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Danica Svilanović, BA

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Acronyms and Definitions

ACA	Anti-Corruption Agency of Serbia
AFET	Foreign Policy Committee of the European Parliament
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CAT-OP	Optional Protocol of the Convention against Torture
CCPR	International Covenant on Civil and Political Rights
CCPR-OP2-DP	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty
CDB	Council of Europe Development Bank
CED	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRC-OP-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
CRC-OP-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography
CRPD	Convention on the Rights of Persons with Disabilities
CRIDHO	the Interdisciplinary Research Cell in Human Rights (University of Louvain)
EEAS	European External Action Service
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
EDHR	European instrument in the field of democracy and human

	rights
EEAS	European External Actions Service
EP	European Parliament
ERRC	the European Roma Rights Centre
EUSR	European Union Special Representative
EUSR for HR	European Union Special Representative for Human Rights
EU	European Union
EU acquis	European Union law
FRA	Fundamental rights Agency of the EU
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for the war crimes committed in former Yugoslavia
ILO	International Labor Organization
IPA	Instrument for pre-accession
LGBT	people who are lesbian, gay, bisexual, trans
LGBTI	people who are lesbian, gay, bisexual, trans, and/or intersex
MEP	Member of European Parliament
MIA	Ministry of Internal Affairs
MSA	Military Security Agency of Serbia
NGOs	Non-governmental organizations
NES	National Employment Service
NHRIs	National Human Right Institutions
OSCE	Organization for Security and Cooperation in Europe
PDPA	Personal Data Protection Act
RBA	Republic Broadcasting Agency
SAA	Stabilization and association agreement
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNGA	United Nations General Assembly
UN OHCHR	United Nations Office of High Commissioner for Human Rights
YUCOM	Lawyers Committee for Human Rights, Serbia

1 Introduction to research and methodology

National human rights institutions (NHRIs) are new to the constitutional system of Serbia.¹ In the eyes of the citizens they are seen as something which is not part of the legal tradition Serbia belongs to, but is to a certain extent a result of the modernization of society related to the accession to the EU. The citizens are not wrong in this regard. The establishment of the Ombudsman was proposed in the context of the accession of Serbia to the EU. In the official document adopted by the Government of Serbia, The National Strategy of Serbia for Serbia and Montenegro's Accession to the European Union in May 2005, proposed to write new laws and establish the institution of the Ombudsman.²

It took several years to adopt the Law on the Ombudsman and create this institution. First attempts to adopt it in the parliament failed in 2004³, and then after the National Strategy for the Accession to the EU was adopted in 2005, it took another two years until the law was finally adopted in 2007. It is obvious that issues related to human rights and the creation of independent institutions which would challenge activities of the governmental bodies in this field was a part of the democratization process in the country and therefore resulted in political disagreements even before the Ombudsman was established. Consequently, we are witnessing tensions between the authorities and these independent

¹ The institution of Ombudsman was introduced in Serbian legal system on 14 October 2007, following the adoption of The Protector of citizens Act, Official Gazette of Serbia, No. 79/05 and No. 54/07 art. 1, para 2, See <http://www.parlament.rs>

² Actually, Serbian National Strategy for the accession to the EU explicitly defines the role of Serbian Ombudsman in the context of accession: *"This body will be responsible for examination of individual cases of violation of human rights and liberties caused by illegal and inappropriate work of administration bodies and proposal of manners for elimination of these violations. Its main tasks will include the following: protection of human rights and liberties guaranteed by the Constitution; ensuring the awareness and environment for fulfilling the rule of law principle; enhancing the responsibility of democratic institutions; influencing the creation of citizens' legal certainty, legality and impartiality in the work of state institutions responsible for realization of citizens' rights, liberties, obligations and legal interests."*, National Strategy of Serbia for the Serbia and Montenegro's Accession to the European Union, page 57, May 2005, See

http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/national_strategy-pdf.pdf

³ National Strategy of Serbia for the Serbia and Montenegro's Accession to the European Union, page 57 and 58, May 2005, See

http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/national_strategy-pdf.pdf

institutions, as well as debates in the media, accusations in the parliament⁴ and obvious confrontation between representatives of the government and independent institutions⁵. The attacks on the Ombudsman by the representatives of the government were so severe that even the EU Commissioner, Johannes Hahn, had to intervene and call on the government to stop the campaign⁶. This gives another reason to believe that while the scope of the activity as well as the number of cases increases, the institutions are seen by politicians as unwelcome and “*imposed*”⁷. Whoever was in power, irrespective of the parties they came from, was, in one way or another, opposed to the reports of these institutions.

What we wanted to do in this thesis was to compare the legislation establishing these institutions and the practices they have developed on one hand, with the *EU acquis*⁸ and the very accession process of Serbia to the EU, as defined by the European Commission⁹ (the content of the chapters which have already been opened or are yet to be opened), on the other hand.

⁴ See <http://rs.n1info.com/a53757/Vesti/Poslanici-o-ombudsmanu-Sasi-Jankovicu.html>, and also http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=12&dd=08&nav_id=1208223

⁵ See <http://www.021.rs/story/Info/Srbija/140285/Ombudsman-Vulin-uporno-krsi-zakon.html>

⁶ See <http://opozicionar.com/2015/05/09/han-napadi-na-ombudsmana-moraju-prestati/>

⁷ President of Serbia stated that “They (EU) asked from us to have institution of the Protector of citizens, although many in the EU do not have that institution”, See <http://www.blic.rs/vesti/politika/vucic-sin-mi-kaze-ajde-ti-i-tvoja-eu/62kk768>

⁸ Ombudsman has been established in the EU in the Maastricht agreement (Treaty on European Union), 1992, Art. 8d and Art. 138e. See https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf

⁹ “*Serbia will need to continue its efforts to align its legislation with the acquis and to ensure full implementation of key reforms and legislation, in particularly in the areas of the rule of law, including reform of the judiciary and the fight against corruption, the independence of key institutions, and further improving the business environment; special attention should be given to the rights and inclusion of vulnerable groups, particularly the Roma, as well as to the effective implementation of legislation on the protection of minorities, the non-discriminatory treatment of national minorities throughout Serbia, and tackling discrimination on the basis of sexual orientation or gender identity*” (Conference on the accession to the European Union – Serbia, Accession document, General EU position, EU opening statement for accession negotiations, para 14, Brussels, 21 January 2014), See <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=AD%201%202014%20NIT>

In order to understand the relevance of the NHRIs for Serbia's accession to the EU, we have analyzed not only their practices but have also consulted how they are understood by the media, by non-governmental organizations, what the position of the EU institutions is towards their work, and how they are perceived by the political elite and the people in the country.

1.1. Research question

We would like to analyze to what extent the work done by these institutions is influencing the EU accession process (positively or negatively), both when it comes to the changes of Serbia's legislation, as well as the practices of the government and other institutions. We aim to clarify the following: *what is the contribution of NHRIs to the overall human rights situation in Serbia, and is there a link between the practices of the NHRIs and the negotiation process with the EU?*

1.2. Overview of the thesis

In the thesis, we started with the explanation of the relevance of Human Rights Institutions in the EU (Chapter 2); then we presented human rights related chapters of the EU accession process (Chapter 3). In continuation, the human rights situation in Serbia is presented in order to better understand the necessity for the establishment of the NHRIs in Serbia's legal system (Chapter 4). We presented the recent history of the establishment of the NHRIs in Serbia's legal system, their legal foundations, practical work, problems and achievements (Chapter 5). Chapter 6 has been devoted to the presentation of the valuable work of non-governmental institutions and their contribution to the work of NHRIs as well as to the accession of Serbia to the EU, and, finally, to the overall improvement of the human rights situation in the country. After comparing the human rights related chapters of the EU accession process and the work of NHRIs, in Chapter 7 we analyzed the NHRIs contribution to Serbia's accession to the EU and have tried to answer the question we have posed. Lastly, in Chapter 8, we have presented our

conclusions.

2 The relevance of Human Rights Institutions in the EU

National Human Rights Institutions are a relatively new concept in the sphere of human rights mechanisms. They are gradually becoming more important as a tool through which international human rights obligations should be implemented. Formally the concept has been established in 1946 that NHRIs are “*entities at the national level contributing to the adherence to United Nations Human Rights*”.¹⁰ However, in practice they rarely existed, if at all, until the concept was reestablished after the Second World Conference on Human Rights in Vienna in 1993.¹¹

Following the “*Seminar on National and Local Institutions for the Promotion and Protection of Human Rights*” in 1978, the guidelines for the NHRIs practice started developing.¹² In these guidelines the roles and tasks of NHRIs were described:

they are established to deal with “*information and education; issuing recommendations and advice to the government; reporting regularly to the authorities on compliance; conducting fact-finding, investigating complaints, and issuing concrete remedies in individual cases, including the power to summon witnesses and access evidence; promoting the incorporation of human rights provisions into national cooperating with civil society; assisting in state reporting procedures under treaties; and facilitating research*”.¹³

Another important step for these institutions was the creation of the Paris Principles in

¹⁰ Fundamental Rights Agency Report: “National Human Rights Institutions in the EU Member States – Strengthening the fundamental rights architecture in the EU”, p.18, http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

1993, and thus the creation of the criteria for NHRIs.¹⁴

As the concept was rather new, it was only understandable that there was a need to adjust NHRIs to the different legal traditions. Therefore, one of the most important aspects that originated was *“the rights of each State to choose the framework that is best suited to its particular needs at the national level”*.¹⁵ The State can choose what kind of framework suits it best; in that way it will perform the best. This is the crucial characteristic of the NHRIs. Without it, their purpose would be unfulfilled.

Whether these NHRIs are in the form of human rights commissions, ombudsmen or institutes, their primary aim is to promote and protect human rights in the country concerned. They can be described as *“key elements of a strong, effective national human rights protection system”*.¹⁶

The purpose of NHRIs according to the Paris Principles is *“to promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party and their effective implementation”*.¹⁷

In the Paris Principles there are detailed explanations of what NHRIs should do, such as cooperation with governments, parliaments and civil societies together with NGOs.¹⁸ Thus, these Principles have been accepted as a *“primary source establishing minimum*

¹⁴ Ibid.

¹⁵ *“Paris Principles”*, Annex 6, A/RES/48/134, 85th plenary meeting of the UN General Assembly, 20 December 1993. See <http://enoc.eu/wp-content/uploads/2015/01/Paris-Principle.pdf>

¹⁶ Report of the United Nations Secretary-General to the UN General Assembly A/64/320, 24 August 2009, paragraph 99., <http://nhri.ohchr.org/EN/News/Documents/A-70-347%20en.pdf>, International Council on Human Rights Policy (2005) Assessing the Effectiveness of National Human Rights Institutions, p. 5., http://www.ichrp.org/files/reports/18/125_report.pdf,

¹⁷ *“Paris Principles”*, Annex 6, <http://enoc.eu/wp-content/uploads/2015/01/Paris-Principle.pdf>

¹⁸ Fundamental Rights Agency Report: “National Human Rights Institutions in the EU Member States – Strengthening the fundamental rights architecture in the EU”, http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

standards for the effective functioning of an NHRP".¹⁹ However, the Principles are not a binding instrument in international law; they are instead regarded as "*the most authoritative instrument in this area*".²⁰ Moreover, a vital aspect of NHRIs is that they are independent of the government and hence they preserve "*their legitimacy and credibility as independent human rights bodies free to determine their own priorities and activities*".²¹

NHRIs are dedicated to respecting and improving democracy, the rule of law, human rights, human dignity, freedom and equality. All of these represent the values to which European Union is committed to. Hence, NHRIs are important and relevant to the European Union as well as to the member states of the EU as they are based on the same fundamental values. These values are embedded in the European Convention on Human Rights and the EU Charter of Fundamental Rights, which is a binding document since 2009 for all the EU Member States.²²

The EU's commitment to these values and their significance, especially to the respect of human rights, has been explicitly shown and further strengthened when the first EU Special Representative for Human Rights (EUSR for HR) was appointed in 2012.²³ This was a strong sign of the EU showing its desire and need to monitor and improve the situation of human rights throughout the EU countries. The goal of the EUSR for HR is "*to enhance the effectiveness and visibility of EU human rights policy*" and in order to do that has "*a broad, flexible mandate, giving him the ability to adapt to circumstances, and he works closely with the European External Action Service, which provides him with full support*".²⁴

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Protecting fundamental rights within the EU, http://europa.eu/pol/rights/index_en.htm

²³ Following the adoption of EU's Strategic Framework and Action Plan on Human Rights and Democracy, on 25 June 2012, Mr. Stavros Lambrinidis was appointed EUSR for HR, See http://europa.eu/pol/rights/index_en.htm

²⁴ EEAS homepage, See http://eeas.europa.eu/background/eu-special-representatives/index_en.htm

Some of the main goals of the EU policy consist of “*working to promote the rights of women, children, minorities and displaced persons, opposing the death penalty, torture, human trafficking and discrimination, defending civil, political, economic, social and cultural rights, defending the universal and indivisible nature of human rights*”.²⁵ The EU wants to achieve these goals with the help of “*full and active partnership with partner countries, international and regional organizations, and groups and associations at all levels of society*”.²⁶ One of the ways in which the EU can achieve them is through NHRIs in the member states, which is why it is crucial that all EU countries establish NHRIs.

It is important to notice that the establishment of NHRIs is not only limited to the EU Member States. Every country should create such institutions if it wants to have a good human rights record and improve the living standard for its citizens. It is of particular importance for the accession countries as well to have them, in order to create institutional arrangements for their existence and to make room in public life for their activities for the benefit of their citizens, but also in preparation for EU membership. The ones who will benefit the most from the work of these institutions are the citizens of these countries. These institutions are meant to improve their lives through promoting respect and protection of human rights for all. Eventually, the EU as a whole benefits from their performance.

In order for the countries to achieve this, the NHRIs should have “*a sufficient level of independence, powers, and a mandate related to the full spectrum of rights – at minimum the rights covered by the EU Charter of Fundamental Rights*”, and “*be equipped with strong preventive powers, and sufficiently resourced to be able to collect data and conduct research and awareness-raising*”.²⁷

²⁵ Protecting fundamental rights within the EU, http://europa.eu/pol/rights/index_en.htm

²⁶ Ibid.

²⁷ Fundamental Rights Agency Report: “National Human Rights Institutions in the EU Member States – Strengthening the fundamental rights architecture in the EU”, See

It is not easy to fulfill these conditions since there are some challenges that NHRIs face at the national level. The challenges may differ. They can be “*a lack of political support; a high level of government influence in the appointment processes, in the NHRIs activities, or its resource allocation; as well as a weak protection mandate resulting in weakened credibility*”.²⁸ Also, the role of the NHRIs is to change the situation from “*state’s international obligation to ‘respect’*”, into actual engagement of the state bodies in order to actively “*protect’ and ‘fulfill’ human rights*”.²⁹ The human rights situation together with the rule of law and democracy reflect the overall circumstances in the EU. Thus, it is in the interest of the EU to push countries to establish NHRIs in order to improve themselves, and comply with international obligations. It may sound easy and doable, but in reality it is very hard, takes a lot of time, serious effort, and often legal and political reforms. Most vitally, there is often a need to change the political as well as administrative practices. In reality, it is largely about changing the political culture of a country.

http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

²⁸ G. Magazzeni (2009) “*The Role of OHCHR in Promoting National Human Rights Institutions*”, in W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds): “*Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*”, Wien, Graz: Neuer Wissenschaftlicher Verlag, p. 174. See http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

²⁹ J. Lynch (2009) “*Fifteen Years after Vienna: The Role of National Human Rights Institutions*” in: W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds): “*Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*”, Wien, Graz: Neuer Wissenschaftlicher Verlag, p. 157. With regard to the situation prior to the Vienna World Conference 1993 see also, for example, G. de Beco (2007): “*National Human Rights Institutions in Europe*”, CRIDHO Working Paper 2007/01, also published in Human Rights Law Review Vol. 7, Nr. 2, pp. 331-370, See http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

3 Human rights related chapters of the EU accession process

The EU is going through a rough time and is faced with many challenges. As Džihic says: *“The virus of the crisis has been spreading across Europe and the globe too rapidly to give us any chance to look for a cure.”*³⁰ The trigger was the global economic and financial crisis, which started at 2008. It has influenced the living standard of EU citizens and has opened the doors wide for different national policies within the EU member states which are more inward looking, more populist, sometimes even xenophobic. Consequently, we have seen elections for the EU Parliament which brought into the EU mainstream some of the more radical political forces³¹. Similarly, we have observed radical political forces gaining more strength in France, the Netherlands, Italy, Austria and Finland. The situation got even worse when the wave of migrants flooded some EU member states, as a result of the war in Syria and mismanagement of the humanitarian crisis. Problems continued with the terrorist attacks and the crisis got very deep with the EU citizens voting in referenda to leave the EU. Such a development made continuation of enlargement process for the Western Balkans much more difficult and eventually led to President of the EU Commission, Juncker, stating that enlargement will not happen during the mandate of this new EU Commission³². This mood is also known as enlargement fatigue³³.

Despite all of these challenges, the EU remains important and closely observed by both the politicians and citizens of the Western Balkans. Regardless of all of this, there is still

³⁰ Džihic, “EU Enlargement – Dead Man Walking in Dire Need of Resurrection” in European Western Balkans, <https://europeanwesternbalkans.com/tag/vedran-dzihic/>

³¹ European Parliament, Results of the 2014 European elections, See <http://www.europarl.europa.eu/elections2014-results/en/election-results-2014.html>

³² See European Commission database http://europa.eu/rapid/press-release_IP-14-984_en.htm and also <https://www.neweurope.eu/article/juncker-commission-no-further-eu-enlargement/>

³³ Džihic, op. cit., Anna Szolucha, “The EU and ‘Enlargement Fatigue’: Why Has the European Union Not Been Able to Counter ‘Enlargement Fatigue’?”, Journal of Contemporary European Research, <http://www.jcer.net/index.php/jcer/article/view/124>, John O’ Brennan, “Enlargement Fatigue and its Impact on the Enlargement Process in the Western Balkans”, <http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR018/OBrennan.pdf>

something that makes non-EU states from the Western Balkans want to be part of the Union. The EU is still something these countries are striving for.

“It is the mobilization around urgent social questions and an open fight for liberal and democratic values where the Balkans can join many European forms of new activism.”³⁴

This was ever-so obvious in July 2016 in Paris, at the EU-Western Balkans summit of the so-called Berlin Process, where all the Prime Ministers from the Western Balkans gathered together with the President of France, the Prime Ministers of Germany, Italy, Austria, and other dignitaries, in order to reiterate their aspirations for EU membership. The reasons for this attitude differ from country to country. Most often it is the accession process that makes these countries reform, change and improve, and with that comes economic growth and prosperity.

One of the main conclusions of the European Council on enlargement and the stabilization and association process in 2012 was that *“the enlargement process continues to reinforce peace, democracy and stability in Europe”*.³⁵ Another conclusion of the Council outlines the reasons for the countries’ accession process:

“(…) political and economic reforms, transforming societies, consolidating the rule of law and creating new opportunities for citizens and business in those European countries who want to become part of the project of an ever closer union among the peoples of Europe built on shared values”.³⁶

Same ideas still drive the process, as was explicitly confirmed in the more recent Enlargement Strategy, presented by the European Commission to the European Council

³⁴ Džihic, op. cit.

³⁵ “Council conclusions on enlargement and stabilization and association process”, 3210th GENERAL AFFAIRS Council meeting, Brussels, 11 December 2012, Council of the European Union, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134234.pdf

³⁶ Ibid.

and European Parliament, in November 2015. Referring at the enlargement, the European Commission says:

*“It provides clear guidance and sets out the framework and tools to support the countries concerned to address the core issues and requirements of the accession process. It provides a clear opportunity for the aspiring Member States to make both significant progress on their respective EU paths in the period ahead as well as to reap benefits of closer integration already before accession. The EU’s enlargement policy is an investment in peace, security and stability in Europe. It provides increased economic and trade opportunities to the mutual benefit of the EU and the aspiring Member States. The prospect of EU membership has a powerful transformative effect on the countries concerned, embedding positive democratic, political, economic and societal change.”*³⁷

Although the EU is in a deep crisis, as we have presented here, there is no doubt that, the Western Balkan countries, including Serbia, are nonetheless striving to join and are ready to comply with the prerequisites of the accession process which are based on the “*basics first*” principle, as they like to say in Brussels’ bureaucracy. That encompasses the rule of law, reform of the public administration, and economic governance.

The accession process is not an easy one; it requires a lot of works from both sides as there are certain requirements to be fulfilled. First of all, if a state wants to join the EU it must be eligible, which means that it has to be geographically in Europe and has a desire to respect and commit itself to the values of the EU that are enshrined in the Article 2 of the Treaty of the European Union.³⁸ Also, a state should have established “*stable institutions guaranteeing democracy, the rule of law, human rights and respect for and*

³⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, EU Enlargement Strategy, Brussels, 10.11.2015., https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_strategy_paper_en.pdf

³⁸ “*Joining the EU — the accession process*”, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l14536&from=EN>

protection of minorities”, as well as “*a functioning market economy and the capacity to cope with competition and market forces in the EU, and the ability to take on and implement effectively the obligations of membership, including the aims of political, economic and monetary union*”.³⁹ These requirements are the so-called Copenhagen criteria⁴⁰. Secondly, a state must fulfill all the procedural requirements: formal application, obtaining candidate status that is received only after the approval of the European Council, the European Commission and the European Parliament, and afterwards the negotiations, screening process, and finally accession.⁴¹ The negotiations between the candidate country and the EU start with an intergovernmental conference where the 35 Chapters or policy areas which make the EU laws – the *acquis* – are discussed.⁴² Together with the negotiation, the screening process takes place, which is checking whether “*individual items of the acquis listed in a given chapter have been transposed into the law of the candidate country*”, and only when this is completely finished can the accession treaty can be signed and ratified with the consent of the European Council and the European Parliament.⁴³

We would like to note that “*for EU accession negotiations to be launched, a country must satisfy the first criterion,*” that being the “*stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities*”⁴⁴. This reference is clearly putting the rule of law and respect for human and minority rights as an absolute priority for any country interested in joining the EU, meaning it is an absolute priority for the EU as well. This is also what is meant by politicians who speak about the EU as a union of values. These values are all embedded in the respect for human

³⁹ Ibid.

⁴⁰ Criteria (known as the Copenhagen criteria) were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995, http://eur-lex.europa.eu/summary/glossary/accesion_criteria_copenhagen.html

⁴¹ “*Joining the EU — the accession process*”, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l14536&from=EN>

⁴² Ibid.

⁴³ Ibid.

⁴⁴ EUR-Lex, Access to European Union Law, Accession criteria, See http://eur-lex.europa.eu/summary/glossary/accesion_criteria_copenhagen.html

rights as one of the bases of EU and one of the bases for the design of the accession negotiation process. In practice this means that while negotiating the accession, the candidate country is implementing the EU *acquis* into domestic regulations, making it national legislation.

In the process of negotiations each one of the 35 chapters is opened and negotiated through, and if it is done so satisfactorily it is then closed. The chapters that are of concern to the NHRIs are those which are closely linked to the implementation of human rights obligations.

Chapter 23 in accession negotiations is concerned with the judiciary and fundamental rights while chapter 24 with justice, freedom and security.⁴⁵ Chapter 23 is based on values that “include the rule of law and respect for human rights”, as well as the idea that “a proper functioning of the judicial system and effective fight against corruption are of paramount importance, as is the respect for fundamental rights in law and in practice”⁴⁶. Chapter 23 deals in depth with the functioning of the judiciary, which means with strategic documents, management bodies, independence and impartiality, accountability, professionalism and competence, quality of justice, efficiency, anti-corruption policy, and clean track record in all of these areas. When it comes to the institutional framework it deals with prevention measures, law enforcement; the legal framework, and the strategic framework.⁴⁷ The second half of Chapter 23 deals with fundamental rights which include the promotion and enforcement of human rights, prevention of torture and ill-treatment, prison systems, personal data protection, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, property rights, non-discrimination, equality between women and men, rights of a child, as well as the integration of persons with disabilities, the LGBTI community, labor and trade unions,

⁴⁵ Serbia 2015 Report, European Commission staff working document, Brussels, 10 November 2015, See http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf

⁴⁶ Ibid.

⁴⁷ Ibid.

procedural rights, protection of minority rights, refugees and internally displaced persons.⁴⁸ As can be seen, this chapter deals with the most important topics when it comes to human rights, and thus some of these topics, depending on the country, can be very controversial, which makes the negotiation process harder and more challenging for both the EU and the candidate country.

Chapter 24 deals with justice, freedom and security, which encompasses legal and irregular migration, asylum and visa policy, Schengen and external borders, judicial cooperation in civil and criminal matters, the fight against organized crime, the trafficking of human beings, the fight against terrorism, cooperation in the field of drugs, and customs cooperation.⁴⁹ It may seem that this chapter does not deal with human rights directly, but all of these topics are interrelated and interdependent.

Moreover, there are provisions in other chapters that are related to human rights and rights of minority communities in the country. For example, Chapter 26 deals with education and culture, and Chapter 28, which deals with health protection.

The EU Council adopts on a yearly basis conclusions regarding the stabilization and association process with potential candidates as well as the enlargement process with the candidate countries. In these conclusions, the EU Council refers to the democratization process in each and every accession country, particularly observing to what extent they have improved the human rights situation, what particular problems are, and in which of the areas there is need for more engagement, or for improvement. These remarks are based on the so called progress reports, currently called country reports, prepared by the European Commission. Some of the challenges that countries face, according to the European Council, are related to “*the freedom of expression, including political interference in the media (which) continue to be a matter of particular concern*”, as well

⁴⁸ Ibid.

⁴⁹ Ibid.

as “*the rights of persons belonging to minorities, and without distinction as to the sexual orientation or gender identity of persons, including the right to freedom of assembly, expression and association, and the importance of promoting a culture of tolerance*”.⁵⁰ Also, there are difficulties with “*improving [the] social and economic inclusion of vulnerable groups, including the Roma*”.⁵¹

In these reports, which serve as a kind of tracking mechanism regarding the progress of the countries in the accession process, NHRIs are often mentioned, and their reports are analyzed, because through them the human rights issues are dealt with. They “*often require significant strengthening, as does the law enforcement bodies’ handling of issues such as hate crimes and gender based violence*”.⁵²

Another aspect that is important to take into the account is that internal situations vary from country to country. Not all the countries are on the same level of economic growth or have the same political stability. Nevertheless, in order to join the EU certain criteria have to be satisfied when it comes to human rights; Chapters 23 and 24 must be on the satisfactory level, because that is the basis for other components to develop. For example, when the rule of law is established, than human rights are more effectively protected and respected, and having a judiciary system that is independent and impartial results in less corruption in society. Further, if the judicial system is working properly and is trustworthy, that is a signal that the country is moving forward and progressing. The accession process is a way for a country to implement reforms, to change what needs to be changed, to improve itself, and human rights make a good first step for that change to happen.

⁵⁰ “*Council conclusions on enlargement and stabilization and association process*”, 3210th GENERAL AFFAIRS Council meeting, Brussels, 11 December 2012, Council of the European Union, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134234.pdf

⁵¹ Ibid.

⁵² Ibid.

All of this is clearly proving the argument that respect for human rights is one of the critical elements on which the EU is based today. Perhaps it started as a “*coal and steel community*”⁵³, and later became an economic community⁵⁴, but today the EU is increasingly a union which is developing common foreign and security policy, and that would have not been possible without certain common beliefs and values, which are chiefly related to human rights. We are aware of the crisis and of so many critical developments in some of the EU member states which are recently often neglecting the common values based on human rights. But here we are not discussing the internal politics of the EU in the current times, we trust that the good elements in and about the EU will prevail against all odds and challenges posed by the economic and financial crisis, by the migration crisis, by the rise of populism, by Brexit, and so on. Here we are discussing the EU that Serbia wanted to join long ago, when the first proposal was made.

4 Accession of the Republic of Serbia to the EU

After the overthrow of Milosevic from power in 2000, the time had come for Serbia to go forward and start its process of joining the EU. The process of accession began together with other five countries: Bosnia and Herzegovina, Croatia, the Republic of Macedonia (the Former Yugoslav Republic of Macedonia), Montenegro and Albania. They were seen as the potential candidates in the Thessaloniki European Council Summit in 2003.⁵⁵ Starting the negotiations of the Stabilization and Association Agreement (SAA)⁵⁶ was

⁵³ Eur-Lex, Access to European Union Law, Treaty establishing the European Coal and Steel Community, ECSC Treaty , <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=URISERV:xy0022>

⁵⁴ Eur-Lex, Access to European Union Law, Treaty of Rome (EEC), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Axy0023>

⁵⁵ “Serbia, membership status”, Enlargement, EU, http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm

⁵⁶ Stabilization and Association Agreements are agreements between the country, in this case Serbia, and the EU, which are “*adapted to the specific situation of each partner country and, while establishing a free trade area, they also identify common political and economic objectives and encourage regional co-operation*”, “European Commission - Enlargement - Stabilization and Association Agreement”, http://ec.europa.eu/enlargement/policy/glossary/terms/saa_en.htm

difficult and wrought with setbacks because of Serbia's non-cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY), but in 2007 the negotiation with the EU on signing the SAA recommenced.⁵⁷ Then, in 2008, agreements on visa facilitation and readmission entered into force; in 2008 the SAA and Interim agreement on trade and trade-related issues were signed in Luxembourg; in 2009 visa requirement were lifted for travelling to Schengen countries and the same year Serbia finally applied for EU membership.⁵⁸ The following year, in 2010, the EU decided to start the ratification process of the SAA.⁵⁹ This agreement is important because it functions as a foundation for further implementation of the accession process.

In the meantime, two significant events played out which are important for Serbia's accession process. The first one is that Kosovo declared independence and the second one is that Montenegro became independent from Serbia.⁶⁰

In 2011 Serbia was conditioned by the EU "*on one key priority*" in order to obtain candidate status, and that key priority was to normalize the relations with Kosovo through the dialogue with Pristina which was facilitated by the EU.⁶¹ Finally, thanks to the successful conclusion of the first agreement in the so called Brussels dialogue (dialogue between Belgrade and Pristina, facilitated by the EU /namely EEAS/), in March 2012, Serbia was able to get the status as an EU candidate country.⁶² After all the EU Member States ratified the agreement, the SAA entered into force in 2013.⁶³ Before the first EU-

⁵⁷ "Serbia, membership status", Enlargement, EU, http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ When it comes to the Kosovo declaring independence, the political situation in the country was not that good, both people and the government were dissatisfied with this decision. There were protests on the streets that ended up with an attempt to burn down the embassy of Germany and embassy of USA in Belgrade, whereas the independence of Montenegro, which was voted on in the referendum, was received differently, without any major reaction by the public in Belgrade or other cities in Serbia.

⁶¹ "Serbia, membership status", Enlargement, EU, http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm

⁶² Ibid.

⁶³ Ibid.

Serbia Intergovernmental Conference took place in 2014, the Serbian government selected Ms. Tanja Mišćević to be the Chief negotiator in Serbia's accession process, and the Serbian Assembly agreed on the Resolution on the Role of the National Assembly and the Principles of Serbia's EU Accession Negotiations.⁶⁴

In 2015 two chapters were opened; Chapter 32 '*financial control*' and Chapter 35 '*other issues - normalization of relations between Serbia and Kosovo*'.⁶⁵ In 2016 the process continued with an opening of chapters 23 and 24, and at the very end of 2016, chapters 5 and 25 were opened (Chapter 25 was immediately temporarily closed, as was the practice in other accession negotiations) and in 2017, Chapter 26 was opened and closed temporarily, and chapters 7 and 29 were opened.

While deciding to open the first chapters, the Commission put forward the following comments, conclusions and recommendations on Serbia:

*"The decision of the European Council to open negotiations was reached due to Serbia's progress in the reforms and its continued commitment to the normalization of its relations with Kosovo. (...) In line with the new approach to rule of law issues, opening benchmarks have been set under chapters 23 and 24. (...) In order to ensure an overall balance in negotiations, progress under these chapters will need to be made in parallel with progress in negotiations overall."*⁶⁶

Even though these chapters are open, for the negotiation to continue Serbia would need to implement the European Council's recommendations and those are:

"the independence of key institutions (...) special attention should be given to the

⁶⁴ "Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards", Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/03/Human-Rights-in-Serbia-2014.pdf>

⁶⁵ "Serbia, membership status", Enlargement, EU, http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm

⁶⁶ European Commission: "Serbia Progress Report", October 2014, See http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

*rights and inclusion of vulnerable groups, particularly the Roma, as well as to the effective implementation of legislation on the protection of minorities, the non-discriminatory treatment of national minorities throughout Serbia, and tackling discrimination on the basis of sexual orientation or gender identity”.*⁶⁷

European Commissioner for Neighborhood policy and Enlargement negotiations, Johannes Hahn said in his speech in the Serbian Parliament, just before the first chapters were opened, that Serbia has made significant progress towards its way to the EU. He further stated:

*“Let me stress here the intensive work to finalize the action plans on the rule of law, the key agreements with Kosovo, and the important steps taken to improve regional ties and strengthen relations with neighboring countries.”*⁶⁸

Commissioner Hahn also looked at what still needs to be done by saying:

*“A renewed commitment to move decisively forward with reforms, in particular in the areas of the judiciary, the fight against corruption, freedom of expression – which is non-negotiable from EU perspective - public administration, anti-discrimination and the economy.”*⁶⁹

Moreover, some of the points that Mr. Hahn highlighted are that the Serbian parliament should *“play a lead role in the oversight of the executive and monitor effective implementation of reforms on the ground, in close cooperation with independent regulatory bodies.”*⁷⁰

⁶⁷ Council of European Union, Council Conclusions on Enlargement and Stabilization and Associations Process, 3210th General Affairs Council meeting, Brussels, 11 December 2012. See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134234.pdf

⁶⁸ Johannes Hahn, EU Commissioner for Neighborhood policy and Enlargement negotiations, speech in the National Assembly of Serbia, Belgrade, 10 December 2015. See https://ec.europa.eu/commission/2014-2019/hahn/announcements/statement-johannes-hahn-plenary-serbian-parliament_en

⁶⁹ Ibid.

⁷⁰ Ibid.

The message of Commissioner Hahn is clear; he is inviting the government and the parliament of Serbia to closely cooperate with the national human rights institutions. As we have mentioned so far and will continue presenting in more detail, it is obvious that these repeated appeals by EU officials towards the government in Belgrade not to put pressure on the Ombudsman and to work with it, have been either completely ignored or only partially respected. In spite of this attitude of ignoring the messages, at the same time, the opening of chapters in the accession process with Serbia continued. This leads us to conclude that the EU accession process with Serbia is driven more by the need to make sure that Belgrade is cooperative in the so called Brussels process (dialogue between Belgrade and Pristina facilitated by EU), than by the so called EU values. Another argument is constantly present and that one is the obvious need of EU to keep Belgrade closer to Brussels than to Moscow⁷¹. More recently we observe how important cooperative attitude of Serbia regarding migration crisis is for Brussels, and it does have an impact on the EU assessment on the situation in Serbia. However, in this paper it is not our task to discuss foreign and security policy of EU, nor geopolitical games in the Western Balkans or in wider Europe. Our task is to analyze the work of NHIs and their contribution to the EU accession process of Serbia. The Serbian authorities seem to be well aware of this attitude of EU and are continuing to maintain very good cooperation with Russian Federation, balancing the pace of negotiations with EU as well as the pace of reform process with their other geopolitical priorities.

4.1. Human rights situation in Serbia

The situation of human rights in Serbia is not a fairytale. Human rights are a serious phenomenon and therefore it is challenging to improve the human rights situation,

⁷¹ European Parliament Resolution on the 2016 Commission Report on Serbia (2016/2311(INI)), Committee on Foreign Affairs, Rapporteur: David McAllister, 22.3.2017., <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2017-0063+0+DOC+PDF+V0//EN>

especially for a country that has gone through a lot in its history, such as the dissolution of a big and powerful country, wars, war crimes, bombings, and changing regimes. However, that does not mean that a country should not strive to eliminate human rights abuses, to improve its mechanisms and to have a good human rights record. When the respect of human rights is improving, that provides chances for the improvement to be achieved in other areas of the same society, which means the country as a whole is improving.

Unfortunately, Serbia does not have a good human rights record; there is much room for development and progress. Hopefully with the accession process of Serbia to the EU, this progress can be made. According to the Civil Rights Defenders, a non-governmental human rights organization, the situation of human rights has not improved much, and actually worsened when compared to 2013, even though the negotiations were opened in 2014.⁷²

They claim that this can be seen mainly “*in the area of national minorities, freedom of expression, independent regulatory bodies and judicial reform*”.⁷³ Also, the situation for minorities, especially for Roma and LGBTI people has not changed substantially, despite the Belgrade Pride Parade in 2014, which took place that year after being banned four times⁷⁴, and despite the fact that the newly appointed prime minister of Serbian government declared herself as homosexual. Media freedom is also one of the areas where a lot of improvements need to be done, because it is influenced by politics to a high extent.⁷⁵ The last several years were supposed to be the years of reforms, the change of structures and legislative frameworks so that prevention and protection of human rights is improved. However, not all of the reforms were implemented.

⁷² *Human Rights in Serbia*, Civil Rights Defenders, June 2016, See, <https://www.civilrightsdefenders.org/country-reports/human-rights-in-serbia/>

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

In their annual reports reflecting on the progress achieved in the countries striving to join the EU, the European Commission regularly comments on the human rights situation in Serbia, too. In its progress report in 2012, the European Commission stated:

*“The Ombudsman’s Offices continued to be effective and have increased their accessibility. The term of office of the State Ombudsman was renewed by the parliament of Serbia in August 2012. The number of citizens’ complaints has increased. The largest number of reported violations relates to governance. Changes to the Law on the Ombudsman, which should enhance the Ombudsman’s independence, still have not been adopted. The Ombudsman’s recommendations were not sufficiently followed up. The Commissioner for Information of Public Importance and Personal Data Protection continued to be active and his term of office was also renewed by the parliament in December 2011. Some progress has been made in the implementation of legislation ensuring access to information of public importance. However, the recommendations of the Commissioner are still not sufficiently implemented.”*⁷⁶

Four years later, it seems that the message coming to Serbia through the same source, namely, the European Commission progress report on Serbia, is very much the same:

*“The welcome practice of regular meetings with the Prime Minister needs to be built upon with a view to improving within the public administration the understanding and acknowledgement of the essential role played by the Ombudsman’s Office and other independent authorities and regulatory bodies in ensuring that the executive is accountable. It is important in this respect that all their recommendations, and in particular those related to issues of significant public concern, are responded to, as appropriate.”*⁷⁷

⁷⁶ European Commission, *Serbia Progress Report 2012*, Brussels, 10 October 2012, See http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf

⁷⁷ Serbia 2016 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of

“The Ombudsman’s Office’s recommendations on illegal data collection by the Military Intelligence Agency on political parties’ activities need to be followed up.”⁷⁸

“As regards free access to information, the legislation has not yet been amended to improve the effectiveness of the work of the Commissioner for Free Access to Information of Public Importance and Personal Data Protection.”⁷⁹

We are referring at the reappointment of the ombudspersons and the conditions in which they work including the attitude of the government officials towards them, as they have become a kind of necessary infrastructure when it comes to accessing the human rights situation in Serbia. This seems to also be the position of the European Commission. Besides ratification of the main international human rights instruments and their integration into national legal framework, the very existence and particularly the administrative, legal and public interventions and other activities of NHRIs, as well as their regular reports that should be presented in Serbian parliament, are now the main elements illustrating the human rights situation in the country.

Articles 18–81 of the Constitution of the Republic of Serbia are devoted to human rights.⁸⁰ That section of the Constitution is divided into three parts: fundamental principles (Arts. 18–22), fundamental human rights and freedoms (Arts. 23–74) and rights of persons belonging to national minorities (Arts. 75–81). Serbia has already ratified all of the main international human rights instruments.⁸¹ Therefore we may also look into the practice of

the Regions, 2016 Communication on EU Enlargement Policy, Brussels, 9 November 2016, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Constitution of the Republic of Serbia, http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en

⁸¹ Serbia is party to:

CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ratified 12 Mar 2001 (d), CAT-OP - Optional Protocol of the Convention against Torture signature 25 Sep 2003 ratified 26 Sep 2006, CCPR - International Covenant on Civil and Political Rights ratified 12 Mar

the European Court for Human Rights in Strasbourg and consult the cases against Serbia. The bulk of the judgments so far relate to the excessive length of court cases and to non-enforcement of domestic judgments. A total of 4.833 new applications have been submitted to the ECHR since September 2011, bringing the total of pending applications to 9.478.⁸² The number of filed applications against Serbia is steadily growing and now represents 6% of all applications filed with the Court.

These are general comments and only give an overview of what exactly is happening and what the problems which need to be resolved by the government are. Let us now look into a more detailed exploration of the human rights situation in Serbia, focusing on the main group of rights and freedoms using the reports prepared by the Ombudsman, comments by the European Commission expressed in its progress reports, as well as statements and annual reports issued by international and domestic non-governmental human rights organizations.

2001 (d), CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty ratified 06 Sep 2001 (a), CED - Convention for the Protection of All Persons from Enforced Disappearance signature 06 Feb 2007 ratified 18 May 2011, CEDAW - Convention on the Elimination of All Forms of Discrimination against Women ratified 12 Mar 2001, CERD - International Convention on the Elimination of All Forms of Racial Discrimination ratified 12 Mar 2001 (d), CESC - International Covenant on Economic, Social and Cultural Rights ratified 12 Mar 2001 (d), CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families signature 11 Nov 2004, CRC - Convention on the Rights of the Child ratified 12 Mar 2001 (d), CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict signature 08 Oct 2001 ratified 31 Jan 2003, CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography signature 08 Oct 2001 ratified 10 Oct 2002, CRPD - Convention on the Rights of Persons with Disabilities signature 17 Dec 2007 ratified 31 Jul 2009.

<http://tbinternet.ohchr.org/layouts/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN>

⁸² Only in 2012, the European Court of Human Rights (ECtHR) delivered judgments on 40 applications finding that Serbia had violated rights guaranteed by the European Convention on Human Rights (ECHR). Due enforcement of ECtHR's rulings in cases of compensation of workers from State owned enterprises, for which a decree was taken by the government in March 2012, is needed. See http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf

4.1.1. Civil and political rights

Both the Ombudsman and relevant non-governmental organizations in Serbia claim that some progress has been made in the prevention of torture and ill-treatment of persons deprived of their liberty. They mention poor living conditions, unsatisfactory healthcare and a lack of adequate and specific treatment programs. They also mention that the internal control system for the police needs significant strengthening in terms of staff and training.⁸³

Constitutional guarantees of access to justice are in place. Judicial reform, which is a prerequisite for the realization of this right, is undermined by the effects of the prior reforms. The establishment of the new court network as of 1 January 2014 led to adjournments of trials.⁸⁴ The length of court proceedings and the backlog of cases continue to remain issues of concern.⁸⁵

Equality before the Court and the right to a Fair Trial is enshrined in the Serbian Constitution under Article 36 and “*it guarantees everyone the right to equal protection of their rights in proceedings before courts, other state authorities, entities vested with public powers and provincial and local self-government authorities, as well as the right to file appeals or other legal remedies challenging decisions on their rights, obligations*

⁸³ *Human Rights in Serbia*, Civil Rights Defenders, June 2016, See

<https://www.civilrightsdefenders.org/country-reports/human-rights-in-serbia/>

⁸⁴ “*Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/03/Human-Rights-in-Serbia-2014.pdf>

⁸⁵ As a signatory to the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Serbia is obliged to incorporate and implement, into its system, the provisions stipulated by these international documents, including the provisions regarding fair trials. However, the judiciary system in Serbia is marked by inefficiency – cases are taking too long to be resolved, some even being reconsidered regarding sentencing or under statute of limitations and in some cases not enforcing verdicts, which brings concerns over the functioning of the judiciary and judges impartiality. In the course of one year, courts often have a greater number of received than solved cases, which makes the situation continue to deteriorate year on year. 2014 was marked by a 4-month long lawyers’ strike, which further exacerbated the right to the fair trial in Serbia. *Human Rights in Serbia*, Civil Rights Defenders, June 2016, See <https://www.civilrightsdefenders.org/country-reports/human-rights-in-serbia/>

or lawful interests”.⁸⁶

The legal framework to ensure freedom of expression is in place, but in our research it was pointed out that the media freedom seems to be one of the biggest problems of Serbia's democracy. Freedom of expression deteriorated significantly in 2014. Throughout the year, several political TV shows were cancelled; there was an increase in political and financial pressure on the media, as well as threats of prosecution of journalists and bloggers. This has led to *“a high degree of censorship and self-censorship that completely disables free and critical debate about any of the serious issues in Serbian society”*.⁸⁷

Several working groups have been set up to implement the Media Strategy adopted in October 2011 and its accompanying action plans. In 2014 the set of new Media laws which regulates the media field to a great extent in line with EU standards and regulations have been adopted, but the implementation was marked by problems. Numerous problems that have already surfaced during the almost 16-month-long implementation of the 2014 media laws can be ascribed to the lack of political will to implement them in practice, to the fact that they fail to fully elaborate some of the key areas and to the absence of adequate oversight mechanisms and penalties for violations of their provisions⁸⁸. Although these new laws have been adopted, the implementation into practice is very poor and still problematic. Overall performance of Serbia in the field of media freedom dramatically deteriorated in the last several years as could be seen in the global index on media freedom. Serbia was listed at the 66th place in the world in the

⁸⁶ “Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

⁸⁷ See here interviews with Mr. Janković and Ms. Gaće, Belgrade, Appendix of Evidence

⁸⁸ The National Assembly already amended two of the newly adopted laws in 2015: the Public Information and Media Act – extending the deadline by which the media had to privatized, and the Public Media Services Act – extending the budget funding of the public service broadcasters' core activities. The National Assembly also adopted a Lex specialis – the Act on the Temporary Regulation of Public Media Service License Fee Collection. See also: “World Report 2015: Serbia”, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/serbia/kosovo>

Reporter without the borders list of the freedom of media. Reporters without borders explicitly defined the situation in Serbia as “*European standards still out of reach*”⁸⁹. This is a drop of 7 places compared to the 2016 index⁹⁰.

In practice there are still different kinds of pressures and attacks on media and journalists, as authorities failed to react or strongly respond to them, thus showing a lack of willingness to protect journalists’ rights and media freedoms.⁹¹

The Republic Broadcasting Agency (RBA) has improved the transparency of its work and has enhanced its technical capacity for monitoring broadcasters. However, violence and threats against journalists remain of concern, although their frequency has decreased slightly.⁹² The Serbian authorities have continued to provide police protection for journalists and media outlets which have received threats.⁹³ Investigations into murders of journalists dating back to the late 1990s and early 2000s and into recurring threats against journalists have so far failed to identify the perpetrators. A more comprehensive and proactive approach by the police and the judiciary remains essential. Monitoring of

⁸⁹ “Media freedom has declined ever since 2014. The media work under harsh financial and editorial pressure, and those that are most critical of the government are attacked publicly. The investigative media groups BIRN and CINS, the investigative website KRIK, the daily Danas, and the weekly Vreme are often targeted. “*Hostile*” media are subjected to frequent arbitrary financial and administrative inspections. Three laws complying with European standards on freedom of information were approved with the aim of facilitating admission to the EU but were never put into effect.”, Reporters without borders, 2017 Global media freedom index, See <https://rsf.org/en/serbia>

⁹⁰ Ibid.

⁹¹ See numerous press statements, press releases and appeals issued by the OSCE Representative on Freedom of the media regarding the media freedom and related problems in Serbia, [http://www.osce.org/fom/statements?filters=+im_taxonomy_vid_5:\(289\)&solrsort=ds_date%20desc&rows=10](http://www.osce.org/fom/statements?filters=+im_taxonomy_vid_5:(289)&solrsort=ds_date%20desc&rows=10)

⁹² Journalists continued to face threats, harassment, intimidation, and political and other interference. Between January and August of 2015, the International Journalist Association in Serbia reported five assaults on journalists, three direct threats, and 12 cases of political and other pressure. See also: “*World Report 2015: Serbia*”, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/serbia/kosovo>

⁹³ Four journalists are still living under 24 hour police protection, 24 attacks on journalists occurred throughout 2014, out of which 12 involved physical assaults which led to inconsistent and lenient judicial closures. See “*World Report 2015: Serbia*”, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/serbia/kosovo>

discriminatory or hate speech by the RBA needs to be improved.⁹⁴ The access to advertising in the media remains under the control of a few corporate and political actors, entailing a significant risk of influence on the media and of self-censorship.

Transparency of media ownership has yet to be ensured, therefore “*the situation on the media scene in Serbia looks very chaotic*”.⁹⁵ The implementation of the media strategy needs to be speeded up. Non-transparent government advertising, one of the main tools for exerting pressure on the editorial independence of the media, remains completely unregulated. Serbia ranks first in Europe with 1,400 media outlets, but their number is inversely proportional to the diversity of the sources of information and media programs.⁹⁶ In conclusion, this area remains unregulated despite the formal existence of a legal framework.

Freedom of assembly and association is constitutionally guaranteed and in general respected. The most recent statistic is that by January 2017 there have been 113 political parties registered.⁹⁷ Therefore we cannot say that there are problems related to political pluralism. On the contrary, we may discuss the proliferation of political parties with no significant influence in domestic political life.

The Constitutional Court of Serbia declared the 1992 Public Assembly Act unconstitutional in April 2015. It suspended the publication of its decision for six months

⁹⁴ On several occasions, politicians and religious leaders throughout Serbia used political inflammatory speech and hate speech against other political opponents, human rights organizations, human rights defenders and the international community. Hate speech against Roma and LGBT people have largely increased and are frequently used by political party representatives, religious representatives, extremists groups, several media outlets and individuals. See also *Human Rights in Serbia*, Civil Rights Defenders, June 2016, <https://www.civilrightsdefenders.org/country-reports/human-rights-in-serbia/>

⁹⁵ See here interview with Ms. Gaće, Belgrade, 30 May 2016, Appendix of Evidence

⁹⁶ “*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

⁹⁷ Blic daily, 16. 09. 2016., <http://www.blic.rs/vesti/politika/u-srbiji-registrovano-113-politickih-stranaka/762qnw5>

to give the Ministry of Internal Affairs (MIA) time to draft a new Public Assembly Act, organize a public debate on it and submit it to the National Assembly for adoption. Given that the MIA failed to act on the Constitutional Court's decision within the specified deadline, the Public Assembly Act ceased to be valid on 23 October 2015, when the Constitutional Court decision was published in the Official Gazette. A group of non-governmental organizations and the Protector of Citizens warned that the absence of positive regulations governing the exercise of the freedom of assembly could give rise to situations potentially endangering public law and order and the realization of the freedom of assembly. The draft law was ultimately published in October and put up for public debate. The draft law contains provisions which may be interpreted as amounting to a *de facto* approval system.⁹⁸

A lot of caution needs to be exercised in regulating this area, as there have been instances in which the freedom of assembly was restricted due to the local governments' misinterpretation of their powers and positive regulations.⁹⁹ But not only might the local authorities have an issue with the interpretations of the regulations contained in the draft law, the Minister of Internal Affairs said at a news conference that the police prohibited all five rallies that had been scheduled in front of the National Assembly to mark the 20th anniversary of the Srebrenica genocide.¹⁰⁰ The Minister's practice of publicly prohibiting

⁹⁸ It especially remains unclear how the organizer is to submit information regarding the safe and unobstructed holding of the assembly. The grounds for the prohibition of assemblies in the Draft are the same as the ones in the Act declared unconstitutional by the Constitutional Court. Further-more, they do not correspond fully to the legitimate grounds for restricting the freedom of assembly under the Constitution and the ECHR. See also "*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*", Belgrade Center for Human Rights, <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

⁹⁹ This happened, for instance, to the initiators of "*Let's Not Give/Drown Belgrade*", who were distributing a newsletter by the same name in front of the Belgrade City Assembly in March 2015. They were asked by the communal police to show their IDs and the city communal inspectors later said they had filed misdemeanor reports against them for "*distributing advertising material*" in violation of the law although the assembly had been pre-notified in due time and in accordance with the Act and the material cannot be qualified as advertising under the law. Six rallies were prohibited in the Belgrade, two in the Novi Pazar and one in the Sremska Mitrovica police jurisdictions from January to November 2015. The one complaint filed with the Ministry of Internal Affairs in the period was rejected.

¹⁰⁰ These rallies had been scheduled for the same day, 11 July, but different times by the Serbian Patriotic Movement Zavetnici, the Dveri movement, the NGOs Women in Black and Youth Initiative for Human

assemblies is not laid down in positive regulations.¹⁰¹

The exercise of the freedom of association is governed in greater detail by two different laws, the Act on Associations and the Act on Political Parties.¹⁰² In practice, the freedom of association should also be seen through one of the events which provoke a lot of problems every year, namely the organization of the so-called Pride Parade, as it is also related to our judgment of whether the right to non-discrimination has been violated.

There has been some progress on anti-discrimination policies. Serbia's anti-discrimination legislation is broadly in line with European standards on combating racism and racial discrimination. The Equality Protection Commissioner's office was active in raising awareness on discrimination and existing mechanisms for protection against discrimination.

Although a relatively good legislative framework exists, the Roma and LGBT community remains one of the weakest; most marginalized and discriminated groups who are often exposed to violence.¹⁰³ The highest degree of ethnic animosity among Serbs exists

Rights, the Association of Families of Kidnapped and Missing Persons from 1998 to 2000 and by a private individual Nikola Aleksić. The NGOs had also invited the National Assembly deputies and Government members to take part in the "Seven Thousand" drive on 11 July and thus show their compassion for the Srebrenica victims and human and civic solidarity with their families, together with other citizens of Serbia.

¹⁰¹ "Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards", Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

¹⁰² The Law on associations, Official Gazette of Serbia, No. 51/2009, No. 99/2011, See http://www.paragraf.rs/propisi/zakon_o_udruzenjima.html; The Law on political parties, Official Gazette of Serbia, No. 36/2009, No. 61/2015, See http://www.paragraf.rs/propisi/zakon_o_politickim_strankama.html

¹⁰³ Attacks and harassment against the Roma minority continued. In February 2015, a group of non-Roma attacked members of a Romani nongovernmental organization (NGO) in Novi Sad, northern Serbia. The Roma managed to escape into their office and called police for help, who refused to assist, according to the European Roma Rights Centre (ERRC). In March 2015, four members of the NGO were brutally beaten by two non-Roma carrying sticks. One Roma man received serious head injuries and two others suffered lighter head injuries. In April 2015, around 15 men threw Molotov cocktails at a Romani Protestant church in the village of Bošnjace in southern Serbia, setting fire to the room where church ceremonies are held. Nobody was injured. According to the ERRC, three people were convicted in April

towards Roma, LGBT people and ethnic Albanians. The government is seen both as an institution that is engaged in discrimination as well as the one most responsible for alleviating the problem.¹⁰⁴

The police response to attacks against the LGBT population has slightly improved. Several physical attacks and threats on members of the LGBT population and those promoting LGBT rights continued to occur and the 2011 and 2012 pride parades were banned because of security threats. For the first time, a Pride Day was marked in June 2012 by events co-sponsored by the government and civil society, but the government has taken no further initiative towards the better inclusion of the LGBT population and a greater understanding across society. LGBT people continue to face intolerance, harassment, and in at least one case, physical violence.¹⁰⁵

In December 2011 the Constitutional Court ruled that a decision by the Ministry of the Interior not to allow the 2009 Pride Parade to take place in the location registered by the organizers was a violation of freedom of assembly. However, while a Pride festival could take place in Belgrade from 30 September to 7 October 2012, the Pride Parade itself, scheduled for 6 October 2012, was banned by the Serbian authorities on security grounds, for the second year in a row. “*Security grounds*” actually referred to the threats posed by activities of extreme right-wing organizations and of violent groups of sports hooligans,

in connection with the attack and sentenced to 30 days in prison. See “*World Report 2015: Serbia*”, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/serbia/kosovo>

¹⁰⁴ “*World Report 2015: Serbia*”, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/serbia/kosovo>; *Human Rights in Serbia*, Civil Rights Defenders, June 2016, See <https://www.civilrightsdefenders.org/country-reports/human-rights-in-serbia/>

¹⁰⁵ In September 2015, a 27-year-old German LGBT activist was brutally beaten by a group of men and suffered serious injuries that required hospitalization. Police arrested three suspects. In April, the Gay-Straight Alliance received repeated emails calling for the murder of LGBT people and cleansing of LGBT organizations in Serbia. Three weeks prior, Gay-Straight Alliance members received death threats over the phone. A local LGBT group reported that the police had failed to identify the perpetrators. In February, the Commissioner for Equality, Nevena Petrušić, issued an opinion that held that the Belgrade Boško Buha theatre discriminated against a gay magazine by refusing to allow it to have information about one of its shows for publication. See “*World Report 2015: Serbia*”, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/serbia/kosovo>

which continue to be a major cause of concern.¹⁰⁶

The May Belgrade Pride March, which had been cancelled for three consecutive years due to alleged security reasons, was held in late September 2015, amid heavy police security, and was attended by 1,000-1,500 people, including three Serbian ministers, the European Union representative in Serbia, and several foreign diplomats. No violence against LGBT supporters was reported.¹⁰⁷

Discrimination of Roma is most visible in areas of employment, education¹⁰⁸, and health care and housing. The lack of personal documents continues to be a problem, mostly among the forcibly displaced Roma from Kosovo, hindering their ability to enjoy fundamental human rights. Cases in which the LGBT population is discriminated against are still very common in Serbia, and responses by relevant state bodies continue to be inadequate.¹⁰⁹

The freedom of thought, conscience and religion is guaranteed and generally respected.¹¹⁰ The Constitution of Serbia states that Serbia is a secular state and treats the separation of

¹⁰⁶ The Constitutional Court banned one such organization in June 2012. Criminal proceedings were initiated in April 2012 against 12 persons suspected of having taken part in the attacks of foreign diplomatic missions in Belgrade, including embassies of US and Germany, in February 2008. So far, one of the suspects was acquitted in first instance.

¹⁰⁷ “*World Report 2015: Serbia*”, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/serbia/kosovo>

¹⁰⁸ The educational levels of various ethnic communities are extremely divergent as well – e.g. 87% of the Roma population has incomplete primary education or only primary education and less than 1% has completed higher education. The educational breakdown of persons with disabilities is also unfavorable: 52.7% of them over 15 years of age have not completed primary school or have no more than primary education and only 6.5% have completed higher education. See “*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

¹⁰⁹ Human Rights in Serbia, Civil Rights Defenders, June 2016, See <https://www.civilrightsdefenders.org/country-reports/human-rights-in-serbia/>

¹¹⁰ The right to freedom of thought, conscience and religion is enshrined in Article 9 of the ECHR and Article 18 of the ICCPR. Under these Articles, everyone shall freely manifest the belief or religion of his choice whilst the freedom to manifest one’s beliefs or religion may be subject only to such limitations as are prescribed by the law.

church and state at the level of constitutional principles, i.e. prohibits the establishment of a state or mandatory religion (Art. 11). The Constitution also enshrines the right to freedom of thought, conscience and religion, i.e. guarantees the right to stand by or change one's religion or belief by choice (Art. 43).¹¹¹

In addition to 7 religious communities recognized as traditional communities under a law passed in 2006, 18 religious organizations have been registered. The lack of transparency and consistency in the registration process continues to be one of the main obstacles preventing some smaller religious groups from exercising their rights, which also led to limit the access to church services in some minority language. The Constitutional Court ruling on the 2006 law which differentiates between traditional and other religious organizations is still awaited.

4.1.2. Economic and social rights

Serbia signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in April 2012.¹¹² However, violence against women remains an area of concern. The action plan for the implementation of the National Strategy for Prevention and Suppression of Violence against Women has yet to

¹¹¹ Although the freedom of religion is unlimited *per se*, the Constitution lays down when the manifestation of religious beliefs may be restricted. Freedom of manifesting a religion or a belief may be restricted by law only if that is necessary in a democratic society to protect the lives and health of people, morals of a democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent incitement of religious, national, and racial hatred. The Constitution also lays down that no-one is obliged to declare his religion or beliefs and guarantees parents the right to freely decide on their children's religious education and upbringing. The freedom of religious organization is governed in the provisions. The administrative duties regarding the state's cooperation with churches and religious communities are performed by the Ministry of Justice Directorate for Co-operation with Churches and Religious Communities. See "*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*", Belgrade Center for Human Rights <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

¹¹² A general protocol on procedures and cooperation between institutions, agencies and organizations in situations of domestic and partner-relationship violence was adopted in November 2011. The protocol aims to provide better protection for victims. A telephone helpline for victims of domestic violence was introduced in November 2011. A new shelter for up to 20 victims of domestic violence was opened in Pančevo in January 2012, bringing the number of such centers to 13.

be adopted. Very often, domestic violence goes unreported and greater coordination is needed on collecting and sharing data between all actors in the system for protecting women from violence. Women continue to be discriminated against in the labor market.

Children's rights are guaranteed by the Constitution and broadly respected. There has been a steady reduction in the number of children with disabilities placed in residential care institutions and an increase in the availability of community services for family members with disabilities. However, both juvenile violence and violence against children continue to grow and are of great concern. Children's rights, particularly the rights of those belonging to vulnerable groups such as Roma, poor children, children with disabilities, children without parental care, and homeless children, are unevenly protected. There are an increasing number of children living in poverty. Inclusive education is still not fully developed. The school drop-out rate is high among Roma children, children with disabilities and children living in remote areas. Too many Roma children are still being enrolled in special schools. The overall legislative framework is in place for the protection, inclusion and education of socially vulnerable persons and persons with disabilities. However, the number of vulnerable persons registered with the National Employment Service (NES) remains extremely low. Overall, social integration of persons with disabilities remains limited¹¹³.

Labor and trade unions rights are guaranteed by the Constitution and broadly respected. The 1996 Law on Strike is not in line with the EU and ILO standards, in particular as regards possible restrictions to the right to strike. Criteria for social partners' representation in social dialogue are still an issue: several registered trade unions are still not recognized and concerns remain as to the criteria for participation of employers' organizations. Social dialogue remains limited.¹¹⁴

¹¹³ See more in "Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards", Belgrade Center for Human Rights, <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

¹¹⁴ Ibid.

A new law on strikes is long overdue. The Draft Strike Act, prepared back in 2011, was aligned with ILO Conventions. The Draft has not entered the parliament pipeline yet although a public debate on it was organized in July 2013. Under the valid Strike Act, the right to strike is limited by the obligation of the strikers' committee and workers participating in the strike to organize and conduct a strike in a manner ensuring that the safety of people and property and people's health are not jeopardized, that direct pecuniary damage is not inflicted, and that work may resume upon the termination of the strike. The Act also establishes a special strike regime: "*in public services or other services where work stoppages could, due to the nature of the service, endanger public health or life, or cause major damage*", but does not specify these services.¹¹⁵

4.1.3. Respect for and protection of minorities

A comprehensive legal framework for the protection of minorities is in place, in line with the Framework Convention on National Minorities of which Serbia is a party to, and is generally respected. A Governmental Office for Human and Minority Rights was established as of August 2012, taking over the functions ensured by the previous Directorate within the Ministry for Human and Minority Rights, Public Administration and Local Self-Government. Regular financial reports by the national minority councils to the Office for Human and Minority Rights have been introduced.

The Republic Council for National Minorities has remained inactive since its establishment until today. The legislation is in place but implementation at field level remains uneven throughout the entire territory of Serbia. Further improvements are also needed regarding information and education in minority languages, including the provision of all the necessary textbooks. This was one of the main issues discussed in the

¹¹⁵ Ibid.

bilateral meeting between President of Croatia and at that time Prime minister of Serbia on 20 June 2016, while signing the Declaration on the improvement of bilateral relations¹¹⁶.

As regards the municipalities of Preševo, Bujanovac and Medveđa, the situation continued to be stable overall, although there were sporadic incidents. An Albanian/Serbian Department of Economics was opened in Bujanovac in October 2011. In April 2012 the government and the municipal authorities reached an agreement on state investment in small and medium-sized enterprises in the three municipalities. Following calls by their political parties, Albanians, however massively boycotted the October 2011 population census and partially boycotted the May 2012 parliamentary elections. Albanians continue to be underrepresented in the public administration and local public companies. The area remains among the poorest in Serbia and requires further commitment from the State authorities for its economic development.

Regarding the Sandžak area, the situation has been stable overall. A 2011 recommendation to a municipal administration by the Equality Commissioner to ensure the use of the Bosnian language and Latin alphabet has not been followed. The Ombudsman also issued recommendations in April 2012 to ensure adequate use of the Bosnian language in four municipalities. Still, after five years, there was no substantial improvement in practice. The area remained significantly underdeveloped, with a high unemployment rate and a lack of adequate infrastructure and investment. It requires further commitment from the State authorities for its economic development.

The government response to the existing tensions between the minority communities (Bosniak and Albanian) was rather poor. We have not witnessed engaged leadership in

¹¹⁶ Radio television of Serbia reporting, 20. 06. 2016., See <http://www.rts.rs/page/stories/sr/story/9/politika/2358257/sastanak-vucic-i-grabar-kitarovic.html>, <http://rs.n1info.com/a170207/Vesti/Vesti/Deklaracija-o-unapredjenju-odnosa-i-resavanju-otvorenih-pitanja-Srbije-i-Hrvatske.html>

Belgrade which would try to discuss thoroughly the situation, the causes for obvious dissatisfaction of these national minorities. This could be illustrated by recent statements of one of the political leaders among Albanians in Serbia, Jonuz Musliu, president of the National Council of Albanians in Preševo, claiming that he does not respect authorities in Belgrade and that his president is not Aleksandar Vučić but it is actually Edi Rama, the prime minister of Albania¹¹⁷. There have been tensions also in the Sandžak region, very often exchange of harsh statements between the local political leaders who are representing minority communities and the political leaders in Belgrade. Most often the reaction in Belgrade would be public defamation. Sometimes, we have noticed attempts to include local minority community leaders in the central authorities, appointing them as ministers without portfolio or as Secretary of State. Though positive, these actions were limited to the pacification of their voices rather than to more decisively engage with them in improving economic, social and political situation in the areas minority communities live. The minority community leaders who joined the government, most often used the tenure to strengthen their influence in the community, to provide some jobs to their entourage, but rarely to efficiently provide benefits for the communities and regions on whose behalf they were elected.

There has been some improvement in the position of the Roma population, also thanks to the increased support by EU¹¹⁸. Different measures have been implemented by the government in order to improve the inclusion of the Roma. The enrolment rate of Roma children in the education system has increased. The school drop-out rate for Roma children remains higher, however. Most of the Roma population lives in informal settlements under difficult conditions. Some positive steps to comply with international

¹¹⁷ See statements by Jonuz Musliu for Prva TV, presented also in the Danas daily, http://www.danas.rs/politika.56.html?news_id=344458&title=Musliu%3a+Naravno+da+je+Rama+moj+p+redsednik%2c+ne+Vu%c4%8di%c4%87

¹¹⁸ Only in 2012, the EU continued to implement four projects under the IPA programme to support anti-discrimination policies and to improve the situation of vulnerable people, including Roma people, refugees and internally displaced persons, with a total value of EUR 16.5 million. See, Serbia Progress Report 2012, European Commission staff working document, Brussels, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf

standards were taken regarding the relocation of Roma evicted from such informal settlements. The Roma population, and especially Roma women, is the group most discriminated against in the labor market. The Roma minority continues to face discrimination, social exclusion and high unemployment. Roma women and children are still frequently subject to domestic violence, which often goes unreported.

As the Roma Decade was completed in 2015, the Government of Serbia has offered to host the Roma integration 2020 Action Team, regional office established by the Regional Cooperation Council and sponsored by the European Commission and the Open Society Foundations. The regional Roma integration 2020 Action Team is based in Belgrade as of April 2016 and has organized the first ever public hearing in the Parliament of Serbia regarding the implementation of the national strategy for the inclusion of the Roma in September 2016. In practice, there are many problems related to the inclusion of Roma community on one hand and one can notice resentment and incidents motivated by the racist attitude towards members of Roma community, on the other hand¹¹⁹.

According to the UNHCR, there are around 66.000 refugees and 210.000 internally displaced persons (IDPs) in Serbia. The programme for supporting municipalities which prepare local action plans for the improvement of the status of refugees and IDPs has continued and some improvement has been recorded concerning the displaced persons' housing situation. However, the living conditions of many refugees and internally displaced persons are still difficult. Many are unemployed and live in poverty. Internally displaced persons who do not have personal documents are in a particularly difficult position as they are not able to exercise their basic rights.

In the first eight months of 2014, Serbia registered 6,974 asylum seekers, a significant

¹¹⁹ See article in Blic daily about the Roma boy beaten up by teenagers in the school, <http://www.blic.rs/vesti/hronika/rom-ne-moze-da-nosi-srpsku-zastavu-sedmaka-iz-beograda-vrsnjaci-davili-i-tukli-uz/3j61e58>

increase from 2,567 during the same period in 2013. Syrians comprised the largest national group (3,696 people). In 2014, three new reception centers opened in Serbia, adding to the existing two. For the first time since it assumed responsibility for the asylum procedure in 2008, the Asylum Office granted refugee status to one asylum seeker and subsidiary protection to three others. But its asylum procedures remain inadequate, with thousands of pending claims. By September, there were 96 unaccompanied migrant children registered in Serbia. According to the United Nations High Commissioner for Refugees (UNHCR), there are no formal age assessment procedures for unaccompanied migrant children, putting them at risk of being treated as adults and not receiving special protection. Guardians appointed to represent the interest of unaccompanied children are not sufficiently trained to accommodate their needs and rarely visit them after first contact. Serbian authorities made little progress towards finding a long-term solution for refugees and internally displaced persons (IDPs) from the Balkan wars living in Serbia. According to data from UNHCR, as of July there were 44,251 refugees in Serbia, most from Croatia, and as of September, 204,049 IDPs, the majority of whom are from Kosovo.¹²⁰

In its 2014 progress report on Serbia, the European Commission very clearly expressed its comments on the human rights situation in some of the areas we have touched upon here. Namely, the EC stated that the legal framework for the protection of minorities is broadly in place, but its consistent implementation across the country needs to be ensured, notably in the areas of education, use of languages, and access to the media and to religious services in minority languages¹²¹. Positive measures taken to ameliorate the situation of the Roma need to be improved, particularly when it comes to education, housing and employment. Further sustained efforts are needed to improve the situation of

¹²⁰ “*World Report 2015: Serbia*”, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/serbia/kosovo>

¹²¹ European Commission: “Serbia Progress Report”, 10 October 2014, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

refugees and displaced persons¹²². The Pride Parades, which took place in Belgrade in 2014, 2015 and 2016, without major incident, are an important milestone towards the effective exercise of human rights in general and LGBTI rights in particular.

4.2. Human rights related chapters of Serbia's accession to the EU

In the previous chapter we have explained in detail that the legislative and institutional framework for observance of international human rights laws in Serbia is in place. What is needed is sustained effort by the Serbian authorities to ensure its implementation. The accession negotiations with the EU present the right opportunity to improve the level of respect and implementation of the existing human rights infrastructure. Some of the chapters (out of, in total, 35 negotiations chapters in Serbia's EU accession) are directly related to achieving higher standards in the implementation, preservation, respect and protection of the human rights. This opportunity should not be missed and all partners in the process should do their best to make this happen, for the benefit of the people of Serbia.

For the purpose of this paper, for the purpose of the improvement of the human rights situation in Serbia, accession negotiations on Chapter 23, "*Judiciary and fundamental rights*"¹²³ and Chapter 24, "*Justice, freedom and security*"¹²⁴ are the most relevant.

¹²² Ibid.

¹²³ "EU policies in the area of judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. The establishment of an independent and efficient judiciary is of paramount importance. (...) This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. (...) Member States must fight corruption effectively, as it represents a threat to the stability of democratic institutions and the rule of law. (...) Member States must ensure respect for fundamental rights and EU citizens' rights, as guaranteed by the *acquis* and by the Fundamental Rights Charter." See https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

¹²⁴ "EU policies aim to maintain and further develop the Union as an area of freedom, security and justice. On issues such as border control, visas, external migration, asylum, police cooperation, the fight against organized crime and against terrorism, cooperation in the field of drugs, customs cooperation and judicial cooperation in criminal and civil matters (...)." See https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

Although the media situation will most probably be discussed under the Chapters 23, it may happen that some elements will also be discussed while negotiating Chapter 10, “*Information society and media*”¹²⁵.

Besides that, we may expect that under the Chapter 19, “*Social policy and employment*”¹²⁶, there will be discussion related to the respect of some economic and social rights. Also, under the Chapter 26, “*Education and culture*”¹²⁷, it is to be expected that the neighbors of Serbia might raise issues related to the respect of the representatives of their ethnicity, meaning those belonging to national minorities in Serbia, most specifically their rights on education in their own language.

Respecting a fact that in the case of Serbia, there is Chapter 35, “*Other issues – Item 1: normalization of relations between Serbia and Kosovo*”, we tend to believe that the progress in all other accession negotiations chapters will be, in a way, seen through the implementation of all of it in Chapter 35.

From what we have observed so far, particularly while checking the progress reports (country reports) prepared by the European Commission on Serbia, we may expect that under the Chapter 19, following issues are going to be negotiated and hopefully the situation will have to be improved regarding: the youth, the unemployed with low qualifications, and workers made redundant from companies due to restructuring; key challenges in employment policy and social policies; youth unemployment; the most

¹²⁵ The *acquis* includes specific rules on electronic communications, on information society services, etc. See https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

¹²⁶ The *acquis* in the social field includes minimum standards in the areas of labor law, equality, health and safety at work and anti-discrimination. See https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

¹²⁷ The areas of education, training, youth and culture are primarily the competence of the Member States. See http://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

vulnerable groups and the groups with a high incidence and persistence of unemployment, including the Roma; the area of social inclusion and access to employment, etc.¹²⁸

During the negotiations on Chapter 23, the greatest number of human rights issues will have to be negotiated, like for instance: judicial independence, impartiality and accountability, professionalism, competence and efficiency; and the issue of war crimes.¹²⁹

In the field of anti-corruption: institutions and policy, and international and domestic legal frameworks will have to be brought to terms. Regarding fundamental rights: human dignity, respect of and the right to life and to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery, servitude, and forced or compulsory labor; respect for private and family life and communications; the right to marry and the right to found a family; freedom of thought, conscience and religion; freedom of expression including freedom and pluralism of the media; freedom of assembly and association, including freedom to form political parties and the right to establish trade unions; treatment of socially vulnerable and disabled persons and principle of non-discrimination; right to education, right to property, gender equality and women's rights and rights of the child will be observed, discussed in detail, and the situation will hopefully have to be improved in order for Serbia's laws and practices to fulfill the requests of EU *acquis*.¹³⁰ We would expect that the negotiations on the legal framework will also be discussed against the background of existing practices.

Furthermore, so-called procedural safeguards will be negotiated within the Chapter 23, namely: liberty and security, right to a fair trial, respect for and protection of minorities

¹²⁸ European Commission: “*Serbia Progress Report*”, 10 October 2014, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

¹²⁹ European Commission: “*Screening Report Serbia, Chapter 23 – Judiciary and Fundamental Rights*”, Brussels, 15 May 2014, <http://www.europa.rs/upload/2014/Screening-report-chapter-23-serbia.pdf>

¹³⁰ Ibid.

and cultural rights, measures to combat racism and xenophobia and the protection of personal data¹³¹. Eventually, this chapter will be completed with the implementation of the EU *acquis* regarding so-called EU citizen rights: right to vote and stand as a candidate in elections to the European Parliament, right to vote and stand as a candidate in municipal elections, right to move and reside freely within the European Union, and diplomatic and consular protection.¹³²

Negotiations under Chapter 24 will provide for the assessment of the degree of Serbia's alignment and implementing capacity in the field of migration and asylum rights; visa policy and the protection of external borders and Schengen, judicial cooperation in civil, commercial and criminal matters; police cooperation and the fight against organized crime; the fight against terrorism; cooperation in the field of drugs, customs cooperation and counterfeiting of the euro.¹³³

What the situation is at the moment regarding most of these issues, we may see in the resolution of the EU Parliament on Serbia¹³⁴. It presents clearly what the most pressing issues related to Serbia's accession are, and indirectly it also reflects on the rule of law, the status of democracy, the human rights and minority rights situation, as well as the freedom of the media in Serbia. In its resolution of 4 February 2016 on the 2015 report on Serbia¹³⁵, the European Parliament:

“emphasizes the key importance of the principles of the rule of law; stresses the vital importance of an independent judiciary; notes that, while some progress has been made in the area of judiciary, political interference remains high; (...) calls on the authorities to implement the national judicial reform strategy as set out in

¹³¹ European Commission: “Screening Report Serbia, Chapter 23 – Judiciary and Fundamental Rights”, Brussels, 15 May 2014, <http://www.europa.rs/upload/2014/Screening-report-chapter-23-serbia.pdf>

¹³² Ibid.

¹³³ Ibid.

¹³⁴ European Parliament Resolution of 4 February 2016 on the 2015 report on Serbia (2015/2892(RSP), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP8-TA-2016-0046%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

¹³⁵ Ibid.

*the action plan for Chapter 23 and to ensure independence of the judiciary and that the work of judges and prosecutors is free from political influence; (...) and urges Serbia to make further steps in order to increase confidence in the judiciary”.*¹³⁶

Furthermore, the European Parliament:

*“expresses concern that no progress has been made to improve the situation regarding freedom of expression and of the media; notes with concern the continuous political pressure which undermines media independence, resulting in growing self-censorship by media outlets; is concerned that journalists face political pressure, intimidation, violence and threats; (...) calls on the authorities to investigate all cases of attacks against journalists and media outlets, which have prompted strong protests by the International Association of Journalists; reiterates that the new media laws need to be implemented in full; emphasizes the need for complete transparency in media ownership and funding of media, as well as non-discrimination as regards state advertising”.*¹³⁷

The draft of the new resolution for 2017 (reflecting on the progress made in 2016) has been prepared by the rapporteur on Serbia, German politician and member of the EU Parliament, David McAllister¹³⁸. The practice is that the draft is discussed in the EU Parliament committees and eventually put to vote before the Parliament. This provides for MEPs coming from different political and national background to discuss the situation, comment on the progress Serbia has achieved, in particular on the chapters opened or soon to be opened. This is why these resolutions also point to the relevance of the negotiation process for the overall human rights climate in the country.

¹³⁶ Ibid., Art. 8

¹³⁷ Ibid., Art. 19

¹³⁸ In the meantime, Mr. McAllister has been elected president of the Foreign Policy Committee of the European Parliament (so called AFET).

Let us for the moment reflect on the resolution of the European Parliament, using several research interviews we have done, which are presented here in the Appendix of Evidence. Our interlocutors have most often mentioned that they would expect concrete results in the negotiations of the Chapter 23 regarding the improvements in the fields of media freedom, fight against corruption, rule of law and judiciary reform¹³⁹, improvement of minority rights¹⁴⁰, non-discrimination regulations and Roma rights.¹⁴¹

Looking into the content of the EU Parliament Resolution on Serbia, we may observe that there is a high level of compliance between the position of our interlocutors and MEPs. The European Parliament

- *“is concerned by the lack of progress in the fight against corruption”*;¹⁴² and it
- *“notes that further sustained efforts are needed to improve the situation of persons belonging to vulnerable groups, including Roma, persons with disabilities, persons with HIV/AIDS, LGBTI persons, migrants and asylum seekers, and ethnic minorities”*;¹⁴³
- *“Reiterates its concern that no progress has been made to improve the situation regarding freedom of expression and self-censorship of the media, which is a worsening phenomenon; stresses that political interference, threats, violence and intimidation against journalists, including physical assaults, verbal and written threats and attacks on property remain an issue of concern.”*¹⁴⁴

Ms. Petrović expressly said that she expects most of the work to be done in the context of the Chapter 23 negotiations, as the media situation and the freedom of expression are

¹³⁹ Interview with Ms. Bobić, Belgrade, 26 May 2016, Appendix of Evidence

¹⁴⁰ Interview with Ms. Mišćević, Belgrade, 27 May 2016, Appendix of Evidence

¹⁴¹ Interview with Ms. Bobić, Belgrade, 26 May 2016, Appendix of Evidence

¹⁴² Art. 11, European Parliament Resolution on the 2016 Commission Report on Serbia (2016/2311(INI)), Committee on Foreign Affairs, Rapporteur: David McAllister, 22.3.2017., Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2017-0063+0+DOC+PDF+V0//EN>

¹⁴³ Ibid., Art. 19

¹⁴⁴ Ibid., Art. 20.

the key problem: “*most of the media are directly or indirectly influenced by the state*”¹⁴⁵.

*“Whoever comes into power after elections is trying to control and influence the media. Media laws are not good. The situation regarding the privatization of the media is absurd. Local media have been privatized either by the party members or by tycoons. Therefore the situation is worse than it was.”*¹⁴⁶

Although she expressed more nuanced views, eventually Ms. Gaće joined the conclusion that “*most of the media have been privatized by the ruling parties*”¹⁴⁷.

When it comes to how Ms. Mišćević approaches corruption related problems, we would say that she is in full compliance with the positions expressed by the European Parliament in the resolution mentioned. Ms. Mišćević stated that “*in some areas corruption became systemic; for instance in education, health and police*”. She added:

*“This is why it is important to go through Chapter 23 and to push it further in the process of negotiations.”*¹⁴⁸

Ms. Petrović also points out issues related to corruption, but she believes that it should not be discussed solely in the context of Chapter 23, but also in the chapter dealing with public procurement; therefore she claims there is a need to “*link negotiations on different chapters in order to be able to improve human rights situation as a whole*”¹⁴⁹.

To sum up, we would say that there are increased expectations that the negotiations with the EU in the accession process will increase respect for human rights in the country in some specific areas and that most of these expectations are related to the negotiations on Chapters 23 and 24.

¹⁴⁵ Interview with Ms. Petrović, Belgrade, 30 May 2016, Appendix of Evidence

¹⁴⁶ Interview with Ms. Petrović, Belgrade, 30 May 2016, Appendix of Evidence

¹⁴⁷ Interview with Ms. Gaće, Belgrade, 30 May 2016, Appendix of Evidence

¹⁴⁸ Interview with Ms. Mišćević, Belgrade, 27 May 2016, Appendix of Evidence, see also interview with Ms. Aračkić, Belgrade, 27 May 2016, Appendix of Evidence

¹⁴⁹ Interview with Ms. Petrović, Belgrade, 30 May 2016, Appendix of Evidence

European Parliament again stressed explicitly how highly it regards the work of the NHIs in Serbia and its expectation from the government in Serbia to pay more respect to their work and to fully support them. European Parliament

“Reiterates the importance of independent regulatory bodies such as the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, the State Audit Institution, the Anti-Corruption Agency and the Anti-Corruption Council in ensuring oversight and accountability of the executive; stresses the need for transparency and accountability of state institutions; calls on the authorities to fully protect the independence of these regulatory bodies, to provide full political and administrative support for their work and to ensure proper follow up of their recommendations; calls on the authorities to refrain from accusations and unfounded political attacks directed at the Ombudsman.”¹⁵⁰

5 National Human Rights Institutions

The ombudsman institution derives from the original Scandinavian model dealing mainly with individual legal protection, with particular focus on the handling of complaints of administration.¹⁵¹ As ombudsman institutions are typically single-member institutions, they encounter difficulties with regard to the pluralism requirement. They have to secure pluralism in other ways, for example, through governing bodies or the election system. At times ombudsmen have specifically defined mandates in a system of interrelated institutions, for example in the areas of discrimination, children’s rights or data

¹⁵⁰ Art. 17, European Parliament Resolution on the 2016 Commission Report on Serbia (2016/2311(INI)), Committee on Foreign Affairs, Rapporteur: David McAllister, 22.3.2017., Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2017-0063+0+DOC+PDF+V0//EN>

¹⁵¹ Report of the United Nations Secretary-General to the UN General Assembly, A/64/320, 24 August 2009, para 109. See http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

protection.¹⁵²

As previously mentioned, the Paris Principles require that NHRIs be established by a constitutional or other legislative act. Three additional factors operate to ensure independence: firstly, pluralism in the composition of an NHRI, secondly, a suitable infrastructure (in particular adequate funding and budget autonomy) and thirdly, a stable mandate of the NHRI's members expressed through appointment and dismissal conditions and the exclusion of voting rights for government representatives within governing bodies of NHRIs.¹⁵³

As reaffirmed in a 2006 UN General Assembly Resolution, “*national institutions have a crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights*”. Therefore states should ensure that “*all human rights are appropriately reflected in the mandate of their national human rights institutions when established*”. In such a way, the indivisibility and interdependence of all human rights – as stressed in paragraph 5 of part I of the Vienna Declaration and Programme of Action – can be ensured.¹⁵⁴

NHRIs should play an active role in the prevention of all human rights violations. On this note, it has been recognized that monitoring places of detention contributes to the prevention of torture. Further, the UN General Assembly encouraged governments to provide NHRIs with “*more autonomy and independence, such as by giving them an*

¹⁵² http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf,

¹⁵³ Report of the United Nations Secretary-General to the UN General Assembly, A/64/320 24 August 2009, para 109-110. See also UN OHCHR (2009) Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide, pp. 52-53. See http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

¹⁵⁴ UN General Assembly (2006) National institutions for the promotion and protection of human rights, A/RES/60/154 (23.02.2006), para 5. See: UN Commission on Human Rights (2005) National Institutions for the Promotion and Protection of Human Rights, Resolution 2005/74 (20.04.2005). See also UN OHCHR (2009) Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide, pp. 4, 32, 49, 51, 54-55. See http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

investigative role or enhancing such a role".¹⁵⁵

Ombudsman institutions are not always explicitly mandated to cooperate with civil society and usually do not do so on a systematic or regular basis. However, they normally liaise with civil society in order to receive information for their individual case-work or to inform the public about their work.¹⁵⁶ None of the ombudsman institutions possess an explicit mandate to promote international treaties; however, the Ombudsmen's recommendations frequently encourage states to become party to treaties.¹⁵⁷ Many NHRIs engage in various forms of human rights education, awareness-raising, and research. All of the Commissions are mandated to promote awareness and understanding of human rights and regard this as one of their core functions.¹⁵⁸

Ombudsman institutions are typically not explicitly mandated to engage in human rights education or awareness-raising but they nevertheless do so at times, for example, through information on their mandate (such as how to file a complaint) or by giving lectures and engaging in other forms of activities.¹⁵⁹

5.1. National Human Rights Institutions in Serbia

Independent human rights protection authorities have been operating in Serbia for a number of years now. The Commissioner for Information of Public Importance and Personal Data Protection was elected in December 2004 under the Free Access to Information of Public Importance Act and his remit was extended to personal data

¹⁵⁵ UN General Assembly (2006) National institutions for the promotion and protection of human rights, A/RES/60/154 (23.02.2006), para 9: "*Notes with satisfaction the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps.*" See http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

protection when the Personal Data Protection Act (PDPA) came into force in 2009.¹⁶⁰ The National Assembly re-elected Mr. Rodoljub Šabić in 2011.

Mr. Saša Janković was elected Protector of Citizens in 2007 pursuant to The Law on the Protector of Citizens,¹⁶¹ and was re-elected in 2012.

The Anti-Corruption Agency Act¹⁶² was adopted in 2008; the members of the Agency Council were elected in March 2009 and the Agency Director and Deputy Director were appointed in July, the same year. The new Director and Deputy Director were appointed in 2013 (Ms. Tatjana Babić and Mr. Vladan Joksimović).

Ms. Nevena Petrušić was appointed Commissioner for the Protection of Equality in May 2010 to a five-year term in office, pursuant to the Anti-Discrimination Act.¹⁶³

Although all these independent authorities have faced a number of difficulties since they were established (primarily lack of office space and staff that would enable them to operate at full steam) they have won public trust over time and improved their operations. They, however, still face some obstacles, and the law needs to be amended to strengthen their roles.¹⁶⁴

¹⁶⁰ Official Gazette of Serbia, No. 97/08, No. 104/09, No. 68/12 – Constitutional court decision, 107/12, See “*Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-2014.pdf>

¹⁶¹ Official Gazette of Serbia, No. 79/05, No. 54/07. See “*Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-2014.pdf>

¹⁶² Official Gazette of Serbia, No. 97/08, No. 53/10, No. 66/11 – Constitutional court of Serbia, decision 67/13 – Constitutional court of Serbia, decision 112/13 – authentic interpretation. See “*Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-2014.pdf>

¹⁶³ Official Gazette of Serbia, No. 22/09. See “*Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-2014.pdf>

¹⁶⁴ “*Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp->

Independent human rights protection authorities submit their annual reports to the National Assembly of the Republic of Serbia, but the follow-up on their recommendations is quite limited. The competent parliamentary committees hardly ever review these reports within the 30-day deadline set by the Assembly Rules of Procedure. The report review process ends with the National Assembly issuing conclusions or recommendations proposed by the competent committees, but there is no mechanism to make them binding on those public authorities or actors they refer to. In its conclusions, the National Assembly requires of the Government to submit follow-up reports within six months, but this practice has not taken root yet, therefore a procedure needs to be put in place for overseeing the implementation of the National Assembly conclusions and, if necessary, taking measures against those who failed to implement them without good cause.¹⁶⁵

5.1.1. The Protector of citizens – Ombudsman

The Protector of Citizens is an independent and autonomous body, responsible for the protection and promotion of rights and liberties.¹⁶⁶ The immunity enjoyed by the Protector of Citizens enables the independence of his/her work. The Protector of Citizens focuses particularly on the protection of: national minority rights, children rights, rights of disabled persons, rights of people deprived of liberty and gender rights.¹⁶⁷ Having in mind such a definition of competences as expressed by this law establishing the Ombudsman/Protector in Serbia, we would like to join Mr. Janković, who rightly says

<content/uploads/2015/03/Human-Rights-in-Serbia-2014.pdf>

¹⁶⁵ Ibid.

¹⁶⁶ “The Protector of Citizens is hereby established, as an independent body that shall protect the rights of citizens and control the work of government agencies, the body authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organizations, enterprises and institutions which have been delegated public authority (hereinafter: administrative authorities).

The Protector of Citizens shall also ensure that human and minority freedoms and rights are protected and promoted.” Art. 1 of The Law on the protector of citizens, “Official Gazette of Serbia”, No. 79/2005, No. 54/2007.

¹⁶⁷ Home page of The Protector of Citizens – Ombudsman of Serbia,

http://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=3&Itemid=24

that the respect for human rights is not something static: “*there is always change; the expectations of people go further*”¹⁶⁸.

The Protector of Citizens controls, by checking the allegations of complaints or acting at own initiative, whether state administration bodies, the Republic Public Attorney, bodies or organizations exercising public authority treat the citizens of Serbia in accordance with the laws and other regulations of the Republic of Serbia or in compliance with the principles of good administration.¹⁶⁹

The role of the institution of the Protector of Citizens, defined by the Constitution of the Republic of Serbia and the Law on the Protector of Citizens, is to constantly influence the respect of human liberties and rights by personal and institutional authority. By the power of argument, the Protector of Citizens should persuade the authority that an error has been committed, and that it is necessary to rectify it and change the relevant practice.¹⁷⁰

Pursuant to the Protector of Citizens Report, the National Assembly, inter alia, charged the Government with adopting laws and other regulations as soon as possible, with a view to achieving the goals in the national Public Administration Reform Strategy adopted in January 2014. The Assembly underlined that the Government should and has to adhere to the recommendations, to initiatives and opinions the Protector of Citizens addressed to it and act on his recommendations. It called on the Government to review the Law on the Protector of Citizens and submit to it for adoption amendments aligning the legal framework governing the work of the Protector of Citizens to the needs identified in his work so far. The recommendations also state that the Government has to enact regulations ensuring the right to a trial within a reasonable time, and obligated the Government to

¹⁶⁸ Interview with Mr. Janković, Belgrade, 26 May 2016, Appendix of Evidence

¹⁶⁹ Home page of The Protector of Citizens – Ombudsman of Serbia,
http://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=3&Itemid=24

¹⁷⁰ Ibid.

continue efforts to improve the status of persons deprived of liberty.¹⁷¹

The office of the Ombudsman/Protector is internally organized in such a way that there are four deputies who are responsible for different fields of the Protector's competencies: Deputy Protector of Citizens for Children's Rights and Gender Equality; Deputy Protector of Citizens for the Rights of Persons with Disabilities; Deputy Ombudsman for the Rights of National Minorities and Deputy Protector of Citizens for the Protection of Rights of Persons Deprived of Liberty and Head of the National Preventive Mechanism against Torture in the Republic of Serbia. Still, all actions and statements are done on behalf of the Protector. This organizational structure is prescribed by the law establishing the institution of the Protector.¹⁷²

The number of complaints filed with the Protector of Citizens and the Commissioner testifies to the public trust they enjoy. The number of citizens complaining to the Protector of Citizens increased by 28% in 2015 compared to 2014. For instance, the Protector was contacted by 14,169 citizens and received 5,890 complaints, an increase over 2014. This authority issued 382 recommendations, 266 of which were implemented.¹⁷³ The Protector of Citizens filed a number of legal initiatives and draft amendments to valid laws, as well as motions for the review of constitutionality of specific laws. As it was stated in the latest report, the Annual Report for 2016, in the ten years of the existence of the Ombudsman

¹⁷¹ Conclusion on the 2013 Protector of Citizens Annual Report, "*Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards*", Belgrade Center for Human Rights, <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/03/Human-Rights-in-Serbia-2014.pdf>

¹⁷² "The Protector of Citizens shall have four deputies that help him/her in performing the duties prescribed by this Law, and within the powers delegated to them by the Protector of Citizens.

When delegating powers to deputies, the Protector of Citizens shall in particular ensure special expertise for the performance of duties under the Protector of Citizens' competency, primarily in respect to the protection of rights of persons deprived of their liberty, gender equality, children's rights, rights of national minorities and rights of persons with disability.", Art. 6 of the Law on the Protector of Citizens, "Official Gazette of the Republic of Serbia", No. 79/2005, No. 54/2007.

¹⁷³ "Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards", Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska-prava-u-Srbiji-2015.pdf>

in Serbia, there have been almost 150.000 citizens contacting it, and almost 35.000 complaints. Only in 2016, almost 20.000 citizens contacted the Ombudsman's office, which is by one third more than what was an average number per year during the period of 2007-2015.¹⁷⁴

In 2015, *“complaints pertaining to social and economic rights have outnumbered complaints relating to the so-called maladministration—including delays, negligence, obvious inadequate implementation of law and other cases of deviation from good governance – as the most common complaints filed with the Protector of Citizens”*¹⁷⁵.

A similar trend continues in 2016. The highest number of citizens complaining to the Protector did it believing that their economic and social rights have been violated, then again, one third was complaining regarding the maladministration and inadequate implementation of laws.¹⁷⁶

This is how the Protector presents the human rights situation in its 2015 Annual Report:

“Particularly vulnerable groups and citizens included: the extremely poor, children and the youth, persons with disabilities, elderly persons, refugees and other migrants, internally displaced persons, national minorities (with the Roma as the most vulnerable among them), persons deprived of liberty (including patients at psychiatric hospitals and beneficiaries of residential institutions), persons with severe diseases, victims of domestic and intimate partner violence, organizations and individuals advocating human rights, organizations and individuals who express critical attitudes, journalists, and members of the LGBTI

¹⁷⁴ The Annual Report of the Protector of Citizens for 2016, See

<http://ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>

¹⁷⁵ The Annual Report of the Protector of Citizens for 2015, See

<http://www.ombudsman.org.rs/attachments/article/132/Annual%20Report%202015.pdf>

¹⁷⁶ The Annual Report of the Protector of Citizens for 2016, See

<http://ombudsman.rs/attachments/article/5191/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202016.%20godinu.pdf>

*population. As many have pointed out to the Protector of Citizens, the “ordinary person” is at the greatest risk in Serbia.”*¹⁷⁷

In its 2015 Annual Report,¹⁷⁸ the Protector is pointing out cases and different problems related to the freedom of expression and the media, issues related to legal certainty, civilian democratic oversight over the police and the secret services, public administration reform, rights of persons deprived of liberty, national minorities, rights of persons with disabilities, gender equality and rights of LGBTI persons, child rights, youth and the elderly, education and social protection, health, pension and disability insurance, labor rights, judiciary, finance, economic and property rights, energy and consumer protection, environment protection and climate change, refugees and internally displaced persons.

Let us go through some of the key critical remarks by the Ombudsman in Serbia, regarding some of the most prominent groups of problems as pointed out in his reports.

Regarding the media sphere, the Ombudsman has criticized officials who have used their official position to spread unconfirmed information including offensive and inappropriate personal opinions. They were doing it while acting in their official capacity.¹⁷⁹ The Ombudsman was very critical about the implementation of media laws. The three most important media laws, namely, the Law on Public Information and the Media, the Law on Electronic Media and the Law on Public Service Broadcasting, (effective since 1 July 2015) have, in practice, *“done little or nothing to strengthen the freedom of the media and the citizens’ right to complete, impartial and timely information”*.¹⁸⁰ In his Report, the Ombudsman stated that *“the media remain crucially influenced by a non-transparent convergence of politics and money, formally posing as funding for broadcasting and*

¹⁷⁷ Regular Annual Report of the Protector of Citizens for 2015, See <http://www.ombudsman.org.rs/attachments/article/132/Annual%20Report%202015.pdf>

¹⁷⁸ Ibid.

¹⁷⁹ The Annual Report of the Protector of Citizens for 2015, See <http://www.ombudsman.org.rs/attachments/article/132/Annual%20Report%202015.pdf>

¹⁸⁰ Ibid.

advertising money”¹⁸¹. The Ombudsman continues, saying in his Report, that the authorities treat any journalists or editorial boards who are critical of their actions as their political adversaries and that the authorities have also been boycotting certain media outlets, including public service broadcasters¹⁸².

In his annual Report, the Ombudsman was also commenting on the democratic oversight on police and secret services, saying that the police reform activities “*have been very contradictory*”¹⁸³. He presented in many details the case of direct and systemic intimidation of journalists done by high-ranking employee at the headquarters of the Ministry who had “*regular contacts with journalists and collected information which did not fall within the remit of the Ministry of Interior, or any other state authority, and then orally communicated them directly to the Minister of Interior*”¹⁸⁴. The Minister presented one such piece of information as officially obtained evidence in a public appearance in the national public broadcaster program, which – quite understandably – caused fear of unlawful wiretapping among journalists¹⁸⁵. When the Ombudsman approached the office of the Minister of Interior and asked for clarifications regarding the person he got an answer that nobody know the tasks and responsibilities of this person and where exactly he was working, although it was confirmed that the person is employed by the Ministry¹⁸⁶.

On judiciary, the Ombudsman stated that there is considerable improvement of the situation as a result of the adoption of the Law on Protection of the Right to Trial within a Reasonable Time, although there are identified shortcomings of that Law. But the Ombudsman added that there is “*a strong – yet difficult to substantiate – perception that judicial and prosecutorial functions are heavily influenced by the political*

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

authorities.”¹⁸⁷

On the Tax Administration the Ombudsman was very critical saying that this service is *“the least compliant with the principles of good governance of all central administrative authorities.”*¹⁸⁸

Regarding good governance, the comments by the Ombudsman on the lack of efficient engagement by the competent authorities on refugee problems are very critical. He pointed out that twenty years after the refugee crisis broke out; there are still 17 collective centers in Serbia for refugees from territories of former Yugoslav republics. And the situation remain unresolved although the Framework Agreement on Implementation of a Regional Programme for Provision of Permanent Housing to Refugees was signed between the Republic of Serbia and the Council of Europe Development Bank (CEB) 37, and it was planned to close the remaining centers by 2017, but *“the Call for Proposals for the provision of housing for refugees was not successfully implemented, although funds were provided.”*¹⁸⁹

We have presented extensively some of the main points expressed by the Protector in his 2015 Annual Report as an illustration of the content full of remarks, concrete proposals and suggestions for the Parliament and for the Government and other levels of authority. Unfortunately, the reports have not been regularly presented to the Parliament as someone decided that the Parliament is too busy and did not find time to put on the agenda the presentation of the reports. The Parliament failed to use an opportunity and provide for the public debate about the proposals which could only help improving the overall human rights situation in Serbia. With these quotations we also wanted to illustrate the extent of the activities of the Protector as well as the relevance of the engagement of the Protector

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

for the issues pertinent to EU accession of Serbia. There we primarily have in mind recommendations regarding media freedom, legal certainty and judicial reform, national minorities, Roma integration, respect for persons belonging to LGBTI population, etc. All of these problems are directly linked to the implementation of EU *acquis* referred to in the negotiations of Chapters 23 and 24.

Although “*the Protector of Citizens is independent and autonomous in performance of his/her duties established under this Law and no one has the right to influence the work and actions of the Protector of Citizens*”¹⁹⁰, there was a harsh campaign that the executive authorities launched against the Protector of Citizens which began in 2014, and culminated when he, the following year, publicly presented his annual report for 2014.¹⁹¹ He was soon the victim of a defamation campaign over a 1993 suicide case committed with a handgun which he had allegedly owned illegally. Numerous statements by officials implying the man was murdered rather than killed himself were made during the days-long campaign against Mr. Saša Janković, during which the deputies of the ruling party on several occasions threatened to initiate his dismissal. An extremely dangerous precedent was created by the conduct of the Ministry of Internal Affairs, which selectively published documents from the 22-year-old case file. The crucial documents, confirming that the case was closed and that Mr. Saša Janković was not involved in it at all, were published only after he himself published the copies in his possession¹⁹².

The Commissioner for Information of Public Importance and Personal Data Protection Mr. Rodoljub Šabić sharply criticized the behavior of the police. The international community reacted to the drastic pressures on the Protector. The OSCE Mission to Serbia expressed its concern, as did the European Union¹⁹³.

¹⁹⁰ Art. 2 of The Law of the protector of citizens, Official Gazette of Serbia, No. 79/2005, No. 54/2007.

¹⁹¹ “Human Rights in Serbia 2015: *Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska-prava-u-Srbiji-2015.pdf>

¹⁹² Ibid.

¹⁹³ Ibid.

It is sad that Mr. Janković, while serving as Ombudsman/Protector of citizens' rights, was very often the subject of a campaign by different representatives of authorities¹⁹⁴, while at the same time his work was acknowledged both by the people of Serbia¹⁹⁵ and by the relevant international authorities in the field of human rights as impeccable. On 22 March 2016 at the General Assembly of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in Geneva, Ombudsman Saša Janković received a certificate of re-accreditation in the highest "A" status as a National institution for the promotion and protection of human rights, for the period from 2015 to 2020. It was the first time The United Nations first accredited an ombudsman as a National Institution for the Protection and Promotion of Human Rights with the highest "A" status in 2010 for a five-year period.¹⁹⁶

The key problem we see in the constant attacks on Mr. Janković is related to the fact that these attacks and harsh campaigns against him personally also served to deteriorate the relevance of the institution he was leading. The Ombudsman is by definition a personalized institution. Eroding the personal relevance and integrity of Mr. Janković, with such political statements and accusations, no matter whether they were coming from the governmental or opposition, leads into ruining the institution of the Ombudsman, the very idea of an independent national human rights institution.

¹⁹⁴ See Informer daily, 14 February 2015, <http://www.informer.rs/vesti/politika/140215/NAJVECA-MISTERIJA-SRBIJI-BRE-OVAJ-COVEK-Sve-mracne-tajne-propalog-dosovskog-lidera-Sase-Jankovica>, Television N1, 16. November 2016, <http://rs.n1info.com/a208390/Vesti/Vesti/Vulin-o-Sasi-Jankovicu.html>, Telegraf portal, 26 December 2016, <http://www.telegraf.rs/vesti/politika/2532098-sad-nek-podnese-ostavku-vulin-o-jankovicu>, Television N1, 20 April 2015, <http://rs.n1info.com/a53436/Vesti/Vucic-o-zastitniku-gradjana-Sasi-Jankovicu.html>

¹⁹⁵ Mr. Janković was invited to run for the president of Serbia by the so called "*Apel 100*", signed by hundreds of intellectuals from Serbia who wanted to show respect for his work as the Protector of citizens' rights. He run in the presidential elections held on April 2016 and scored distinguished 16% of votes, ending as a second best candidate. See http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=11&dd=25&nav_id=1203215

¹⁹⁶ The International Coordinating Committee brings together national institutions for the promotion and protection of human rights recognized by the UN and accredits them according to the compatibility of work and responsibilities of human rights institutions in accordance with the Paris Principles. See <http://www.ombudsman.org.rs/>

Obviously, such an attitude is in contradiction to the European Parliament resolution, which:

*“Reiterates the importance of independent regulatory bodies, including the Ombudsman, in ensuring oversight and accountability of the executive; calls on the authorities to provide the Ombudsman with full political and administrative support for his work and to refrain from exposing him to unjustified criticism.”*¹⁹⁷

In an interview we have done with Mr. Janković, practically at the very end of his second tenure, he said:

*“There are no reasons to be very satisfied. There are reasons to work hard on the establishment of the rule of law in the country, as the rule of law is the basic precondition for the guarantees of all rights of the citizens. We have now the situation in which the rule of law is dependent of the existence of political will. Unfortunately, but we do not have a situation in Serbia for which it could be easily said that there is full media freedom. Quite the opposite, I would say.”*¹⁹⁸

He pointed out improvement in certain areas, like respect for the rights of the LGBTI population,¹⁹⁹ more decisive engagement of the authorities in order to improve women’s rights, but “we have not managed to suppress violence against women”.

As for the future, he mentioned the need to do more regarding the democratic control of security forces, insisting on the relevance of the civilian control for the strengthening of

¹⁹⁷ Art 16, European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2015/2892(RSP), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP8-TA-2016-0046%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

¹⁹⁸ Interview with Mr. Janković, Belgrade, 26 May 2016, Appendix of Evidence

¹⁹⁹ “Today, very rarely would any politician allow himself to say something in public which would be disrespectful of the LGBT population. We have witnessed substantial improvement in recent years.”, Interview with Mr. Janković, Belgrade, 26 May 2016, Appendix of Evidence

the rule of law and respect for human rights in the country.²⁰⁰

5.1.2. The Protector of citizens – Ombudsman of the Autonomous Province of Vojvodina

The ombudsman of the Autonomous Province of Vojvodina was actually the first independent human rights institution whose territorial competences were limited to a part of Serbia, the Autonomous Province of Vojvodina. It preceded the Protector of citizens' rights for three years, as Ms. Aniko Muškinja Heinrich was appointed by the Parliament of Vojvodina in September 23, 2003 and became operational as of January 2004²⁰¹. The decision was based on the Decree of the provincial Parliament. By this act the Ombudsman was tasked to deal with the complaints by the citizens regarding human rights violations and misconduct done by the authorities of the Autonomous Province of Vojvodina, public enterprises founded by the AP Vojvodina, other public institutions which were founded by AP Vojvodina. The Ombudsman has four deputies dealing specifically with Children's rights, National minority rights and the Gender rights.

The Ombudsman of the Autonomous Province of Vojvodina, prof. Zoran Pavlović²⁰², presents his Annual Reports to the Parliament of Vojvodina regularly (Annual Report for 2016 was presented to the Vojvodina Parliament on April 12, 2017). In 2016, the Ombudsman formed 831 cases out of which 28 based on its own initiative and the rest as a result of the citizens appeals. As it was stated in the Annual Report for 2016, while citizens complained mainly regarding the functioning of communal services, they were

²⁰⁰ Interview with Mr. Janković, Belgrade, 26 May 2016, Appendix of Evidence

²⁰¹ Home page of the Ombudsman of the Autonomous Province of Vojvodina, See <http://www.ombudsmanapv.org/riv/index.php/o-nama/institucija-i-postupak.html>

²⁰² Mr. Pavlović was appointed on November 24, 2016 by the two third majority decision of the Parliament of the Autonomous Province of Vojvodina and thereby he replaced Ms. Anika Muškinja Hainrih. See The Annual Report of Ombudsman of the Autonomous Province of Vojvodina for 2016, http://www.ombudsmanapv.org/riv/attachments/article/1890/Godisnji_izvestaj_PZG-ombudsmana_2016.pdf

also complaining about labor, economic, and social problems²⁰³.

Besides this, the cases presented in this report dealt with the Roma community integration problems (housing, education and employment). There are cases regarding the national minority problems, most often related to the lack of knowledge and use of minority languages by the different municipal officials, medical doctors and teachers²⁰⁴.

We have read and compared the Annual Report for 2016 with the previous reports of the same institutions and the change in the format of reporting as well as in the volume is significant (Annual Report for 2016 contains roughly 40 pages, while previous annual reports contained more than 140 pages²⁰⁵). It seems that the reporting method followed the personal changes in the institution, also as a result of the change in the political spectrum in the Parliament of the Autonomous Province of Vojvodina. This rendered the work of the Ombudsman of the Autonomous Province of Vojvodina barely relevant.

5.1.3. Commissioner for Information of Public importance and Personal Data Protection

There are two main laws defining the competences and the scope of work of the Commissioner for Information of Public importance and Personal Data Protection. These are The Law on free Access to Information of Public Importance²⁰⁶ and The Law on personal data protection (here cited as Personal Data Protection Act, PDPA).²⁰⁷ The list of the tasks is very detailed and is duly presented on the Commissioner's home page²⁰⁸.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ The Annual Report of Ombudsman of the Autonomous Province of Vojvodina for 2015, http://www.ombudsmanapv.org/riv/attachments/article/1768/Godisnji_izvestaj_PZG-ombudsmana_2015.pdf

²⁰⁶ The Official Gazette of Serbia, No. 120/04, No. 54/07

²⁰⁷ The Official Gazette of the Republic of Serbia, number 97/08

²⁰⁸ Home page of the Commissioner for Information of Public Importance and Personal Data Protection, See <http://www.poverenik.rs/en/o-nama/authority.html>

Commissioner is tasked to monitor the respect of obligations by the public authorities regarding these laws; to initiate the preparation or change of regulations for the implementation and promotion of the right to access information of public importance; propose necessary measure to be taken to improve the situation; to train employees of state bodies; to consider complaints against the decisions of public authorities that violate the rights of citizens; to supervise the enforcement of data protection; to decide on appeals in individual cases; to register the violations of the rights of citizens regarding their personal data; to give an opinion to the government in case of doubt whether a data set constitutes a data file within these laws; give proposals for improving the regulations and practices. The Commissioner shall present his reports to the National Assembly, and shall send reports to the President of the Republic, the Government and the Ombudsperson.²⁰⁹

The Commissioner himself assessed these laws defining the scope of his work, claiming that the Law on access to information is very liberal: *“In essence it is a very good piece of legislation, a powerful anti-corruption tool. It was proclaimed the best law dealing with the access to information in comparison with other such laws in the world. There is no need to further comply the legal text with the EU standards.”*²¹⁰ But when it comes to the practices, there are difficulties directly linked with the lack of political will on the highest political levels, *“to use the full potential of this law”*²¹¹. Still, it is a very good law which is widely implemented in practice. Mr. Šabić said it is *“a rare situation that such a law is so often and so robustly implemented in one transition country as it is in Serbia”*.

On the other hand, while the Law on personal data protection is completely different, the situation is *“tragic”*, says Mr. Šabić: *“Bad regulations accompanied by the complete lack of political will to do something about it. In spite of my insistence, nothing has*

²⁰⁹ Ibid.

²¹⁰ Interview with Mr. Šabić, Belgrade, 30 May 2016, Appendix of Evidence

²¹¹ Interview with Mr. Šabić, Belgrade, 30 May 2016, Appendix of Evidence

changed.”²¹²

As this was a very new institution, there were many issues raised at first, both by the Commissioner as well as by the non-governmental organizations regarding the legal definition and practices related to the right to privacy and confidentiality of correspondence, as defined in the Serbian constitution and in the laws. The office of the Commissioner prepared the Strategy regarding the personal data protection in order to mend this situation. In that Strategy, which the government of Serbia adopted and made it governmental Strategy, it was envisioned to bring the Action plan within the next three months, but it did not happen in the next 6 years. Therefore, for years, this Strategy remained relevant only on paper. When finally the Action plan was adopted, as the adoption came years later, many things had changed “*and therefore in the meantime the Strategy on which this Action plan is based, was outdated*”.²¹³

There is a debate about this topic of personal data protection and its realization because there is not much interest on the State’s part to implement this right in a systematic way and thus allow people to enjoy this right as laid down in the Constitution. Not all the relevant institutions have adopted this Action Plan for the implementation of the Personal Data Protection Strategy, and the old provisions of the laws are not in line with the PDPA and therefore the personal data controllers and processors do not have required knowledge and capabilities to do their work effectively.²¹⁴

Moreover, there are certain activities that are set in the Action Plan that need to be implemented, for example, “*the drafting of a new Personal Data Protection Act in accordance with the Model Act*”²¹⁵ prepared by the Commissioner for Information of

²¹² Interview with Mr. Šabić, Belgrade, 30 May 2016, Appendix of Evidence

²¹³ Interview with Mr. Šabić, Belgrade, 30 May 2016, Appendix of Evidence

²¹⁴ “*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

²¹⁵ Home page of the Commissioner for Information of Public Importance and Personal Data Protection,

Public Importance and Personal Data Protection”.

The Commissioner has drafted the Model PDPA and presented it to the public in order to incite a public debate. The debate has been finalized by the April 14, 2017 and the next step would be to formally propose this new Model PDPA for adoption in the Parliament²¹⁶. The Commissioner forwarded it to the Ministry of Justice; however in the Ministry of Justice, they prepared their own draft law which is different than the Commissioner's, although in the Action Plan it was explicitly said that the new law should be in accordance with the Model Act prepared by the Commissioner.²¹⁷

The Model Act, prepared by the Commissioner, is in alignment with the Council of Europe and the European Union documents.²¹⁸

Moreover, the differences between the Model Act and the Draft PDPA are obvious regarding the processing principles. The Model Act says exactly what these principles are (*“lawfulness and fairness; purpose limitation; proportionality; data accuracy; data security; and, prohibition of discrimination”*), while the Draft PDPA mentions only some of them (*“data security and prohibition of discrimination”*).

The Draft PDPA does not envisage demonstration of consent by any clear affirmative action²¹⁹, thus excluding the possibility of the data subjects expressing their consent in numerous situations. What particularly needs to be kept in mind is that the use of information technologies provides for numerous situations in which consent to data processing can be expressed in other ways as well, not just orally or in writing.

See <http://www.poverenik.rs/yu/model-zakona-o-zatiti-podataka-o-linosti.html>

²¹⁶ Ibid.

²¹⁷ “*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

²¹⁸ Ibid.

²¹⁹ Ibid.

Under Article 45 of the Draft PDPA, the Commissioner shall take decisions in accordance with the provisions of the General Administrative Procedure Act, while the Commissioner's rulings shall be enforced in accordance with the Enforcement and Security Act. It is unclear why the Working Group that developed the Draft PDPA opted for the enforcement of rulings issued in administrative proceedings in accordance with the Enforcement and Security Act, which governs enforcement and security of claims pursuant to enforceable documents.

Mr. Šabić explained this situation in an interview we did with him, using the following metaphor: *"I feel like a firefighter trying to deal with the fire, while all others around me are acting as if they are the arsonist trying to burn down whatever I have saved from the fire."*²²⁰ He continued, saying that we are lacking a systematic approach and concept on personal data protection, and therefore we in Serbia are lacking real results in this field.

Detailed discussion about the differences between the two draft laws, one drafted by the Commissioner and another one drafted by the Ministry of Justice Working Group, might be found in the report of the Belgrade Center for Human Rights about the Human Rights Situation in Serbia for 2015²²¹. As it seems to be too technical for the purpose of this thesis, we will not go into too many details here. In general, it seems that the draft law prepared by the Ministry of Justice Working Group is weakening the position of the Commissioner when it comes to enforcement and the implementation of his findings in concrete cases of violation of rights of persons and the disclosure of personal data by different state authorities, particularly by the State Security and the Military Security services.

The Commissioner reviewed a large number of cases. According to the Commissioner's

²²⁰ Interview with Mr. Šabić, Belgrade, 30 May 2016, Appendix of Evidence

²²¹ *"Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards"*, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf>

2014 Report, published in March 2015, his office found violations of the right of free access to information of public importance in over 90% of the complaints reviewed in 2014²²². In the January-November 2015 period, he had received 5,198 cases regarding free access to information of public importance and 2,200 cases regarding personal data protection. He ruled on 4,948 of the former and 2,073 of the latter.

In 2016, the Commissioner received 8,237 new cases, including 5,291 cases relating to freedom of information, 2,464 cases relating to personal data protection and 482 cases relating to both areas of the Commissioner's work. Together with the pending cases carried forward from the previous period (3,864), in 2016 the Commissioner worked on 12,101 cases in total. During 2016, the Commissioner closed 8,061 cases, including 5,135 cases in the field of freedom of information, 2,454 cases in the field of personal data protection and 472 cases relating to both fields. There were 4,040 pending cases carried forward to 2017. The reason for such a high number of pending cases is the fact that, for many years, the Commissioner worked with insufficient resources, while facing a huge influx of new cases.²²³ In 2016 the Commissioner mostly ruled as the authority of second instance on individual complaints relating to violations of the freedom of information and the right to personal data protection, and oversaw personal data processing, both *ex officio* and pursuant to citizens' reports²²⁴.

These numbers testify to the continuous deficiencies in the work of the state authorities, primarily with regard to their respect of the rights guaranteed under the Free Access to Information of Public Importance Act and in particular the Personal Data Protection Act. For instance, there was a TV broadcast in which the editor had in his hand a personal

²²² Report of the Commissioner on the Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection in 2014, See <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2015/engg%20izvestaj2014.pdf>

²²³ Summary of the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2016, See <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2016/enrezime.pdf>

²²⁴ Ibid.

psychiatric dossier of a person and was publicly discussing it while the Minister of Health was in the studio and the Minister did not even react at it.²²⁵ On the contrary, the dossier and the diagnosis were taken from the office of the Minister with his knowledge and upon his request. This case is testifying and illustrating to what extent Serbia needs new laws on personal data protection and to what extent there is a need to improve awareness of the sensitivity of personal data and its usage among the highest officials in the state.

In his 2016 Annual Report, the Commissioner stated that the continuous progressive process seen since the adoption of The Law on free Access to Information of Public Importance has been stopped and a reversed, negative trend has been observed for the first time²²⁶. The percentage of successful interventions by the Commissioner has for the first time declined in 2016 (from 96% to 92% of successful interventions). The Commissioner claimed it is indeed a worrisome trend which he explains as a result of a decrease in support to his work by the state bodies including the highest state bodies²²⁷. He had to approach the government and ask for the governmental safeguard of the enforcement of his recommendations a total of 61 times and the government didn't respond positively once²²⁸. This was not the case in previous years.

The new attitude towards his work was also expressed by the Parliament of Serbia, which, contrary to the Law and its own Code of Conduct, failed to provide for the presentation of his report and discussion of the report in the plenary session of the Parliament. Moreover, contrary to the practice in the previous 12 years, in 2016, not even the Parliamentary Committee for culture and information had put on its agenda the discussion of his report.

²²⁵ Interview with Mr. Šabić, Belgrade, 30 May 2016, Appendix of Evidence

²²⁶ Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2016, (Available only in Serbian language), See <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2016/latizvestaj2016.pdf>

²²⁷ Ibid.

²²⁸ Ibid.

Although the Commissioner claimed in his previous reports that in spite of difficulties we are witnessing in Serbia “*an irreversible positive trend when it comes to the free access to information of public relevance*”, the Commissioner was forced to backtrack on his own encouraging statement, and had to point out the deterioration in practices of the Government and the Parliament²²⁹.

When it comes to the personal data protection, the Commissioner stated in his 2016 report, that Serbia is at a very early stage of the process of implementation of EU standards into the legal practice and everyday life. He pointed out that it was in 2010 that the Commissioner together with the experts from the European Commission prepared the Strategy on personal data protection, which the Government of Serbia adopted, but it failed to adopt the Action plan for its implementation until the end of 2016 (although it was prescribed to adopt the Action Plan within three months)²³⁰.

Furthermore, although the Government obliged itself in the Action Plan for the implementation of the Chapter 23 in the EU accession negotiations, to bring the new Law on personal data protection before the end of 2015, based on the Model PDP Law as prepared by the Commissioner, it was not done so far. Therefore we do not have legal definitions for personal data protection in very important situations, like for instance video surveillance, biometrics, security checks, private security enterprises, etc. In his 2016 report, the Commissioner explicitly says that all of this has to be done in order to provide for the implementation of EU *acquis* into Serbian legislation.

When it comes to some concrete recommendations of the Commissioner in the course of 2015, there have been some state authorities who took on board the Commissioner’s views. For instance, in December 2015, the Ministry of Internal Affairs acted on the Commissioner’s warning and destroyed records with data on people who had

²²⁹ Ibid.

²³⁰ Ibid.

purchased tickets for “*high risk*” sports events.

The Commissioner repeatedly alerted to the existing and potential shortcomings in the work of the state authorities in 2015 and filed misdemeanor motions against individual civil servants after performing checks of the state authorities. In 2015, he again called for the adoption of a Decree on the Archiving and Special Measures for the Protection of Particularly Sensitive Data, which was to have been adopted by May 2009²³¹.

Mr. Rodoljub Šabić himself was not spared from media attacks either²³². Some senior state officials publicly criticized his activities and status. These criticisms gained in intensity whenever he reacted to the state authorities’ refusal to provide access to data they are under the obligation to provide under the law²³³. The national telecommunications company Telekom Serbia continued with its practice of filing numerous lawsuits against the Commissioner²³⁴. The adoption of the Commissioner’s 2014 Report by the National Assembly was delayed in May 2015, after the members of the Culture and Information Committee belonging to the ruling party, walked out of the session during which a conclusion on the Report was to have been adopted, because they allegedly had not been consulted about it in advance.²³⁵

The reasons for such a hostile attitude²³⁶ by the state authorities towards the

²³¹ “*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska-prava-u-Srbiji-2015.pdf>

²³² Radio television of Serbia, 27 June 2017, <http://www.rts.rs/page/stories/sr/story/9/politika/2784393/sns-sabica-ne-urusavajte-institucije.html>

²³³ See Cenolovka portal about the freedom of the media, Foundation Slavko Curuvija, 3 October 2016, <https://www.cenolovka.rs/vesti/direktor-tuzio-sabica-zbog-pitanja-novinara/>

²³⁴ Novi magazin weekly, 3 September 2014, <http://www.novimagazin.rs/vesti/telekom-srbija-tuzio-sabica>

²³⁵ “*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska-prava-u-Srbiji-2015.pdf>

²³⁶ This is again in direct contradiction to the resolution of the European Parliament. Art 16, European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2015/2892(RSP)).

Commissioner and his work are based on his insistence in approaching the relevant state and other authorities to provide for free access to the information and the data in the cases which turned out to be highly sensitive and politicized, like for instance, the so-called “Savamala case” and also “the helicopter case” and the disclosure of the content of the documents regarding the establishment and operation of Air Serbia. In his 2016 report, the Commissioner is referred to his requests to provide free access to the information in these and some other cases²³⁷.

We asked Mr. Šabić, what his assessment of the results was, having in mind that he is soon going to complete his term in office, and he was directly linking his work and the attitude of the authorities to the EU accession of Serbia:

“The bottom line is that we are a transition, post-socialist country which is trying to depart on new avenues, although still burdened with nationalism.

The collectivity is more important than the individuality, personality; whatever it is, the nation, the clan, the people...as it was in socialism with the working class and Communist Party.

*If we are honestly striving to become another European democracy, then we should discuss it thoroughly, we should define our national concept as a part of the European and global concept, and eventually, we should start implementing it.”*²³⁸

5.1.4. The Commissioner for the Protection of Equality

Besides the Constitution of Serbia, there is a list of different laws in Serbia, promoting the prevention of discrimination and prescribing legal remedies against the discrimination. These are the Law on the Prohibition of Discrimination in the Republic

²³⁷ Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2016, (Available only in Serbian language), See <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2016/latizvestaj2016.pdf>

²³⁸ Interview with Mr. Šabić, Belgrade, 30 May 2016, Appendix of Evidence

of Serbia,²³⁹ the Law on Professional Rehabilitation and Employment of Persons with Disabilities,²⁴⁰ the Law on Protection of Rights and Freedoms of National Minorities.²⁴¹ Discrimination is referred to and proscribed in many other laws and bylaws.²⁴²

The Commissioner for the Protection of Equality was established in 2010 and since then has been producing annual reports regularly, as well as intervening publicly in cases of discrimination or the discriminatory attitude of officials, public institutions and discriminatory practices by other state and non-state actors. The first Commissioner's Annual report for 2010 describes the authority and competencies of the Commissioner, providing and ensuring working conditions and the overview of the relevant international standards and legislative framework in the area of promoting and protecting equality. It also analyses the conditions in Serbia in relation to the most common grounds for discrimination by emphasizing that it does not mean that discrimination on other grounds does not exist in Serbia, but that there were no opportunities to see them during this short period of work.²⁴³

In later reports prepared by the Commissioner, there was always a list of concrete cases and interventions of this institutions in cases of discrimination usually based on the grounds of national affiliation, disability, people living with HIV/AIDS, gender, ages, sexual orientation, discrimination of refugees, internally displaced persons, migrants and asylum seeker. In her Annual Report for 2014, concluding the five year term, Ms. Petrušić, the first Commissioner, made a list of recommendations on what should be done in order to combat discrimination effectively and establish effective equality. She listed the need for a timely start for the preparation of strategic documents expiring in 2015,

²³⁹ Official Gazette of Serbia, No. 22/2009

²⁴⁰ Official Gazette of Serbia, No. 36/2009

²⁴¹ Official Gazette of Federal Republic of Yugoslavia, No. 11, of 27 February 2002, Official Gazette of Serbia and Montenegro, No. 1/2003, and Official Gazette of Serbia, No 72/2009

²⁴² See more at the official home page of the Commissioner for Protection of Equality, <http://ravnopravnost.gov.rs/en/legislation/republic-of-serbia-legislation/>

²⁴³ Commissioner for Protection of Equality, Regular Annual Report for 2010, See http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/regular_annual_report_2010.pdf

such as the National Strategy for Improving the Position of Women and Promoting Gender Equality (2009–2015), the National Action Plan for Children (2004–2015), the National Strategy for Improvement of the Position of Roma People, Roma Decade 2005–2015, the Strategy on Aging (2009–2015), the Action Plan for the Implementation of the Strategy for Improving the Position of Persons with Disabilities (2013–2015), and the Strategy on Development and Promotion of Socially Responsible Business Operations (2010–2015)²⁴⁴. She also presented the need to prescribe gender mainstreaming, in other words, integrating the gender perspective in public policies in order to ensure the abolishment of systemic and structural causes of gender inequality and create the conditions for gender equality immersion in the work of the government, as a European value, in a coherent and systematic manner²⁴⁵.

The Report mentions the need to prescribe the duty of all public authorities and private employers to develop internal mechanisms for combating and protection from discrimination, gender balanced recruitment policies and managing national, ethnic, religious, language and other diversity.²⁴⁶ The Report calls for the introduction of measure determined by the national, regional and local strategic documents and action plans, which should ensure full equality of the deprived, vulnerable and marginalized society groups: Roma people, persons with disability, refugees or internally displaced people, penurious and other socially disadvantaged people, including women and children belonging to these groups. The aim of these actions would be to create the conditions for an effective enjoyment of all the guaranteed rights, without any kind of direct or indirect discrimination.²⁴⁷ The Report calls for continuous work on education of judges, public prosecutors, police officers and public servants working in state administration or local self-government units in the area of anti-discrimination legislation, in order to ensure that

²⁴⁴ Regular Annual Report for 2014, Commissioner for Protection of Equality, See http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/regular_annual_report_of_the_cpe_2014_spojeno.pdf

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

the legislative bodies regularly and evenly interpret and apply anti-discrimination regulations, in accordance with the international standards and the policy of international legislative institutions. The full implementation of these regulations and standards would contribute to combating discrimination and protection of the victims of discrimination;²⁴⁸ to adjustment of the legal decisions that regulate the conditions and the process of registration of non-traditional religious communities with the national and international standards of church and religious communities' equality, in order to prevent direct discrimination of these religious groups and of devotees themselves.²⁴⁹

On 27 May, 2015, Ms. Brankica Janković was elected by the National Assembly of the Republic of Serbia, as the Commissioner for the Protection of Equality. In her Annual Report for 2016, she presented that a total of 1346 cases were handled by the Commissioner in 2016, out of which 626 were complaints filed by citizens and 665 were recommendations of measures aimed at achieving equality²⁵⁰. In 2016 the largest number of complaints alleged discrimination on the grounds of disability (12.9%), gender (12.9%), followed by complaints alleging discrimination on the grounds of age (11.8%) and complaints claiming discrimination on the grounds of national affiliation (9.4%)²⁵¹.

As for areas in which discrimination is most commonly encountered, much like in previous years, most complaints alleged discrimination in the job recruitment process or workplace related discrimination (33.9%), followed by complaints claiming discrimination in the course of procedures before public authorities (approximately 23.3%) and by complaints alleging discrimination in the process of public services provision or utilization of public spaces and facilities (9.4%). Similar to previous years, the largest number of complaints was filed against government bodies i.e. public

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Summary of 2016 Regular Annual Report of the Commissioner for the Protection of Equality, See <http://ravnopravnost.gov.rs/en/reports/>

²⁵¹ Ibid.

authorities (38.9%), followed by complaints against legal entities (30.5%) and private entities (20.3%). The area of education and professional development is next with 7.5% of complaints pertaining to this particular area, followed by healthcare protection at 5%, public information and media at 4.6%, public domain at 3.8%, social welfare at 2.9%, while complaints in other areas of social life are also present but to a lesser extent²⁵².

The European Commission assessed the situation in Serbia in the field of anti-discrimination policy and stated that the Equality Protection Commissioner's office continued its awareness-raising activities on discrimination and mechanisms for protection against discrimination. The anti-discrimination law remains to be further aligned with the EU *acquis*.²⁵³

The groups most discriminated against remain the Roma, sexual minorities, and persons infected with HIV/AIDS. Notwithstanding the government's good preparatory work for the Pride Parade, a more visible political commitment to promoting a culture of respect towards the LGBTI community and raising awareness is needed²⁵⁴.

Regarding equal opportunities between women and men, legislation with regard to the dismissal of pregnant women and women on maternity leave, sexual harassment and inequality in promotion and salaries needs to be systematically enforced.²⁵⁵

Limited progress can be reported in the area of social policy and employment. Developments continued in the area of health and safety at work but have slowed down in the areas of employment policies and social inclusion. Further work is needed to align the Labor Law with the *acquis*. Social dialogue needs to be strengthened at all levels and

²⁵² Ibid.

²⁵³ European Commission: "Serbia Progress Report", 10 October 2014, See http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

²⁵⁴ Ibid.

²⁵⁵ Ibid.

the stalemate of tripartite social dialogue is of particular concern. Further efforts are needed to address labor market segmentation and to ensure alignment with the acquis. An action plan for the implementation of the strategy for the fight against discrimination was adopted in October 2014. Overall, preparations in this area are at an early stage²⁵⁶.

Although the Commissioner for the Protection of Equality noted in her Report that the legislative framework aimed at achieving equality and prohibiting discrimination in the fields of labor, professional rehabilitation and employment of persons with disabilities, the protection of persons with mental disorders and patient rights has been improved, the Assembly conclusions obligate the Government and competent state authorities to take the requisite measures to fully implement the Commissioner's recommendations and protect from discrimination those most discriminated against²⁵⁷.

The Independent Authority was very busy in 2015. The Commissioner filed a motion with the Constitutional Court to review the constitutionality of the Maximum Number of Public Sector Staff Act, rendered a number of opinions on draft laws and issued recommendations to state administration authorities. The Commissioner noted an increase in the number of complaints filed with her office in 2015, specifying she had received 898 until November 2015 and that most of them claimed violations of the freedom from discrimination on grounds of sex and national affiliation.²⁵⁸

5.1.5. Anti-Corruption Agency

The establishment of the Anti-Corruption Agency (ACA) – an autonomous, independent

²⁵⁶ Ibid.

²⁵⁷ “*Human Rights in Serbia 2014: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/03/Human-Rights-in-Serbia-2014.pdf>

²⁵⁸ “*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska-prava-u-Srbiji-2015.pdf>

state authority – was initiated by constituting the ACA Board (15 April 2009). The ACA Director and Deputy Director were selected on 19 July 2009, whereupon preparations for providing basic work conditions were initiated, as well as the preparations for the start of comprehensive implementation of the Law on the Anti-Corruption Agency, set for 1 January, 2010²⁵⁹.

Since it was formed, the Anti-Corruption Agency has been issuing an Annual Report on its work as well as a Report on the Implementation of the National Anti-Corruption Strategy of the Republic of Serbia. In its Annual Report for 2013, the ACA stated that the purpose of the competences entrusted to the ACA by the Law on the Anti-Corruption Agency²⁶⁰ indicates that they are focused on attaining the following general goals:

- “1. Realizing public interest and combating corruption, for the purpose of which the ACA has the duty to: decide on incompatibility of public offices and conflict of interest; oversee public officials’ assets and keep a register of public officials, assets and gifts; oversee the financing of political entities.*
- 2. Providing support to citizens who report corruption (...);*
- 3. Education of public sector representatives and other target groups, including the general public, on important anti-corruption issues;*
- 4. Providing mechanisms for establishing and improving integrity within the institutional and regulatory framework, (...); oversee and report on the process of implementing the national anti-corruption strategy; analyze risks of corruption in regulations and launch initiatives for amendments and passing new regulations in order to prevent risks of corruption; conduct research and analyses in order to provide empirical know-how for the formulation of anticorruption public policies.*
- 5. Presenting the work of the ACA to the public and international cooperation,*

²⁵⁹ Official home page of the Anti-Corruption Agency, See <http://www.acas.rs/about-acas/acas-establishment/acas-competences/>

²⁶⁰ Official Gazette of Serbia, No. 97/08, No. 53/10, No. 66/11-US and No. 67/13-US; hereinafter: The Law on the ACA

(...); *conduct anti-corruption campaigns; enable work transparency.*”²⁶¹

Although the Anti-Corruption Agency issued numerous recommendations and alerted to various problems in 2015, the general impression is that the state authorities, both at the local and the national levels, have failed to act on its findings sufficiently. The Agency nevertheless reviewed several high profile cases in 2015 and found violations of the Anti-Corruption Agency Act. In a case concerning the Defense Minister, it found that he had violated the regulations on conflict of interests when he was the Mayor of Kruševac, because he concluded contracts with companies owned or co-owned by his wife and son²⁶².

The Agency also opened proceedings to establish whether the Belgrade Mayor, Siniša Mali, had violated the regulations on conflict of interests after allegations surfaced that he was the Director of two offshore companies headquartered in the Virgin Islands and whether his income statement was accurate in view of indications that he possessed real estate of significant value in Bulgaria.²⁶³

The fierce reactions of the executive, and, quite often, the legislative authorities to these independent bodies’ reports, initiatives and observations and their public descriptions of them as “*attacks on the state*” at the behest of “*foreign pay-masters*” give rise to concern. They demonstrate that these authorities are insufficiently cognizant of the roles the independent bodies are playing and that they need to seriously review the irregularities identified by them and address all deficiencies and mal practices²⁶⁴.

²⁶¹ Annual Report of the ACA for 2013, See http://www.acas.rs/wp-content/uploads/2014/11/2014-05-15_-_ACA_Annual_Report_2013.pdf

²⁶² “*Human Rights in Serbia 2015: Law, Practice and International Human Rights Standards*”, Belgrade Center for Human Rights, See <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska-prava-u-Srbiji-2015.pdf>

²⁶³ Ibid.

²⁶⁴ Ibid.

To what extent the issue of corruption is directly linked with the EU accession of Serbia and to what extent it is still critical problem, we may see from the resolution of the European Parliament which also referred at the problems related to corruption in bold language. The European Parliament:

“Notes that corruption and organized crime are widespread in the region and also represent an obstacle to Serbia’s democratic, social and economic development; notes that some progress has been made in the fight against corruption, which nevertheless remains an element of concern in Serbia, through continued implementation of legislation and the adoption of the law on whistle-blower protection; stresses the need to build a track record on investigations and final indictments on corruption, including high-level corruption and the need to coordinate and monitor the full implementation of the anti-corruption strategy as set out in the action plan for Chapter 23 in all key institutions; calls on the authorities to ensure that the Anti-Corruption Agency and Anti-Corruption Council are able to perform their mandate fully and effectively and that state institutions follow up on their recommendations; considers that a regional strategy and enhanced cooperation between all the countries in the region are essential to tackle these issues more effectively; calls on academic institutions, together with state authorities and public officials, to adopt rules in this area in order to investigate cases of plagiarism and prevent future cases”²⁶⁵.

In its progress report for 2015 on Serbia, the European Commission was critical when it comes to corruption. It stated explicitly that:

“Serbia has some level of preparation in the fight against corruption. (...) However, corruption remains widespread and strong political impetus has yet to translate into sustained results. In addressing the shortcomings outlined below in the coming year, Serbia should pay particular attention to:

²⁶⁵ Art. 10, European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2015/2892(RSP))

→ *establishing a track record on investigations, indictments and final convictions in high-level corruption cases,*

→ *creating a robust system to coordinate and monitor implementation of the national anticorruption strategy and action plan (...);*

→ *urgently amending and implementing the economic and corruption crimes section of the Criminal Code (in particular Article 234 on abuse of position of a responsible person) with a view to providing a credible and predictable criminal law framework;*

→ *swiftly adopting a new Law on the Anti-Corruption Agency to strengthen its role as a key institution in a more effective fight against corruption.*"²⁶⁶

Besides the need to adopt the new law on the ACA, we believe that there is a need to change the attitude towards this independent institution²⁶⁷ as it is obvious that it is in crisis after some changes in its leadership. At the moment it is not fully staffed and is not well equipped to perform its work²⁶⁸.

While we were writing this thesis, the Director of the ACA had not yet been appointed; the previous one having resigned in December 2016, as she was appointed a judge of the Constitutional Court of Serbia. In practice, the Agency is not operational at the moment²⁶⁹

²⁶⁶ Serbia 2015 Report, European Commission staff working document, Brussels, 10 November 2015, See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_serbia.pdf

²⁶⁷ "As regards political influence on the police, judges and prosecutors, Ministers (and MPs/party members) continue to criticize ongoing corruption investigations and court rulings." Serbia 2015 Report, European Commission staff working document, Brussels, 10 November 2015, See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_serbia.pdf

²⁶⁸ "The Anti-Corruption Agency lacks adequate financial, material and human resources to play its role effectively. The Anti-Corruption Council analyses cases of systemic corruption and provides the government with policy advice. However, the Council is under-resourced and the government does not follow up and act on its recommendations often enough." Serbia 2015 Report, European Commission staff working document, Brussels, 10 November 2015, See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_serbia.pdf

²⁶⁹ Blic daily, 2 February 2017, <http://www.blic.rs/vesti/drustvo/agencija-za-borbu-protiv-korupcije-o-kandidatima-za-direktora-8-februara/n1g9373>

of writing.

6 Non-governmental organizations and the protection of human rights in Serbia

This paper is not meant to deal extensively with the non-governmental organizations in Serbia. Still, we wanted at least to mention them in the context of the independent human rights institutions. As it has been previously explained, the definition of National Human Rights Institutions refers to the Ombudsman and similar institutions whose work we have presented here and have analyzed in detail. But, as it was clear from the so far presented analyses, the performance of the NHRIs in Serbia would have been much weaker had they have not been supported by the civic sector and in particular by the very relevant, and often strong and influential, non-governmental organizations dealing with the human rights situation in Serbia.

“One should never forget that there is a well-developed network of nongovernmental organizations in Serbia, often very competent, very well connected, which react promptly, sometimes before anybody else. They react in order to point out to the government and to the people that there are situations, there are cases of violation of human rights.”²⁷⁰

Some of these NGOs are dealing with the advocacy and the promotion of human rights (like for instance Belgrade Center for Human Rights, Civil Defenders of Human Rights and Helsinki Committee for Human Rights in Serbia); some are engaged in the protection of citizens and represent them in the courts (YUCOM, Lawyers Committee for Human Rights), some prepare annual human rights reports and deal with the education (Belgrade Center for Human Rights) and some are directly engaged in the promotion of the values

²⁷⁰ Interview with Ms. Gordana Aračkić, Adviser on democratization, EU Delegation in Serbia, Belgrade, 27 May 2016, Appendix of Evidence.

of EU in public (European movement in Serbia).

All of these and many more organizations are very often quoted in the reports of the NHRIs; some of the interventions of the Ombudsman and the Commissioner are done based on the cases provided by these non-governmental institutions. We have observed synergy being developed between Serbian NHRIs and Serbian NGOs: *“The NGO’s have been helping from the very beginning. They are helping the core of the activities of this institution. We are also trying to help them.”*²⁷¹

We wanted to pay respect to this cooperation, as did Mr. Janković, the Ombudsman:

*“Civil society and non-governmental organizations are the corner-stone of the Ombudsman institution. They are the core support for us in one way, and in another one they are a kind of extension of our work, particularly when it comes to promoting certain ideas...changing public discourse in favor of the respect of human rights. There is a certain amount of expertise, legal knowledge that has grown among the civil activists that we are trying to make the best use of.”*²⁷²

As. Ms. Maja Bobić, from the European movement in Serbia puts it:

*“Civil society has a very good understanding with independent institutions. I would say they share the same values and same understanding of democracy.”*²⁷³

The civic sector in Serbia is quite strong and has nationwide and region-wide relevance, therefore we have extensively used the reports and materials of these NGOs while doing our research and working on this thesis.

The non-governmental organizations were meant to have a role as a controller of the

²⁷¹ Interview with Mr. Rodoljub Šabić, Belgrade, 30 May 2016, Appendix of Evidence.

²⁷² Interview with Mr. Saša Janković, Ombudsman, Belgrade, 26 May 2016, Appendix of Evidence.

²⁷³ Interview with Ms. Maja Bobić, Secretary General, European movement in Serbia, Belgrade, 26 May 2016, Appendix of Evidence.

process of accession to the EU²⁷⁴, says Ms. Tanja Mišćević, Chief EU negotiator of Serbia:

*“In order to be able to control the process, they should not become a part of the same process but should be a bit aside and monitor it. Therefore we have formed the Convent.”*²⁷⁵

*“National Convent for EU integration is led by the European movement in Serbia, who signed the contract with the National Parliament”, explains Ms. Petrović, from the Belgrade Center for Human Rights.*²⁷⁶

In different situations in which NHRIs were under fierce attacks by different personalities in the government or by different authorities or some political leaders and organizations, these non-governmental institutions proved to be up to the job and have reacted very strongly in support and protection of the work of NHRIs. Therefore, we thought it is of crucial importance to refer to them as well while presenting the system of independent institutions dealing with the human rights promotion and protection in Serbia.

Besides the NHRIs, some in the government do understand the positive role the non-governmental organizations may play and are supportive for their inclusion in the accession process, like for instance, Ms. Mišćević, the Chief EU negotiator of Serbia.

“...civil society organizations gathered in the Convent have adopted the action plans as if they were their own product, because they have been working together with us while we were preparing them. They were and they are critical, sometimes they request more to be done than what is in the action plans, they give us certain

²⁷⁴ A National Convent on the European Union was set up as a platform for cooperation with civil society in the accession negotiation process in June 2014. The government adopted in August 2014 guidelines for the participation of civil society in the legislative process European Commission: “Serbia Progress Report”, 10 October 2014, See http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

²⁷⁵ Interview with Ms. Tanja Mišćević, Chief EU negotiator for Serbia, Belgrade, 27 May 2016, Appendix of Evidence.

²⁷⁶ Interview with Ms. Vesna Petrović, Director of Belgrade Centre for Human Rights, Belgrade, 30 May 2016, Appendix of Evidence.

ideas, directions on what else needs to be done. And we are grateful for that, as this is exactly what we need from the Convent. We are not in need of civil society organizations which would be sponsored by the government and in that way pacified. We are in need of vibrant civil society organizations which are ready to work with us and which are ready to tell us that they disagree with something, to show us how they see our mistakes. There is no prosperity without that.”²⁷⁷

In conclusion we would like to point out that in spite of the fact that these organizations are not formally NHRIs, their work is as relevant for the overall improvement of the human rights situation in Serbia and in particular for its accession to the EU, as it is important for the support and promotion of the work of the here presented Serbian NHRIs. In times when we did not have NHRIs at all as part of the legal and institutional system in Serbia, these and many more civic organizations were in practice doing their job. They were at that time the seeds of what tomorrow will bring, and today, when the system of NHRIs is almost complete, these non-governmental organizations remain its valuable component and contributor.

Both the work of these NGOs and the work of NHRIs would have been easier and much more efficient had we had vivid, independent and free media, but as it was clear from this paper, as it was clear from the report of the Freedom of the media rapporteur of OSCE and as it has constantly been mentioned in the reports of NHRIs we have quoted here, this is unfortunately not the case. But, that is a very good topic for another paper.

²⁷⁷ Interview with Ms. Tanja Mišćević, Chief EU negotiator for Serbia, Belgrade, 27 May 2016, Appendix of Evidence.

7 Relevance of the work of NHRI in Serbia for the EU accession of Serbia

The establishment and the work of NHRIs is not based on EU laws, as the very existence, the establishment of NHRIs is not part of the EU *acquis*, stated Ms. Mišćević.²⁷⁸ While this statement is disputable²⁷⁹, we believe we have proved that NHRIs do have a very important role in the accession process of Serbia to the EU.

They have a role in the negotiation process and it may be twofold, as Ms. Mišćević says. They could directly engage in the relevant working groups which are preparing Serbia's position in negotiations with the EU (*"they could help us prepare relevant documents for negotiations as well as monitor the realization in practice of the policies defined in these documents"*).²⁸⁰ This of course did not happen, as direct engagement of the Ombudsman or of the Commissioner in the negotiation process would be in direct contradiction with their independence²⁸¹, but the office of the Ombudsman has taken an active role with the screening process, particularly screening of the Chapter 23, preparation of Action plan for the Chapter 23, revision of the Action plan and preparations of the Negotiating positions. As Ms. Mišćević said, *"even more than that, they have worked in parallel and together with the authorities and they have taken part in the work of subcommittees"*, the government has organized.²⁸²

There have been numerous exchanges of different views between the Ministry of Justice and NHRIs in this process of cooperation. Eventually, they have ended up on completely

²⁷⁸ Ibid.

²⁷⁹ Completely opposite view expressed by Ms. Bobić: *"The very existence of NHRIs in Serbia is a result of the accession process with the EU."*, interview with Ms. Maja Bobić, Belgrade, 26 May 2016, Appendix of Evidence

²⁸⁰ Interview with Ms. Tanja Mišćević, Belgrade, 27 May 2016, Appendix of Evidence

²⁸¹ *"We will always give an opinion, provide information and answer to a question. But I cannot sit in the working group of the government; it is not suitable for the independent institution as it is the Commissioner."*, Interview with Mr. Šabić, Belgrade, 30 May 2016, Appendix of Evidence

²⁸² Ms. Mišćević, interview with Ms. Tanja Mišćević, Belgrade, 27 May 2016, Appendix of Evidence

opposing sides regarding the understanding of the notion of the “*independence*”²⁸³ of these independent institutions. As. Ms. Mišćević explains “*sometimes representatives of the office of Ombudsman believe that their independence is jeopardized, while at the same time representatives of the Ministry of Justice believe that they have too much independence*” and she is suggesting that in such situations they “*need to find the middle ground as a team*”.²⁸⁴

Mr. Janković, the Ombudsman, sees the relationship between the negotiation process and the work of NHRIs slightly differently. Negotiations themselves do have a positive impact on the human rights situation in the country “*as in the negotiation process the awareness of the relevance of human rights is strengthening both among politicians and the broader public.*”²⁸⁵ He claims that “*the bottom line is that the accession process to the EU, especially opening of relevant chapters, is certainly having a positive effect on the understanding of the relevance of human rights in our lives.*”²⁸⁶

In this opinion he is joined by the representative of the civic sector. For instance, Ms. Petrović stated that “*we believe that negotiations are the right mechanism which is making it possible for us to influence the changes in the country.*”²⁸⁷ She has expressed this position very clearly: “*When we were speaking about the EU values, we were actually speaking about the respect for human rights of the citizens by the government.*”²⁸⁸

Mr. Janković stated that the NHRIs are not engaged in the accession process as it is the task for the administration of the government. “*My task is to help, but also to make sure*

²⁸³ The Venice Commission expressed its opinion that the Serbian Constitution is not defining the financing of the NHRIs well enough; as their budget is financed from the regular budget of the Republic of Serbia, instead of being completely separate budget.

²⁸⁴ Ms. Mišćević, interview with Ms. Tanja Mišćević, Belgrade, 27 May 2016, Appendix of Evidence

²⁸⁵ Mr. Janković went even further claiming that “*had there not been for negotiations, I am pretty much sure that the situation would have been much worse than it is today.*”, Interview with Mr. Saša Janković, Belgrade, 26 May 2016, Appendix of Evidence

²⁸⁶ Interview with Mr. Janković, Belgrade, 26 May 2016, Appendix of Evidence

²⁸⁷ Interview with Ms. Petrović, Belgrade, 30 May 2016, Appendix of Evidence

²⁸⁸ Ibid.

that we remain an independent institution.”²⁸⁹

It is obvious that the government on one hand wanted to have NHRIs directly engaged in the process of accession negotiations in the preparatory phase, while the government was preparing the negotiation positions for the chapters 23 and 24 and we see it as a clear sign of respect for their competence. On the other hand neither Mr. Šabić nor Mr. Janković were ready to jeopardize the independence of their institutions with such engagement, therefore they all agreed that Ms. Mišćević, as the Chief EU negotiator “*should be a kind of a spokesperson for them in the team of the government*” and that she should present their position to the rest of the governmental team.²⁹⁰ We take this as a compliment to the work of Ms. Mišćević.²⁹¹

This is only one way in which NHRIs contribute to the EU accession process, as Ms. Mišćević has said. Another way, “*much more important*”, is to promote the existence and the work of NHRIs as they are something completely new. Basically, to do their job as defined by the laws. It is indeed a pity that the work of NHRIs was not understood in this positive way by all representatives of different authorities. Since these institutions have been created, they have been constantly under fire by the representatives of the government and members of the parliament.

There we agree fully with Ms. Mišćević, as there we see the core relevance and the contribution of the NHRIs to the EU accession of Serbia. With their work on a case by case basis, they are helping to solve concrete cases of the violation of human rights. Besides, with their public engagement, they are constantly reminding the government of the need to improve both the legislation and the practices.

²⁸⁹ Mr. Šabić, interview with Mr. Rodoljub Šabić, Belgrade, 30 May 2016, Appendix of Evidence

²⁹⁰ Ms. Mišćević, interview with Ms. Tanja Mišćević, Belgrade, 27 May 2016, Appendix of Evidence

²⁹¹ See also interview with Ms. Vesna Petrović, Belgrade, 30 May 2016, Appendix of Evidence

As we have presented in this thesis, both the Commissioner and the Protector have engaged in drafting new laws and in proposing the amendments to the existing laws. Each time they engaged, they did it by scrutinizing and harmonizing both the new legislative proposals and the practices in accordance with the legislation and best practices in the EU member states. There is a high respect among EU officials and in the EU institutions for the work done by NHRIs when it comes to initiating new legislation. *“The Ombudsman proved to be very engaged, reacting efficiently and timely to the requests of the citizens. Using his competence to change the legislation, Ombudsman intervened requesting the changes of the existing laws”*, says Ms. Aračkić.²⁹²

Similarly, there is also high respect for the work of NHRIs among representatives of different non-governmental organizations and in the public. NHRIs have been using the expertise of the independent experts, those coming from academia and those engaged in non-governmental organizations; sometimes working jointly with them.²⁹³

The work of NHRIs contributed heavily²⁹⁴ to the integration of Serbia into the EU and it contributes to the strengthening of democracy in the country and establishment of the system in which public authorities are responsive and accountable for the respect of human rights of the citizens.

Here is one example of such a contribution. In order to be able to complete the negotiations on the Chapter 23, the government will have to prepare and adopt relevant Action plans for the implementation of a Strategy and eventually implement the Strategy related to the data protection and access of information. The draft Model Law on the data protection has been prepared by the Commissioner for Information of Public importance

²⁹² Interview with Ms. Gordana Aračkić, EU Delegation in Serbia, Belgrade, 27 May 2016, Appendix of Evidence

²⁹³ See here interview with Ms. Vesna Petrović, Belgrade, 30 May 2016, Appendix of Evidence; see also interview with Mr. Janković, Belgrade, 26 May 2016, Appendix of Evidence

²⁹⁴ Ms. Bobić, interview with Ms. Maja Bobić, Belgrade, 26 May 2016, Appendix of Evidence

and Personal Data Protection. This example clearly shows a direct consequence of the work done by one of the national human rights institutions on the accession process of Serbia (in particular on the closing of the Chapter 23).

8 Conclusions

In this thesis we have presented the human rights situation in Serbia, then we have presented where Serbia is at this very moment in its accession negotiations with the EU. In particular, we have been focused on those chapters of negotiations which are directly linked with the improvement of the human rights situation in the country, mainly chapters 23 and 24.

Moreover, we have presented the work of national human rights institutions, in particular the work of the Protector of the rights of citizens (Ombudsman), as well as the Commissioner for Information of Public importance and Personal Data Protection. What they have done since they were established and became part of the institutional system of Serbia is crucial. As independent national human rights institutions, their work proved to be of precious importance for the overall improvement of the human rights situation in the country. Improving the overall situation regarding respect of human rights in Serbia is important as it is changing to the positive the image of the country in the eyes of those deciding on Serbia's accession, both the politicians of EU as well as citizens of the EU. Their work was – and still is – of paramount importance in this regard. These NHRIs were representing individuals whose rights have been violated and were requesting successfully from the state authorities to change the attitude in particular cases and to compensate for the mistakes made in individual cases. In addition to advocacy, both these two, but also other NHRIs in Serbia have been successful in initiating the changes of legislation, sometimes just as initiators, more often as authors or co-authors of the new draft laws. Each time they have done that, the new laws were brought in accordance with

the laws of EU. Therefore, each time they were directly bringing Serbia closer to achieving the standards of the EU, and implementing EU *acquis* into domestic regulations.

We have also seen that sometimes, the representatives of the offices of NHRIs were sitting together with the representatives of the government and were assisting them in preparing the position for negotiations with the EU, either the strategic documents or action plans. What we have learned is that this is the two-way process. On one hand the negotiations with the EU put pressure on the government, politically, to improve the human rights situation in the country. On the other hand, the process itself, its bureaucratic aspect, helps the government scrutinize its institutional set-up, improve its legal infrastructure, as well its practices regarding the respect of human rights. This legislative basis is a prerequisite for the EU membership, because these new pieces of legislation have to be in accordance with the EU laws.

If we would try to sum up what we have said regarding the situation in Serbia, we would then have to point out that formally, many good things have happened. Many laws have been adopted as a direct result of the accession process with the EU. These laws are in accordance with *acquis communautaire* and are improving the rule of law as well as respect for human rights. So, the accession to the EU, as a reform process, leads to massive improvement of rule of law and respect for human rights. But then again, in practice, there are many cases of violation of individual human rights and many situations in which the rights of citizens have not been fully respected nor were the authorities, including judicial institutions, acting in the best possible manner. In short, the legal bases are there, but not the actual implementation of these laws, or the practices surrounding them. Therefore, what the immense contribution of NHRIs was, was their acting as guardians of the laws and guardians of citizens' rights, constantly publicly presenting malpractices in their reports. So, they are a kind of correction mechanism, a catalyst to right the wrongdoings. This double faceted picture which on one hand presents a sound

legal framework and on the other one a very poor system of practices, gives us a realistic understanding of Serbia as one of the nations in transition, or a Semi - Consolidated Democracy²⁹⁵. Serbian NHRIs have proved to be serving the cause, to improving the human rights situation in the country. By doing so, they have directly been contributing to achieving the preconditions for the opening of the relevant chapters in the accession process with the EU and while reporting on different problems and while proposing the measures to mend the situation, they are helping fulfilling adoption of the EU values and practices in Serbian daily routine. Through their work, they have been directly supporting the accession of Serbia to the EU.

Perhaps all of what we have tried to present is summarized in the remarks by Ms. Gaće, about the contribution and the relevance of the NHRIs of Serbia:

“Serbia is a young democracy and this means that the NHRIs are of great importance. Both Mr. Šabić and Mr. Janković, heading the two most important institutions, managed, perhaps more than others, to position themselves and their institutions as important regulating factors which are constantly pointing at deficiencies in the performance of the state bodies towards respecting rights of the citizens. They’ve done this through great work invested and they have become respected authority in the eyes of a broader public.

They became a factor of corrections to the society in Serbia. These institutions have more influence on the society in Serbia, than the National Assembly and more than the political parties.

They have taught Serbian citizens that as citizens they have the right to ask questions and that they are entitled to be answered by the state institutions.”²⁹⁶

We join these comments wholeheartedly and conclude the thesis by praising the work of

²⁹⁵ Nations in Transit 2017, The False Promise of Populism, Freedom House Report, See <https://freedomhouse.org/report/nations-transit/nations-transit-2017>, Serbia, Country Report, See <https://freedomhouse.org/report/nations-transit/2017/serbia>

²⁹⁶ Interview with Ms. Gaće, Editor in Chief, Novi magazin weekly, Belgrade, 30 May 2016, Appendix of Evidence

independent national human rights institutions in Serbia, which have done more in bringing the country closer to the EU membership than many politicians, members of the parliament, and representatives of different ministries, who were, unfortunately, most of the time, only making their work more difficult.

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Interview with Mr. Rodoljub Šabić, the Commissioner for Information of Public importance and Personal Data Protection of Serbia, Belgrade, 30 May 2016

Abstract

National human rights institutions are new to the constitutional system of Serbia. The work of these institutions has been thoroughly analyzed in order to understand to what extent they are influencing the EU accession process of Serbia.

Firstly, the current human rights situation in Serbia has been analyzed through the existing practices and reports done by the independent national and international non-governmental organizations. Secondly, the accession process to the EU in general has been presented including in particular Serbian accession to the EU. Thirdly, the work of National Human Rights Institutions in Serbia has been presented through their regular reports and was linked with the preconditions for EU membership and with Serbian accession negotiations.

Their work proved to be of precious importance for the overall improvement of the human rights situation in the country. National human rights institutions have directly been contributing to achieving the preconditions for the opening of the relevant chapters in the accession process with the EU and while reporting on different problems and proposing measures to mend the situation, they are helping the adoption of the EU values and practices in Serbian daily routine. Through their work, they have been directly supporting the accession of Serbia to the EU.

NHRI – National human rights institutions - Human Rights – Ombudsman – EU accession
– Serbia – Freedom of Media – Minority rights – LGBTI Rights

Abstrakt

Nationale Menschenrechtsinstitutionen sind eine Neuheit in der Verfassungsordnung Serbiens. Die Arbeit dieser Institutionen wird eigenhend analysiert, damit wir verstehn in welchem Maße sie den Prozess des Beitritts Serbiens zur Europäische Union beeinflussen.

Zuerst wurde die Menschenrechtslage in Serbien durch die Praxis und die Berichte der heimischen und internationalen Nichtregierungsorganisationen analysiert. Zweitens wurde der Prozess des Beitritts zur Europäische Union im allgemeinen sowie besonders der Prozess des Beitritts Serbiens vorgestellt. Drittens wurde die Arbeit von Nationalen Menschenrechtsinstitutionen in Serbien durch ihre regelmäßigen Berichte präsentiert und mit den Voraussetzungen für den Beitritt zur Europäische Union und speziell mit den Verhandlungen Serbiens mit der EU verglichen.

Es hat sich gezeigt, dass ihre Arbeit von erheblicher Bedeutung für die gesamte Verbesserung des Stands der Menschenrechte im land ist. Diese Institutionen leiten einen direkten Beitrag zur die Eröffnung der entsprechenden Kapitel im Prozess des Beitritts zur Europäische Union und ihre Berichte über die Probleme sowie die vorgeschlagenen Maßnahmen zur Verbesserung der Situationen tragen der Implementierung europäische Werte und Praxis im Alltag Serbiens. Mit ihrer Arbeit leisten die unabhängigen Menschenrechtsinstitutionen einen direkten Beitrag für den Beitritt Serbiens zur Europäische Union.

NHRI - Nationale Menschenrechtsinstitutionen – Menschenrechte – Ombudsmann – Beitritt, Serbien – freie Medien – Rechte der Minderheiten – Rechte der LGBTI Gemeinde

Appendix of Evidence

Interview with Mr. Rodoljub ŠABIĆ²⁹⁷, the Commissioner for Information of Public importance and Personal Data Protection

1. What is the situation regarding the laws in Serbia regulating the disclosure of the public information and personal data protection? To what extent are the existing laws in compliance with the EU laws in this field?

We have the Law on access to information which is very liberal. In essence it is a very good piece of legislation. There is no national reservation. It offers access to large number of institutions and different bodies and information they are dealing with. Though, there is something peculiar about this law. It was proclaimed the best law dealing with the access to information in comparison with other such laws in the world. It was done by international legal experts from the civil sector. It truly is a very good law proclaiming good ideas when it comes to the control function of the broader public over the authorities, it is powerful anti-corruption tool.

But when it comes to the practices, we have learned there are difficulties which are not linked with the content of the law itself (although we could have some methodological comments), but the problems are linked with the lack of political will on the high political levels, to use the full potential of this law. There is no need to further comply the legal text with the EU standards, but there is a need to deal with some novelties which we did not have in Serbian legal system. For instance, we did not have an institution of physical personality with the public competences. And now we have notarial system as something new. Then we are also establishing the institution of private individuals who have a competence to execute the civil judgements. All of these changes are triggering issues related to the access to information which these private individuals who do have some public competences should also have and whose level of access should be broader than of other private individuals. In short, we do have a very good law which is massively implemented in practice. It is rare situation that such a law is so often and so robustly implemented in one transition country as it is Serbia. Therefore, it is perhaps one of the most successful reform regulations in the eyes of the citizens who are often using it, and these individuals are not only journalists, but many others. This is the best proof that we are speaking about the living law.

Regarding the Law on personal data protection, situation is completely different, even tragic. There we have very bad regulations accompanied by the complete lack of political will to do something about it. In spite of my insistence, appeals, public pressure, different actions I have done so far, nothing has changed; we missed so many chances to improve this regulation. Let me give you an illustration. We have adopted the Law on personal data protection of public figures in 2008, and it was enacted in 2009. In general it is in line with the EU principles, ideas. Most importantly, in this law we managed to proclaim certain legal standards in a similar way as in other EU countries. But then, from the very start we failed to put it in compliance with developed European standards and to make the bad situation worst it is not even in compliance with the Constitution of Serbia. All we did through this law was to offer more of guarantees than we had in the Law on security. Not more than that. And everybody was aware of this and nobody wanted to do more. All what was done, was done through different activities of the Commissioner for information of Public importance and Personal Data Protection. Look into statistic. In the first year of its implementation, in 2009, we had only 80 cases, while in 2015 the number rose to 2500. Still while the number of cases is steadily growing, I feel like a firefighter trying to deal with the fire, while all others around me are acting as if they were arsonist trying to burn down whatever I have saved from the fire. I don't want to underestimate the results of my own institution, but we are lacking systemic approach, the concept and therefore we are lacking results.

What are results? The bottom line is that we are a transition, post socialist country which is trying to depart

²⁹⁷ Interview was done in direct communication held in Serbian language in the premises of the office of the Commissioner in Belgrade, 30 May 2016

on new avenues, although still burdened with nationalism and therefore whatever individualistic you promote it is underestimated, questioned. The collectivity is more important than the individuality, personality; whether it is the nation, the clan, the people, as it was the case in socialism, the working class and communist party... If we are honestly striving to become another European democracy then we should discuss it thoroughly, we should define our national concept as a part of the European or global concept and eventually we should start implementing it. So, we were in need of a strategy, which Serbia didn't have, although it should have been done together with the adoption of the Law. Finally, we got the Strategy in the summer of 2010. We did it here in the office of the Commissioner. It was done by my associates. The government adopted it after I put a public pressure over it.

In the Strategy it was prescribed that the Action plan should follow in the next three months but it did not happen in the next 6 years. Therefore, the Strategy remained empty, words only. Today I may say that this Strategy is already outdated. Many things have changed in Europe in the meantime. We've ended up in the so to say tragic and comical situation. We have got the Law on the sensitive data protection which looks like European one. But this law states that the special measures for the sensitive data protection will be defined by the bylaw, by the governmental decree. This produced confusion and it could be against the constitution. Instead of defining the scope of sensitive data by the Law, we are in the Law prescribing that the scope of sensitive data will be defined by the bylaw. More of a problem was that this decree should have been adopted in 2009 and we are now already in 2016 and this decree, this bylaw was never adopted by the government. Therefore the whole idea of the special protection of the sensitive data remained only an idea.

There have been several scandalous situations. The government formed a working group in 2012 tasked to prepare the new Law. And this group hasn't produced any result till today. Having in mind that the EU is preparing its own decree to regulate this situation for the EU members, I tasked my team in the office to prepare the draft Law. We did it and we gave it to our government a year and a half ago. While preparing the Action Plan for the negotiations of Chapter 23, the government stated that they will use our draft Law as a model and that they will complete it by the end of 2015. Until the end of 2015 this draft Law has never been prepared by the government and what we have seen in writing so far has nothing to do with the draft prepared by my team, by the Commissioner. Therefore, Serbia has actually violated its own Action plan, which was coordinated with the EU, even before Serbia started negotiations on the Chapter 23. Now the government is saying that it will be adopted by the end of 2016 and I am positive it will not happen. This is an illustration of a lack of political will but also lack of legal knowledge. As it happens, when the bureaucracy has no knowledge, then they avoid dealing with the problems, they postpone as long as they can.

We ended up with the very bad situation regarding the personal data protection. I am hopeful that if there is political will, soon we could quickly change things to the better. All we need is political will and several well designed and energetically implemented strategic moves.

2. What would you say, has there been any improvement?

I don't think so; barely. Well, if you take for instance the fact that we managed to build the institution of the Commissioner for Information of Public importance and Personal Data Protection, to create a mechanism that is an improvement. We have a team which could be compared with any European in this area. These are great staff members, well educated, well additionally trained and well trained in practice. I have provided resources and programs to improve the human resource in the office and we are on the level of others in EU. For instance one of our colleagues is the Vice president of the Executive bureau of the Convention 108 of the Council of Europe, Strasbourg. It is one of the highest positions in this field achieved in the open competition. So, it is an improvement. But everything else, actually, is not.

For instance, there was a TV show in which the editor was having in his hand personal psychiatric dossier of a person and was publicly discussing about it in the presence of the Minister of health. And the diagnosis and the dossier were taken from the office of the minister with his knowledge and upon his request.

3. Since you have said there are an increased number of cases you are dealing with, does it mean that there is higher level of awareness among the citizens about their rights?

Actually no, not at all. I don't think so. The beginning of our work was funny. I became the state official,

defined by the Law/ Later on it was changed and I was not alone but together with the President of the Republic, the Ombudsman, and two other Commissioners. But in the beginning, the confusion was that I was defined as a state body individually, and not as it should be, as an office of the Commissioner. While bringing the Law, they mentioned supporting service but forgot to regulate the service. Therefore, they elected me and that was all. I haven't been given anything else, not even office material. So I bought the seal and was laughing publicly that if I get angry and resign, I will take the seal with me and there will be no institution any more at all. Well, there were comical situations; in general, it was a difficult atmosphere about it, about the institution of the Commissioner. Although, I would say it is very easy to explain even to non-educated citizens what the institution of the Commissioner is about. As everyone can understand that since he or she is obliged to pay the taxes, he or she also has certain rights to know who and how is spending the money they pay through taxes.

On the other hand there have been questions regarding privacy, which have been a direct result of our past. For instance, I was asked by some people why am I so worried about the surveillance or taping of the communications. Some would say something like: „I am an honest man, there is nothing I should hide, so why would that be a problem if my communications wire taped? “

The Strategy I mentioned was meant to fight the fear, to change this attitude. We in my office launched an intensive campaign in order to change the mentality of these people. More than 20 NGOs joined us and made a coalition. They traveled with us all over the country so that we could introduce broadly the new institution regarding the access to information.

When it comes to the data protection, it is completely different situation. It is the twofold problem. Firstly, it is not easy to organize such a campaign, and secondly, there are not that many organizations of the civil society who do have expertise in that field.

When it comes to the access to information it was about openness, it was an attractive subject, as it was also about the control of the government institutions, their accountability, about fighting corruption. People understood and were willing to join. While, dealing with the data protection is more delicate. I have put together a small coalition, several NGOs joined. But in the essence, it is responsibility of the state. In order to prepare the Strategy, we would have to engage responsible ministries to list relevant laws and other regulations which are not in compliance with the EU decree; we would have to do the inventory, to form the team which would have 2 or 3 interlocutors in each ministry, etc. Nothing like that has been done before and this service, the Commissioner's office, is the only such institution and they know it in the EU. But then again, if we would engage in that manner, we would in a way jeopardize the role of the institution of the Commissioner. Therefore, we are not directly engaged in the accession process as it is the task for the administration of the government. My task is to help, but also to make sure that we remain independent institution. We will always give an opinion, provide information, and answer to a question. But I cannot sit in the working group of the government; it is not suitable for the independent institution as it is the Commissioner.

4. What is the role of NGOs; to what extent do they help you in your work?

They've been helping from the very beginning. They are helping the core of the activities of this institution. On the other hand we are also trying to help them. For instance, this evening there will be a presentation of a movie by David Gamete, „Democracy and the fever about the data“. I will speak at the opening. I always engage in that manner.

There was a hacking once in the Agency for privatization. The database listing all citizens who have acquired the right to own the actions was leaked. In a way, this was a database of almost all citizens of Serbia who are of age. I used the resources of the civil sector to close down this link and protect the database of the state agency, the Agency for privatization.

5. What would you say is the most important thing to do regarding the data protection which would help the Serbia's EU accession team to close the relevant Chapters in the negotiation process?

The government should without any hesitation prepare innovated Strategy, than it should prepare and adopt relevant Action plans for the implementation of such a Strategy, and finally these plans would have to be swiftly implemented. Also, the government should use the draft Law on the data protection which was

prepared by my team and complete the legislative procedure in order to adopt such a law, the Law on the personal data protection.

This should not be done only because of the EU negotiation and because of the completion of the negotiations on the Chapter 23. This has to be done because we are discussing one of the basic existential issues. I have discussed this issue with colleague of mine in Slovenia, asking her what would be her attitude if there was a plea to provide us with the Slovenian database in order to collect the data on the enterprises which are interested in processing the credit cards. And she explained that they in Slovenia, her service, would not deem Serbia eligible as Serbia is not fulfilling the standard, although she knows me well personally and professionally and highly regards the work of my office. Nothing personal about it, her position, and Slovenian position would be that Serbia is not fulfilling the standards in order to be provided with such information by Slovenian authorities. This is why I was saying this is an existential issue.

Unfortunately, nobody is systematically educating the entrepreneurs in Serbia about it. We do some education, but it is not the job of my service. It should be the task of relevant ministries and this is why we desperately need to have the new Strategy. Fees to be paid in accordance with the new EU decree if the personal database is compromised are very high, astoundingly high. And these punishments are not meant only for the EU companies but for everybody who is doing the business on the EU territory. Some of our companies are doing the business in the EU, some intend to do so, and these companies are facing a punishment up to 5% of their annual business in case they violate this decree. It is a reality they should be systematically educated about and it has not been done. The business community needs to be educated, they need to be prepared, they need to establish their own logistic to be able to respect these regulations. Nobody seems to care about it here.

Interview with Ms. Tanja MIŠČEVIĆ²⁹⁸, Chief EU negotiator of Serbia

1. To what extent is Chapter 23 linked with the work of Serbia's NHRIs? What is their role in the process you are guiding, meaning the negotiations with the EU?

The establishment and the work of NHRIs are not based on EU law, as the very existence, establishment of NHRIs is not part of the EU acquis. No one in the EU can say "Serbia must do this or that". That cannot be said. Actually, Serbia should find its own way, the best possible way to use the existing best practices of the EU member states and include the NHRIs in its legal system. This is why I'd like to start this conversation from another angle. Let us discuss what should be the end goal of the negotiations with the EU. The end goal in this context would be to provide for the full independence of these bodies, meaning the Protector and the Commissioner, and to organize proper control to be done by the national Parliament over these bodies. The same idea was also expressed in the opinion presented to us by the Venice Commission. The Venice Commission expressed its opinion that Serbian Constitution is not defining the financing of the NHRIs well, as their budget is financed from the budget of the Republic of Serbia, instead being completely separate budget. I may only guess that Mr. Šabić and Mr. Janković, as well as representatives of the EU Delegation in Serbia have expressed their opinion already to you, that the way the NHRIs are financed is not correct. I would just like to say that we are aware of the problem and we understand that we should strive to resolve this problem; it is one of our goals.

What is the situation now? I don't want to discuss now the possible changes of the law. Let me come back to your question, and it is to say something about the role of the Protector and role of Ombudsman in the negotiations with the EU. Well, I would say that their role is twofold. One is to be directly involved in the negotiation, meaning to be part of relevant working groups. There they could help us prepare relevant documents for negotiations as well as monitoring of the realization in practice of the policies defined in these documents. There I can't say that the Ombudsman did take the role so far, personally, I mean, Mr. Janković himself, but his office, the office of Ombudsman has taken active role from the very start;

²⁹⁸ Interview was done in direct communication held in Serbian language in the premises of the Office of the EU integration in Belgrade, 27 May 2016

beginning with the screening process, particularly screening of the Chapter 23, preparation of Action plan for this Chapter; revision of the Action plan and preparation of the Negotiations position. Even more than that, they have worked in parallel and together with us and they have taken part in the work of subcommittees we have organized. Do we agree with their positions expressed in the process? Well, no, we do not agree each and every time with the position they express and we have seen differences in opinion between them and the Ministry of Justice. Sometimes they do not share same vision and same concepts. Sometimes representatives of the office of Ombudsman believe that their independence is jeopardized, while at the same time representatives of the Ministry of Justice believe that they have too much independence. In such situations, we need to find the middle ground as a team. My role would be to help find this solution which is the best one for the country and which is bringing their positions together for the benefit of the country. Sometimes, we have been successful in this respect. For instance, the Protector and Commissioner did not want to participate in the screening process. The reason was that they are not the representatives of the government. We have understood that and therefore we have agreed with them that I should be a kind of a spokesperson for them in the team of the government, I should present their position to the rest of the governmental team. This has been very well accepted by everyone. What I want to say is that there have been different problems but we have managed to find an understanding, an agreement. Well, this was one so to say technical problem which we have resolved.

NHRIs do have another role in the process as well, and this role is much more important; it is to promote the existence and the work of NHRIs as they have been something completely new, something strange to our legal and our administrative life to which we are still adjusting. It is a situation with all other administrations. Bureaucracy does have a difficulty to adjust to the independent bodies. But this is something which is not directly linked with the negotiation process, it is somehow linked with the change of the perception among politicians and in the administration and there I see a precious role of the EU, their member states who may share their experiences their best practices with us.

2. What do you think is the most important thing Serbia should do in order to be able to close the Chapters 23 and 24? What needs to be done?

Oh, my God, there is not one area in which we could just quickly go through without substantial engagement. In each and every area we need to work hard. In a way, it is easier to close Chapter 24 than Chapter 23. Chapter 24 is mostly about the right to asylum, visas, migrations, fight against trafficking, fight against drugs smuggling, cooperation in criminal matters, etc. It is indeed simpler for us to adjust our system to the acquis in these areas, as these areas are more technical, if I may say so. In the areas covered by Chapter 24 there are rules and regulations which are known and it is going to be easier for us to prove that we are, for instance, dealing with the requests for asylum in a manner prescribed by EU laws.

It is more problematic to prove that the judicial system is operating in an independent manner. How do we prove that? You do not prove that by the number of cases which have not been resolved, with the backlog. You do not prove that claiming that the cases are resolved within 10 and not within 30 years. It is not easy to prove that you do have independent, professional and accountable judicial system in a country. It is more difficult to prove that you fight systemic corruption successfully and it ceased to be systemic. Even in Sweden, Denmark and Norway there are cases of corruption, but it is not systemic corruption. Our problem is that in some areas corruption became systemic. For instance in education, health, police and some other areas, we need to fight corruption which had become part of the system. Statistic says that these are the most corrupt parts of the administration. What I deem important it is that we manage to formulate the new understanding among the people, that they feel that corruption is something bad, they want us, the government to deal with it, to fight it. The citizens of Serbia are requesting from the government to clear those corrupt parts of the system that I have mentioned before. This is why it is so important to go through Chapter 23 to push further in the process of negotiation.

The third part of this Chapter relates to the protection of human rights, actually, fundamental rights including the minority rights. So if you ask me which of these parts is going to be the most difficult one to finalize and close the Chapter down, there I have no answer, cannot say it really. But I do see the role of the independent human rights institution there. When it comes to fundamental rights, there is a role for Ombudsman, as these bodies are dealing with the promotion of European values. There I have to say, it makes the work of the NHRIs only more difficult as they are promoting the values and are helping the

system to integrate these values into a daily routine, and it is not at all easy.

3. What would you say, does the civil society, and do the NGOs help you in your work?

They help a lot. We do rely on the civil society and its support a lot in the negotiations process. Let me explain what is the exact role of the civil society organizations in the process? In case of Montenegro, in which the representatives of the civil society have become integral part of the negotiation teams, meaning that they sit in each of 35 groups for each of 35 negotiating chapters. I understand that and explain it by the fact that the state administration there is small, so they actually are in need for support by the civil society. In case of Serbia, our opinion, both of the government and of the civil society, was that it is not so to say natural role of the civil society that the representatives of civil society should not sit in the teams which are negotiating every chapter. Civil society should be close to the process but not involved directly in the process of negotiations. In order to be able to control the process, they should not become a part of the same process but should be a bit aside and monitor it. Therefore we have formed the Convent. We have included in the convent not only representatives of the civil society, not only representatives of the NGOs, but also representatives of academia, universities, different think tanks, chamber of commerce and unions. So, we brought together the civil society in the broadest sense. All of them are included in order for them to work together with us, with the government. Actually, the real first test case for us was to prepare the action plans for Chapters 23 and 24. I was very glad to see that the civil society organizations gathered in the Convent have adopted the action plans as if they were their own product, because they have been working together with us while we were preparing them. They were and they are critical, sometimes they request more to be done than what is in the action plans, they give us certain ideas, directions what else needs to be done. And we are grateful for that as this is exactly what we need from the Convent. We are not in need of the civil society organizations which would be sponsored by the government and in that way pacified. We are in need of the vibrant civil society organization which are ready to work with us and which are ready to tell us that they disagree with something, to show us how they see our mistakes. There is no prosperity without that. I am personally very often relying on the civil society, more often on them than on the political parties as it turn out that there was not much of a capacity in the parties unlike in civil society organizations. Parties turn out to be less able to question our work in a manner which would also be encouraging for us to dig deeper. Besides, civil society is important in order to bring more of a visibility in the process as they have good access to media and they help us make the negotiations process visible for the citizens, for which we care very much.

Interview with Ms. Vesna PETROVIĆ²⁹⁹, Director, Belgrade Center for Human Rights

1. Would you please tell me, how do you see the work of the NHRIs in Serbia?

We in the non-governmental sector tend to treat the Ombudsman as our natural ally. This is particularly true for those of us who are dealing with the protection of human rights in the country. It is because his role is to be the protector of the rights of the citizens as well as to oversee the authorities.

I can't comment on other countries, but the problem of Serbia, the way I see it, is that the authorities do not see in him or in other national human rights institutions, independent institutions, they do not see them as allies and someone who will discover some problems and establish the facts in order to invite the government and state institutions to change the attitude, to resolve the problems.

So, it is obvious that we in the non-governmental sector have one understanding of the NHRIs and the government has totally opposite one. Although, the Ombudsman has stated that up to 90% of his findings and recommendation are actually eventually fulfilled, respected by the state institutions. But, when it comes to those of the findings and recommendations which deal with the politics, which have something to do with the politicians who are heading different ministries or other institutions, I would say that the Ombudsman has no real power. He is presenting his views to the media, he is quite often cited in the media,

²⁹⁹ Interview was done in direct communication held in Serbian language in the premises of the Belgrade Center for Human Rights, Belgrade, 30 May 2016

but as most of the media are directly or indirectly influenced by the state, his findings and statements is cited in those of the media which do not have very high circulation throughout the country. Therefore we are in the situation that he and his work is known in the cities, and not in the smaller places. It is particularly not known in rural areas. I don't even think people know about him in the province as there are no independent TV stations which would broadcast more frequent his findings.

He has done a lot to promote the institution of Ombudsman and we respect him for that. He traveled and spoke in different cities. In the last several years he was presenting his reports in the Palace of Serbia. He would often invite some dignitaries, some intellectuals for the opening of these events, than there would be many representatives of the non-governmental organizations; there would be media recording at the beginning and we would see reports in some but not in the most influential TV stations. Then, as a rule, it would be a kind of a debate which would not be very interesting for the broader public. Still, those who are interested would be able to find the information about his work.

I would say that he had done his best to promote the Ombudsman as an institution. And here we see that one of the problems in Serbia is that the strength of the institution is very much dependent on the personality who is in the lead. Firstly, we got the Commissioner for Information of Public importance and Personal Data Protection, who somehow managed to pave the way to other independent institution, as he was the first one, and later we got the Ombudsman, now elected for the second term. He followed the path. We see that the two are working somehow closely with each other, they are connected. They often issue statements about the events which are disturbing the people, which provoke the interest of the public; about the events in which the citizens are either victims or are somehow linked with them or are worried about these events. In this manner, both of them managed to change something in the society.

Well, as everything else is going so slowly in Serbia, the same goes for their work and the necessary changes they would like to introduce and we the people would like to see happening.

I would say that the Commissioner for Information of Public importance and Personal Data Protection, managed to break the ice in some institutions. Although, there are weaknesses in the law as the Commissioner has limited powers (he is not authorized to enforce his own decision, but only to recommend them). In practice, he would invite the institution to provide the information and would say that if they do not do it, they are to be sanctioned. And then, instead of disclosing the information, the institution would pay the fee, meaning they would use the public money and would pay for the sanction instead of following the recommendation to publish the information.

There, the Ombudsman would come up with his statement regarding the same incident, in case he has something to add as he is task to protect the rights of the citizens. The Ombudsman is present in the media and he is also targeted by some of the media. He is often attacked and I expect that he would be attacked in the nearest future as he is mentioned as potential candidate for the president's office in Serbia in the spring of 2017. The campaign to compromise him has been launched already.

As far as cooperation with the NGOs is concerned, I would say that he proved to be very open for communication and cooperation and not only with the NGOs dealing with human rights (both political and socio-economic human rights) but all others as he is task to protect variety of rights and to oversee and monitor many different state institutions. In a way, they are tasked to monitor each and every ministry.

At the beginning there was a problem he managed to resolve. As it happened that in parallel with the establishment of the Ombudsman covering the territory of the whole country, we have first got Vojvodina province Ombudsman. There were problems with the sharing of competencies. My impression is that they have cleared this and have agreed on the modalities of cooperation. There was another problem arising from the fact that some municipalities in Serbia have also established their own municipal Ombudsman offices (there are some 10 or 20 local Ombudsman offices out of 160 or more municipalities). It was again about the competences. At the early stage there have been issues but lately I see no more fuss about it therefore seems that the problem has been resolved (well in practice some of the municipalities could not continue financing local Ombudsman office and that was the end of it).

The Protector of citizens, the Ombudsman is based on a pretty good law. He is authorized to initiate legislation, perhaps the best part of this law. He also cooperates well with those who are doing the legal analyses of the laws and practices. He is always using the information we the non-governmental sector

provide for him. Some of his projects are actually shared with the non-governmental institutions, we engage jointly. For instance, we in Belgrade Centre for Human Rights have done the project regarding the implementation of his recommendations. We did the survey in several municipalities and we have closely cooperated with the Ombudsman.

He also got financial support for the project in which he included all organizations which have applied, namely five different organizations. We have observed that he requests different expert opinions, not exclusively coming from the civic sector, but independent analysts, legal experts, professors of law, as well. And then he bases his interventions on this expertise. He is really open for cooperation and is open towards the broader public.

Regarding the statistic, how many cases he resolved, I couldn't say but the information should be available on his web site. He claims that many of the cases have been resolved after his intervention including through private communication.

We in the Belgrade Centre for Human Rights are now dealing with one case which is also relevant for both the Commissioner for Information of Public importance and Personal Data Protection and Ombudsman. They help a lot as they may directly communicate with the state institutions. They are independent but they are also institutions of the state. Unfortunately, neither the previous nor this government sees them as allies. It is a shame.

2. Do you think that there are improvements regarding the human rights situation in Serbia after it started the accession negotiations with the EU?

Well, regarding the negotiations on Chapter 23, the problem is the State Secretary in the Justice Ministry, who is also heading the Working group on the Chapter 23, is of the opinion that the only task is to rewrite everything which is said in the screening report of the European commission into the Action Plan and in the Strategy and that we should not intervene into it and not to mention make something more out of it. We have tried to explain to him that the European commission might have a view on Serbia, but that we in Serbia might have some other problems which the EC is not aware of, and that therefore in the Working group they should do more and try to use the accession process and improve the situation regarding some other issues. We, the Belgrade Centre for Human Rights are not in the Working group, but we are part of the National convent which brings together the civic sector in support to the government in the accession process (actually the Convent is led by the European Movement in Serbia who signed the contract with the National Parliament). Some other NGOs are following Chapters 10, 12, 35 and 24. We are following Chapter 23, together with 40 other NGOs. This group is led by YUCOM. Sometimes we meet with the Head of the Chapter 23 Working Group, Mr. Backović and debate, comment, offer recommendations in writing. Some of our ideas have been accepted but we will continue and follow the negotiations on Chapter 23 and in particular, the implementation of the EU acquis.

The politics is a problematic one. The politics is interfering into almost everything, including into technical issues. It happens that some technical problems have to be resolved on the political level. It actually happens as the administration which should implement the Action Plan as it stand, is constantly waiting the approval from the higher and political level. Action Plan has been adopted some time back, there is a kind of a time frame defining when do we have to implement some of the activates and we see that everything is going so slow that we will not be able to implement the changes timely.

Regarding the Chapter 24 Working group, led by the Ministry of Interior, I may say that they were kind of closed for us others. But, then, after being pressured by the public and also thanks to the Covenant and thanks to Ms. Tanja Mišćević, our Chief EU Negotiator, this Working group is now more opened to us and to the public, than it was before. There is less number of organizations there and the Ministry of Interior is more concrete in their answers. On the other hand they are kind of hiding the Negotiation Platform and are offering to us, NGOs, the summary. So, there are always some limitations for us, the non-governmental sector in this process, but as long as there is an Action Plan which is public document, we may work on it.

3. What do you think are the most important areas regarding the negotiations on Chapter 23, which would request the most work in order for this Chapter to be closed successfully?

I would say that the key problem is related to the media situation, or so to say, the freedom of expression.

I believe everyone in Serbia would tell you this, there are problems regarding the media freedom. The most recent problem was the changes in the Radio and Television of Vojvodina. Editorial team and journalist have been replaced as direct result of the change in power. Whoever comes into power after elections is trying to control and influence the media. Media laws are not good. We in the civic sector were saying this from the very beginning, that there are not enough of guarantees for the independent journalism and for the freedom of expression more generally. We were also trying to explain this to the representatives of the EU but they did not listen to us as they do not know enough about Serbia. And we who know it well, particularly the journalists, we were commenting and protesting from the beginning. Now the situation regarding the privatization of media is absurd. Municipal media have been privatized but in reality they have been both by the party representatives or by local tycoons directly linked to local branches of the parties. Therefore the situation is worse than it was. Previously it was the municipalities owning the media, now they are owned by someone...and you don't really know who it is. So the situation is worse than before the privatization which actually happened because it was the EU standard. The proof is the situation in the city of Belgrade TV station Studio B, which is now only following the work of the government of Serbia and is not covering the situation in the city. Obviously, the editorial is under direct influence of the politics.

Another problem is this position of the government which is constantly between the EU and Russia. We are constantly between the two sides. Perhaps this is also a way for the government to blackmail EU in a way.

Regarding the Chapter 23 and some other different human rights, in a way I see that the citizens have been deprived from some economic and social rights, covered by some other chapters in negotiations. For instance, corruption is best suited to be dealt with through negotiations on the chapter dealing with the public procurement. Therefore I would say that these negotiations with the EU should be taken together and we should linked negotiations on different chapters in order to be able to improve the human rights situation as a whole.

It remains to be seen to what extent this is going to be understood by the EU. There is corruption in the new EU member states; we have recently witnessed corruption related affairs in Croatia and elsewhere in the EU.

In conclusion I would say that the freedom of expression and freedom of media might be the most important rights. If we could only see the improvement there, people would be feeling free to speak up. Now they are frightened. Citizens are poor, they are jobless and therefore whatever they are offered, they are happy with. We witness a lot of employment through the parties.

4. Since Chapters 23 and 24 are to be completed and closed only at the very end of the process of accession, do you think we are going to be able to successfully complete them?

I think we are going to have difficulties as Serbia has some unresolved issues with the neighbors who are EU members, like for instance with Croatia. There will be different pressures when it comes to opening and closing of different chapters. We in the NGO community are also going to put some pressure on the government. We need to make an effort in order to make the government responsible and to make them fulfill the criteria and in the Action Plan defined timeframe. As we are going to do this, so will some of the neighboring countries like for instance, Romania, Bulgaria, Hungary, and Croatia. They will question the position of those belonging to their ethnic minorities living in Serbia. This is why I believe there will be more problems in future. The real danger is if that blocks negotiations and bring them into a deadlock. Position of the Belgrade Centre for Human Rights is that we request chapters to be opened as we believe that negotiations are the right mechanism which is making it possible for us to influence the changes. In the last several years the EU was constantly praising our government but at the same time was not very forthcoming in opening different chapters. We were requesting the opening of negotiations on different chapters because only then could we influence the changes.

Cynical as it is, but the EU was also very concerned to help interests of their companies which are investing in Serbia and were happy if they were getting subventions from our government while offering poor jobs for low salaries to our people. Somehow this is sometimes more important to the EU decision makers than the human rights situation in Serbia. Therefore, from time to time, we do have a problem with the positions expressed by some of the EU politicians. They are praising our government thinking of their own interests

and not necessarily of the interests of the people in Serbia, particularly not the human rights situation of our citizens. This came as disappointment to us from the civic sector in Serbia. In consequence, our citizens are losing faith in the EU and values of EU. When we were speaking about the EU values, we were actually speaking about the respect for human rights of the citizens by the government. Our citizens are confused by this attitude of some EU politicians.

Interview with Ms. Gordana ARAČKIĆ³⁰⁰, Adviser on democratization, EU Delegation in Serbia

1. What do you think of the work of the Commissioner for the protection of rights of citizens?

I am positive that the Office of Ombudsman has done very good work. First, the very existence of the institution of Ombudsman is the legacy of the democratic development in the country. Since it was established, the Ombudsman proved to be very engaged, reacting efficiently and timely to the requests of the citizens but also regarding the cases which are within its competencies, about which they got aware of in any other manner, including through media. Besides, using his competence to change the legislation, Ombudsman intervened requesting the changes of the existing laws if they were not fully guaranteeing respect for human rights.

The European Commission in its progress reports, country reports, was regularly insisting that the government should take the recommendations of the Ombudsman very seriously and that the governmental bodies to which these recommendations were sent should take an action in accordance with the recommendations.

Although there is a statistical data proving that the responsiveness is high, what the Ombudsman was insisting on in the meetings with the EU delegation in Belgrade, and what we may see in the practice, is that most important elements of the system which needed to be changed in accordance with his recommendations, have not yet been changed.

We are aware that statistics might be somewhat strange sometimes and may give as distorted picture of what is the reality in Serbian society. It is one thing if in every case of violation of human rights the governmental institutions react properly, but if you see that the same or similar cases happen repeatedly, than the government should change the cause which is provoking these cases of violation. So, one would expect that representatives of the government would try to change the procedure which is producing these cases of violation of human rights, to shorten the procedure, to change it, to do whatever is needed, whatever they have been advised by the Ombudsman, to prevent the repetition of such cases. This is why I would say that it is important that the Ombudsman has shown readiness to react and he did react whenever it was needed.

We are aware that there is another side of the story. And it is that there is a need for constant increase of the capacities of the Office of Ombudsman, not only technical but also human resources as well; to help them increase their knowledge. Only recently, there has been a decision brought to increase the number of staff in the Office of Ombudsman. But, the problem is not only the number of staff as it is the level of education, practical knowledge and training needed for them to be able to react promptly and efficiently.

2. What do you think is the most important thing for Serbia to do in order to be able to complete negotiations on the Chapters 23 and 24?

Regarding the Chapter 23, as far as I am aware, as the Adviser on democratization issues in the EU Delegation in Belgrade, I would always say that there is a need to improve the human rights situation in the country. Although, there are so many different issues which Chapter 23 encompasses, which are interlinked and are important, so it is not easy to say just like that fight against corruption is the most important, let us focus on that and disregard the situation in the judiciary or human rights situation or minority rights situation. I would say that these processes are parallel to each other; therefore the government cannot say

³⁰⁰ Interview was done in direct communication held in Serbian language in the premises of the EU Delegation in Belgrade, 27 May 2016

something like, now we are going to deal with corruption first and only then we shall focus on the judiciary. It is not possible to fight corruption unless judiciary is not reformed and ready to process cases of corruption properly. This is why I was saying that these processes are parallel and interlinked and that the government needs to deal with them at the same time.

Somehow, what we see it is the need to fight corruption and to accept the zero tolerance, to reform and strengthen judiciary. That is the basic. It is not at all possible to efficiently deal with the human rights situation and improve it unless you have functional judicial system which would be able to decide in due process of law. I am coming back to the beginning of my answer, as I am dealing with the human rights situation. When we speak about human rights situation, the need is to accept zero tolerance for the discrimination, as it was the case with the fight against corruption. There should be no case of discrimination which is tolerated; no discrimination is to be tolerated no matter what was the basis for particular case of discrimination. Therefore, if I need to make a comparison and certain sequence of steps to recommend, I would say start with the fight against discrimination and you will efficiently start improving human rights situation in the country. Although, as I have said, these are all interlinked, interconnected problems and one should be cautious not to make any exclusion.

3. How do you help the government to achieve the *acquis*?

To start with, the EU is offering political and technical support. In our dialogue with the government regarding the Chapter 23, we strive to increase the awareness both among the governmental bodies' representatives as well as among the broader public, citizens of Serbia, that there is a need for establishment of the rule of law and full respect for human rights and principles of democracy. In addition, we offer technical support; we are implementing projects both with the government and with the civil society organization, which is one of the most important elements of the society.

One should never forget that there is a well-developed network of nongovernmental organizations in Serbia, often very competent, very well connected, which do react promptly, sometimes before anybody else. They react in order to point out to the government and to the people that there are situations, there are cases of violation of human rights. EU is using Instrument for Pre-accession, so called IPA funds available for Serbia in order to support the government and its institutions to achieve the goals set in the accession process, reforms needed in different areas, including in the areas directly linked with the accession negotiations on the Chapters 23 and 24. Besides, there are also other instruments, like for instance, EDHR, which is European instrument in the field of democracy and human rights, where non-governmental organizations and associations of citizens, professional association may apply for funding. Using these different instruments we are trying to be inclusive and support different actors, governmental and non-governmental so that they all engage in the reform process in Serbia.

4. How would you evaluate the importance of the Ombudsman for the accession process of Serbia to the EU?

I believe that I have answered this question already. The Protector of the rights of citizens was the first such independent institution, but I would say that the role of the institutions which have been formed later is equally important. Namely, Commissioner for access to public information and personal data protection and Commissioner for gender equality. These are the institutions I most closely cooperate with. Of course there is also Agency for the fight against corruption, State audit Agency, etc. Their work, their reactions, recommendations are very important as they are sometime the most rational voices. They alert everyone when something is wrong and they also offer solutions for the problems. All institutions which are independent bodies are entitled to offer solutions for the problems, to propose modalities to resolve the cases but also to initiate changes in the legislation if needed. I do not put all of them at the same level. They do have different competencies and they are in different positions, but each of these bodies is of great importance.

5. Do you agree that these chapters, 23 and 24, should be the last to be closed?

Of course I do agree. As I also agree with the idea these are the chapters first to be opened. In case of Serbia, as it happened, the first one to be opened was Chapter 35, but nevertheless. We are about to witness the opening of these two chapters. Why are these chapters so important? These chapters are important not solely because of the accession of Serbia to EU. These chapters are important as they are somehow the

most individual, may be personally understood by each and every citizen of Serbia. The fact is that improvement in areas regulated by these chapters citizens will feel as the benefit for themselves irrespective of the EU integration process itself. They are about the rights of citizens and this is why they citizens will feel the benefit of improvement in their everyday life. If not, if there is deterioration of the situation in areas related to chapters 23 and 24, than the citizens will also directly feel the deterioration in their lives. Therefore, these are the issues to be dealt with as early as possible and during the whole process of accession. We should not be waiting for the chapter to be opened or closed, we should be insisting to feel the change, to see the improvement in our lives.

Interview with Ms. Nadežda GAČE³⁰¹, Editor in chief, Novi magazin, political weekly

1. How important are independent national human rights institutions for you?

Serbia is a young democracy and this makes the importance of NHRIs significant. Both Mr. Šabić and Mr. Janković, heading two most important institutions, managed, perhaps more than others to position themselves and their institutions as important regulating factor which are constantly pointing at deficiencies in the performance of the state bodies towards respecting human rights of the citizens. They've done this through great work invested and they have become respected authority in the eyes of a broader public.

Eight years back when the institutions were created and they were appointed by the parliament, there was full support in the political arena for their work, coming both from the opposition and from the ruling parties. Besides them, I would say that it was done only by Mr. Pavle Petrović, the economist and the head of the National fiscal council, who also positioned himself and the Council as voice with certain authority when it comes to commenting economic performance by the government. Out of hundred different institutions, these three are the dominant ones. Everybody knows about them.

The advantage of Mr. Šabić and Mr. Janković was that they engaged in hard work from the day one. They became a factor of corrections to the society in Serbia, to the government as well and equal partner in the dialogue. Of course, politicians are changing very slowly and are slowly understanding and accepting them as equals. These institutions have more of an influence on the society in Serbia, than the National Assembly, Serbian parliament, more than political parties whose number is anyhow too big.

The most important was their ability to communicate with the broader public. While I was heading the Independent Association of Journalists of Serbia, 2006-2010, I witnessed that the two of them together with the civic society organizations have been organizing every September campaign called "Your citizens right to know". Both of them were educating the citizens that they have right to approach the administration, to ask for the information which is within the competence of certain state body and that this state body must respond to them. So, these two heads of two independent institutions new how to communicate with the public and there were always media which were supportive for their efforts.

Sometimes, there was an impression, that both Mr. Šabić and Mr. Janković, being very active, insisting on the relevance of the institutions they were heading, did not enjoy the political support. They are rightly saying that the Parliament, who is by the laws obliged to analyze their annual reports every year, had not done so last year. In spite of that, of these reluctance expressed by authorities, both of them managed to build such a strong and relevant institutions, that no government would be able to ruin. They've taught Serbian citizens that as citizens they have right to ask questions and that they are entitled to be answered by the state institutions. By doing this, citizens are becoming real controllers of the government.

2. How would you describe situation in the media in Serbia, particularly having in mind that the media freedom is related to Chapter 23 in Serbia's EU accession process?

At first, the situation on the media scene in Serbia looks very chaotic. We have been saying for long that we should privatize media; we were saying that the state is bad media owner and manager. We were demanding that the media are privatized and the state is out of ownership. That happened; we've got the

³⁰¹ Interview was done in direct communication held in Serbian language in the premises of the Novi magazine political weekly, Belgrade, 30 May 2016

first law on privatization of the media in 2006. The process of the adoption of the laws and adoption of the media strategy was very slow and difficult. Partially, it was because the blockage by the politicians, partially it was result of the lack of understanding on our side, on the side of the journalists. Finally, we've got completely new set of media laws two years back. The Law on information, as well as other related laws and bylaws provided for the privatization of the media. Today, only two dailies, "Večernje novosti" and "Politika", do have substantial share of actions in the hands of the government. All others are fully privatized. We were expecting that now we will be seeing so called project based financing by the state. It did not happen so far. We, the journalists turned out are not ready to criticize the laws as only one year of the new practice is not enough to formulate our judgement. Investigative journalism proved that the media situation is very difficult, particularly for the local, municipal media. What we have learned through investigative journalism and non-governmental organizations, their findings are that most of the media have been privatized by the ruling parties. So it turned out that in spite of the privatization, the power, the control over the media remained in the hands of political parties, those who were in power when the privatization was taking place. So, this is why I am saying that the situation in the media is bad.

I would not say that the key problem is so called tabloidization of the media in Serbia, although both Mr. Šabić and Mr. Janković insist on it in their reports. I would say that the problem is more general, and it is that have not created the situation in the country which would clearly define the ownership structure and ownership rights in different areas, including in the media. So we have not seen qualitative transformation of the property rights in all spheres of the society.

Many businesses are still run by the state; there are many public enterprises, so the situation is the same with the media. I don't want to be tough with the laws. Actually, we've got dissent laws two years back. We have laws which have been in accordance with the EU standards and have been brought under the auspices of EU accession, so to say. Still, they are difficult to implement, partly because journalists are bad and are ready to serve some centers of power, and partly because media have been politically partisan and bias. The transition in Serbia has not been completed, the process of transformation of our society has not been completed and therefore we cannot say that the transformation of media has been completed. I don't want to support those who would immediately like to change the new laws because the practice is bad. I think that the laws provide for better journalism in the country but the country has to continue changing.

Interview with Ms. Maja BOBIĆ³⁰², Secretary General, European movement in Serbia

1. What is your cooperation like with the Protector of the rights of the citizens, the Ombudsman?

We have recently prepared one report which is discussing the relationship between the independent institutions and the parliament. Civil society has a very good understanding with independent institutions, including the Ombudsman. I would say that we share same values and same understanding of democracy. Quite often the Protector is targeted by different media, by non-professional journalists, and then different non-governmental organizations were voicing their support for his work and were publicly requesting that these media stop the negative campaign with false accusations. European movement in Serbia has issued many such statements and same goes for different NGOs and their networks. Each time when we feel that the institution of Ombudsman was endangered we have reacted and were explaining that these attacks were jeopardizing of the democracy in Serbia. For instance, the European movement in Serbia awarded the Ombudsman institution and Mr. Saša Janković personally, for the second time with an award "Contribution of the year to Europe". He was so often attacked by the tabloids and we wanted in this way to offer our support and defend the institution and him, as we highly regard his work. It is an award established 12 years back in cooperation with the International European movement, for the individuals, initiative, projects, books, activities which have contributed the most to the accession of Serbia to the EU in the course of the year. This was a precedent to award the same person twice, but we believe that he deserved it. The jury is

³⁰² Interview was done in direct communication held in Serbian language in the premises of European movement in Serbia, Belgrade, 26 May 2016

consisted by those who have been awarded previously. We are of the opinion that his work as an Ombudsman, contribute heavily to the integration of Serbia into the EU and that it contributes to the strengthening of democracy in the country and establishment of the system in which public authorities are responsive and accountable for the respect of human rights of citizens.

2. Could you elaborate a bit more on your practical cooperation with the Ombudsman?

It is a dynamic relationship. The Protector of the rights of citizens, the Ombudsman is there for the last seven years and during these years our relationship went through different phases. Not one government was very savvy with this institution. The government would just tolerate his work and was not enthusiastic. It was the EU who would support him and who would to certain extent create a kind of positive pressure on the government and also in the public in support of the work and relevance of this institution. Same goes for other NHRIs in Serbia. It was done in order to increase the monitoring of the work of the state bodies, in order to allow for the access to information of public relevance as well as the personal data protection. So, the attitude of the state towards these institutions was always a bit reserved and critical.

Most critical was the National Assembly. In one hand it is the National Assembly of Serbia which is appointing the Ombudsman. There would be a forceful debate about him, and then they would avoid discussing his reports although they are tasked by the Constitution to do it regularly. Still they would be late in putting the report on the agenda; they would not accept his recommendations and would publicly criticize. This attitude by the Parliament would only encourage the government and different ministries towards whom these recommendations were targeted to also avoid implementing the requests coming by the Ombudsman. Sometimes they would just ignore his recommendations if these recommendations would be limiting the powerful position some personalities or parties were in. So what NHRIs are doing in Serbia is a difficult job, because the democracy is still weak, Parliament as an institution is yet underdeveloped, dependent from different circles of power and not very independent by the party establishments.

There are some good examples, but in general I would say there is a bulk of the job yet to be done in Serbia to improve the cooperation between NHRIs and the state bodies. It is important that Mr. Janković is actively insisting in improving this relationship, he is also insisting on establishing the institution based on certain values; he is informing the broader public about the work they have done and about the recommendations issued. I believe this is the only way we may contribute to the establishment of human rights culture in the country and respect for the cooperative relationship between the NHRIs and executive and legislative branches of power.

3. How would you judge the change in human rights situation in Serbia since the beginning of the EU accession process?

Well, not much has changed so far. Anyhow, the negotiations have just been opened recently and we are yet to see how they influence the human rights situation in the country. In general the accession process in its very early stages has brought us where we are, what I mean, the very existence of NHRIs in Serbia is a result of the accession process with the EU. These institutions have been established under the influence of EU. We expect that the accession process will have visible positive effect on the status of human rights in the country. It may not be visible for everyone, as still there are so many problems related to the slow and non-efficient work of the public administration.

I would say that the least has been done towards the Roma minority situation. Roma are in the most difficult situation, they are the most discriminated group in the society, socially, economically and politically. On the other hand we have witnessed improvement towards the LGBT population, towards the rights of woman and suppression the violence in the family; all these improvements are linked with the EU accession process. We find it very important that these issues are regularly reported by the EU Commission through so called progress reports or country reports. We expect that these issues will be even more in the focus when it comes to negotiations of the Chapter 23 and the monitoring of the areas related to this Chapter.

4. What do you think is the most important for Serbia to do in order to be able to close Chapters 23 and 24?

There is different action plans prepared in which the government had defined what should be done. These have been prepared in close cooperation with the European Commission, which closely followed the

preparations and was stating its opinions and had directly consulted the administration on some issues. The documents have been closely shared while drafting. Now these Action plans are finalized and I would mark them as solid. Well, some of the civil society organizations dealing with human rights are still critical as they had more ambitious expectations; there is also some criticism coming by NHRIs regarding the prepared action plans. We in the European movement may agree with these comments, still if everything which was planned will be implemented soon, we would be very happy. We have already remarked that there is delay in the implementation of these documents. We did have elections, opening of negotiations was delayed, but this is no excuse for the administration to fulfil the documents agreed by the government, namely the Action plans. Had everything been implemented on time the situation of human rights in Serbia would have been much better today. And this is going to be the real test for Serbia. Usually the most critical problem is to fulfill the standards and criteria in practice, meaning to implement the laws in real life. So, we do have documents like Action plans, we do have proper laws, but in practice not much has been implemented. What we are lacking it is certain automatism of action by the state administration in respect of human rights. It looks like the administration is constantly waiting for political impulses to implement the laws regarding human rights.

Let me say something directly linked with the Chapter 23 and the protection of human rights, namely the functioning of judiciary. I'd say it is the most important segment of the process as the functioning of judiciary is a guarantee that there is a rule of law, functioning state. It gives assurances to the people and businesses that their rights will be protected. This area, reform of judiciary, the most important area of the rule of law, has been approached by the state, but so far, we have failed to improve the situation, to reform the judiciary. Although, in these attempts we have been supported by the EU, still, we failed so far. This is why I expect problems there and am only hopeful that the accession process will provide us with the political will among the parties to give up their pretenses to influence the judiciary.

5. Do you think that these Chapters, namely 23 and 24, should be the last to be closed as their effects are to be mirrored in practice?

I absolutely support this attitude of the European Commission that these chapters are the last to be closed; there I don't think that the EU conditionality is bad, not at all; as it is about the themes which are bringing real benefit to the people. Achieving these standards will bring the benefit for all of us. I think that it was a good decision of EU to start the process opening these chapters and close the process only when these standards have been achieved in real life. It is tremendously important that these chapters are going to be the key element in the EU accession process of Serbia. And it is also good that these changes which are close to the hearts of citizens irrespective of the fact whether they are supportive for the EU membership or are not will be brought in the EU accession process. Of course, it is important that the process itself is a credible one; as it is usually said, tough but impartial. I wouldn't want to end up in the situation which we have seen recently, that some EU members are blocking the process based on their bilateral interest. That might jeopardize the whole EU accession process and would bring nothing good to us.

Interview with Mr. Saša JANKOVIĆ³⁰³, Protector of the rights of citizens

1. Have you noticed any improvement in the human rights situation in Serbia since the opening of accession negotiations with the EU?

The relationship between the negotiations and the human rights situation is not as such so I can't directly answer the question. Actually, negotiations with the EU do have an influence over the human rights situation as in the negotiation process the awareness of the relevance of human rights is strengthening both among politicians and the broader public. Had there not been for the negotiations, I am pretty much sure that the situation would have been much worse than it is today. On the other hand, is the situation better than we have intensified our cooperation with the EU and to what extent, it is somewhat different issue. I

³⁰³ Interview was done in direct communication held in Serbian language in the premises of the office of the Protector of the rights of citizens in Belgrade, 26 May 2016

would say that if we compare today's situation with the one several years back, there are areas in which we have witnessed substantial improvement and there are areas in which we do not see the change towards the better. Respect for human rights is not something static. There is always change; the expectations of the people go further. For instance, when it comes to the data protection or media freedom, expectations have grown among the citizens but the development in these two areas is going into two different directions. Personal data protection has improved while the media freedom deteriorated. So, it is rather complex issue to discuss. If I would have to say in one sentence, the bottom line is that the accession process to the EU, especially opening of relevant chapters, is having certainly positive effect on the understanding of the relevance of human rights in our lives.

2. How would you explain the situation of human rights which are going to be tackled by the Chapter 23? For instance, you have mentioned media freedom, freedom of accession, freedom of expression, corruption, judiciary, minority rights?

There are no reasons to be very satisfied. There are reasons to work hard on the establishment of the rule of law in the country, as the rule of law is the basic precondition for the guarantees of all rights of the citizens. We now have situation in which the rule of law is dependent of the existence of political will, meaning that some rights and freedoms will be enjoyed freely if the daily political developments in the region, or some other political development in the country allow for it. Unfortunately, but we do not have a situation in Serbia for which it could be easily said that there is full media freedom. Quite the opposite, I would say. Also, we cannot say to the citizens that the due process of law in the courts is respected. These are the areas; these are the human rights in which we have not noticed improvements in the recent years. On the other hand, some newly discovered areas, for instance the respect for the rights of LGBT population, are the areas regarding which we may notice some progress. There is good news about the respect of the rights of LGBT population, meaning the right on non-discrimination. In the last several years, there were many politicians, not to mention citizens, who were openly opposing respect of these rights. Today, very rarely would any politician allow himself to say something in public which would be disrespectful of the LGBT population. State has engaged against the violence towards this group. So this is another area in which we have witnessed substantial improvement. When it comes to the women's rights we have seen a specific situation. The awareness of the needs to respect their rights has increased but at the same time we have not managed to suppress violence against women. I believe that the next step should be more efficient engagement of the government and their institutions in the prevention of this violence.

3. What are the main topics you discuss for instance while meeting with the Council of Europe Commissioner for human rights? In your report you mentioned the media situation and discrimination. Have you been discussing these issues with the rapporteurs of the EU parliament or the members of EU Commission?

What I have discussed recently with the Council of Europe's Commissioner for Human Rights was about the relationship between security and human rights; the democratic control of security forces, specifically the relevance of the civilian control for the strengthening of the rule of law and respect for human rights in the country. Further, we have discussed issues related to the efficiency of the human rights institutions; we have discussed the strategies of different international organizations to support the national human rights institutions. There I have a comment; international organizations are focused too much on the national human rights institutions, rather than expressing its influence towards the national governments. In a way, they offer trainings to us instead of offering the trainings to the state bodies which are in the situation to improve the respect of human rights of the citizens in their daily work. Let us invest in the prevention rather than in the control and protection. As it is now, in result those who are lacking understanding of the importance of respect for human rights continue lagging behind.

4. What kind of complaints do you receive?

Well, that you can see from our reports and the statistical data we have published.

5. To what extent are non-governmental organizations helpful to the work of your office?

Civil society and non-governmental organizations is the cornerstone of the Ombudsman institution. They are the core support for us in one way, and in another one, they are a kind of extension of our work,

particularly when it comes to promoting certain ideas, promoting within the broader public certain decisions which are difficult for the political establishment. They are doing a great work in changing the public discourse in favor of the respect of human rights. They are relevant support when there is a need to define priorities regarding the human rights strategies. At the same time the non-governmental sector is public advocate of the work of the Protector of human rights and in their work they elevate the influence of our recommendations. And finally, there is significant specificity from which we try to profit since recently, and that is the expertise. There is a certain amount of expertise, legal knowledge that has grown among the civil activists that we are trying to make the best use of. Sometimes there are problems, issues which go beyond the level of knowledge of my team and then we approach the more specialized non-governmental organizations that bring together academic institutions and their expertise, so we consult them and are grateful for their support in this respect as well. The expertise they provide us sometimes becomes part of the materials we prepare; sometimes even the core element on which we base the position of Ombudsman.