels of education and training without any discrimination as to sex, race, ethnic origin or religion.³⁵

The Education of Children with Special Needs Act³⁶ provides for education of children and youth with special needs together with other children in pre-schools and schools with additional conditions, tools and expert assistance (inclusive education), or within particular groups in pre-schools and schools or in special institutions, and in all cases upon an individually tailored education program developed in cooperation with parents. Direction of children is performed by a Commission for direction of children with special needs, a local self-government body in charge for education.

³¹ General Law on Education, Art. 11.

³² *Ibid.*, Art. 136.

³³ A class with the instruction on the minority language may be established for a smaller number of students than prescribed for the specific educational institution, but which cannot be below 50% of the number of students laid down by the Law (Art. 14 of the Law on Minority Freedoms and Rights).

³⁴ The governmental "Strategy of Civic Education in Primary and Secondary Schools in Montenegro 2007-2010" was presented in Podgorica in December 2007.

³⁵ Article 102, SAA between the European Communities and Their Member States, and Montenegro.

³⁶ *Official Gazette of RoM*, No. 80/04.

Montenegro passed a law on adult education and a variety of other regulations from the domain, taking thus into consideration specific characteristics of education of adults.³⁷ The Government adopted in 2005 the Program of Elementary Functional Literacy Enhancement, which is practically related largely to Roma ethnic group and represents a key mechanism of their social inclusion.

1.2. Right to Education in Practice.

The existing network of educational institutions offers equal access to education and there were no particular objections in that respect by members of national minorities.³⁸ Education in Albanian language is well organized and implemented in the institutions of primary and secondary education, and partly in higher education institutions.³⁹ Montenegrin textbooks have been translated into Albanian, but the experts, NGO and political representatives of the Albanian minority criticized poor quality of the translations.⁴⁰ Import of textbooks from Kosovo and Albania for some study programs had also been approved. Pre-school institutions with Albanian instruction exist only in Podgorica and Ulcinj. Since 2007, a private high school in Albanian language has been established in Ulcinj, which is fully accredited and implements the official educational program approved by the General Education Council.

However, education in mother tongue has not yet been provided for members of other national minorities and ethnic groups, even in places with a significant number of minority populations.⁴¹ Governmental authorities plead that the language spoken by Montenegrins, Serbs, Bosniaks,

³⁷ The Law on Adult Education (*Official Gazette of RoM*, No. 64/02, 49/07); Adult Education Strategy of 30 March 2006, Adult Education Plan 2006-2010 of 13 April 2006, Action Plans on Adult Education by Municipalities, for each year separately, etc.

³⁸ Nevertheless, the issue of sufficient capacity of the existing educational network is frequently raised in practice, particularly in the context of requests for inclusion of the Roma students into larger classes and accessibility of these schools in the light of transportation costs.

³⁹ In the institutions of primary education, the instruction is delivered in Albanian language in the municipalities of Ulcinj, Bar, Podgorica, Plav and Rozaje. According to the most recent official data, this instruction was attended by some 4.7% students of the total primary-school population. The instruction in Albanian language in secondary schools is organized in the municipalities of Ulcinj, Podgorica and Plav and it is attended by some 3.4% students of the total secondary-education population. Albanian is taught at one university unit (University of Montenegro, Niksic Arts Faculty, Department of Albanian Language and Literature, The First State Report on the Implementation of the Framework Convention, 2007, p. 57.

⁴⁰ As an example, the term "magnetic field" has been translated into Albanian as "magnetic meadow".

⁴¹ Alternative Report on the Application of the European Charter for Regional or Minority Languages, Podgorica, November 2007, LIBERTASK Union of NGOs.

Moslems and Croats in Montenegro is a part of a uniform lingual system and that there is no justifiable need for their separation from the existing uniform educational system realized through the concept of common study programs for this subject (course).⁴² Some associations of national minorities, such as the Croatian Civic Society, have organized an alternative instruction in schools from the subject of mother language and history, supported by their parent country, but that remained outside the educational system of Montenegro.⁴³

Despite the fact that Roma language has been recognized by the Government as a minority language, the instruction in this language has not yet been organized, what is explained by the lack of requisite teaching staff and textbooks, as well as by the fact this language is not a standardized language. Although the problem has been persisting for years, the Government has not endeavored at creating any special and encouraging measures to create adequate staff and resolve the problem of standardization. Roma education in secondary schools and at the University is patronized mainly by the local NGO, *Roma Scholarship Foundation – the Institute for Social Inclusion*, with the scholarship program and funding support enabled mainly by foreign donors. Nonetheless, it is through the affirmative action principle that the Government supports the Roma admission to secondary schools and the state University. Four students of Roma origin were admitted at the University in the academic year 2007/2008.⁴⁴

According to the 2003 census, 2.35% of Montenegrin population beyond the age of 10 is illiterate. It is since 2006 that the Government has been implementing the Adult Educational Plan which also incorporates the literacy enhancement program, attended by some 1000 trainees by the end of 2007.

⁴² The First State Report on the Implementation of the Framework Convention, 2007, p. 56. One of the subjects in primary and secondary schools is “Mother tongue and Literature”, which is actually a common name of study program for Serbian, Montenegrin, Bosnian and Croatian language. It is expected from students and their parents to opt for the title of this subject. The instruction is uniform and is conducted by the same teacher.

⁴³ For more details see the Alternative Report on the Application of the European Charter for Regional or Minority Languages in Montenegro, LIBERTASK Union of NGOs, November 2007, Podgorica. Montenegro has not yet proceeded with the conclusion of bilateral and other agreements to regulate the issue of recognition of qualifications, scholarships, schooling, textbooks, etc.

⁴⁴ Roma Scholarship Foundation data.

1.3. Key Problems.

The instruction in minority languages apart from Albanian has not yet been organized in Montenegro.

Non-enrollment in schools or drop-out of is a characteristic of the Roma community. According to estimates, some 50% of the Roma children are not included within the educational system, while relevant NGO researches report on some 80% of Roma children dropping out of schools at the level of I-III grade.⁴⁵ There is no data on any parent ever being punished for that. In practice, an acute problem is also lack of access to textbooks, affecting particularly the Roma community and other poor citizens.⁴⁶

The Law on Education of Children with Special Needs from 2004 has not yet been consistently implemented due to lack of professional teaching staff in regular schools to work with children. The Ombudsman also indicated this problem with examples of schools refusing to admit children with special needs into inclusive education.⁴⁷ In addition, while many municipalities have not formed the Commissions for direction of children with special needs, in some already formed Commissions there are no adequate experts.⁴⁸ Also, lack of andragogy experts presents a particular hindrance to adequate development of the adults education.⁴⁹

There are no special language programs or tools at the University for students with disabilities, although discrimination on the grounds of disability in access to high education has been especially prohibited by law.⁵⁰

⁴⁵ SOS Niksic in partnership with UNICEF, „Research on the Inclusion of the Roma Children into the Educational System“, Niksic, 2006.

⁴⁶ Over 50% of Roma students in primary schools in Podgorica, Nikšić and Berane in the school-year 2006/07 did not have required textbooks (Documentation of the Roma NGO Coalition „The Roma Circle“).

⁴⁷ „Principals Claim They Are in Need of Teaching Staff“, *Dan*, 27 July 2007; HRA documentation.

⁴⁸ Data of *Youth with Handicap Association*, March 2008, HRA archive.

⁴⁹ Montenegro has less than 10 andragogy experts and some of them are not even employed in their profession.

⁵⁰ Law on High Education, *Official Gazette of the RoM*, No. 60/03, art. 7; HRA research.

2. Access to rights: National Human Rights Institutions

2.1. Protector of Human Rights and Freedoms (Ombudsman).

2.1.1. Constitutional and Statutory Provisions.

Protector of Human Rights and Freedoms Act⁵¹ defines the Ombudsman as “an autonomous and independent institution entrusted with protecting and promoting human rights and freedoms guaranteed by the Constitution, law, ratified international human rights treaties and generally accepted rules of international law, when these are violated by an enactment, act or failure to act on the part of state authorities, local self-government authorities, public services and other holders of public powers”. The new Constitution proclaims autonomy and independence of this institution, but does not provide sufficient guarantees of its independence.⁵² Ombudsman is elected by the Parliament upon proposal of the President of the State for a six-year term of office.

2.1.2. Practice.

The Ombudsman’s Office 2007 Report concludes that the number and structure of citizen’s complaints prove that the authorities “have not yet become an efficient service of citizens for consistent exercise of their human rights and freedoms.” A problem of untimely and inadequate information of Ombudsman by the authorities, notably the courts, still prevails. Ombudsman has been processing 647 complaints in 2007, of which 448 were from 2006. Out of 406 fully processed complaints, violations were found in 49.6% of cases, of which 117 were clarified in the course of examination and in 13 cases recommendations were made to competent authorities to remedy the violations, four of which were not honored. Majority of complaints related to the “silence of administration” and unreasonable duration of, particularly, civil proceedings. Ombudsman requested from the Parliament in 2005 to amend the law and increase the number of deputies and the capacity of this institution, but that has not been considered by the end of 2007.

⁵¹ *Official Gazette of the RoM*, No. 41/2003.

⁵² V.C. and ODIHR and Ombudsman himself proposed broader guarantees of independence in the form of a 9-year term of office, election by a qualified parliamentary majority, requirement of high professionalism and ethics, budgetary independence, and more precise definition of competencies in view of investigation of human rights violations (*Interim Opinion on the Draft Constitution of Montenegro*, No. 392/2006, Venice Commission, 6/2/2007, para. 103; also see 2007 Report of Ombudsman in Montenegro).

Ombudsman contributed to public presentation of human rights violations, most notably regarding conditions in which the minors serve their prison sentences, conditions of prison and detention units in general and violations of the right to trial within a reasonable time. Annual reports on the Ombudsman's activities presented to the Parliament and publicized on the internet are useful, encompassing comprehensive analyses of both processed complaints and general incidences of infringement of rights and recommendations for the enhancement of work of state authorities and legislature. In its 2007 Report, Ombudsman proposed adoption of amendments to the Law in order to enhance the independence of his office, adoption of the Law on Prevention of Drug Abuse, Law on Protection of Equality of Citizens (anti-discrimination law), and establishment of specialized institutions for juvenile offenders and provision of separate accommodation for juveniles during detention and serving prison sentences.

2.1.3. Key Problems.

Despite his increased presence in media and rather correct work results, Ombudsman does not enjoy the reputation of an “uncompromising human rights fighter“, his image is rather that of a public servant. Although Ombudsman reported that state bodies sometime disregard his recommendations and fail to answer to his requests for information, it has not been recorded that Ombudsman ever strongly objected to that and exercised his powers to address the Parliament or the Government in any such case. Ombudsman chooses to maintain a particularly low profile of appealing to the authorities to engage in investigating cases of human rights violations highlighted by media and identified in reports of international organizations and foreign governments.

2.2. Judiciary – Courts and the State Prosecutor.

2.2.1. Constitutional and Statutory Provisions.

Under the Constitution the court is “autonomous and independent” and the State Prosecutor's Office “independent state authority”. Provided is the principle of tenure of the judicial duty, non-transferability of justices (except in case of courts' reorganization, based on decision of the Judicial Council) and publicity of trial. Judges, prosecutors and their deputies enjoy functional immunity, while the President of the Supreme Court, Supreme State Prosecutor and justices of the Constitutional Court enjoy general

immunity from criminal prosecution as MPs, President of the State, Prime Minister and members of Government.⁵³

Election of the President of the Supreme Court by simple majority vote in the Parliament, upon the joint proposal of the President of State, Speaker of the Parliament and Prime Minister, contravenes the principle of independence of judiciary and the request for avoidance of political influence from election of judges.⁵⁴

The Parliament also elects by simple majority all state prosecutors, at the proposal of the Prosecutorial Council, and it elects members of this Council, what does not guarantee independence of the state prosecutor's office.⁵⁵

The new Constitution for the first time removed decision on the appointment and dismissal of judges from the competence of the Parliament and vested it in the reformed *Judicial Council*, a body consisting of ten members, four of whom are judges, elected by the Conference of Judges, the fifth member is the President of the Supreme Court and other five members are the Minister of Justice, two MPs – from the ruling coalition and opposition parties and two distinguished lawyers appointed by the President of State.⁵⁶ The Bar Association, Faculty of Law and the Association of Jurists of Montenegro have been deprived by the reform of the entitlement to appoint their representatives to the Council, resulting in the weakened impact of the civic society on the work of this body. The composition of the Council does not ensure its independence and autonomy nor does it safeguard against political influence, as it comprises three politicians, President of the Supreme Court who is proposed, elected and dismissed by politicians, and two lawyers opted for by the President of

⁵³ For these guarantees, refer to Arts. 118, 134, 120, 121, 122 & 86 of the Constitution of Montenegro.

⁵⁴ The V.C. Opinion on the Constitution of Montenegro has also been rendered in that sense (see p. 87-92). The Commission emphasized that the “political election” of the President of the Supreme Court reflected the will of the authorities to ensure better accountability of the judiciary, considered it a “transitional solution” and encouraged Montenegrin authorities to ensure “that the election of the President of the Supreme Court and state prosecutors be carried out with the highest possible majority”. However, the former Supreme State Prosecutor V. Medenica was elected to the office of the President of the Supreme Court solely by the ruling coalition, whereas the opposition protested against the election by voting against her appointment and by boycotting the voting (*Vijesti, Dan*, 19 December 2007).

⁵⁵ “The prosecutorial system provided by the Constitution is therefore totally under the control of the ruling party or parties. This is not in conformity with the European standards.” V.C. Opinion on the Constitution of Montenegro, 2007, p. 104, 105-111.

⁵⁶ Art. 127, of the Constitution of Montenegro.

State.⁵⁷ The chairmanship of the Council entrusted *ex officio* to the President of the Supreme Court may endanger Council's supervision over the Supreme Court and cause adverse consequences of excessive concentration of powers with the President of the Supreme Court.⁵⁸

Independence of the judicial budget, which would adequately ensure the independence of judiciary, was not provided, because the Judicial Council may only propose to the Government the amount of the courts' budget.⁵⁹

Although the Constitution excluded representation of State in civil law matters from the competence of the state prosecutor, in line with the CoE request for avoidance of the existing *conflict of interest*,⁶⁰ this had not been enforced by the end of the year.

According to the Criminal Procedure Act, the state prosecutor is in charge of the initial investigation of crime, prior to initiation of criminal investigation by the court upon his request, when the investigating judge takes over the investigation until its completion. The role of the police is to service the prosecutor's, i.e. investigating judge's requests. The state prosecutor participates in the judicial investigation and when it is completed decides on the indictment. Reform of the Criminal Procedure is underway according to which the prosecutor should conduct the entire investigation procedure.

The courts and state prosecutor perform their duties in accordance with the Constitution, laws and ratified international treaties. Act on Training in Judicial Bodies does not provide for an explicit obligation in respect of continuous professional training from the domain of human rights.⁶¹ Precise criteria need to be adopted relating to the election, promotion, assessment

⁵⁷ The V.C. took into consideration that "the Montenegrin political class is firmly convinced that acute problems relating to the effectiveness and impartiality of the judiciary can be overcome only through oversight of the judiciary by parliament". With some minor remarks, the composition of the Judicial Council was appraised by the Commission as "a good balance among the judiciary and the political power". (V.C. Opinion, para. 94).

⁵⁸ Similarly, the V.C. Opinion of the Constitution of Montenegro (p. 96).

⁵⁹ Art. 128, para. 1, item 6 of the Constitution.

⁶⁰ This conflict of interest is particularly obvious in the proceedings of the 1992 deportation of refugees war crime, where the state prosecutor in the civil proceedings alleges that the state officers are not liable for this crime, while in criminal proceedings he initiated their criminal prosecution for the same crime. For more detail, see: http://www.prelevic.com/Documents/DEPORTATION-Role_of_the_State_Prosecutor.pdf.

⁶¹ *Official Gazette of the RoM*, No. 27/2006 of 27 April 2006.

of performance and accountability of judges, and an obligatory Judicial Code of Ethics.⁶²

Act on the Protection of the Right to Trial within a Reasonable Time passed in November 2007⁶³ is intended to provide an effective remedy for expediting court proceedings and redress in case of violation of the right to trial within a reasonable time. The Act unjustifiably limits the amount of compensation for nonmaterial damage due to violation of the right to € 5.000, although the European Court of Human Rights awarded € 15.000 on the same ground in the judgment against Serbia.⁶⁴ The Act alleges its implementation in compliance with standards established by the European Court of Human Rights, despite the fact that these standards have not been officially publicized in Montenegro.

The Government adopted the Judiciary Reform Strategy 2007-2012, objectives of which are “strengthening of independence, efficiency and accessibility of judicial institutions and enhancement of public confidence in judiciary”, and adopted the Action Plan for its realization.

As to *access to court – right to legal aid*, Constitution proclaims that everyone is entitled to legal aid, which can be free of charge, in accordance with the law. In criminal procedure, the defendant will be appointed a defense counsel by the court in cases where defense is compulsory under the law, as well as upon request of the defendant who cannot afford to retain a defense counsel himself where a criminal procedure is for a crime punishable over three years in prison or where so requested in the interest of fairness. The Civil Procedure Code, in addition to an earlier institute of “legal aid *in forma pauperis*” introduced a possibility for a first instance court to appoint qualified legal representative to the client who cannot afford representation in court, when the court finds it necessary for protection of the client’s justified interest or where the client requests so himself.⁶⁵ There is no evidence that this right has ever been ensured in practice or that the clients have ever referred to it. Ombudsman emphasized the problem of absence of relevant free legal aid services to ensure right to access to the court.

⁶² For more details about such proposal of the HRA, see the publication *Proposal for the Election of Judges in Montenegro*, Human Rights Action, Podgorica, February-July 2007.

⁶³ *Official Gazette of Montenegro*, No. 11/2007 of 13 December 2007.

⁶⁴ See judgment in the case *V.A.M. v. Serbia*, March 2007.

⁶⁵ Civil Procedure Code 2004, Art. 168.

2.2.2. *Judiciary in Practice – Courts.*

Inefficiency of courts is one of the largest problems in Montenegro. The State Prosecutor's Report for 2006 adopted in July 2007, underlines a specific problem of inefficiency of courts in the conduct of criminal investigations, the consequence of which are time-barred prosecutions and, as an extreme case, non-sustainability of indictments due to insufficient evidence.⁶⁶ The Ombudsman finds that »proceedings in civil matters are sometimes delayed for more than 10 years, the first-instance proceedings sometimes last 6-9 years and proceedings upon appeals over two years. In a number of cases preliminary hearing is not scheduled even after a year.«⁶⁷

The Parliament failed to appoint the Judicial Council for more than a year and thus 20 vacant judicial posts could not be filled what, according to the appraisal of the President of the Court of Appeals, resulted in the backlog of some 5.000 cases.⁶⁸

Apparently, there is also a problem of inadequate competence and professionalism of judges, which impacts their effectiveness.⁶⁹ To that end, Montenegro tops European countries with the number of judges in relation to the size of its population.⁷⁰ On the other hand, judges are not provided with direct internet access or translations of key standards - judgments of the European Court of Human Rights.

Public confidence in judiciary is at a low level.⁷¹ Four officers of the Supreme Court's Administrative Office have been under investigation for fraudulent misuse of the amount of € 300.000 since December 2006, and among the suspected is also one of the judges of the Basic Court. This investigation has not been completed by the end of 2007.⁷² The information was leaked to the public that the head of the police indicated a judge and a

⁶⁶ The Supreme State Prosecutor's Report for 2006.

⁶⁷ Report of the Protector of Human Rights and Freedoms for 2007.

⁶⁸ President of the Court of Appeals, judge V. Golubovic, „One Judge Doing the Work of Two“, *Pobjeda*, 16 February 2008.

⁶⁹ Former President of the Higher Court in Podgorica, attorney-at-law M. Dakic claims the lack of knowledge is the largest problem: „There is a surprising number of ignorant persons in the Montenegrin judiciary“ („Podgorica Needs an Extra Court“, *Dan*, 11 October 2006.). The President of the Basic Court of Podgorica Z. Pazin speaks in the same manner („It is High Time for Ignorant Persons to Leave Judiciary“, *Vijesti*, 9 December 2007.)

⁷⁰ „Methods of Efficient Resolution of the Case Backlog Problem“, Judicial Training Center of Montenegro <http://www.coscg.org/test/Editor/assets/Metodi.pdf>.

⁷¹ *Inter alia*, see CEDEM, Opinion polls in 2007, www.cedem.cg.yu.

⁷² „Vukotić Responsible for All Payments“, *Dan*, 30 September 2007.

president of the court as persons responsible for obstructions of investigations.⁷³

A defamation civil law suit worth one million euro initiated by the PM M. Djukanovic against a journalist and director of the Daily *Vijesti* Z. Ivanovic has been processed in an unusually expedient manner, with the trial being set down in record time, some ten days after filing the counter statement. The same judge set down the first hearing upon the damage claim of the war crime victims against the state of Montenegro almost a year after the claim was filed.⁷⁴

The appointment of the President of the Supreme Court, former Supreme State Prosecutor V. Medenica, has been boycotted by all opposition parties.⁷⁵

Salaries of judges, prosecutors and judges of the Constitutional Court were increased by 30% since 1 September 2007, and now an average salary of a Basic Court judge amounts to € 1300.

2.2.3. Office of the State Prosecutor in practice.

In July 2007, the Parliament adopted the Supreme State Prosecutor's (SSP) 2006 Report against marked protests from the opposition. The SSP, who was appointed the President of the Supreme Court in December, was reproached by the opposition parties mostly for her failure to investigate suspicious privatizations, corruption, torture, as well as for the ineffectiveness of war crime investigations.⁷⁶

The U.S. Department of State 2007 Human Rights Practices Report for Montenegro states that governmental figures at times influenced

⁷³ "Komnenić: I'll Call the Judge Mandić to Testify", *Vijesti*, 5 September 2007.

⁷⁴ „He Claims: Charges Are Used as a Metaphor“, *Dan*, 27 November 2007, and the HRA Archives.

⁷⁵ "Medenica: Too a Large Commitment", *Vijesti*, 19 December 2007; "No More Prosecution by Vesna", *Dan*, 19 December 2007.

⁷⁶ The study on corruption in Montenegro, ordered by the Swedish International Development Agency (SIDA) and prepared by the experts of Mihlesen Institute of Bergen, indicates that "there is a widely-shared negative public view of the prosecution, due largely to a perceived reluctance to investigate state officials involved in corruption scandals, ... the new owners of privatized large companies in Montenegro who 'have faked the financial reports and profit data' to the detriment of the state budget ... failure to initiate investigation on organized cigarette smuggling back in the 90s, in contrast to Serbia, where the investigation has started against a person close to the senior government officials in Montenegro. ("Many reforms superficial, state still hostage of the ruling party", *Vijesti*, 18 October 2007).

prosecutors for political reasons and that judges issued tainted decisions out of fear of reprisals, including the loss of their jobs.⁷⁷

2.2.4. War crime investigations.

The investigations into a number of war crimes dating back to the '90s were finally initiated in 2007 after years of pressures coming from the civil society and international organizations.⁷⁸ By the year's end, there were still no indictments.

The investigation into the war crime of deportation of more than 80 Bosnian refugees from Montenegro to the Bosnian Serbs Army in May 1992 lasted for more than two years with no results, in spite of its being one of the best documented crimes in the region.⁷⁹ The order initiating investigation filed by the prosecution in October 2005 under the public pressure and complaints of victims' families did not include the masterminds or contain written evidence. Instead, it proposed the hearing of sixteen dead victims. Although the prosecution is well aware of the fact that most evidence has been destroyed by the Parliament and the Ministry of the Interior, this has not been investigated to date.

There is no information on the opening up of the investigation into war crimes committed during Dubrovnik attacks in 1991-1992 when the shelling of this city resulted in over 80 civilian casualties, over 400 injured persons, over 11,000 damaged buildings, a large number of which was under UNESCO protection at the time.⁸⁰ The attack was the responsibility of the Yugoslav Army, the territorial defence forces of the Republic of Montenegro, the Ministry of the Interior of the Republic of Montenegro, and volunteer units composed mostly from Montenegrin citizens. War crimes committed during the attack resulted only in the conviction of the General P. Strugar by the ICTY to eight years in prison.

⁷⁷ Montenegro, Country Reports on Human Rights Practices, 2007, 11 March 2008

⁷⁸ This refers to Morinj Camp where both civilians and prisoners of war were abused in the Dubrovnik war zone 1991-1992, the ethnic cleansing of the Moslem village of Bukovica in the municipality of Pljevlja, the killings of Albanian refugees by the Yugoslav Army on the territory of Montenegro in the Kaludjerski Laz area. See more details on these crimes in the report on war crime investigations in Montenegro at www.hraction.com.

⁷⁹ Scanned written evidence available at: http://www.prelevic.com/deportation_written_evidence.htm

⁸⁰ The Final UN Expert Commission Report, Annex XI, 28 December 1994, presented to the Security Council, "Open Society Archives" <http://www.osa.ceu.hu>.

2.2.5. Investigations of Human Rights Violations.

Most controversial was still the Podgorica Higher Court of Montenegro's judgment acquitting on 27 December 2006 for insufficiency of evidence the only indicted accomplice in the case of killing of D. Jovanovic, editor-in-chief of the opposition daily *Dan*.⁸¹ The Jovanovic's family claimed there had been a series of oversights during the investigation and trial as well as that the investigation had deliberately not been directed at tracking those who commissioned the murder. At year's end, the appeal against this judgment had not yet been decided yet. The family of S. Scekcic, a senior police official whose killing in 2006 led to several indictments, also emphasized that masterminds were not among the indicted.⁸²

No progress was made in the investigation into the assault on J. Brkovic, a Montenegrin writer and the killing of S. Vojcic, his bodyguard (2006). Brkovic suspects the assault was motivated by his latest novel describing the nexus between criminals and politicians in Montenegro.⁸³

By the year's end, the state prosecutor had not investigated publicly pronounced allegations of former Ministry of the Interior officer S. Muratbasic against his superiors for having forced him to instruct citizens how to vote before the parliamentary elections in 2006.⁸⁴

In the case of continuous death threats to human rights researcher A. Zekovic in April 2007, the state prosecutor failed to conduct an effective investigation in spite of Zekovic filing criminal report against unidentified perpetrators. This was followed by the media publicizing the name of the police officer whose voice was identified by citizens from the recorded threats broadcast by the radio.⁸⁵ The state prosecutor's office claimed not to have had any information on the identity of the stated police officer,⁸⁶ while, the US Department of state later also announced the name in its 2007 report from March 2008.

⁸¹ "Theatrical politician – upon election of Medenica for the Supreme Court President", *Dan*, 12/13/2007.

⁸² "War criminals need to be found for the victims to find their peace", *Vijesti*, 31 January 2007.

⁸³ "Milo knows everything", *Dan*, 2 October 2007.

⁸⁴ See also the Report of the Youth Initiative for Human Rights (YIHR), Human Rights in Montenegro – 2007: <http://yihr.org/uploads/reports/bhs/24.pdf>.

⁸⁵ Archive of the dailies *Dan*, *Vijesti*, and *Republika*, April and May 2007; A.S.Z. archive.

⁸⁶ Response of the SSP to the HRA's request for information (Tu. No. 654/07, 12/17/2007).

M. Mitrovic, president of environmental NGO “Breznica” and former head of the crisis group opposing the flooding of the Tara River, was continuously exposed to serious threats in 2006 and 2007 that he reported to the authorities and that also enjoyed media coverage. By the year’s end, not a single reported offence had been investigated although Mitrovic claims the identity of the offenders was either known or could have been easily established.⁸⁷

The prosecution expressly charged two alleged attackers on Z. Ivanovic, a journalist and director of daily *Vijesti*, based solely on their confessions to the crime, although Ivanovic, just like other witnesses, negated their statements, pointing out that the defendants did not even look like the actual attackers. The Podgorica Basic Court convicted the two defendants to four years in prison, based solely on their confessions⁸⁸.

The state prosecutor’s office was inefficient and ineffective in acting on torture reports.

In the case of 1995 torching of the Roma settlement in Danilovgrad, where the Committee against Torture found the violation of the Convention against Torture by the state and ordered, in addition to the payment of just compensation, an effective investigation of responsible police officers. The investigation was not conducted.⁸⁹

There was no investigation into mass beating of prisoners in Spuz Prison by special units of the Interior Ministry on 1 September 2005⁹⁰ in spite of explicitly expressed interest of the EU in the effective conduct of this investigation.⁹¹

As for the criminal charges for police torture filed on 14 September 2006 by ethnic Albanians charged with terrorism (police operation “Eagle’s Flight”), the prosecution opened an investigation against five police

⁸⁷ Human Rights in Montenegro, 2007, Report of the YIHR, *ibid*, p. 25.

⁸⁸ “Ivanovic’s attackers received four years each”, *Vijesti*, 16 January 2008.

⁸⁹ CAT decision in the case *Hajrizi Dzemajl v FRY*, <http://www1.umn.edu/humanrts/cat/decisions/161-2000.html>, or *Danilovgrad Case*, Humanitarian Law Centre, Belgrade, 2003.

⁹⁰ According to the SSP information of 12/17/2007 (Tu br. 654/07), the files were with the Basic State Prosecutor as of December 2005 (*Dan*, 12/11/2005) who in the meantime submitted to the investigating judge the proposal for investigative measures to be taken against (just) one responsible person in the Police Directorate of Montenegro for the alleged commission of crime ‘Negligence in Office’, as defined in Art. 417(1) Criminal code, with the investigation still underway.

⁹¹ EC stressed that “police ill-treatment in the prison in Spuz needs to be fully and transparently investigated”, *European Commission Serbia and Montenegro 2005 Progress Report*, 11/9/2005, p. 18.

officers as late as 26 October 2007.⁹² Media reports led to a conclusion that in this case the police did not cooperate efficiently with the prosecutor's office.⁹³ At year's end, the persons who reported torture have not yet been informed that an investigation had been initiated.⁹⁴

From September 2006 until the end of 2007, 29 cases of ill-treatment by police officers were reported that had not resulted in indictments by the year's end.⁹⁵

2.2.6. Key problems.

Criminal proceedings against police officers for the extortion of evidence and ill-treatment and torture are instituted relatively rarely.⁹⁶ Verdicts are reached in a small number of reported cases only to be followed by admonitions, suspended sentences and fines.⁹⁷ Disciplinary procedure for misuse of office and exceeding official powers referred to in the *Law on Civil Servants and Employees*, conducted by the Interior Ministry, is seen in practice as a more lenient alternative to criminal procedure although

⁹² "List is not final", *Vijesti Daily*, 26 October 2007

⁹³ *Ibid.*

⁹⁴ They were not informed as well as until 1 May 2008 (HRA archive).

⁹⁵ According to the YIHR 2007 Report, media releases and archive of A. Zekovic, researcher of human rights violations and member of the Council for Civilian Control of Police.

⁹⁶ *Extortion of evidence* (Criminal Code of RoM, Art. 166): A person who acts in his official capacity and uses force or threats or other unlawful means or manner to extort evidence or other act from a defendant, witness ... or other person ... shall be liable for punishment ... from 3 months to 5 years. *Ill-treatment and torture* (Criminal Code of RoM, Art. 167): A person who abuses another person or treats him in a way humiliating for his dignity shall be punished ... if in the official capacity, then up to 3 years; 2. A person who causes suffering of another person with the intention to obtain from that person or a third person information or confession or to intimidate that person or a third person or to exert pressure on them or who performs such acts for any other reason on the grounds of discrimination, shall be punished by imprisonment up to three years – if in official capacity from 1 to 5 years in prison.

⁹⁷ According to the latest published report of the SSP for 2006; According to data of SSP (Tu.br. 654/07, 12/17/2007), from the introduction of the crime of *Ill-treatment and Torture* back in 2004 until 11/1/2007, a total of 198 criminal charges were pressed against persons acting in their official capacity – police officers (15 were filed by the Police Directorate and 181 by other persons) of which 76 charges were ruled out, 43 were indicted, 14 received first instance judgments (there is no information on binding court decisions). As for the crime of *Extortion of evidence*, from 2004 until 1 November 2007, 12 criminal charges were pressed (5 by the Police Directorate and 7 by other persons), 2 charges were ruled out, 5 persons were indicted, and there were no verdicts. Of final judgments following charges for the said crimes pressed against 37 persons that year (the data are not restricted to persons acting in the official capacity), just 1 person received a prison sentence, 1 a fine, 9 received suspended sentence, and 1 received an admonition. The remaining 26 persons were acquitted.

these procedures are of different nature and should be conducted in parallel.⁹⁸

In cases of manifest violations of absolutely protected human rights, which implicate responsibility of state officers, the state prosecutor, either did not act at all or did not act timely and effectively, which points to an unjustified tolerance of rights violations, promotes impunity, and contributes to public distrust in the rule of law in Montenegro.

Inefficiency of the courts is a special problem.

3. *Constitutional Court.*

Constitutional Court judges and chief justice are appointed by parliamentary majority on the proposal of the president of Montenegro, which enables decisive influence of the ruling political coalition on the appointments. The jurisdiction of the Constitutional Court over the protection of human rights in the last instance requested that its judges be appointed in line with all guarantees of independence and political impartiality, but the Venice Commission's recommendations to that end were ignored.⁹⁹

The Constitutional Court decides on the *constitutional appeal* for violations of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have previously been exhausted. The Constitutional Court Act, not yet adopted, should envisage that this appeal may also be filed in cases when the legal remedy is not envisaged, as well as for violations of human rights not guaranteed by the Constitution but guaranteed by the ratified international agreement.

⁹⁸ The Interior Ministry data on disciplinary procedures initiated against the police officers who exceeded official powers in 2006 and 2007, particularly in terms of the use of means of coercion, which was the issue under round table discussion "Police Torture in Montenegro" organized by YIHR in December 2007. The Police Directorate response to the YIHR 2007 report remarks that it is not true that 29 cases of torture have been identified and that those have mostly been "misuse of official powers" (disciplinary infringement), "particularly when it comes to the use of means of coercion" ("State not Interested in Politically Motivated Violence", *Dan*, 4/19/2008). Bearing in mind the definitions of crimes above cited, this reaction confirms that the Police Directorate itself minimizes ill-treatment by reducing it to a disciplinary infringement.

⁹⁹ The V.C. proposed that a) the right to propose a candidate for a Constitutional Court judge should be entrusted to the Judicial Council, Parliament, and the president of the state; b) judges should be appointed by qualified majority in the Parliament (which would ensure the participation of the opposition in the decision making); and that c) the chief justice of the Constitutional Court should be elected by the judges from among themselves (V.C. Opinion, December 2007, p. 183-186).

Anyone may initiate a procedure before the Constitutional Court for the assessment of constitutionality and legality, but the procedure itself can only be initiated by the court, other state agency, a local government body and five members of parliament, while in the past this right was also provided to nongovernmental organizations.

4. *Police.*

In mid-2005, Montenegro saw the beginning of implementation of the reformed Police Act, which defines the police mission as “protecting constitutional rights and freedoms of citizens” and allows for internal, parliamentary, and civilian control of the police.¹⁰⁰ The reform is still not in full swing in terms of either its intensity or substance, and the actual examples indicate that the police oversight control mechanisms are not efficient enough. A public view of the police is that it is not free from political influence. For example, an NGO publicly announced that the premises of the Police Academy and the police around the country showed in open view the posters of ruling coalition leaders and other political party promotional material. After civil society representatives addressed the PM, the director of the police ordered removal of all such political party material.¹⁰¹

Many of the criticism related above to the office of the state prosecutor with regard to ineffective investigations of human rights violations probably also involves ineffective performance of police. However, the state prosecutor, in charge for initial criminal investigation, never publicly protested lack of efficient police cooperation.¹⁰²

5. *Other state bodies.*

5.1. *Office for Gender Equality.*

The governmental Office for Gender Equality was set up in March 2003 because, as the head of the office emphasized “over the past ten years, the position of women in such a patriarchal and traditional society such as Montenegro’s has deteriorated”.¹⁰³ The office is to be commended for the

¹⁰⁰ Police Act, *Official Gazette of the RoM*, No. 28/2005, 5 May 2005.

¹⁰¹ The telegram sent by the Director of the Police Directorate UP 01-37 dated 22 October 2007 to the police organizational units; Archive of the Council for Civilian Police Oversight.

¹⁰² At least in the cases referred to above.

¹⁰³ “Status of Women – subject of public dispute”, *Pobjeda*, 2/9/2004.

adoption of the Law on Gender Equality in July 2007, and the proposed amendments to the Draft Labour Act whose aim is to enhance the protection of women from discrimination and mobbing and improve provisions regulating the maternity leave.¹⁰⁴ The activities of this office have mostly been funded through foreign donations. It has developed cooperation with the NGO sector.

5.2. Parliamentary committees for gender equality, human rights, defense and security.

The gender equality committee has not proved to be either efficient or adequate for its role. No cooperation with the civil sector has taken place, which is mainly due to the attitude of the lady chair of this committee, a DPS member of parliament, seen in public as an advocate of the traditional role of woman in the Montenegrin society.¹⁰⁵ The work of the *Committee for human rights and fundamental freedoms* has been obstructed by the representatives of the DPS – SDP ruling coalition which holds the majority in this committee. As a result, many of its sessions scheduled in 2007 were delayed by their absence.¹⁰⁶ The committee contributed to the improvement of the Law on Trial within Reasonable Time by adopting three amendments suggested by the SNP, an opposition party, shortening substantially the previously defined long terms within which chief justices were to act on complaints for violations of this right.¹⁰⁷ In addition, it has helped set up the Minority Fund. *The Parliamentary Committee for Defense and Security* develops an efficient parliamentary control. A role in this is played by the developing capacity of this parliamentary body.¹⁰⁸

¹⁰⁴ Office for Gender Equality, 12/19/2007:

<http://www.vlada.cg.yu/gender/index.php?akcija=vijesti&id=153183>

¹⁰⁵ “Walkers Want Equality”, *Republika*, 4/2/2007.

¹⁰⁶ The opposition representatives on this committee pointed that only few sessions were held in the first six months for the absence of a quorum and due to obstruction of the ruling coalition members, the committee either could not debate in time or could not debate at all on important issues, such as the case of Muratbasic, a former police officer, exceeding police authority in the operation “Eagle’s Flight”, assess war crime investigations, etc. The excuses the ruling coalition representatives used were that the sessions were not scheduled at the time suitable to them or that debating on some topics would be unlawful interference with court procedures and the Interior Ministry explanations. (“Time for Taboos”, *Vijesti*, 2/18/2008; “Prevent Obstruction”, *Dan*, 9/26/2007; “By Quorum against Human Rights”, *Dan*, 8/9/2007).

¹⁰⁷ “Penalties up to 5.000 € – Parliamentary Committee for Human Rights on the protection of the right to a trial within reasonable time”, *Dan*, 7 November 2007.

¹⁰⁸ Particularly involved in capacity development of the committee is the Centre for the Democratic Control of Armed Forces (DCAF), Geneva, Switzerland.

5.3. Council for Civilian Control of the Police.

The Council was set up in 2005 under the Police Act with the mission to assess the use of police powers for the protection of human rights and freedoms. The council can be addressed by citizens and police officers. Its membership includes five representatives appointed by the Bar Association, Medical Chamber, Lawyers Association, University and NGOs dealing with human rights issues. The council protested on several occasions, particularly on issues concerning misuse of police powers by police officers. The funding of the council is a problem. By the year's end, the council had reviewed 300 applications received by citizens and police officers as well as upon initiatives of its own membership. However, its work is still not visible enough in the public, or accepted appropriately by the police itself.

3. Prohibition of discrimination. Non-favoured, marginalized, and disadvantaged groups

3.1. General prohibition of discrimination.

The new Constitution incorporates a very broad prohibition of discrimination by banning every "direct or indirect discrimination based on any ground" (Art. 8). This general prohibition is supplemented by provisions guaranteeing "equality in law", "equality before the law" (Arts. 17, 19) and gender equality (Art. 18). Temporary special measures aimed at achieving *de facto* equality of persons belonging to disadvantaged groups (affirmative action) are explicitly allowed, while persons with disabilities are guaranteed special protection (Arts. 8, 68). Incitement of hatred on any grounds is prohibited (Art. 7). Prohibition of discrimination cannot be derogated in time of war or other public emergency nor can derogation of human rights and freedoms be based on grounds such as sex, ethnic origin, race, religion, or any other personal characteristic (Art. 25).

All forms of discrimination have long since been qualified as crimes, also allowing for punishment of offenders committing violence against persons of different religion, race, nationality, political affiliation, sexual orientation, etc. However, there remains the problem of their inconsistent

implementation in practice.¹⁰⁹ Laws, such as the Labor Act, Employment Act, Health and Social Care Act and other, prescribe the principle of equality and prohibit discrimination.

In 2005, the Montenegrin government adopted the Draft Citizens Equality Act (general anti-discriminatory legislation), but by the end of 2007 it had not yet been considered by the Parliament.¹¹⁰

3.2. Protection of national and ethnic minorities.

Constitution guarantees important rights to protect the identity and prohibit assimilation “of members of minorities and other minority ethnic groups” although there is no consensus in Montenegro as to who belongs to this category. The Constitution Preamble states that members of nations and minority groups living in Montenegro include: “Montenegrins, Serbs, Bosniaks, Albanians, Muslims, Croats, and others”. Naming of constituting nations was avoided on request of the CoE and to the disappointment of particularly Serbian and Bosniak political parties. The Constitution prescribes Montenegrin language as the official language, whereas Serbian, Bosniak, Albanian and Croat languages are “in official use”.

The Constitution guarantees the right to authentic representation of minorities in the Parliament of Montenegro and local government councils in units where they make a significant proportion of the population, in line with the affirmative action principle, as well as to proportional representation in public services, public administration agencies and local government. The existing electoral legislation governs the representation of Albanian minority in the Parliament only, not giving the same opportunity to the other minority groups.¹¹¹

¹⁰⁹ An example is lack of punishment of football fans both before and after the match between Croatia and Montenegro held in Montenegro in July 2007 (“Pocrnjeli od pendreka, a ne od sunca”, *Dan Daily*, 26 July 2007; “Navijaci su posebna fela”, *Vijesti*, 21 July 2007).

¹¹⁰ Human Rights Committee insisted as early as 2004 that Montenegro and Serbia start work on the adoption of anti-discriminatory legislation and it is also Montenegro’s priority task under European Partnership (*Council Decision on the principles, priorities, and conditions contained in the European Partnership with Montenegro*, 17 January 2007, p. 7).

¹¹¹ The OSCE observation mission concluded that the existing electoral system “favors just one national minority in Montenegro while at the same time making it dependent on the parliamentary majority that determines these voting stations before any election”. The authorities were invited to consider the existing system of allocating a number of mandates based on results in previously determined voting stations as well as to improve Roma participation in public and political life (*OSCE/ODIHR Observation Mission Final Report*, 10 September 2006, p. 15 and 22).

The implementation of the Minority Rights and Freedoms Act (2006) began in late 2007 with regard to foundation of the National Minority Councils and Minority Fund responsible to fund the projects of the Councils and other bodies working to promote minority rights. The draft 2008 budget includes funds for the work of these bodies. By the end of the year the drafting of Minority Policy Strategy was underway, supposed to define the executive policy toward minorities.

Montenegro applies the European Charter on Regional and Minority Languages since June 2006 and at the same time it also became party to the Framework Convention on the Protection of Minorities.¹¹²

In 2007 the Government submitted the first state report on the implementation of the Framework Convention for the Protection of Minorities, which was prepared in cooperation with NGOs.¹¹³ There is a significant number of active minority educational, scientific, cultural NGOs, as well as political parties and print and electronic media in minority languages. Representatives of minorities and NGO sector were dissatisfied with participation of minorities in decision making processes, development of experts among members of minorities in all areas, staff representation in cultural affairs, particularly at national level.¹¹⁴

Montenegro submitted its first report on the implementation of the European Charter on Minority and Regional Languages in June 2007.¹¹⁵ With the Charter ratification, accepted were only the commitments related to Albanian and Roma as minority languages. The exclusion of recognition of the Bosniak and Croat languages was seen in public as ill-treatment of these languages, although the Government saw it differently in its report.¹¹⁶

¹¹² The FRY Parliament ratified the Framework Convention in 1998 (*Official Gazette of FRY*, No. 6/98). In terms of its obligations under international law, the Convention became binding as late as 2001 when the Council of Europe invited FRY to accede to this Convention and when ratification instruments had been deposited. Montenegro's accession to the Convention was acknowledged as of 6 June 2006, the date of statement of succession status.

¹¹³ The first state report on the implementation of Framework Convention, Podgorica, 2007

¹¹⁴ An example presents the National Library of Montenegro with only 3% of its staff from minority groups. Although the library stocks books in Albanian, none of its staff speak Albanian. Instead of a teacher of Albanian language and literature, who is a representative of the minority herself, other individual not meeting the requirements has been given the job (archives of A. Zekovic).

¹¹⁵ <http://www.minmanj.vlada.cg.yu/vijesti.php?akcija=rubrika&rubrika=284>

¹¹⁶ In the Report, the Government points out that "the failure to include the Bosnian and Croat languages in the list does not mean, of course, that the state is denying the existence of these languages. The absence of use of these languages is a consequence of an absence of legally respectable requests or activities towards the introduction of these languages in the official, public, educational, or media usage" (p. 3).

The Constitution had later designated those two as languages “in official use”.¹¹⁷

Legislation makes full provision for unhindered use of minority languages in criminal procedures. No practice has been developed in translating the most important legislation, in violation of the commitments under Charter Art. 9(3).

Local media public services in most municipalities have not developed the practice of designing programs devoted to minorities. The model to monitor the observance of these legislative obligations by the National Broadcast Corporation “Radio and television of Montenegro” (“RTCG”) has not been designed yet either.¹¹⁸

The Ministry for the Protection of Human and Minority Rights has so far been dealing exclusively with minority rights and was subject to criticism for that work, particularly by representatives of minority political parties and NGOs.¹¹⁹

Minority political parties and NGOs warn about inadequate participation of minorities in the police, state prosecutor office, judiciary and education in particular, and the Government also confirms in its first state report on the implementation of the Framework Convention that the public administration human resources structure does not reflect the national population structure. In the Parliament, minority representatives make 20%. Deputy President of the Parliament and Ombudsman are members of minorities, and out of 17 members of the Government, two are members of minorities.

3.3. Roma, Ashkali and Egyptians (RAE). - Roma, Ashkali, and Egyptians are the most disadvantaged ethnic group suffering, together with Albanians, the strongest ethnic and racial distance.¹²⁰ According to official data, the

¹¹⁷ For more on education in minority languages, see *Right to Education*.

¹¹⁸ The Ministry of Culture, Sports, and Media has not controlled spending of the funds allocated to the National Broadcast Corporation (RTCG) for programs in minority languages. Public is unaware of the effects of the work of the Commission for the Programs in Minority Languages. The RTCG Council (the key body whose membership represents the interests of citizens) includes minority representation.

¹¹⁹ The Minister, Fuad Nimani, is Albanian, from Democratic Union of Albanians, belonging to the ruling coalition. Complaints of the civil sector and opposition political parties relate to insufficient transparency and efficiency in the work of the Ministry and the fact that it is mainly related to one rather than all minorities. General human rights issues do not seem to be within the scope of interest of the Ministry.

¹²⁰ “Ethnic distance in Montenegro”, public opinion poll, CEDEM, 2007.

size of RAE population in Montenegro is 2.826, or 0.46% of the total population.¹²¹ The data from the field, however, indicate that there is between 15,000 and 20,000 Roma (around 3%). Also, out of the total number of refugees and displaced persons in Montenegro, some 24%, or 4,300, are RAE.¹²² Lack of reliable data has a negative effect on the exercise of certain rights, use of funds from the state Minority Fund and awareness of the political significance of this minority.¹²³ RAE is the only ethnic group not mentioned in the new Constitution.

Government joined the regional program “Decade of Roma Inclusion” and adopted the Action Plan 2005-2015 defining education, health care, employment and housing as priorities. The Action Plan has not been implemented because organizational, technical, human resources and financial requirements were not in place.¹²⁴ In late 2007, the “Strategy for Improvement of Roma Position in Montenegro 2008-2012” was adopted and funds for its implementation provided.

According to official state statistics, poverty rate among RAE population in Montenegro is 4.5 times higher than the national poverty rate and 5.5 times higher than the poverty rate among the local population.¹²⁵ RAE is also recognized as the group with the highest rate of economic disadvantage (75.6%).¹²⁶

RAE is a category with very limited employment opportunities, low competition and mobility in the labor market due to generally low level of education and due to discrimination.¹²⁷ Unemployment tends to last longer

¹²¹ 2003 Census, publication “Stanovništvo – nacionalna ili etnička pripadnost”, MONSTAT, Podgorica, September 2004.

¹²² Agency for Protection of Refugees, November 2006.

¹²³ According to the *SOS Phone of Niksic* research, members of this population avoided the 2003 census, were either disinterested or identified themselves as members of more populous population groups, that is likely to cause them to lose a mandate in the Parliament. (“Statistika ostavila Rome bez poslanika”, *Vijesti Daily*, 3 December 2007).

¹²⁴ National conferences on Roma inclusion, held in 2006 and 2007 in Podgorica by international and local governmental and nongovernmental organizations, showed that the Government did not develop a mechanism of monitoring the implementation of the Action Plan “Decade of Roma Inclusion”, nor has it envisaged any responsibility for failure to fulfill tasks within the given deadlines.

¹²⁵ Average poverty rate for entire Montenegro is 12.2, among the local population 9.6, RAE 52.3, and refugees and IDPs 38.8 and 38.6 respectively; Source: ISSP and UNDP, Development and Poverty Reduction Strategy, Ministry of Labor and Social Care, Podgorica, 2003.

¹²⁶ “Living standard and poverty in Montenegro”, Institute for Strategic Studies and Prognosis and World Bank, 2002.

¹²⁷ Report on Roma Employment in Montenegro, Council of Europe 2005.

and the gender gap in employment is wider than with the other groups.¹²⁸ The Roma Scholarship Foundation (RSF) registered numerous cases of citizens rejecting services provided by Roma who had undergone professional development courses through Employment Agency training programs.¹²⁹ School drop out phenomenon is mostly manifested from ages 12 to 14, mainly due to decision of male family members. Montenegro also witnesses intergeneration poverty transmission that particularly affects children.¹³⁰

RAE members are generally allowed access to public health care institutions. It is noted, however, that they tend to wait longer for the service and that health care staff treat them differently than other patients.¹³¹ Another problem for them is the payment for medications and co-payment required for some medical treatments. Introduction of Roma health care mediators has been proposed so as to ensure medical services of better quality and an improved access to health care services.

As for the improvement of housing conditions for Roma, the state authorities have done nothing in spite of the plans envisaged by strategic documents. Roma mostly live in suburban settlements with poor sanitation, with no sewage system or access to potable water.

Another widespread problem is begging by Roma children who are, generally, forced to it by their parents. Although this is qualified as a crime¹³², the relevant authorities did nothing do combat it and protect the rights of children.

3.4. Refugees and Internally Displaced Persons (IDPs). - Montenegro hosts around 16,200 IDPs from Kosovo and around 8,500 refugees from Croatia and Bosnia and Herzegovina.¹³³ Persons from Kosovo are still counted as IDPs although Montenegro became independent from Serbia in June 2006.

¹²⁸ The number of self-employed women is around five times smaller than that of men in RAE population; UNDP "Vulnerable groups: Social vulnerability of Roma, refugees, and IDPs in Montenegro", 2006.

¹²⁹ "The moment employers or citizens see we have 'chocolate colored' skin they do not hire us" is just one of the comments; RSF Documentation.

¹³⁰ "Break up the chain of exclusion – Roma children in SEE", UNICEF, Serbia, Belgrade, 2007.

¹³¹ Documentation of NGO "Association of Roma and Locksmiths – Women's Heart" from Podgorica.

¹³² Neglect and abuse of a minor, Art. 219(2) Criminal Code of the RoM: "A parent, adoptive parent, caregiver or other person who abuses a minor or forces him into excessive work or work not suitable to the child's age or into *begging* ... shall be punished by a prison term from three months to five years."

¹³³ According to the Agency for Protection of Refugees.

Approximately 2,000 displaced persons made claims for a resident status, but none was fully adjudicated by the year's end.¹³⁴

Although Montenegro adopted an ambitious national Strategy for Durable Solution to the Problems of Refugees and IDPs in 2005 with a view to securing optimum solutions to these two categories by early 2008, enjoyment of their rights remained limited in 2007. This was primarily due to the fact that the legal framework prevented them from registering permanent residence, which was an essential requirement for being accepted into Montenegrin citizenship. Without citizenship and ID documents many refugees and IDPs experienced problems registering with the local employment offices and accessing *inter alia* higher education, social welfare and property rights.¹³⁵ As a consequence, majority of them experience difficult living conditions which gave rise to serious concerns on the part of the European Commission over their status.¹³⁶ There is also some information that the government was reluctant to register all births of refugees and IDPs, also resulting in statelessness and denial of some public services.¹³⁷ On a positive note, draft Montenegro Citizenship Law¹³⁸ makes the naturalization requirements less stringent by insisting on “lawful and habitual residence” instead of “permanent residence”, as envisaged by the 1999 Citizenship Law. This citizenship reform may end a long nightmare for thousands of refugees and IDPs who found safe haven in Montenegro in the 90's.

The Asylum Law, adopted in June 2006, took effect on January 25, 2007. This is the first law of this kind in Montenegro and has been assessed as being in line with international and European standards.¹³⁹ The Office for Asylum, which forms part of the Ministry of the Interior and Public Administration, decides upon asylum applications, while the State Asylum Appeals Commission, appointed by the Government, hears appeals on first instance decisions. Both bodies have been established by the end of the

¹³⁴ US Department of State *Country Reports on Human Rights Practices 2007- Montenegro*, 3/11/2008.

¹³⁵ Information provided by the Legal Aid Center, NGO from Podgorica. Also, see PACE, “Situation of Longstanding Refugees and Displaced Persons in South East Europe”, Doc. 11289, Report, Committee on Migration, Refugees and Population, 24 May 2007.

¹³⁶ *Montenegro 2007 Progress Report*, Commission of the European Communities, Brussels, 11/6/2007.

¹³⁷ US State Department, Report on State Human Rights Practices 2007.

¹³⁸ Law on Montenegrin Citizenship, *Official Gazette of RoM*, No. 13/2008, see Art. 8.

¹³⁹ *The Republic of Montenegro Migration Profile*, International Organization for Migration, 2007, p. 36

year. Decisions of the latter body are final and no recourse to judicial proceedings to challenge such decisions is permitted.¹⁴⁰

In 2007, the authorities decided on three asylum requests (one was accepted).¹⁴¹ Due to lacking financial resources, works on the construction of the asylum-seekers reception centre, envisaged by the Law, were suspended in 2007.

3.5. *Women.*

Despite being stronger in number than men,¹⁴² women in Montenegro remain underrepresented in decision-making processes, in Parliament, Government and corporate management. The Vice Prime Minister for European Integration is the only female-held position in the Government, while the number of women MPs totals nine, or 11 %. No political party is headed by a woman. As a consequence, Montenegro is at the bottom of the world scale in political participation of women and only Albania in this part of the world has a lower percentage.¹⁴³ Furthermore, a research done by the Human Resources Management Authority of Montenegro shows that while they make 60% of governmental employees, women occupy only 10% of management positions in the Government structures.¹⁴⁴

The Constitution guarantees gender equality, development of „equal opportunities policy“ and allows for affirmative action measures. The Gender Equality Act, adopted in July 2007¹⁴⁵ aims at eliminating gender-based discrimination and creating equal opportunities for men and women in all areas of life. However, the Act provides more recommendations for action than it orders institutions to take concrete measures. As it also does not provide for any sanctions, its effective implementation remains doubtful.¹⁴⁶

In practice, women are generally paid less than men for equal work and equal qualifications. Montenegro tops European states in the level of a

¹⁴⁰ Art. 17, Para. 3, Asylum Law, *Official Gazette of RoM*, No. 45/2006.

¹⁴¹ Deputy Minister of Interior, Osman Subasic, MBC television report, 5 January 2008.

¹⁴² According to the 2003 census, there are almost 10,000 more women than men.

¹⁴³ http://www2.undp.org.yu/montenegro/si/projects/Gender%20Programme/Gender%20Project_prod.pdf

¹⁴⁴ *Daily Vijesti*, 20 April 2008, p. 2.

¹⁴⁵ *Official Gazette of RoM*, 31 July 2007.

¹⁴⁶ “Women NGOs Network believes the Law is only a show for Europe”, *Dan*, 14 July 2007.

variant in the socio-economic coefficient, since the gender wage gap has risen to 19%¹⁴⁷

Domestic violence remains a cause of serious concern, with every second woman in Montenegro experiencing verbal abuse and every third being exposed to physical violence.¹⁴⁸ Nonetheless, the number of cases brought to the attention of the police is significantly smaller, though a 7.3 % increase in such cases was reported in 2007.¹⁴⁹ Apart from police records, there are no reliable data on the scope and forms of domestic violence, as there are no legal obligations for the relevant state institutions (hospitals, social work centers, courts, schools) to take record or report on such cases. According to data provided by NGOs, the number of telephone reports or visits they received largely outnumbered the reported crimes.¹⁵⁰ While domestic violence is a criminal offence under Art. 220 of the Criminal Code, penal policy towards the offenders remains mild.¹⁵¹ Specific legislation on domestic violence has been under governmental consideration since 2005.¹⁵² Likewise, the country is yet to provide specific budget allocations for the fight against domestic violence both at the central and local levels.¹⁵³

Another problem is sexual harassment which, unlike domestic violence, is not specifically punished by law. Victims are hesitant to report harassment and there is no public discussion on the issue, allowing the offenders to get away unpunished.¹⁵⁴

According to the director of the Police Directorate, in 2007 the police detected two cases of human trafficking where four victims had been

¹⁴⁷ “For the same qualification and knowledge lesser payment”, *Dan*, 15 October 2007

¹⁴⁸ According to detailed research by the *SOS telephone Podgorica* in 2003. Some 74.5% of women participating in the survey stated to have endured some form of family violence.

¹⁴⁹ Senior Police Commissioner at the Police Directorate of Montenegro, M. Bulatovic, *Stop Violence Against Women Conference*, December ‘07: <http://www2.undp.org.yu/montenegro/home/archive/viol.html>; According to the director of the Police Directorate, the police processed 565 reported cases of domestic violence in 2007, 55 more than in 2006 (*Daily Dan*, 22 April 2008, p. 12).

¹⁵⁰ Information obtained from *SOS telephone* and *Women’s Shelter*.

¹⁵¹ The Head of the Gender Equality Office, Nada Drobnjak, *Stop Violence Against Women conference*, December 2007 report available at: <http://www2.undp.org.yu/montenegro/home/archive/viol.html>.

¹⁵² A draft working version of the Law against Family Violence has been prepared. NGOs Women’s Shelter and SOS for Women and Children Victims of Violence delivered critical comments to the Ministry of Justice.

¹⁵³ Monitoring Report *Violence over Women: Does Montenegrin Government Care?*, NGO *SOS Telephone for Women and Children, Podgorica*, November 2007, p 15.

¹⁵⁴ *Daily Dan*, 29 November 2007, citing NGO *Women Today*’s President, also reporting that 10 women have sought protection by this organization from sexual harassment at work place in 2007.

women.¹⁵⁵ One first instance judgment was delivered for the crime of trafficking against family M., where father, mother, and a son deprived of their liberty a woman and a minor and used them as prostitutes in their restaurant. All three were sentenced to 5 years in prison respectively, which is a minimum penalty for the crime.¹⁵⁶

Women NGOs believe that investigation of such crimes and identification of victims of trafficking is a problem in Montenegro, although the number of processed and adjudicated cases remains negligible. In October 2007 a reformed Cooperation Agreement on the Combat Against Human Trafficking was signed by the Prosecutor General, Ministry of Health, Labour and Social Care, Ministry of Education and Science and three NGOs: Women's Shelter, Montenegrin Women's Lobby and Centre Plus.

Montenegro has not yet ratified the CoE *Convention on Action against Trafficking in Human Beings*, although it did sign it back in 2005. By the end of the year there was no reopening of the investigation of the famous trafficking case involving a Moldavian victim S.C. and senior state officials of Montenegro. However, the prime suspect, the then Deputy Prosecutor General, initiated criminal proceedings for forgery against S.C., who remains resettled in a third country.

3.6. *Persons with disabilities.*

World Health Organisation assessment reports that Montenegro has a minimum of 62,000 persons with some disability.¹⁵⁷ The Constitution guarantees special protection to persons with disabilities (Art. 68). Montenegro's legislative framework in this area is lagging behind other former Yugoslav republics and Albania.¹⁵⁸ The Government approved the Draft Law on the Protection of Persons with Disabilities from Discrimination, Draft Law on Professional Training and Employment of

¹⁵⁵ Daily *Dan*, 22 April 2008, p. 12.

¹⁵⁶ "Five Years in Jail Each", Daily *Republika*, 27 December 2007.

¹⁵⁷ According to the WHO assessment, at least 10% of the total population are persons with a disability. The National Strategy for Persons with a Disability points to the fact that the Republican Pension and Disability Fund has registered 26,365 users of disability pensions. The Employment Agency of Montenegro records around 2,700 unemployed persons with a disability. Montenegro's Social Exclusion and Poverty Reduction Strategy points that around 60% of persons with a disability live on or below the poverty line.

¹⁵⁸ According to Vesna Simovic, Assistant Professor of Labour Law at Podgorica Law School, http://www.b92.net/srbija2020/vesti/region.php?yyyy=2007&m08&d31&nav_id=261547&fs=1.

Persons with Disabilities and Draft Law on the Use of Guide Dogs and Assistant Dogs,¹⁵⁹ but none of these laws were adopted by the year's end¹⁶⁰.

The Draft Law on Professional Training and Employment of Persons with Disabilities, approved back in 2005, provides for an obligation on all employers with over 20 staff to hire at least one person with a disability, while companies with over 50 staff must hire a minimum of 6% of persons with disabilities.¹⁶¹ In the meantime, the Government and Employment Agency introduce various measures and relief mechanisms to promote the employment of persons with disabilities.¹⁶² The Agency recognizes these persons as persons who are difficult to find a job to and thus require extra sensitivity and attention¹⁶³. In practice, however, this does not yet yield the results expected.

Late in the year, the Government adopted the National Strategy for Persons with Disabilities 2008-2016 aiming to improve their position and participation in all areas of society with full equality. The drafting of action plans for the first two years has been underway.

According to the data from the National Strategy, not a single health care institution in the country is fully accessible to persons with disabilities, nor adjusted to their needs. The Strategy recommends that all large hospitals should hire sign language interpreters. No health care institution has done that so far. This creates difficulties for persons using this as their means of communication, which in turn makes it extremely difficult for them to exercise their right to health care.

Architectural barriers are a major concern. Although the Spatial Planning and Design Act and the Building Construction Act make it obligatory upon investors and owners of residential and public facilities to adjust the designs to persons with disabilities, this is rarely observed today, particularly in the absence of penalties for noncompliance. The local and intercity public transport remain unadjusted to persons with disabilities.

¹⁵⁹ "Improve Conditions of People with Disabilities", *Pobjeda*, 21 June 2007.

¹⁶⁰ The Act on the Use of Guide Dogs and Assistance Dogs was adopted in February 2008.

¹⁶¹ *Vijesti*, 3 October 2005

¹⁶² Professional assessment – triage of persons with a disability, favorable loans for youth in this category, community work "Suncana radionica" hiring exclusively persons with a disability.

¹⁶³ The National Employment Strategy and National Employment Action Plan 2007-2010, Employment Agency of Montenegro, 2007.

The University is left without specialized programmes or tools for students with sight or hearing impairments.¹⁶⁴

The National Strategy points to a need to amend secondary legislation so that health insurance should cover 100% of the price of rehabilitation services at stationary health care institutions, while full health care should be provided without any co-payment required to all categories of persons with disabilities, and without any distinctions made according to the level and origin of disability.¹⁶⁵

The Republican Health Care Fund announced the review of its Rules governing the right to medical and technical disability aids as the Strategy has assessed them as restrictive and largely discriminatory since they do not allow for a rational access to rehabilitation to match the diagnosis and seriousness of the illness.

By the year's end, Montenegro has not yet ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol that it did sign in September 2007.

3.7. *Sexual minorities.*

In Montenegro only NGOs make efforts to raise awareness on the rights of sexual minorities and promote tolerance towards members of LGBT¹⁶⁶ population. The initial, expert version of the new constitution included a provision allowing marriage to everyone in Montenegro. This liberal provision was later abandoned with the Constitution allowing for marriage between a man and a woman only.¹⁶⁷ The new Family Act,¹⁶⁸ in effect since 1 September 2007, defines both marital and extra-marital community as between a man and a woman, meaning that same sex couples may not exercise rights to benefits and else recognized to extra-marital partners, in contravention to the case law of the European Court of Human Rights (*Karner v. Austria*, 2003). However, the Constitution prohibits all forms of discrimination as well as instigation and incitement of hatred on any grounds. A discriminatory provision of the Criminal Code was eliminated

¹⁶⁴ HRA survey.

¹⁶⁵ At present, this insurance covers 15% of the cost of a tool, and the wheelchair costs over €1,000, and hearing aid even €2,000.

¹⁶⁶ Lesbian, Gay, Bisexual, Transsexual.

¹⁶⁷ Constitution of Montenegro, Art. 71(2) "Marriage can only be concluded with mutual consent of a woman and a man".

□ *Official Gazette of the RoM*, No. 1/2007, 9 January 2007.

in 2004 as it envisaged different age of sexual consent for homosexuals (18 yrs.) on the one hand than that for heterosexuals and lesbians (14 yrs.) on the other.

Several cases have been recorded with police officers calling victims of abuse “faggots” and threatened them with “faggots” in prison. Several police officers after having found two young men of Podgorica having sex on the outskirts of the town, had brutally beaten them and left them without clothing.¹⁶⁹ No criminal prosecution ever took place for stoning of A. Kovac in Podgorica in 2005 for his public appearances intended to protect the rights of sexual minorities, although the police did initially arrest three attackers.

As the public generally condemns sexual minorities and sees them as amoral or sick, members of this population in Montenegro conceal their identity and tend to avoid reporting discrimination cases and physical assaults.

¹⁶⁹ Documentation of A. Zekovic, a human rights researcher.

Human Rights in Serbia 2007

By Ana Jerosimić (ed.)

Belgrade Centre for Human Rights

Abstract

Human Rights in Legislation: Constitutional Provisions

The year 2007 was the first year in which the new Constitution of Serbia, adopted on 30 September 2006 and endorsed at the 28 – 29 October 2006 referendum, was applied. The Constitution had been adopted in a rush, with no public debate or opportunity for the experts to analyse and comment its provisions. Public reaction was fierce. Although it is still too early to give comprehensive assessments of the reach of the constitutional provisions qualified as problematic both by international and domestic experts, there is no doubt that these deficiencies can largely be attributed to the fact that the Constitution had not been put to any public debate before adoption. Although the Constitution was passed in a manner unusual for democratic countries, it indisputably comprises a much better catalogue of human rights than the previous Constitution of Serbia.

Legal System and Laws Relevant to Human Rights

The state of human rights in Serbia and the state authorities' concern with their enjoyment and protection in 2007 were strongly influenced and frequently overshadowed by the turbulent political events. The National Assembly was inactive from October 2006 until mid-May 2007 which led to delays in the adoption of laws – the Assembly adopted only 70 or so laws by the end of 2007. Only about 20 of them were totally new and nearly all of them were merely fulfilling the formal obligations laid down in the Constitutional Act on the Implementation of the Constitution. Moreover, nearly all the adopted laws had been submitted and adopted under an emergency procedure, wherefore there were hardly any opportunities for serious debates of the drafts and for making any essential

improvements in them through amendments.

Human Rights and Education: Right to Education

The primary and secondary education in Serbia is regulated by the Act on Foundations of the Education System adopted in 2003 and the Act on Elementary Schools and the Act on Secondary Schools both adopted in 1992. The higher education in Serbia is regulated by the Higher Education Act adopted in 2005. This Act was drafted for several years and introduces a large number of new and modern provisions. These laws were not amended in 2007 and thus the situation in this field remains the same as in 2006.

Access to Rights: National Human Rights Institutions in the Country

The institute of ombudsperson has to date been established at three levels in the Republic of Serbia: at the state level, at the level of the Autonomous Province of Vojvodina and at the local self-government level. Although the Act on the Protector of Citizens, passed in September 2005, envisaged the election of the ombudsman within six months from the day the Act comes into force, Serbia's first ombudsman was elected only in mid-2007. The Government of Serbia on 14 December 2007 submitted to the Assembly the Draft Act on the Protector of the Rights of the Child, which is one of its commitments arising from the Council of Europe membership. The enjoyment of the right to freely access information is still dissatisfactory notwithstanding certain positive trends in the implementation of the Act on the Free Access to Information of Public Importance. The main problems hindering the effective enjoyment of this right lie in the absence of oversight over the implementation of the Act and in mere misdemeanour penalties for its violation.

Disadvantaged, Marginalised and Vulnerable Groups

Tolerance of discrimination in practice is above all reflected in inefficient investigation, prosecution and punishment of its perpetrators and in the lack of systematic and comprehensive legislation. Discrimination against the Roma ethnic minority, frequently accompanied by physical violence, remained widespread. The courts, on the other hand, tended to convict the assailants on Roma to mild sentences. The election of minority deputies to

the Assembly marked a major headway after their three-year absence from the parliament but the question of whether they were able to genuinely actively partake in the work of the Assembly remained open given that they were still unable to use their native languages despite the legal provisions affording them that right. Hate speech is still widespread in Serbia, both in media and in publishing. It was even heard in parliament. A large number of neo-Nazi movements, responsible for various incidents, have been active in Serbia. Although the Act on the Prevention of Discrimination against Persons with Disabilities was adopted in 2006, the national and local authorities have mostly failed to fulfill their obligations and the Act is not adequately applied. The Act on Churches and Religious Communities, passed in 2006, governs the field of religious freedoms and religious organising. Many of its provisions are, however, extremely problematic from the viewpoint of the freedom of religion and the constitutional principle of equality of religious communities. Some religious communities have been the target of attacks for years but the police have failed to identify the perpetrators. Discrimination against women still exists, especially at work, but information on such violations is rarely available. Perpetrators of discrimination are rarely criminally prosecuted; the criminal law provisions invoked in such cases are insufficient to ensure full protection of criminal law. The key problem in court still lies in the challenge of proving discrimination. This problem could be eliminated for the most part by the adoption of adequate legal provisions. Refugees and internally displaced persons in Serbia still face a lot of problems in practice. Although domestic violence is a criminal offence under Serbian law, research indicates that the victims are not adequately protected and that much of domestic violence remains unreported mostly because the victims fear the reactions of their community and the offender and mistrust the legal system. The law does not sufficiently guarantee the urgency of the proceedings and most victims tend to abandon the proceedings they had initiated. Prosecutors, on the other hand, rarely take legal action against persons suspected of domestic violence. Jurisprudence indicates that courts hardly ever order the protection measures envisaged by the Family Act and that the sentences pronounced for violations of the Criminal Code are extremely lenient.

Introduction

1. Political and social situation.

1.1. Political situation.

Serbia entered 2007 as an independent state. It is a fully legally independent state for the first time since 1918, when it joined the Kingdom of Serbs, Croats and Slovenes (which later became Yugoslavia). The new status of Serbia is laid down in its Constitution that was endorsed at the referendum held on 28 – 29 October 2006.

The Constitution met with many reservations both with respect to its content and the manner in which it was adopted. It was passed in a rush, after absolutely no public debate of its provisions. As per its text, the Constitution is a product of a compromise of diverse political forces. The price that had to be paid to achieve the necessary consensus included the provision in its Preamble binding all political protagonists to insist that Kosovo remain a province within Serbia and to oppose any attempt of it gaining independence. Kosovo Albanians, although formally citizens of Serbia, boycotted the referendum on the Constitution, just as they had boycotted all elections in Serbia since 1989. This fact was not, however, taken into consideration when the electoral body for the referendum was determined.

Although the Constitution came into force, wherefore not even criticisms of it could undermine its legality, its weaknesses became increasingly clear in 2007. Apart from the Kosovo issue, these shortcomings were reflected in the incessant discussions on how the Constitution and the Constitutional Act on its implementation ought to be enforced. The most conspicuous deficiency came to the fore in the dispute over the dates of the presidential and local elections. The Democratic Party of Serbia and all those forces presenting themselves as patriotic were of the view that no elections ought to be held as long as Serbia's territorial integrity is in danger. As could have been expected, such a broad formulation allowed for various interpretations, one of which was that the elections would be postponed for an indefinite period of time, given the views that Serbia's territorial integrity may for a long time be endangered in various ways.

Even without going into the abstract risks to Serbia's integrity, the unresolved Kosovo status issue could definitely have been perceived as reason enough to put the elections off as this problem rose on the political agenda in 2007, for two main reasons. On the one hand, the international community, i.e. the influential states involved in the resolution of Kosovo's status in international organisations and, notably, in the Contact Group for Kosovo, were of the view that it was time to finally address this issue. The Contact Group therefore began focusing on it with greater tenacity and entrusted the representatives of the most important stakeholders - the EU, Russia and the USA - with elaborating a final status proposal in consultation with the competent Serbian authorities and the Kosovo Interim Government. The so-called Troika completed its work by the set deadline, 10 December 2007. Due to internal disagreements, it was unable to offer a single proposal and the issue was referred back to the UN Security Council. The UNSC was unable to reach agreement on the issue at its 19 December session.

It transpired, however, that many of the relevant governments think that former Finnish President Martti Ahtisaari's proposal envisaging limited ("supervised") independence of Kosovo is the only way forward, notwithstanding the Serbian Government's vehement opposition. Their view led to the belief that Kosovo Albanians and their political representatives would no longer wait for the proclamation of Kosovo's independence and that the only compromise they were willing to make was to agree to implement the Ahtisaari plan and accept the limited independence of Kosovo. From their point of view, further talks with the Serbian Government were pointless and if no solution was found in the UNSC, the decision on recognising the independence of Kosovo ought to be left to the discretion of the individual foreign governments. There have been indications that a large number of states, including most EU members, would recognise Kosovo's unilateral declaration of independence.

On the other hand, the issue of Kosovo's fate, which began rising on the political agenda the previous year, became the crucial and most dramatic domestic political concern in Serbia in 2007. Kosovo remained the topmost priority of the government that assumed power after the 21 January 2007 parliamentary elections, thanks to which the new cabinet no longer needs to rely on the support of Milošević's Socialist Party of Serbia like the previous one. Although most of the ministers in the government come from

the Democratic Party, qualified as more moderate and more pro-Western than the other large parties in Serbia, Vojislav Koštunica was re-elected Prime Minister and ministers from his party (DSS), especially the one heading the newly-formed Ministry for Kosovo and Metohija, have been setting the main tone for all talks on Kosovo. The DSS and its “populist” ally New Serbia imposed the Kosovo issue as a priority on the whole state, pushing off the political agenda nearly all other issues that the post-Milošević governments had focussed on.

Various national institutions, especially the media under the control of the government or under the influence of the extreme right, also contributed to imposing Kosovo as the unique political issue. The year 2007 saw a stronger campaign against all those advocating a more rational approach to the Kosovo issue that would take into account not only the territory of the province but the people inhabiting it, i.e. the Albanian majority living there, as well. This intolerant signal was taken as a cue by numerous movements and NGOs, which feel that the time has come to deal with all of Serbia’s citizens whom they perceive as nationally unaware or even as “traitors”. These organisations, some of which have openly been flirting with Fascism, succeeded in preventing public gatherings of those who do not think like they do and even used some local authorities to prohibit concerts of musicians whose critical views they dislike. There is growing apprehension, voiced by several NGOs, that Serbia is being enveloped in the atmosphere of the nineties given the similarities between the current propaganda and campaigns and the conduct of Milošević’s regime.

The political commotion instigated by the Kosovo issue has also been used in the confrontations between the pro-European and anti-European forces given that the Kosovo debate has been evolving simultaneously with the process of Serbia’s accession to the EU. The integration process had been halted in 2006 when the EU suspended the talks because of Serbia’s failure to fully cooperate with the International Tribunal for the Former Yugoslavia (ICTY), notably to extradite the remaining indictees at large, especially General Ratko Mladić. The talks resumed after the Government of Serbia furnished proof that it was cooperating with the ICTY on all other matters; the Stabilisation and Association Agreement between Serbia and the EU was initialled on 7 November 2007. There were indications that the SAA would be signed in early 2008 even if Serbia failed to fulfil all its ICTY obligations. The political forces in Serbia opposing EU integration,

however, stepped up their activities in 2007, attempting to link the fate of Kosovo with EU accession and assure the public that Serbia would have to renounce its sovereignty over Kosovo if it wanted to join the EU. Statements by some politicians in EU member-states added grist to their mill.

Anti-European forces, which include the strongest party in the country, the Serbian Radical Party, and the DSS, are advocating closer ties with Russia, the government of which has energetically opposed a rapid resolution of the Kosovo issue. These forces only rarely openly speak out against EU accession (which is listed as one of the five priorities of the new government), but rather put blame on others in the West, like NATO, which is quite unpopular in Serbia because of its armed intervention against Yugoslavia in 1999. The resistance to EU integration is seconded by those wielding significant economic clout mostly acquired in the Milošević era wars. They are averse to the stricter rules their businesses would have to abide by in the EU. Gone would be the economic and legal lacunae they have been thriving in. Nor would they any longer be able to wield such strong influence over the political parties and the media.

It is still too early to judge the headway the new government made in other walks of life. It has undoubtedly succeeded in completing the reform of the army, putting it under its control and purging it of nearly all remnants of Milošević's regime. The new Justice Ministry has obviously been trying to reform the judiciary by reducing the number of judges to reasonable proportions and eliminating those unworthy of the profession. It made use of the scandals that broke out over the expiry of the statute of limitations due to judicial negligence, the inconsistent penal policy, which is extremely mild with respect to ordinary crimes, and the general public belief that the judiciary is corrupt. The competent ministries have also been trying to improve the environment, address the problems of socially vulnerable groups and modernise the state administration. Not much progress has been made in the privatisation of big Serbian state companies that have retained their monopolies over energy, air traffic and the railway system. The impression is that the ruling parties are reaping significant incomes from and employing their members in such companies.

Notwithstanding all its shortcomings, the 2006 Constitution of Serbia includes a modern catalogue of human rights. The political situation in

Serbia has improved inasmuch as no political party dares openly oppose human rights as such, but not much more than that. The administration, however, still does not realise the significance of upholding and promoting human rights in a country with an underdeveloped and underrated human rights culture. This lack of awareness and commitment is illustrated *inter alia* by the problems surrounding the establishing of the Constitutional Court of Serbia – only ten of its fifteen judges were elected by end 2007. There have also been difficulties in implementing the decisions of international human rights protection bodies, notably the UN Committees, and the European Court of Human Rights since Serbia joined the Council of Europe. Cultural obstacles include instigating hatred and mistrust of vulnerable minority groups, especially the Roma, members of small religious communities and persons of different sexual orientation.

The status of NGOs focusing on human rights has been affected by all of the above-mentioned factors. The media continued campaigning strongly against non-governmental organisations advocating human rights and democracy, but not against ultra-nationalist and pro-Fascist NGOs. The brand of traitor is stamped on the former, especially those advocating the rights of Albanians and other minorities. Apart from these political disqualifications, these NGOs have been falsely accused of receiving huge amounts of money from the West; its members are said to be guided by lucrative not idealistic motives. This may appear true given that Serbia as a poor country cannot financially back the civil sector, while the wealthiest people and companies still have not embraced the concept of social responsibility. Such attacks are all the more cynical given the foreign donors' conspicuous lack of interest in the civil sector since 2000, which has probably been a consequence of their belief that Serbia finally got a democratic government and that it was more important to help the latter than the NGOs. The civil sector in Serbia has nevertheless continued to develop and, more importantly, to “demetropolise”. More and more local and regional NGOs rallying an increasing number of people have been established in the interior of the country. Such form of activity, no longer concentrated in Belgrade and the other big cities, allows for greater social influence, although it often brings the members of these organisations into conflict with the local authorities.

1.2. Social situation.

1.2.1. General.

Economic and social rights remained the most endangered human rights in Serbia, like in other countries undergoing political and economic transition. The situation in Serbia is somewhat specific because most attention had been devoted to the systematic years-long violations of civil and political rights, which resulted in the neglect of economic, social and cultural rights. Trade unions and professional associations thus remain underdeveloped and untrained to efficiently alert to breaches of these rights and so pressure the executive and legislative authorities. Risks of grave violations of economic and social rights increased in 2007 because a new General Collective Agreement had not been adopted yet again, although the former Agreement had expired quite a while ago. Vulnerable individuals are thus at an even greater disadvantage vis-à-vis both the employers and the state, acting either in the capacity of employer or decision-maker in the country's economic transformation processes. The unemployment rate in Serbia remained high and poverty was one of its greatest concerns in 2007. Abuse and harassment in the workplace (mobbing) was widespread and gaining increasing public attention. Social dissatisfaction continued growing, as illustrated by the large number of strikes in the public sector and, to a somewhat lesser degree, in the private sector. A large number of people went on hunger strike in 2007. Intensified trade union activities are a consequence of the undergoing transition to market economy. The year 2007 has been marked by clashing interests of workers and their employers. The problem lies in the fact that the state still employs a large number of citizens who set demands to the Government in their attempt to realise and protect their rights. On the other hand, the state has attempted to step up transition by conducting a more restrictive economic policy, which runs counter to the workers' interests. The state and workers must improve their dialogue and address problems together, by seeking longer-term solutions. Moreover, measures need to be undertaken to accustom Serbia's society to market economy and new economic relations.

1.2.2. Unemployment.

National Employment Service records show that there were around 913,000 unemployed in Serbia, who spend an average 49 months looking for a job.

As many as 55% of the registered job-seekers are long-term unemployed. The average unemployed citizen is 37 years old. Women account for 54% of the jobless (*Blic*, 14 June, p. 8). Although people with tertiary education account for the smallest share of the unemployed, 45 people with PhDs and 32,552 with Bachelor degrees were registered with the National Employment Service in November (*Večernje novosti*, 2 November, p. 5). The Employment State Secretary in December stated that the number of unemployed had fallen for the first time in seven years, standing at around 797,000 (*Blic*, 6 December, p. 5).

1.2.3. Poverty.

Poverty remained one of the gravest problems in Serbia in 2007. Over 450,000 citizens receive some form of welfare (*Press*, 13 November, p. 10). Serbia received a 500,000 Euro grant from the World Bank to fight poverty. The Government in August endorsed the Second Report on the Implementation of the Poverty Reduction Strategy.¹ The report states that nearly 9% of the population live on less than 6,000 dinars (around 75 Euros) a month (the poverty line has been drawn at 6,221 dinars – nearly 78 Euros). The population in the interior of the country is three times poorer than the one living in Belgrade.

South Serbia is the poorest region, while Roma are the ethnic group suffering from poverty the most. According to UNICEF data, 65.8% of Roma women have not completed even elementary schooling, 32% have only elementary education and only 3.9% of Roma children go to kindergarten due to poverty and social exclusion. The share of poor Roma in the total Roma population is six times higher than in the other categories of the population. It therefore comes as no surprise that as many as 70% of the Roma children refuse to go to school because they have no decent clothing and that 60% think they would be unable to find a job even if they finished school (*NIN*, 2 August, pp. 32 – 33). What is especially concerning is that children under 13 accounted for the greatest share of the poor, 21% of whom are barely making ends meet (*Večernje novosti*, 30 November, p. 6).

1 The Poverty Reduction Strategy, adopted in 2003, aims to halve the number of poor in Serbia by 2010.

1.2.4. Living standards.

The Republican Statistics Bureau data show that living expenses have increased by 8.6% from December 2006 to October 2007. The average net salary stood at 28,270 dinars (around 353 Euros) in October 2007 (*Večernje novosti*, 3 November, p. 9).

The purchasing power fell somewhat in October over September. The Ministry of Trade survey shows that the average monthly net salary was enough to cover the minimal but not the average consumer basket. An average consumer basket cost 1.02 of the average net pay and the minimal consumer basket cost 0.65 of the average net pay. The average consumer basket in October cost 29,389.70 dinars (around 367 Euros) and the minimal consumer basket cost 18,659.70 dinars (around 233 Euros).²

According to Republican Statistics Bureau data, the average monthly salary in November stood at 29,373 dinars (around 374 Euros), which marked a real increase of 0.66% and a nominal increase of 2.27% over the October 07 salary. The average net salary in November 07 was 14.94% higher in real terms and 26.89% nominally than the November 06 average net salary.³

Statistics indicate that Serbia's citizens spend 40% of their income on food, 24% on public utilities and around 12% on transportation. This means they are left with between 6,000 and 7,000 dinars (between 75 and 85 Euros) to cover their health, cultural and other needs. The Consumer Protection Movement alleges that even these dismal data were arrived at by statistical manipulation and warns that the situation is even direr. The constant increase in prices of staples, especially food, has contributed to the increase in living costs. The high prices of the basic produce can *inter alia* be attributed to high sales profit margins, some of which account for 70% of the price of the product. Such high profit margins corroborate views that there are monopolies in Serbia. This was indirectly confirmed by the Serbian Government which formed a team in late 2007 to establish how prices are formed and why the prices of the staple foods are so high (*Vreme*, 6 December, pp. 24 – 25).

2 24 sata, 17 December, www.24sata.co.yu.

3 B92, 20 December, www.b92.net.

Human rights in legislation

1. *Constitutional Provisions.*

Constitutional Provisions on Human Rights.

The year 2007 was the first year of application of the new Constitution of Serbia, adopted on 30 September 2006 and endorsed at the 28 – 29 October 2006 referendum. The Constitution was adopted within a very short period of time; it had not undergone any public debate nor had the experts had the opportunity to analyse and comment its provisions, which met with fierce public reaction. Until the adoption of the new Constitution, human rights were enshrined in the 1990 Constitution of Serbia, which included a much smaller catalogue of human rights than the new Constitution, and the Charter on Human and Minority Rights, which was in force until the dissolution of Serbia and Montenegro (SaM). The question which of the two catalogues of human rights would apply in Serbia that arose after SaM's disintegration actually went unanswered and Serbia in the meantime adopted its new Constitution.

Although it is still too early to give comprehensive assessments of the reach of the constitutional provisions qualified as problematic both by international and domestic experts, there is no doubt that these deficiencies can largely be attributed to the fact that the Constitution had not been put to any public debate before adoption. Even though the Constitution was passed in a manner unusual for democratic countries, it indisputably comprises a much better catalogue of human rights than the previous Constitution of Serbia.

International Human Rights and Serbia.

Serbia is bound by all international human rights treaties ratified by the former SFRY, FRY and SaM.⁴

4 In the view of the Human Rights Committee, all states that emerged from the former Yugoslavia would in any case be bound by ICCPR since, once a human rights treaty is ratified, the rights enshrined in it belong to the persons in the jurisdiction of a state party irrespective of whether it subsequently dissolved into more states. See para. 4, General Comment No. 26 (61) on issues relating to the continuity of obligations under the ICCPR, *Committee on Human Rights*, UN doc. CCPR/C/21/Rev.1/Add.8, 8 December 1997.

Under the new Constitution of Serbia, the generally accepted rules of international law and ratified international treaties shall be an integral part of the national legal system and applied directly (Art. 16 (2)). In addition, Article 18 prescribes the direct application of human and minority rights guaranteed by the generally accepted rules of international law and ratified international treaties.

The Constitution, however, includes a disputable provision that places international treaties above laws but below the Constitution in the hierarchy of legislation as it stipulates the compliance of the ratified international treaties with the Constitution (Art. 16 (2) and Art. 194 (4)).⁵ Therefore, international treaties that had previously been in force can now not be applied unless they are in accordance with the new Constitution. A state cannot withdraw from the obligations it had accepted under an international treaty by amending national legislation, even the Constitution. The question therefore arises, of what the practical effects will be if a ratified international treaty actually is not in accordance with the Constitution. As per international treaties Serbia is yet to accede to, they cannot be ratified if they are not in compliance with the Constitution.

It should be noted, however, that the Constitution stipulates the compliance of only “ratified international treaties” with the Constitution, but does not set these conditions for generally accepted rules of international law, which it explicitly qualifies as part of Serbia’s legal order.

The UN Committee for Elimination of All Forms of Discrimination against Women in early 2007 reviewed Serbia's initial report for the 1992 – 2003 period. After a long delay, Serbia in 2007 submitted to the Committee on the Rights of the Child its initial report on the realisation of the Convention on the Rights of the Child in the Republic of Serbia in the 1992 – 2005 period. The report shall be reviewed by the Committee in April 2008.

The Serbian National Assembly in 2007 ratified the Convention on Police Cooperation in South East Europe, the European Charter of Local Self-Government, the Kyoto Protocol to the UN Framework Convention on

5 In its Opinion on the Constitution of Serbia, the Venice Commission, too, concluded that this provision raised important issues. See European Commission for Democracy through Law (Venice Commission), Opinion No. 405/2006, CDL-AD(2007)004, 19 March 2007, paras. 15-17.

Climate Change, the Additional Protocol to the Criminal Law Convention on Corruption, the Civil Law Convention on Corruption, the Convention on Environmental Impact Assessment in a Transboundary Context, Serbia's visa facilitation and readmission agreements with the EU and the agreement on amending and accessing the Central Europe Free Trade Agreement – CEFTA 2006.

In 2007, Serbia signed the UN Convention on Rights of Persons with Disabilities. Of the treaties adopted within the Council of Europe, it signed the European Convention on the International Validity of Criminal Judgements, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, the Revised European Convention on the Protection of Archeological Heritage, the European Convention on Landscape, the CoE Framework Convention on Value of Cultural Heritage for Society and the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

2. Legal System and Laws Relevant to Human Rights. Introduction.

The state of human rights in Serbia and the state authorities' concern with their enjoyment and protection in 2007 were strongly influenced and frequently overshadowed by the turbulent political events. The full blockade of the political institutions, especially the National Assembly, which ensued the minute the campaign for the adoption of the new Constitution was launched in September 2006, carried over into 2007 due to the parliamentary elections in January 2007. The Assembly was inactive for almost eight months, while the outgoing Government operated in the capacity of a "technical cabinet". The whole political potential of the country focussed on the major campaigns for the referendum on the Constitution and the elections. Eleven parties and coalitions won seats at the January 2007 elections. Although the parties of the so-called "democratic bloc" were said to have won the elections, it would be fairer to say that the parliament is dominated by the right of centre parties.

The elections were followed by an agonising three months of negotiations between the future coalition parties over some of the principles on which the work of the new executive authorities would be based. The somewhat vague constitutional provisions on the President's powers in the procedure of appointing the designate Prime Minister and, to an even greater extent, the lack of political tradition in similar situations resulted in the entrusting

of the mandate to form the government to Vojislav Koštunica, the president of the Democratic Party of Serbia, which came in third at the elections, just a few days before the expiry of the deadline for electing the new Government.

The Government was appointed on 15 May, a few minutes before the deadline expired. Had it not been formed, the still fragile political and legal stability in Serbia would have been additionally undermined – the newly elected Assembly would have had to be dissolved and fresh parliamentary elections would have had to be called. The Government comprises the Prime Minister, one Deputy Prime Minister (charged with EU integration) and 23 ministers, whereby Serbia has one of the bulkiest governments in terms of size in contemporary European political practice.

Although the National Assembly was formally constituted when the mandates of the new deputies were verified on 14 February, the lack of agreement on the new ruling coalition (and parliamentary majority) precluded all legislative activities. The Resolution on Kosovo rejecting all provisions in the Martti Ahtisaari plan perceived as violating Serbia's sovereignty, proposed by the Government, was the only act the Assembly adopted in the first three months.

The activities of the highest legislative body were stymied by the obstruction of its work and delays in electing its Speaker in an atmosphere of overall mistrust and behind-the-scenes arrangements. The year 2007 was characterised by delays in the adoption of laws – the National Assembly adopted only 70 or so laws by the end of the year. Only about 20 of them were totally new and nearly all of them were merely fulfilling the formal obligations laid down in the Constitutional Act on the Implementation of the Constitution. Moreover, nearly all the adopted laws had been submitted and adopted under an emergency procedure, wherefore there were hardly any opportunities for serious debates of the drafts and for making any essential improvements in them through amendments. Major disputes arose over how the requirements and deadlines in the Constitutional Act related to the calling of presidential and local elections ought to be interpreted, even within the ruling parliamentary majority. On 12 December, the Assembly Speaker (from the DS) called the presidential elections for 20 January 2008. Prime Minister Koštunica's Democratic Party of Serbia (DSS) challenged the lawfulness of his decision, because

not all adopted laws necessary for calling of the presidential elections had come into force by 12 December. The Speaker was also criticised for deciding to call the elections without consulting with DS' coalition partners.

However, after the subsequent political agreement among the DS and DSS, the political party of the Prime Minister gave up challenging the legitimacy and legality of the decision on calling presidential elections. As a part of the same „package“ of the agreement at the top of the ruling coalition, the majority in the National Assembly, in the end of December adopted the laws necessary for calling of the local and provincial elections so the Speaker of the parliament called these elections for 11 May 2008.

2.2. Laws Relevant to Human Rights.

2.2.1. Constitutional Judiciary.

The new Constitution introduced in Serbia's legal order the institute of constitutional appeal as a human rights protection mechanism. The effectiveness of this legal remedy has not been tested yet, because the new Act on the Constitutional Court was adopted only in late November. The adoption of this law allowed for overcoming the year-long blockade of the Court and for initiating the extremely complex procedure of appointing the Court's judges. Ten of the fifteen Constitutional Court judges were appointed by the end of the year and, pursuant to the Constitutional Act, the Court can now operate because two-thirds of its members have been appointed. The remaining five judges will be appointed only upon the constitution of the Supreme Court of Cassation, the High Judicial Council and the State Prosecutors Council, which, again, can be established only once the valid laws are harmonised with the Constitution and the new laws are adopted. The Constitutional Court will therefore have to operate without one third of its judges. The even number of judges, unfortunately, carries the risk of deadlocks and the blockade of the Court's work. The shortcomings and imprecise provisions in the Constitution on the nomination and appointment of the Constitutional Court judges became apparent already during the drawing up of the National Assembly list of candidates. The Constitution and the Constitutional Act obviously failed to lay down clear and efficient rules on the appointment of the Constitutional Court judges or proper guarantees of the Court's independence. The

opportunity to rectify some of the constitutional deficiencies in the Constitutional Court Act was, unfortunately, missed. The part of the Act regulating the appointment of judges, the duration and termination of tenures mostly merely reiterates the sparse and vague provisions in the Constitution.

2.2.2. Reform of the Judiciary.

A reformed judiciary system with new administrative, appellate and misdemeanour courts was to have begun operating in 2007 but these courts were not constituted by the end of 2007. The deadlines for implementing the reform of the judiciary laid down in the 2001 Act on Organisation of Courts and its subsequent amendments had already been extended several times. The vague and general provisions of the Constitutional Act on the Implementation of the Constitution allowed for yet another delay in establishing the new courts, again bringing into question the reform of the judiciary, which is needed to improve court protection of human rights. Although the Constitutional Act stipulated that the Assembly harmonise laws relating to the application of the constitutional provisions on the courts and public prosecution offices with the Constitution during its second session, these laws were not included in the Assembly agenda by the end of the year i.e. the end of the second parliamentary session.

2.2.3. Enforcement of Decisions by International Bodies.

The role of international bodies as a corrective factor and guide for national authorities must be adequately acknowledged in Serbia's main procedural laws. This concept has already been recognised by the Civil Procedure Act (CPA). The new CPC (Art. 426 (6)) also allows for retrial a convicted person may benefit from if the ECtHR or another court established under an international treaty ratified by Serbia finds that human rights and fundamental freedoms had been violated during a criminal trial, that the sentence was based on such a violation and that the violation may be remedied by a retrial. In cases not requiring retrial, the new CPC allows for the filing of a request for the protection of legality (Art. 438 (2)).

These provisions in the new CPC and CPA should serve as an example for the amending of Article 51 of the Administrative Disputes Act.

The non-implementation of decisions taken by some other international bodies (Committee against Torture, Human Rights Committee) corroborates the necessity of making amendments to a whole set of (not only procedural) laws in order to ensure the effective and full implementation of the decisions taken by international bodies. The challenges that the state authorities will face in implementing ECtHR decisions could well indicate which amendments the Serbian legislation is in need of.

2.2.4. Right to a Fair Trial.

Serbia's legislation does not comprise an effective legal remedy against unjustifiably long proceedings and violations of the right to a trial within a reasonable time guaranteed by Article 6(1) of the European Convention on Human Rights, which constitutes one of the greatest problems with respect to the right to a fair trial in Serbia. As appellate courts have not been set up yet, the district courts and the Supreme Court are burdened by huge caseloads, which is one of the reasons why trials extend beyond "a reasonable time". Moreover, the enforcement of final judgements, once they are delivered, takes a very long time. Most of the applications Serbia's citizens filed with the European Court of Human Rights relate to overly long proceedings. In 11 of the 15 judgements it delivered against Serbia, the Court found violations of the right to a fair trial due to long proceedings or the non-enforcement of final judgements. Judicial dilatoriness has also led to the expiry of the statute of limitations in cases. The work of the courts was in 2007 additionally blocked by a strike of the judicial staff, which demanded higher salaries and the signing of a collective agreement. The courts provided only "minimum process of work" during the strike and most of the trials were put off.

2.2.5. Opening of State Security Files.

Serbia still has no law regulating the opening of state security files on citizens, an issue of extreme relevance with respect to the right to privacy and the realisation of two vital needs of its society – to confront its authoritarian past and reverse the effects of the grave human rights violations and protect the right to privacy and other important individual rights.

2.2.6. *Lustration.*

Insight in state security files is closely linked to taking to task persons who had violated human rights in the past (so-called vetting or lustration). The law on lustration (Act on the Responsibility for Human Rights Violations) enacted back in 2003 has not been applied at all. Instead of vetting the judiciary in accordance with this Act, the Constitutional Act on the Implementation of the Constitution foresees the re-appointment of all the judges in Serbia.

2.2.7. *Security Services.*

Other segments of the security services have not been reformed either. The Security Services Act, passed in late 2007, provides for democratic civilian oversight of the services by the National Assembly, the President, the Government, the public and a new body, the National Security Council, which shall *inter alia* ensure that the regulations and standards related to the protection of personal data and other regulations protecting human rights which may be violated by exchange of information or other operational activities are applied. Article 19 of the Act, however, lists the issues about which the competent Assembly committee members may not seek information; some of the grounds are impermissibly broad and essentially undermine the possibility of overseeing the work of the secret services.

2.2.8. *Right to Asylum.*

The long-awaited Asylum Act was also adopted in 2007. Although it represents a positive step towards improving protection in this area and includes a large number of guarantees for the rights of persons it relates to, this Act, like many others recently adopted in Serbia, was put in the parliament pipeline without having undergone a proper public debate, which may be one of the reasons why some of its provisions are not fully in accordance with international standards. The Asylum Act and the Travel Documents Act, also adopted in 2007, brought Serbia closer to the EU's 'positive visa' list.

2.2.9. Freedom of Association.

National and international NGOs continued operating in an atmosphere of insecurity given that a law on associations of citizens was not adopted in 2007. The Draft Act on Associations was submitted by the Government to the parliament after a public debate. It governs the work of both domestic and international associations, which is extremely important given that international organisations active in Serbia have been operating in a legal vacuum for years now.

2.2.10. Anti-discrimination.

Serbia has not adopted a general, systematic and comprehensive anti-discrimination law defining the main legal concepts, regulations and standards binding on the courts and specific mechanisms for the protection of victims of discrimination yet, notwithstanding extensive expert debates and repeated recommendations by international organisations that it do so for several years now. Several drafts of a corresponding act had been produced in the past few years, including the 2006 Government bill, but only one of them, submitted by the opposition Liberal Democratic Party (LDP), had formally been submitted to the Assembly for adoption by end 2007. The Serbian Government anti-discrimination bill drafted in 2006 has been withdrawn from the parliamentary procedure and submitted for CoE expertise. It still remains uncertain when Serbia will have systematic and comprehensive anti-discrimination legislation.

Individual rights

1. Human Rights and Education: Right to Education

Under the Serbian Constitution, everyone shall have the right to education. Article 71 sets out that primary and secondary education shall be free of charge. In addition, primary education shall be mandatory. Under the Constitution, all citizens shall have equal access to tertiary education; the state shall provide free tertiary education to successful and talented students, who are unable to pay the tuition, in accordance with the law. This provision falls short of the right to education standard that had been set by the 1990 Constitution, under which the right to free education was

exercised at all levels of regular education.

The primary and secondary education in Serbia is regulated by the Act on Foundations of the Education System adopted in 2003 and the Act on Elementary Schools and the Act on Secondary Schools both adopted in 1992. The higher education in Serbia is regulated by the Higher Education Act adopted in 2005. This Act was drafted for several years and introduces a large number of new and modern provisions. These laws were not amended in 2007 and thus the situation in this field remains the same as in 2006.

University circles in Serbia had for two years been discussing whether the status of persons who had acquired bachelor's degrees under regulations valid before the Higher Education Act came into effect ought to be equated with the status of persons acquiring master's degrees under the Act. Ever since the adoption of the Act, students rallied in the two biggest student organisations, the Student Union of Serbia and the Student Alliance, have been insisting that all former graduates and those now graduating from college be given the status of master without any strings attached.⁶ The National Assembly gave an authentic interpretation of Article 127 (1 and 2) of the Act in November 2007 and equated bachelors and masters i.e. the degrees of those who had graduated before and those acquiring university degrees in accordance with the Bologna Declaration. The Belgrade University said the same day that the degrees would not be automatically equated but that their holders would have equal rights with respect to employment and labour-related rights, continuing their studies and specialisation, including doctoral studies, as well as equal opportunities to take the bar and other professional exams.⁷ The Conference of Universities of Serbia Assembly in late December decided that bachelors could not automatically be conferred the title of master because the new title was not their acquired right and that each higher educational institution would decide whether its bachelors needed to pass additional exams to be granted the title of Master.⁸

6 See <http://www.studentskivet.com/forum/viewtopic.php?t=642>.

7 B92, 5 November, www.b92.net.

8 See <http://studentskivet.com/info/20071225/diplomirani-i-master-fakulteti-ce-odlucivati-o-master-diplomama>.

1.1. "Gradebook Scandal".

The Smederevo District Prosecutor raised charges against 41 people, 29 of whom professors at law colleges in Kragujevac, Belgrade and Niš in mid-August 2007, following a six-month investigation of the so-called Gradebook Scandal.⁹ Sixteen people, 13 of them college professors, were detained. They have been charged with accepting bribes, abuse of post and forgery of documents and with enabling their students to enter their grades without taking exams at the Kragujevac Law College in exchange for money.¹⁰ The Smederevo District Court Criminal Chamber in early November declared it did not have the jurisdiction to try the case which, in its opinion, ought to be tried before the Belgrade District Court Special Organised Crime Department. The Special Organised Crime Prosecution Office spokesman responded that the Office had followed the case since the investigation into it had been opened and had established that there were no elements for its jurisdiction over it.¹¹

2. Access to Rights: National Human Rights Institutions in the Country

2.1. Ombudsperson.

The institute of ombudsperson has to date been established at three levels in the Republic of Serbia: at the state level, at the level of the Autonomous Province of Vojvodina and at the local self-government level.

Ombudsperson at the Level of the Republic of Serbia.

The National Assembly of the Republic of Serbia passed the Act on Protector of Citizens on 14 September 2005. The Government accepted some of the recommendations made by international and non-governmental organisations, but had in some areas deviated from specific key principles vital for ensuring the ombudsperson's independence and impartiality.

Although the Act on the Protector of Citizens, envisaged the election of the

9 Danas, 19 December, www.danas.co.yu.

10 B92, 17 December, www.b92.net.

11 B92, 8 November, www.b92.net.

ombudsman within six months from the day the Act comes into force, Serbia's first ombudsman, Saša Janković, was elected only in mid-2007. The imperfections of the system laid down in the Act came to the fore on this occasion as well. In addition, the election of the Protector was hastily conducted to harmonise the existing laws with the new constitutional order wherefore the opportunity was missed to consolidate the position of the new institute by devoting enough attention to the election of the first ombudsman. The first few months of the Protector's work were accompanied by problems similar to those faced by other independent institutions in Serbia. The year ahead will show what role the Protector will play in Serbia's legal order.

2.1.2. Ombudsperson at the Level of Vojvodina.

The Autonomous Province of Vojvodina was entitled to independently establish and regulate the position and organisation of the provincial ombudsperson under the Act Establishing Particular Jurisdiction of the Autonomous Province of Vojvodina (Art. 56) and the Vojvodina Statute (Art. 21(1.1)). At its 23 December 2002 session, the AP of Vojvodina Assembly adopted a Decision on the Provincial Ombudsperson and on 24 September 2003 elected Petar Teofilović its first Provincial Ombudsman, who began processing complaints in mid-January 2004. The Ombudsman is headquartered in Novi Sad and has two local offices in Subotica (as of 10 January 2004) and Pančevo (as of 10 January 2005).

2.1.3. Ombudspersons at the Local Level.

The Act on Local Self-Government entitles all municipalities to pass decisions on establishing municipal ombudspersons. The main problems faced by municipal ombudsmen stem from the lack of awareness of local authorities and citizens of their role, nature and powers. Such lack of awareness came to the fore when the Belgrade Ombudsperson was being elected. A problem emerged also during the procedure in which the first ombudsperson was elected – the competent bodies advertised the job in the newspapers, a move viewed by some as disparagement of the institution and by others as the city authorities' wish to be transparent.

2.1.4. Draft Act on the Protector of the Rights of the Child.

The Government of Serbia on 14 December 2007 submitted to the Assembly the Draft Act on the Protector of the Rights of the Child, which is one of its commitments arising from CoE membership. Under the Draft, the main duty of this independent state authority will be to protect and work on promoting and spreading knowledge about the rights of the child (Art. 1). The Protector shall be entitled to submit legislative initiatives and launch proceedings for reviewing the constitutionality and legality of general enactments (Arts. 7 and 8) and shall be elected by the National Assembly (Art. 18).

The Protector shall be entitled to access facilities and have insight in the care of children living or accommodated with natural or legal persons and shall have access to facilities in which children deprived of liberty are residing (Art. 10). The Protector shall also be entitled to access all information related to the rights and protection of children notwithstanding the degree of its confidentiality (Art. 11).

Under the Draft, the Protector shall be accountable for the consistent application of the provisions in the Convention on the Rights of the Child entitling children to the right to free expression.

The Protector is obliged to inform the children of their rights and of ways in which they may exercise them (Art. 6).

Freedom of Access to Information of Public Importance.

The Constitution of the Republic of Serbia regulates the freedom of access to information under a partly unusual (and inappropriate) title “Right to Information”. Article 51 (1) of the Constitution guarantees persons within the state’s jurisdiction the right to receive true, full and prompt information on issues of public importance and envisages the corresponding duty of the media to enable the exercise of this right. The formulation of the provision is “left hanging” as it corresponds neither to the freedom of expression, from which the freedom of access to information derives (Art. 46 (1) of the Constitution), nor to the right to participation in the administration of public affairs (Art. 53), as this *sui generis* right may be qualified as the expression of participative democracy. The freedom of access to

information in the true sense of the word is regulated by para. 2 of Article 51, although this definition of the bodies from which information may be requested is much more restrictive than the one in the Act on Free Access to Information of Public Importance of the Republic of Serbia.

Under Article 1(2) of the Act on Free Access to Information of Public Importance, the Access to Information Commissioner (hereinafter: Commissioner) is established as an independent and autonomous state authority in order to implement the right of access to information of public importance. The Constitution does not, however, include provisions regulating the status of Commissioner although it does include such provisions with respect to the Protector of Citizens (Art. 138), the National Bank of Serbia (Art. 95) and the State Audit Institution (Art. 96). It remains unclear how the absence of constitutional provisions on the Commissioner can be justified given the fact that, just like the Act on the Protector of Citizens, the Act on the National Bank of Serbia and the Act on the State Audit Institution, the Act on Free Access to Information had come into force before the Constitution was endorsed at the 28 – 29 October 2006 referendum. The real cause may lie in what the Venice Commission voiced in its Opinion on the Serbian Constitution i.e. that the “finally adopted text was prepared very quickly” by a small group of party leaders and experts and “that there are some provisions that still fall well below those standards and others where the hasty drafting is evident in provisions that are unclear or contradictory” (or non-existent, *author’s remark*).¹²

The Act on Access to Information of Public Importance of the Republic of Serbia was adopted on 5 November and came into force on 13 November 2004. Amendments to the Act were adopted in June 2007 in accordance with the provision in Article 5(1) of the Constitutional Act on the Implementation of the Constitution of the Republic of Serbia under which the new Assembly shall at its first session upon the election of the Government harmonise with the Constitution “the law regulating the realisation of the right of citizens to information and appoint... the authority charged with monitoring the realisation of the public’s right to information...”. Both the experts and the Commissioner himself had presumed that the initial intention of the ruling politicians at the time was to

12 European Commission for Democracy through Law (Venice Commission), Opinion on the Constitution of Serbia, Opinion No. 405/2006, CDL-AD(2007)004, p. 3. [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)004-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)004-e.pdf).

dilute and weaken the institute of Commissioner. However, a new parliamentary coalition was formed after the 21 January 2007 elections; its members differed in views as to whether the then Commissioner ought to stay on until the end of his term in office and whether the achieved degree of freedom of access to information of public information should be tampered with. These “disagreements” can probably be partly attributed to the new post-election party calculations, increased public interest in the issue and the unanimous support the civil society extended the Commissioner. Consequently, in the spirit of the all-pervasive atmosphere of cohabiting legalism (and, ultimately, formally legal logic), it was decided that the explicit norm in Art. 5(1) of the Act on the Implementation of the Constitution had to be abided by. It, however, transpired that the adopted amendments to the Access to Information Act were “cosmetic” both in character and purpose. The content of the amendments need not be analysed here – the Act Amending the Act on Access to Information of Public Importance contains six articles, half of which (Arts. 1 – 3) deal with the manner in which the Commissioner and his/her Deputy are elected, although Article 105 of the Constitution regulates the issue, albeit incompletely. One article (Art. 4) gives the Commissioner the authority to initiate proceedings for assessing the constitutionality and legality of laws and other general enactments, notwithstanding the fact that the Constitution already awards these powers to the Commissioner in Article 168(1). Article 5 regulates the duration of the Commissioner’s and Deputy Commissioner’s terms in office if they are re-elected prior to the expiry of their terms in office (!) while the last Article is merely a run of the mill transitional or final provision.

The legislators have, thus, again ignored the need to make substantial amendments that would consolidate specific solutions in the Act. Given the authorities’ inertia on the issue, a Model Act Amending the Act on Free Access to Information of Public Importance,¹³ drafted by civil society representatives and the Commissioner himself, was presented to the expert public in October 2007. The proposed amendments have been deliberated by the expert public for quite some time now.

13 See Model Act Amending the Act on Free Access to Information of Public Importance at: <http://www.cups.org.yu/download>.

The explicit provision in the Model Act (Art. 18) under which the provisions of the Act on Free Access to Information of Public Importance shall apply in the event of conflict between this law and the other laws warrants special attention. This provision reflects the recommendation in the Joint Declaration adopted by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression under which the law on access to information should, to the extent of any inconsistency, prevail over other legislation.¹⁴

The Model Act Amending the Act on Free Access to Information of Public Importance also obliges the government to regulate the enforcement of Commissioner decisions and, if necessary, ensure their enforcement (Art. 9(3)). This provision is extremely important given the fact that public authorities have often ignored the Commissioner decisions in practice. The severity of the problem is highlighted in the Commissioner's 2006 Annual Report on the Implementation of the Free Access to Information Act¹⁵: "The passive attitude and absence of support of the Government in the execution of the decisions of the Commissioner despite permanent attention being drawn to this problem by the Commissioner as well as the direct requests made to the Government by the citizens and media for obtaining information, could mean that the Government is supporting and encouraging the government agencies to violate this right guaranteed by the Constitution and law. In any case the number of non-executed decisions made by the Commissioner, which was very small at the beginning, has been growing more and more lately, which serves as evidence to support such assumption."¹⁶

In 2007, a lot of public attention was drawn to the (non)publication of the Contract on the Concession for the Construction of the Horgoš – Požega Highway Route signed on 30 March by the then Capital Investments Minister Velimir Ilić and the Spanish-Austrian Consortium "FCC

14 See "Joint Declaration" at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1>.

15 Although this Report focuses on 2007 in general, it quotes data from the Commissioner's 2006 Report on the Implementation of the Act on Free Access to Information of Public Importance as the Commissioner will publish his 2007 Report in 2008.

16 Report on the Implementation of the Act on Free Access to Information of Public Importance in 2006, Commissioner for Information of Public Importance of the Republic of Serbia, March 2007, p. 27, http://www.poverenik.org.yu/Dokumentacija/eng_42_ldok.pdf.

Construction” and “Alpine Mayreder Bau”. Vojvodina Assembly Speaker Bojan Kostreš on 2 April 2007 submitted a request to the Serbian Government, the Ministry of Capital Investments and the Ministry of Finance, asking them to make public the disputed concession contract in accordance with the Act on Free Access to Information. These institutions, however, ignored the request and Kostreš complained to the Commissioner for Information of Public Importance.¹⁷ The Serbian Infrastructure Ministry¹⁸ responded by filing a complaint with the Supreme Court of Serbia to revoke the Commissioner decision, although the Supreme Court of Serbia had already dismissed 14 complaints by state authorities in similar cases.¹⁹ After months of public pressure, the Infrastructure Minister Velimir Ilić finally decided to allow access to the contract; when journalists asked him why so much time had to pass before he allowed its publication, he replied that no-one had been persistent enough and that he just felt like it.²⁰ The Horgoš – Požega Highway Route Construction Concession Contract was finally made public on 20 August 2007. However, although the authorities said the journalists would be able to review the whole contract, they were only allowed to peruse the main document, while the 19 annexes with essential information on the concession terms and conditions remained hidden from the public. The journalists of over 20 papers, TV stations and agencies were given a chance to look at merely four copies and one original of the main document i.e. access to the incomplete document was even more difficult.²¹ Public pressures on the Infrastructure Minister did not abate and the Government unanimously decided to publish the concession contract on its website. But, Annexes 3 and 5 remained unpublished.²²

The power some politicians hold over institutions is illustrated also by the publication of a 580 million dollar contract between JAT Airways and Airbus, under which JAT is to purchase eight A-319 airplanes. The contract was concluded in 1998 and, although an advance of around 23.5 million

17 “Concession Mystery“, *Politika*, 24 May, p. A13.

18 After the January 07 parliamentary elections, the parties that made up the ruling coalition agreed on splitting the former Capital Investments Ministry into the Infrastructure Ministry, which remained in the hands of Velimir Ilić, and the Telecommunications and Information Society Ministry.

19 “Even the Number of Registered Trabants Has to be Found out through the Commissioner» *Danas*, 16 August, p. 1.

20 “Contract on Government Website as of 23 August?” *Danas*, 18-19 August, p. 1.

21 “Annexes Still Unavailable to the Public”, *Danas*, 21 August, p. 1.

22 More at: http://www.srbija.sr.gov.yu/vesti/dokumenti_sekcija.php?id=72725

USD was paid at the time, none of the planes have been delivered yet. After the Commissioner for Information of Public Importance issued a decision ordering the publication of the contract in response to a complaint by a *Glas javnosti* journalist, JAT Airways filed a complaint with the Supreme Court of Serbia, which dismissed it as inadmissible. JAT Management Board Chairman Miloš Aligrudić prevented the domestic airlines from enforcing the Supreme Court decision, explaining that the publication may prompt Airbus to file a compensation claim against JAT for publishing the contract. On the other hand, a *Glas javnosti* journalist got hold of an official memo from the Airbus Deputy Director General to the JAT Director in which the former said Airbus would allow the publication of the contract if its publication became inevitable.²³

Serbia still needs to adopt legislation complementing the Act on Access to Information of Public Importance. The Serbian Justice Ministry in July 2007 established a working group to draft a law on personal data protection. The working group produced a Draft Personal Data Protection Act²⁴ based on the 2004 Centre for Advanced Legal Studies (CUPS) Model Act on Personal Data Protection.²⁵ Under the draft, the Commissioner for Information of Public Importance shall be charged with the protection of personal data.²⁶ This model, which is, *inter alia*, applied in the Republic of Slovenia, has proven extremely efficient as it ensures uniform jurisprudence in two extremely closely related fields. In late October 2007, CUPS publicly presented both its Model Act Amending the Act on Free Access to Information of Public Importance and its Model Act on Confidentiality of Information.²⁷ The adoption of laws regulating access to data marked by different degrees of confidentiality will largely put the finishing touches to the legal regulation of the very important field of access to information held by public authorities.

The necessity of adopting complementary legislation as soon as possible is illustrated by the practice of the public authorities. The 2006 Report on the Implementation of the Act on Free Access to Information of Public Importance says that confidentiality of documents was the most frequent

23 “Aligrudić not Abiding by Supreme Court Decision”, *Glas javnosti*, 29 September, p. 11.

24 See “Draft Personal Data Protection Act” at: <http://www.mpravde.sr.gov.yu>

25 See “Model Act on Personal Data Protection” at: <http://www.cups.org.yu/download>

26 See “Information on the Personal Data Protection Draft Act” at: <http://www.mpravde.sr.gov.yu>

27 See “Model Act on Confidentiality of Information” at: <http://www.cups.org.yu/download>

reason which the public authorities invoked to deny access to information but that they failed to provide evidence that access was denied to protect an overriding interest.²⁸ The Commissioner also noted that the authorities unjustifiably denied access to information invoking the legal provisions on the protection of privacy.

In his 2006 Annual Report, the Commissioner indicates that the number of applications for access to information has tripled over 2005; the high number of requests is a good illustration of the citizens' interest in accessing information held by the public authorities. The Commissioner also notes some headway in the authorities' responsiveness to such requests; he, however, also observes that he had received a large number of complaints, which indicates that the public authorities still lack adequate will to allow access to information that they are legally obliged to let the public have.²⁹ As per the public authorities' obligation to submit annual reports, the Commissioner had received such reports from 583 bodies by the deadline he had set, 20 January 2007, and another 51 after that date i.e. more than double than in 2005. But, it should be borne in mind that several thousand bodies are obliged to submit such reports (although a comprehensive register of all such bodies still has not been compiled). Of the state bodies, the Republican Public Prosecution Office was the only one amongst the six highest state bodies³⁰ that failed to submit its report; of the 19 Ministries that operated in 2006, only the then Ministry of Capital Investments ignored this legal obligation. The Commissioner's Annual Report, however, specifies that public companies were the ones that failed to fulfil this legal obligation the most.³¹

A similar trend was observed with respect to the obligation of public authorities to publish information directories on their work. Three and a

28 Report on the Implementation of the Act on Free Access to Information of Public Importance in 2006, Commissioner for Information of Public Importance of the Republic of Serbia, March 2007, pp. 28-29.

29 *Ibid.*, pp. 27-28.

30 Under Article 22(2) of the Act on Free Access to Information of Public Importance, complaints cannot be lodged against decisions of the National Assembly, the President of the Republic, the Government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court and the Republican Public Prosecutor, whereby they are exempted from the regular procedure before the Commissioner for Information of Public Importance.

31 Report on the Implementation of the Act on Free Access to Information of Public Importance in 2006, Commissioner for Information of Public Importance of the Republic of Serbia, March 2007, p. 37.

half time as many authorities fulfilled this explicit legal obligation in 2006 over the previous reporting period.³² The Commissioner assessed that an insufficient number of authorities fulfilled the obligation to train their staff in implementing the Act. The Commissioner had therefore on a number of occasions submitted an initiative to the State Administration and Local Self-Government Ministry to include the Act on Free Access to Information of Public Importance in the curriculum of the civil servant exam that employees of the state administration and public authorities must take.³³

The Annual Report ranks the failure to monitor the implementation of the Act and absence of liability for violating amongst the main problems hampering the effective enjoyment of the right of free access to information of public importance. The Act (Art. 45) charges the Culture Ministry with monitoring the implementation of the Act; the Ministry was to have collated a register of entities that must act in accordance with the Act. However, out of hundreds of cases with elements of a misdemeanour that the Commissioner's Office submitted to the Ministry, misdemeanour proceedings were launched only in a score of cases and the misdemeanour judges reached decisions only in three cases: two bodies were fined and one was issued a reprimand and a warning. If one also takes into account another case in which the misdemeanour court pronounced a fine against a public authority in proceedings initiated by the damaged party, it can be concluded that not even 1% of all the registered cases where there were grounds for liability ended with the pronouncement of legal penalties.³⁴ Moreover, due to the lack of manpower and other organisational and technical prerequisites, the Culture Ministry was unable to put together a comprehensive register of entities, wherefore the Commissioner's Office on two occasions sought such data from the ministries and other public authorities in the attempt to compile the catalogue itself. A large number of public authorities, however, failed to respond to this initiative.³⁵

It may be concluded that, notwithstanding some headway in the implementation of the Act on Free Access to Information of Public Importance, the enjoyment of the right to access of information still has not

32 *Ibid.*, p. 40.

33 *Ibid.*, p. 20.

34 *Ibid.*, p.25.

35 *Ibid.*, p.26.

attained the satisfactory level in practice. To reach that level, the political culture needs to change radically and the full respect and implementation of the rule of law needs to govern everyday interaction between citizens and bodies exercising public powers on their behalf.

3. Disadvantaged, Marginalised and Vulnerable Groups

Both the Serbian Constitution and a number of laws include provisions prohibiting discriminatory conduct. However, the calls by numerous international organisations on Serbia to enact a general anti-discrimination law went unheeded and the Serbian Assembly failed to pass a systemic law penalising discrimination by the end of the reporting period. The year 2007, however, saw an upsurge of discrimination in practice. Tolerance of discrimination in practice is above all reflected in inefficient investigation, prosecution and punishment of its perpetrators and in the lack of systematic and comprehensive legislation.

Assaults on Roma.

Discrimination of Roma is still extremely widespread in Serbia. It is often accompanied by physical violence, most often inspired by the victim's ethnic affiliation.

The Coalition against Discrimination rallying several NGOs presented its report on discrimination in Serbia in February 2007. It highlighted that discrimination should be combated systemically, by the adoption of a general law against discrimination. The Coalition emphasised that Roma were the most frequent targets of such assaults (*Politika*, 8 February, p. A8; *Večernje novosti*, 8 February, p. 32).

The problem lies also in the inefficient investigations of the assaults. The police are unusually unable to identify the perpetrators; when they do and when they apprehend them, the courts fail to fulfil their role. Courts are prone to convicting the assailants on Roma to lenient sentences. This is why there has been no adequate response to the frequent ethnically motivated incidents.

Participation of Minorities in Politics.

The election of minority party MPs was facilitated by the adoption of amendments to the Act on the Election of Assembly Deputies in 2004. Under the amendments, the general 5% threshold of all voters who had turned out at the elections does not apply to minority parties, who need to cross the much lower natural threshold standing at 0.4% to get into parliament. These amended regulations were applied at the 21 January 07 parliamentary elections and the following national minority parties made it into parliament: three MPs of the Alliance of Vojvodina Hungarians, two MPs of the List for Sandžak, one MP of the Coalition of Albanians for the Preševo Valley, one MP of the Union of Roma of Serbia and one MP of the Roma Party.³⁶ Esad Džudžević, an MP representing the Bosniak minority, was appointed Deputy Speaker at the constituent session of the National Assembly.

The election of minority deputies to the Assembly marked a major headway after their three-year absence from the parliament but the question of whether they were able to genuinely actively partake in the work of the Assembly remained open given that they were still unable to use their native languages despite the legal provisions affording them that right.

Hate Speech.

The widespread problem of hate speech cannot be viewed separately from the increasingly frequent discriminatory outbursts in Serbia. Like in the previous years, Serbia's media and publishers have continued publishing more and more content inciting or disseminating hatred. Most have gone unpunished. In 2007, hate speech was even heard in Serbian parliament.

According to eminent Belgrade writer Filip David, over 150 anti-Semitic books are currently sold in Belgrade bookstores. Publishers specialising in such literature even sold them at stalls they rented at the Belgrade book fair in October.³⁷

36 http://www.rik.parlament.sr.gov.yu/latinica/propisi_frames.htm, accessed on 2 December 2007.

37 B92, 27 October, www.b92.net.

The Belgrade NGO Labris, which advocates the human rights of lesbians, said in mid-September that its studies show that most media write about lesbians “in a very denigrating manner, using hate speech”. Labris submitted three complaints against hate speech to the Republican Broadcasting Agency (RBA) in 2007. Two of the applications concerned shows on RTV Pink and one a show aired on the public service broadcaster RTS. The RBA, however, failed to react.³⁸

Neo-Nazism in Serbia.

The number of neo-Nazi movements in Serbia has grown, as has the number of incidents they provoked in 2007. One such organisation, National Formation, which has assumed responsibility for numerous attacks on citizens of Serbia belonging to minority groups, has received much media attention.

National Formation members had caused a number of incidents in the previous years as well.³⁹ This organisation is not officially registered and is on the Ministry of Internal Affairs list of organisations the activities of which are monitored.

Discrimination against Persons with Disabilities.

The Act on Prevention of Discrimination against Persons with Disabilities was adopted in 2006. This Act, which marks a major turnabout in the legal regulation of this field in Serbia, also has some shortcomings. The burden of proof rests with the defendant. However, the lawsuits may be filed only by the victims of discrimination. Certain organisations (e.g. those providing assistance to persons with disabilities) should also be allowed to file suits if the rights of persons with disabilities are to be sufficiently protected. The law for the most part focuses on the state authorities’ obligation to render public services and establishments used by the public accessible to persons with disabilities. Apart from prohibiting discriminatory conduct, the Act also envisages a whole set of specific measures the state and local self-government bodies must undertake to facilitate the social integration of

38 B92, 18 September, www.b92.net.

39 The organisation caused an incident when it barged in on an anti-Fascist panel discussion in 2005 and its leader Goran Davidović was convicted to one-year imprisonment.

persons with disabilities. As these authorities have by and large failed to fulfil their obligations, it may be concluded that this law has not been adequately applied although more than a year has passed since its adoption.

Centre for the Development of an Inclusive Society (CRID) data indicate that 79% of persons with disabilities are jobless. One of the main reasons for their unemployment lies in the lack of readiness amongst employers to adapt their offices to accommodate the needs of persons with disabilities. Another problem lies in the fear of persons with disabilities that they will lose their welfare benefits if they find a job, says the CRID.⁴⁰

BCHR representatives held talks with representatives of associations of persons with disabilities in June. The associations said that lack of information was the main problem in combating discrimination against persons with disabilities. The victims of such discrimination are not aware of the rights guaranteed them by law and thus fail to address the courts for help. Those who are aware of their rights as a rule lack money to initiate court proceedings and fear they will be exposed to even greater discrimination during the proceedings, the associations said.

Implementation of the Act on Churches and Religious Communities.

The adoption of the Act on Churches and Religious Communities in 2006 has to an extent regulated religious freedoms and the legal status of registered religious organisations. Many of its provisions, however, remain problematic from the viewpoint of the freedom of religious expression and the constitutional principle guaranteeing the equality of all religious communities.

The Council of Europe and Venice Commission both recommended that Articles 18 and 19 of the Act be eliminated as soon as possible, given that they differentiate between “traditional” and all other religious communities, contrary to international standards. Discriminatory treatment is reflected already in Article 18 regarding the registration of churches and religious communities. Under the law, traditional religious communities need not

40 http://www.b92.net/info/vesti/u_fokusu.php?id=26&start=0&nav_id=274451, accessed on 3 December 2007.

register, while all other must do so. To be registered, a large number of conditions must be fulfilled; these prerequisites place new religious communities in an unequal position. The law does not allow the registration of religious communities the name of which includes the name or part of the name of a registered religious community. The wording of the provision is extremely problematic and allows administration bodies to act in an arbitrary fashion when deciding which religious community ought to be registered. In addition, the Act does not provide an answer the question about the fate of religious communities that fail to register. The law is also discriminatory in the sphere of religious instruction in schools, the provision of which is envisaged only for the traditional religious communities. Moreover, only these traditional communities are entitled to tax exemptions under the Act.

The many shortcomings in the Act have led to systemic discrimination accompanied by discrimination in practice. The US Government annual International Religious Freedom Report 2007 covering 198 countries says that “Government respect for religious freedom continued to deteriorate because of the problematic law on religion and the Ministry of Religion’s arbitrary execution of the law”.⁴¹

A religious community faces several problems if it is unregistered. First, it cannot have the status of a legal entity. It thus cannot act as a legal entity, does not have an official seal and registration number, wherefore it cannot be involved in legal relations and, indirectly, perform religious rituals. Also, the general public is led to believe that communities that have failed to register surely must pose a danger to the security of the state and citizens; this, in turn, leads to a large number of religiously motivated incidents. Some of these attacks have been recurring for years but the police have failed to apprehend the perpetrators.

All these assaults are indirectly the consequence of the undefined status of the minority religious communities and reaffirm the need to eliminate the discriminatory provisions from the law and amend it to ensure systemic protection of non-traditional religious communities.

41 See report at <http://www.state.gov/g/drl/rls/irf/2007/90198.htm>.

3.8. *Discrimination of Women at Work.*

There is widespread discrimination of women at work in Serbia, notably by private employers, notwithstanding the prohibition of such conduct by the Labour Act. Women are discriminated against both when they apply for jobs and at work. Employers frequently avoid hiring pregnant women. At job interviews, they often ask the female applicants whether they are planning on having a family and children. Such conduct grossly violates the women's right to privacy and is in contravention of both international and domestic relevant legal standards. Women, unfortunately, often accept the employers' conditions, mostly because they fear they will not get the job or lose it. This is the reason why it is extremely difficult to obtain data and ascertain the genuine proportions of such discrimination in Serbia. Several incidents attracted public attention in 2007. These cases illustrate that discrimination against women is widespread but that information about it is rarely accessible.

3.9. *Inadequacy of Criminal Law Protection.*

People are rarely criminally prosecuted for their discriminatory conduct. Those who make it to court are charged under Article 128 (violation of equality), Article 317 (instigating racial, religious and national hatred and intolerance) and Article 387 (racial and other forms of discrimination) of the Criminal Code. These provisions are insufficient to provide adequate criminal law protection. The main problem victims of discrimination face in court relates to proving that they had been discriminated against. Some headway in this area has been made in one case (the *Krsmanovača* case) – so-called “situation testing” was used for the first time to prove the commission of a crime incriminated by Article 128 of the Criminal Code. This evidentiary method is well-known in comparative law but is not envisaged by Serbian legislation. Situation testing has mostly been used in Serbia to prove discriminatory treatment of Roma with respect to their access to establishments for public use.⁴² The *Krsmanovača* case is

42 Situation testing uses two groups of people, one belonging to the majority and the other to a minority community. The two groups differ only in ethnicity. In the *Krsmanovača* case, Roma were not allowed to enter the pool grounds although the pool ought to be accessible to all citizens notwithstanding their personal features. One group was composed of Serb citizens and they were allowed to enter the pool grounds, while the other group, made up of Roma citizens, were forbidden entry. On the basis of the situation testing and subsequent testimonies of all

extremely important given that it reached the Supreme Court of Serbia, which upheld the views of the lower courts that had allowed the application of situation testing.⁴³ It also prompted the filing of a large number of cases regarding violations of equality. Although these court cases corroborate that some headway has been made in proving discrimination, they have also pointed to another problem – that courts pass relatively mild sentences against the perpetrators of these crimes.⁴⁴

The wording of Article 317 is unclear. This Article talks of “instigating” racial, religious and national hatred and intolerance, wherefore a number of incidents occurring in practice are not covered by criminal law. This description of the substance of the crime could rather be qualified as hate speech directed at racial, ethnic, religious and other minorities. It is nevertheless a rare example of the legislators’ attempts to penalise gross forms of discrimination. Courts have, however, by and large sentenced the perpetrators of this crime to lenient sentences.⁴⁵ The fact that the legislators failed to prescribe higher minimum penalties⁴⁶ can hardly justify the courts’ practice of passing mild sentences. The penal policy corroborates the assertion that such criminal law protection, even in case of gross forms of discrimination, is inadequate. The reform of criminal legislation is a step that must be taken as soon as a general anti-discrimination law is passed. All amendments ought to be linked to the General Part of the Criminal Code.

members of both groups, the prosecution proved discriminatory conduct in the case and, thus, that the crime in Article 128 of the Criminal Code had been committed.

43 Serbian jurisprudence and legal order do not recognise the status of source of law but Supreme Court decisions command great authority, wherefore the practical importance of this decision is great.

44 For instance, the main defendant in one of these cases (the *Akapulko* case) was found guilty but sentenced to a six-month provisional prison sentence although the penalty for this crime ranges from 3 months to 5 years in jail.

45 For instance, three youths in February 2005 physically assaulted a Roma youth, who had sustained light bodily injuries. They were convicted to maximum 18 months in jail in October 2007 (the Criminal Code foresees a maximum 5 year prison sentence for the crime and a maximum 8 year sentence if it was committed by an official in discharge of duty).

46 Article 137 of the Criminal Code foresees minimum 6-month and maximum 5-year imprisonment for the crime and a minimum 1-year and maximum 8-year imprisonment if the crime was committed by an official in discharge of duty.

3.10. Refugees and Internally Displaced Persons.

According to the Office of the UN High Commissioner for Refugees (UNHCR) statistics of 1 December 2007, there are 206,144 internally displaced persons and 97,417 refugees residing in Serbia.⁴⁷ Refugees and IDPs in Serbia still encounter difficulties in the procedures of obtaining the personal documents necessary for enjoyment of their rights, the problems of poverty and unemployment as well as many other problems in practice mostly related to the enjoyment of their economic, social and cultural rights.

3.11. Domestic Violence.

Although domestic violence is a criminal offence under Serbia's Criminal Code, research has shown that victims are not provided with adequate protection. Moreover, much of domestic violence remains unreported, mostly because the victims fear the reactions of their community and the perpetrator and mistrust the legal system. At its panel discussion "Protection from Domestic Violence in the Refugee and IDP Populations in the Republic of Serbia", the NGO *Praxis* said that only one out of twenty cases of domestic violence is reported. UNHCR data show that the incidence of gender and sex-related violence is the highest amongst refugees, IDPs, asylum seekers and stateless persons.⁴⁸

Domestic violence may take several forms. The most frequent is physical violence, which is followed by psychological, sexual and economic violence.

According to a survey conducted by the NGO Autonomous Women's Centre, 91.5% of the domestic violence is perpetrated by men; 48% of the offenders deny they committed a crime, 31% think the victim was to blame for the violence and only 10% accept the responsibility.⁴⁹ Women and children are the most frequent victims of domestic violence; children are

47 See <http://www.praxis.org.yu/>, accessed on 10 March 2008.

48 B92, 11 October, www.b92.net.

49 B92, *Lifestyle, News*, 2 November, www.b92.net.

also secondary victims of such violence. Only rarely are parents victims of domestic violence.⁵⁰

Although the Family Act prescribes urgent court proceedings in domestic violence cases, it does not set any deadlines within which the second hearing must be held. Due to this deficiency, the proceedings take a long time (sometimes as many as seven months). The first hearings are usually called within the legal deadline but the subsequent ones are scheduled to take place in more than a month's time which prompts many of the victims to abandon their lawsuits. The prosecutors rarely prosecute domestic violence cases of their own accord.

During their monitoring of domestic violence trials, BCHR associates noted that the judges' attitude towards the victims was often one of condemnation; some of them even directly accused the victims of having brought the violence on to themselves.

Close family members, neighbours, NGOs (if the victims asked them for help), social centres and the police are usually called in to testify in such cases. The courts have finally begun to take the testimonies of NGOs seriously in their review of the cases.

Moreover, there are visible differences between trials before judges who have undergone additional training in domestic violence and those who have not. These differences mostly come to the fore in the manner in which the judges question the defendant, the victims and the witnesses, in the way they distinguish between material and immaterial facts during trial, when they schedule the subsequent hearings and in the speed of the trial.

3.12. *Penal policy.*

Jurisprudence indicates that the protection measures envisaged by the Family Act are pronounced extremely rarely and that the sentences pronounced for violations of the Criminal Code are extremely lenient. BCHR associates have during their monitoring of domestic violence trials concluded that most judges were reluctant to order protection measures of

50 Panel Discussion "Experiences in Providing Free Legal Aid to Women Victims of Violence" Zvezdara Municipality, 20 November.

removing the perpetrator from the home or prohibiting him from getting in the vicinity of the victim's home or place of work. Courts still do not perceive these measures as efficient penalties and therefore rarely order them. The purpose of the protection measures is to help the victims during the proceedings or try and affect the conduct of the perpetrator. Their positive effects, however, can only be ascertained once the courts start issuing such orders to a greater extent.

Perpetrators of domestic violence are most often sentenced to one-year prison sentences or suspended two-year sentences, which testifies of the courts' extremely lenient penal policy. The courts are reluctant to issue security measures even if it has been proven that the perpetrator had on a number of occasions committed the violence while he was drunk. The "honest regret" the perpetrators express at the trials and their promises that they will never resort to violence again have also prompted judges to pronounce mild sentences.

The failure to order protection measures and the lengthy proceedings do not provide the victims of domestic violence with adequate protection and they face the risk of being subjected to it again.

3.13. Status of Children.

UNICEF presented its State of Children in Serbia Report 2006 in early 2007. Notwithstanding all attempts to protect child rights in the recent years, the UNICEF data, based on the Multiple Indicator Cluster Survey (MICS) in Serbia, show that over 300,000 children live in poverty or on the verge of poverty.

Roma children are especially vulnerable: over 80% of children living in Roma settlements are poor, only 4% attend kindergarten, four times as many Roma children than other children have development difficulties, the mortality rates of Roma infants and children under five are three times higher than the mortality rates of the rest of the population. Roma children living far from cities and those whose family members do not have even elementary schooling are worse off than those living in cities and those whose parents completed primary schools.

The problems of children with developmental difficulties are exacerbated in local communities due to the lack of counselling centres, professional assistance, the parents' lack of information and prejudice (16% of the parents would not want their children to go to the same school with children with developmental problems).

Apart from domestic violence against children, the report highlights the high percentage of violence in schools, committed by teachers and peers (one-fourth of the children in elementary schools were victims of violence). Teachers believe that the family is the most important factor influencing violent behaviour. The fact that parents beat their children up and consider that to be the most efficient pedagogical tool and lack of societal condemnation of physical punishment lie at the root of violent behaviour of children.⁵¹

The Child Rights Centre in September 07 brought together an *ad hoc* coalition of Serbian NGOs to collect and process data on the state of children in Serbia and draft an alternative Report on the Implementation of the Convention on the Rights of the Child in Serbia which it will present to the Committee for the Rights of the Child in Geneva in 2008. The BCHR has taken part in the work on the report.

The Alternative Report observes that protection of the rights of the child can be effectively realised if the institute of a child ombudsman is introduced at the state level, if the budgetary allocations for children are increased, if the education system is reformed and youth health care improved and if an adequate system of protecting children from abuse is established. Apart from the recommendations on how to improve child protection, the Report also lists the positive steps made by the adoption of a number of strategies on the protection of children from abuse, exploitation and human trafficking, rights of persons with disabilities, the inclusion of Roma, youth health and development. It, however, also emphasises that the poor cooperation between the state and civil sectors has retarded the implementation of these strategies.

51 The State of Children in Serbia Report 2006: Poor and Excluded Children, 8 February, Media Centre. Available at: http://www.unicef.org/ceecis/SOSC-2006_en.pdf.

3.14. *Sexual abuse of children.*

Incest Trauma Centre presented its statistical data on the sexual abuse of children in the September 06 – September 07 period.

The survey encompassed 47.06% of children under 18 and 52.94% adults who had been exposed to sexual abuse. Girls were abused to a much greater extent than boys (88.24% to 11.76%). Most of the perpetrators were men (92.11%); women accounted for 7.89% of the sexual abusers. Most of the children knew the perpetrator: 36.86% were their fathers, 10.53% their step-fathers, 7.88% their grandfathers and 2.63% their mothers.

Sexual abuse of children usually occurs for the first time when the child is six and a half years old. In 14.71% of the cases, sexual abuse lasts several months and in 85.29% of the cases several years.⁵²

52 See http://www.incesttraumacentar.org.yu/letters_reports/Statistike%202006-2007.pdf.