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THE COMMISSIONER FOR HUMAN RIGHTS
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ON HIS VISIT TO SERBIA

13 – 17 October 2008

For the attention of the Committee of Ministers
and the Parliamentary Assembly

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Executive Summary

The Commissioner for Human Rights visited Serbia from 13 to 17 October 2008 for an assessment of the overall human rights situation. Despite steps in the right direction, a number of obstacles remain to the effective implementation of human rights standards. Serbia has upgraded its legislative and institutional human rights protection framework, but implementation remains weak. The widespread public perception of corruption, the failure to deal effectively with the past, and a sometimes ineffective parliament are impediments to progress and undermine the public's trust in the state.

Lengthy civil and criminal proceedings and non-enforcement of domestic judgments remain issues of concern. The improved functioning of the judiciary will largely depend on the proper implementation of the judicial reform strategy.

Serbia does not yet have a general anti-discrimination law covering all forms of discrimination, jeopardizing the effective protection of minorities and vulnerable groups. The situation of the Roma population in Serbia is precarious. They constitute the most discriminated and marginalised minority in the country suffering from social exclusion and often enduring inhumane living conditions. Many Roma, especially refugees and displaced persons, lack personal identity documents which hinders their access to basic human rights, and increases their susceptibility to statelessness.

The legal protection framework to prevent discrimination against persons with disabilities has been improved, yet these persons remain stigmatised and lack access to education and employment. The national mental health strategy is not being implemented effectively. The de-institutionalisation process has been initiated with more encouraging results for children than for adults.

Discriminatory statements made by political figures and the media go largely unpunished, as there is no specific provision in the Serbian Criminal Code banning hate-speech. Human rights defenders in particular are victims of intolerance, hate speech and threats, sometimes resulting in physical attacks. Such instances must be condemned from the highest political level and sanctioned appropriately.

Serbia has a vibrant and competent civil society, yet their knowledge and experience is not harnessed sufficiently by the government in policy and strategy development, as well as project implementation.

Serbia has a diverse and active electronic and print media, although in many cases, professional codes of ethics appear not to be implemented. There is no independent self-regulating media council to deal with complaints against inappropriate, hate-inducing or propagating statements. A further concern is the lack of transparency of ownership and the instrumentalisation of media by business and political circles.

The report concludes with a set of practical recommendations to the government.

I. Introduction

1. The Council of Europe Commissioner for Human Rights, Mr. Thomas Hammarberg, conducted an official visit to Serbia from 13 to 17 October 2008 upon invitation by the Minister of Foreign Affairs, Mr. Vuk Jeremić. The visit was part of the Commissioner's ongoing process of conducting official country visits to all Council of Europe member states to assess the status of human rights promotion and protection therein.¹ In the framework of the official visit, an advance visit to the capital and to south Serbia was conducted by a delegation of the Commissioner's office in September 2008. The findings of the advance visit form part of this report.
2. During the course of his visit the Commissioner met with the Prime Minister, Mr Mirko Cvetković, Minister of Justice, Ms Snežana Malović, Minister for Human and Minority Rights, Mr Svetozar Čiplič, Minister of Labour and Social Policy, Mr Rasim Ljajić (who is also the chairman of the National Council for Cooperation with the International Criminal Tribunal for the former Yugoslavia ("ICTY")), Minister of Religion, Mr Bogoljub Sijaković, Minister of Public Administration and Local Self Government, Mr. Milan Marković, the State Secretaries of the Ministries of Interior, Mr Dragan Marković, Foreign Affairs, Mr Radojko Bogojević, and Health, Mr Tomislav Stantić, as well as the deputy Speaker of Parliament, Ms Gordana Čomić. Further talks were held with parliamentarians from the whole spectrum of political parties represented in Parliament; the Presidents of the Supreme and Constitutional Courts; the acting State Prosecutor; Ombudsmen, and a series of senior representatives of state agencies and commissions, including the Commissioner for Free Access to Information and the Chairwoman of the anti-corruption council. In his visits to the country's provinces and regions, the Commissioner also met with representatives of local authorities.²
3. Besides the capital Belgrade, the Commissioner or his delegation visited Novi Sad, Kovin, Novi Pazar, Požarevac, Bujanovac and Preševo, where several visits to facilities and sites of human rights relevance were conducted. Facilitated by the UNHCR, the Commissioner also conducted an on-site visit to Roma settlements and camps in Belgrade and his delegation conducted on-site visits to Roma refugee settlements in South Serbia.
4. The Commissioner expresses his appreciation for the cooperation of the Serbian authorities in facilitating the visit and wishes to thank the Ministry of Foreign Affairs for its support. The Commissioner would like to thank all the people with whom he met during the course of his visit for their open attitude and constructive approach. The Commissioner would also like to extend his thanks for the invaluable support received from the many international partners in situ.
5. The Commissioner's visit took place shortly after the formation of a new government following the May 2008 elections. After years of political instability and frequent elections, there is cautious optimism that the last elections will provide for a more stable government. The new government is confronted with enormous challenges: overcoming the effects of a complex political, economic and legal transition process, widespread public perception of corruption in many spheres, the failure to deal effectively with the past and reconcile society with Serbia's role in the armed conflicts, an inefficient parliament characterized by destructive rhetoric, obstructionism and filibustering. The Commissioner urges the political parties to adopt a constructive approach and join forces to address the key reform objectives that have been delayed during the past three years due to political rivalries.

¹ See the Commissioner's mandate – Article 3 (e), Resolution (99) 50 on the Council of Europe Commissioner for Human Rights. The Commissioner was accompanied by his advisors Mr. Berry Kralj, Mrs. Rachael Kondak, Mr. Andrew Forde, as well as Mr. Pierre Kaerle, the Council of Europe's cameraman who filmed the visit.

² A full list of individuals, institutions and facilities visited can be found in the appendix to this report.

6. This report is based on first-hand information acquired during the visit along with statements, reports and statistics provided by the authorities as well as international partner organisations, civil society and NGOs. All relevant reports prepared by human rights monitoring mechanisms of the Council of Europe and other international organisations have been considered as a basis for the visit. This report does not intend to provide an exhaustive analysis of the human rights situation in the country but rather reflects priority concerns the Commissioner has identified for improving the genuine protection and promotion of human rights. The Commissioner hopes that this report can serve as a tool for future co-operation and follow-up.

II. Structural protection of human rights

2.1. Status of ratification of human rights standards

7. Serbia acceded to the European Convention on Human Rights in 2004. It has ratified all subsequent Protocols to that Convention, save for Protocols 9 and 10. Serbia is also a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities and the European Charter of Local Self-Government.
8. The Commissioner invites the government of Serbia to sign and ratify the Convention on Avoidance of Statelessness in Relation to State Succession, the Convention on the Legal Status of Migrant Workers, the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes as well as the European Convention on the Compensation of Victims of Violent Crimes. The Commissioner calls on Serbia to ratify promptly the European Social Charter (Revised), the Convention on Action against Trafficking and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, all of which have already been signed.
9. Serbia is a party to all relevant human rights treaties of the United Nations including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional protocol. It has signed but not yet ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, the UN Convention for the Protection of All Persons from Enforced Disappearance and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Commissioner invites the government of Serbia to consider swift ratification of these signed UN conventions. Serbia is moreover party by succession to the Rome Statute of the International Criminal Court. It has not signed any bilateral immunity agreements.

2.2. The Constitutional protection framework

10. The Constitution of the Republic of Serbia was adopted in a rush by the National Assembly at a special session on 30 September 2006 and endorsed by referendum one month later.
11. The Commissioner supports previous Council of Europe expertise calling for further improvements to provisions in compliance with European standards. One particular concern is the excessive influence of political parties on Members of Parliament, which has been widely criticised both in national and international studies, most notably in the opinion

of the Council of Europe's Venice Commission³ as well as in election monitoring reports of the OSCE's Office for Democratic Institutions and Human Rights.⁴ The provisions of the Constitution dealing with the independence of the judiciary and the status of the Public Prosecutor should be amended to ensure full independence of the profession from possible interference of the government. The introduction of amendments, however, is extremely difficult as a result of a complex and rather rigid procedure.

2.3. *The Ministry for Human and Minority Rights*

12. The new government has upgraded the former Agency for Human and Minority Rights to the rank of a Ministry. The new Ministry is tasked to supervise and co-ordinate the work of other governmental Ministries within the scope of human and minority rights.
13. In his meeting with the Minister, the Commissioner emphasised the utility of a more systematic and comprehensive approach to human rights in order to prevent violations from taking place, rather than merely responding to them. Referring to best practices in some Council of Europe member states, the Commissioner outlined the benefits of a comprehensive national action plan for human rights. Serbia presently has a number of separate strategies and action plans for a variety of specific areas. The Commissioner pointed to the added value of mapping all strategies and action plans in force presently, in order to assess ways of streamlining those under one comprehensive national human rights action plan.
14. The Commissioner also recommended including national and international NGOs as well as national experts in a network for consultation on strategy-development, preferably by way of introducing a system of regular consultation with NGOs. The ministry has already embarked on this process with a mapping of NGOs in Serbia and letters of intent to create a consultation network have been prepared.
15. The Minister further informed the Commissioner about the intention to start analysing the recommendations of the various UN bodies with a view to assess best ways for implementation. The intention is to include NGOs and other stakeholders in this process.
16. In the framework of an envisaged tolerance campaign, the Ministry plans to launch a pilot project for a "National Day of tolerance and human rights" and to promote human rights and tolerance education in schools, especially secondary schools. There are plans to introduce human rights education in school curricula within two years. Another envisaged project concerns the education of journalists and media in terms of ethical journalism and human rights.
17. While a number of joint projects have been embarked upon with other Ministries, the Ministry for Human and Minority Rights is still building itself up, and further time is needed before the results of its work can be analysed.

2.4. *The Ombudsman institutions*

18. Serbia has a three-layered system of Ombudsman institutions for the state, the provincial and the local level.

³ Opinion no. 347 / 2005, *Joint Recommendations on the Laws on Parliamentary, Presidential And Local Elections, and Electoral Administration in the Republic of Serbia*, CDL-AD(2006)013, Venice Commission/OSCE/ODIHR, 23 March 2006.

⁴ *Republic of Serbia Early Parliamentary Elections, Limited Election Observation Mission Final Report*, OSCE/ODIHR, 11 May 2008.

State Ombudsman

19. The Commissioner met with the State Ombudsman, Mr. Saša Janković. His core task is to control the executive branch, protect human rights and propose new laws as well as amendments to existing legislation. He is also empowered to initiate disciplinary proceedings against civil servants and to bring cases to court. The institution is not yet fully operational in terms of staffing and infrastructure. Presently, the office has 33 staff located in interim offices divided over two different locations. The institution is set to obtain a new venue in due course to accommodate up to 70 persons. There are plans to open out-reach offices in different parts of the country including one in South Serbia.
20. The institution receives a large number of complaints and requests for assistance from citizens across the country. The current focus is on data collection on human rights violations with an emphasis on cases of discrimination and minority rights. The relationship with parliament is good and the first annual report was discussed in Parliament earlier this year.
21. The Commissioner welcomes Parliament's recent election of four deputy Ombudspersons at the national level after a lengthy delay. The deputies cover the theme of national minorities, deprivation of liberty, child rights, as well as gender equality and persons with disabilities. The Ombudsman intends to propose a change to the "Law on the Protector of Citizens" in order to establish two distinct deputies to cover separately gender equality and rights of persons with disabilities.
22. There is a draft law on the establishment of a distinct Ombudsman for Child Rights to be discussed in Parliament. The Commissioner agrees with Mr. Janković that the creation of another institution is currently unnecessary and would bear the risk of confusion. The Commissioner recommends covering child rights under the current structure and subsequently evaluating the advantages and shortcomings of the present system before embarking on any structural changes.
23. The Commissioner echoes the concerns of the Venice Commission over the absence of any protection mechanism of the Ombudsman against unjustified pre-term dismissal by parliament.⁵ The "Law on the Protector of Citizens" could be further improved especially regarding the eligibility criteria for Ombudspersons; the overly rigid, court-like procedures required when filing a complaint; and the voting provisions for the election of the Ombudsman by parliament.⁶

Ombudsman at the regional level

24. The Law on Local Self-Government provides for Ombudsman institutions at the municipal and provincial level. Cooperation between the state, provincial and municipal Ombudsmen appears to be good. In cases where local or regional legislation enacted by virtue of federal law is at stake, the state Ombudsman gives precedence to the local and regional institutions.
25. The Commissioner met with the Ombudsman for the Province of Vojvodina, Mr. Petar Teofilović. Elected in 2003 for a mandate of six years, he oversees and monitors the functioning of the provincial bodies. He has five deputies, one each for children's rights, gender equality and national minorities, while the remaining two deal with general issues. Currently, the institution has 18 staff including the Deputies, while the law provides for a maximum of 34 staff members. The provincial Ombudsman submits his annual report to the regional Assembly for discussion, although this procedure is not codified in any rules. In the view of the Ombudsman, the legal framework should be adjusted to include this obligation.

⁵ CDL-AD (2007)004, p.13.

⁶ Reference is made to the recommendations in the joint opinion by the Venice Commission and the Commissioner for Human Rights from 2004, CDL-AD(2004)041, Opinion 318/2004 of 6 December 2004.

He would like the discussion of his annual report to be taken more seriously in parliament, for example with written replies.

26. Most of the complaints concern he receives urbanisation, architecture, retirement pension funds, and complaints relating to the environment. Other complaints relate to gender equality, discrimination at work and domestic violence. There are also complaints about the outcome of divorce proceedings and custody rights. Minority rights issues are also raised, such as the right to have one's name written in one's own alphabet. The Ombudsman pointed to the necessity for more human rights training for the judiciary and government officials.
27. Co-operation between the Regional Ombudsman and government has improved and his recommendations are increasingly observed. His office is part of a network of Ombudsinstitutions for children in South-East Europe. Awareness-raising is an important aspect of his work as citizens are generally still ill-informed about their rights.

Municipal Ombudsmen:

28. Besides the state Ombudsman and the Ombudsman for the province of Vojvodina, 11 municipalities (including Belgrade) have local Ombudsmen. The municipal ombudsmen cooperate well with the Regional Ombudsman.

2.5. Civil Society, NGOs and Human Rights Defenders

29. Serbia has a vibrant and active civil society community with a large number of registered NGOs emerging from the anti-war movement in the 1990s. However, many complain that the government does not see them as partners but rather as agitators or extremists. The Constitutional provisions generally respect the rights and responsibilities guaranteed by the UN Declaration on Human Rights Defenders.⁷ The legal framework regulating freedom of association appears outdated. A draft law on associations, approved by the government on 17 July 2008, was withdrawn from the further parliamentary procedure on 17 December 2008. The preparation of a new draft is underway.
30. The adoption of the Law on Free Access to Information of Public Importance established the office of the Commissioner for Free Access to Information, setting the framework for improved access to information for NGOs and Human Rights Defenders. In practice, however, this Commissioner's recommendations and decisions are often not observed, especially in the most relevant cases of public interest, and the cooperation of some state institutions was more than limited. There is no mechanism to enforce his decisions or to sanction violations of the law by government bodies.
31. There have been a number of serious cases of denigration of NGO organisations in the media. Harsh attacks against several human rights defenders and organisations such as the Helsinki Committee, the YUCOM and the Humanitarian Law Centre, were particularly noticeable after Kosovo's⁸ unilateral declaration of independence in February 2008 and the publication of the Annual Report of the Helsinki Committee in October 2008. Personal details including the private address of one human rights defender have been published in the media along with vulgar comments. The silence of the authorities in the face of such media attacks and the inactivity of law enforcement agencies and the prosecution create a dangerous space for such attacks.

⁷ UN General Assembly Resolution 53/144.

⁸ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

32. An open letter signed by some important international NGOs was sent to the main Serbian authorities, in which repeated acts of intimidation against HRDs were denounced. There has also been no progress in the investigations of murders of journalists, some of which date back to the 1990s. Intimidation and attacks against a number of journalists continue, involving physical threats and assassination attempt.
33. The Commissioner is concerned about the hostile environment for human rights defenders who address certain rights and themes, such as the rights of Lesbian, Gay, Bisexual and Transgender Persons and those addressing the issue of transitional justice and war crimes. The Youth Initiative for Human Rights reported 119 concrete incidents of political violence, among which 20 attacks on journalists and 14 on NGO activists and their property in less than a year from October 2006 to April 2007.⁹ It appears that the government favour certain NGOs perceived as being “government or state friendly”.
34. The Commissioner urges the authorities to send without delay a clear message from the highest political authority unambiguously condemning all sorts of attacks or threats against human rights defenders whenever they occur. He further recommends that the Serbian government provide protection for human rights defenders under threat of attack. More has to be done to prevent hate speech and activities of extremist organisations. The Commissioner moreover urges the authorities to ensure that the provisions in the Criminal Code concerning hate crime are relied on in prosecutions and that the punishment is appropriate. Hate speech by politicians is not acceptable in a functioning democracy and the government’s reaction should be firm and immediate.
35. The Commissioner recommends that the government should make better use of human rights organisations in strategising and decision-making. This could be best achieved by establishing a cooperation network with the NGO sector to enable more systematic exchanges, preferably by making use of the newly created Ministry for Human and Minority Rights. Serbia should also speedily enact legislation on citizens’ associations and NGOs consistent with European standards for non-profit organizations.

III. Rule of law

3.1. *Transitional Justice and dealing with the past*

36. The July 2003 Law on organization and jurisdiction of government authorities in prosecuting perpetrators of war crimes established the specialized War Crimes Chamber of the District Court in Belgrade (WCC) and the Office of the War Crimes Prosecutor of the Republic of Serbia (OWCP). The WCC’s jurisdiction extends to Serbian citizens suspected of having committed certain types of crimes in all the territory of the former Yugoslavia. It is applied to investigate and prosecute perpetrators of criminal offences provided under Article 5 of the Statute of the ICTY. The jurisdiction of the chamber covers war crimes, genocide, and crimes against humanity. It is doubtful that crimes against humanity committed in the 1990s will be tried as such because, unlike genocide or war crimes, “crimes against humanity” did not exist as a distinct category in the domestic legislation at the time. A near-consensus exists in Serbia’s legal community that the principle *nullum crimen sine lege* precludes prosecutions on that basis.
37. Since its establishment in 2003, the WCC has made good progress following a decade of war in the former Yugoslavia. However, the Supreme Court has continued to overturn many war crimes verdicts and sends cases back for retrial. There are concerns about pressure

⁹ “Political Violence in Serbia”, report by the Youth Initiative for Human Rights.

being exercised on the Office of the Prosecutor and on lawyers and NGOs working with victims.

38. To date, Serbia, as many post-Yugoslav countries, has focused almost exclusively on the criminal prosecutions of war crimes. Although war crime trials in national courts and the Hague Tribunal have succeeded in bringing some individuals to justice, their capacity to try only a handful of war crimes cases per year cannot provide an accurate portrait of crimes committed.
39. There is an absence of successful transitional justice processes, such as formal truth-seeking efforts, reparations to victims, and the vetting of officials who may be implicated in past crimes. According to a number of the Commissioner's interlocutors, there is a tendency for state institutions to diminish the role of Serbia in the conflict. The role of secret services in supporting fugitives from the ICTY has still to be addressed. There are in general no sound efforts from the media to contribute to the process of facing the past in a responsible manner. Journalists who try to write about this are often branded as traitors.
40. According to the ICRC lists of missing persons, the Republic of Serbia is still seeking 1 950 missing persons as a result of the conflict in Kosovo¹⁰ and 1 303 missing persons as a result of the armed conflicts on the territory of the former SFRY.¹¹ The Serbian authorities stress that all mass or individual graves in Serbia have been investigated and all of the excavated and identified bodies have been returned. Since 2001, a total of 1 205 bodies have been exhumed, on which autopsies have been performed.¹² According to the authorities, the Republic of Serbia is committed to resolving the fate of missing persons, regardless of their national or religious affiliation. This has resulted in the finding of three mass graves in Batajnica, Perućac and Petrovo Selo, from where the remains of 800 persons of Albanian nationality have been exhumed.
41. Besides continued and enhanced efforts to cooperate with the ICTY, the Commissioner recommends that the government adopt a state strategy for accepting and telling the truth about the conflict in the region, in active cooperation with NGOs specialising in this field.

3.2. *Independence of the judiciary*

42. The reform of the judiciary is governed by the 2006 National Judicial Reform Strategy. It sets out priorities and objectives for the period 2006-2011. The Venice Commission has welcomed a number of good provisions therein, but considered that on the whole the laws tended to weaken judicial independence.¹³ The EU's Progress Report for 2008 found that overall there had been little progress with the judicial reform process.¹⁴ A package of reform laws was adopted by parliament in October and December 2008.¹⁵
43. There is a widespread public perception of corruption in the judiciary. Judges themselves complain about pressure being exerted from political and business circles. According to Article 147 of the Constitution, judges are elected by the National Assembly. The Council of Europe's Venice Commission have criticised this practice in its opinion on the Constitution

¹⁰ Persons of Serbian, Albanian or other nationality.

¹¹ 1 200 missing persons resulting from the armed conflict in Croatia and 103 missing persons resulting from the conflict in Bosnia and Herzegovina.

¹² Of the 1 205 exhumed remains, 764 were identified and turned over to UNMIK, 88 to the Republic of Croatia, 123 to relevant commissions in Bosnia and Herzegovina and 13 to families in Serbia.

¹³ CDL-AD(2008)007 Strasbourg 19 March 2008.

¹⁴ Serbia 2008 Progress Report [COM(2008)674].

¹⁵ Including the law establishing the anti-corruption agency and amendments to the law on financing of political parties, the laws on organization of courts, public prosecution, the State Prosecutorial Council, amendments to the Law on Minor Offences, the Law on Judges and the Law on the High Judicial Council as well as the Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices.

of Serbia.¹⁶ The involvement of Parliament risks leading to the politicisation of the appointments. The Commissioner supports the suggestion of the Venice Commission that judges be appointed by the President on the basis of proposals submitted by the High Judicial Council.

44. Another potential area of concern regards the planned re-appointment of all judges. According to the Constitutional Law on Implementation of the Constitution, all judges and presidents of courts (excluding the Supreme Court) shall be re-appointed no later than one year from the date of the constitution of the High Judicial Council.¹⁷ However, this general re-appointment procedure has not yet been embarked upon. According to the Minister of Justice, the Ministry has spent the last 18 months completing an appraisal of every judge, which will include an assessment of the number of cases he/she has completed and the quality of the judgments delivered. The Commissioner is convinced that the reappointment process has to be carried out on the basis of clear and transparent criteria, providing the right of appeal by the person concerned.
45. The High Judicial Council is established by the Constitution in Article 153. In its opinion¹⁸ the Venice Commission argued that its composition was flawed because "all members of the High Judicial Council are elected, directly or indirectly, by the National Assembly." Therefore, there is a risk of politicisation of the appointment process. The draft law on the High Judicial Council of the Republic of Serbia attempts to address this issue. However, while the amended procedure reduces to a minimum the influence of political parties on the election process, it does not eliminate the risk of politicisation completely. The Parliamentary Assembly of the Council of Europe's (PACE) Monitoring Committee considers that the Constitution should be amended, following the Venice Commission recommendation of 2006.¹⁹ The Commissioner shares their expressed view that a High Judicial Council totally dependent on the Parliament cannot be a body which would be able to re-appoint judges in a fair, impartial and transparent manner.
46. During discussions with the Commissioner, the Minister of Justice also raised the problem that the criminal sentences given by judges border on the legal minimum and were sometimes lower. According to statistics on criminal justice, judges tend to apply the lowest possible sentence on the scale, often finding extenuating circumstances which reduce the length of the sentence. The Commissioner encourages the authorities to improve training on penal policy for criminal judges.

3.3. *Lengthy civil and criminal proceedings*

47. Lengthy civil and criminal proceedings and difficulties in enforcing final judgments have all led to deterioration in the public's trust in the judiciary. The Serbian Constitution provides for the right to a fair trial within a reasonable time (Article 32) and the 2005 Civil Procedure Act prescribes that a court should decide on claims and motions of the parties within a reasonable time (Article 10). According to many of the Commissioner's interlocutors, including at the governmental level, excessively lengthy court proceedings is a systemic problem in Serbia. The European Court of Human Rights has published several judgments finding a violation of Article 6 of the European Convention on Human Rights, and a number of cases concerning excessive length of proceedings are pending before it. Of the 16 Strasbourg cases which are currently being supervised for execution before the Council of Europe's Committee of Ministers, nine concern excessive length of civil proceedings.

¹⁶ CDL-AD(2007)004 Strasbourg 19 March 2008.

¹⁷ Itself elected within 90 days of the Harmonisation laws

¹⁸ 405/2006

¹⁹ Honouring of obligations and commitments by Serbia, PACE Report of 15 September 2008, Doc. 11701.

48. One group of cases of particular concern to the Commissioner are those relating to excessively lengthy divorce and custody proceedings.²⁰ In family-related matters, it is essential that hearings are conducted in a timely manner to safeguard the best interests of the child.
49. A domestic remedy for excessive length of court proceedings, as well as any proceedings before a body exercising public powers, has been introduced by way of a constitutional complaint through the Constitutional Court Law. Citizens can refer to the Constitutional Court if their right to a fair trial within a reasonable time has been denied. Where the Constitutional Court finds a violation of this right, it refers the case to the Damages Commission which then is able to award damages. The Damages Commission must make a decision on the claim within 30 days, failing which the applicant will be entitled to file a claim for damages before a court of law. In March 2008, members of the Damages Commission were appointed by the Minister of Justice and its Rules of Operation were adopted (Official Gazette, No. 27/08).
50. During the period from May to October 2008 the Constitutional Court has dealt with 188 constitutional complaints.²¹ These figures demonstrate the determination of the Court to provide an efficient legal remedy in the country's domestic legal system. While it is true that this period is too short to draw conclusions on the Court's performance and efficiency, the Commissioner remains concerned that given the backlog which the Constitutional Court is facing and the problems with resources, personnel and expertise in the field of individual complaints, there are questions as to whether this remedy could be seen as an effective within the meaning of Article 13 of the European Convention on Human Rights.²² The Commissioner therefore would like to draw the Serbian authorities' attention to the Committee of Ministers' Recommendation Rec (2004)6 to member states on the improvement of domestic remedies and to measures adopted in this field by other countries, for example in Poland, the Slovak Republic, Croatia, and Slovenia.²³ He encourages the Serbian authorities to introduce a civil remedy for lengthy proceedings into domestic law.
51. Concerning lengthy criminal proceedings, the Minister of Justice herself defined this as a significant problem which needs to be resolved. The Ministry conducted a fact-finding exercise to determine the extent of the problem and to prioritise future work. According to the Minister, 4 700 criminal cases have fallen outside the Statute of Limitations during the past 5½ years as a result of excessively lengthy criminal proceedings. For some cases, there are good reasons which justify the length of such proceedings, for many there are not. The average duration of criminal proceedings is 5 years. The Minister accepted that the issue was of particular importance when dealing with juvenile offenders.
52. The Commissioner recommends that a number of measures should be taken to facilitate the acceleration of civil and criminal proceedings including organisational measures such as developing/and or refurbishing court premises, the computerisation of the courts, increasing posts for judges and law clerks, training, improved court management and increasing courts' budget. The authorities should also consider mediation as a useful method of alternative dispute resolution for civil matters. Concerning family law disputes, the Commissioner suggests the possibility of setting up specialised family courts which would deal exclusively with family-law issues.

²⁰ See the judgment of *V.A.M v Serbia* (application 39177/05, judgment of 13/03/07, final on 13/06/06), as well as the cases of *Tomić v Serbia* (application no. 25959/06) and *Jevremović* (application no. 3150/05).

²¹ The Court adopted one complaint, rejected eight complaints and dismissed 179 complaints.

²² See the recently communicated case of *Snežana MILOŠEVIĆ v Serbia* (Application no. 36166/08)

²³ See *Kudła v Poland* (Interim Resolution ResDH(2007)28, *Jóri v the Slovak Republic* (Final Resolution ResDH(2005)67, *Horvat v Croatia* (Final Resolution ResDH(2005)60 and *Lukenda v Slovenia* (992nd meeting, April 2007).

3.4. *Non-enforcement of judgments*

53. Another issue hampering the smooth running of the Serbian judicial system is the non-enforcement of court judgments. There are four cases currently being supervised by the Committee of Ministers concerning excessive length of enforcement proceedings and non-enforcement of final judgments. This problem relates to commercial cases, as well as divorce and child custody cases.
54. The Commissioner notes that prompt enforcement of final court judgments is an essential part of a fully operational justice system which upholds the rule of law. Non-enforcement of court orders in respect of family matters can have profound consequences for all the family involved. The Commissioner calls on the Serbian authorities to improve statutory provisions relating to the expediency of enforcement procedures, particularly in the field of family law. Police assistance to bailiffs in enforcement procedures should also be improved.

3.5. *The Constitutional Court*

55. The law on the Constitutional Court was adopted on 23 November 2007. The Court has been operational since 1 April 2008, albeit with a reduced number of judges. Ten judges from the new Constitutional Court were elected in December 2007, five by the National Assembly from a list put forward by the President, and five appointed directly by the President. The remaining five judges should be appointed by the Supreme Court of Cassation. However, the final election of these judges will still be delayed, despite the fact that the judicial laws *inter alia* creating this court were adopted in December 2008.
56. The Constitutional Court now has three main functions. Firstly, it reviews the constitutionality of laws and other regulations. This is a function which the Court (in its various guises) has performed since 1963. According to the President of the Court, some laws are still not aligned with the Constitution. Within the period of six months from May to October 2008, the Court has resolved 251 cases dealing with the constitutionality of laws and regulations. Secondly, from 2006 all citizens have the possibility to refer to the Constitutional Court to protect their rights as infringed by state authorities or other public bodies. Thirdly, citizens can refer to the Constitutional Court if their right to a fair trial within a reasonable time has been denied. Where the Constitutional Court finds a violation of this right, they refer the case to the Damages Commission. One of the goals of the Court is to reduce the number of cases of excessively lengthy judicial proceedings before the European Court of Human Rights.
57. The Constitutional Court faces a backlog of cases inherited from its predecessor: 1 074 cases together with 1 087 new cases received. From the first sitting of the Court in April 2008, there have been 439 cases resolved of which 188 were constitutional complaints and 251 cases for assessing the constitutionality or legality of general legal acts. The Court will need to hire more Registry staff to deal with this backlog. The Court has issued a public announcement to recruit lawyers, but recruitment is not easy as salary levels do not compare favourably with the private sector. There is also a problem in relation to the legal status of the judges. One group of judges are permanently employed as judges and their salaries are defined by the law regulating public officials. The other are still employed by their respective Universities and are compensated for the work they perform as Constitutional judges. In the opinion of the President of the Court, the judicial function must come first and this cannot be achieved if a judge has a permanent contract elsewhere.

58. Another issue which will need to be addressed is internal training. Registry staff of the Court has been trained to analyse the constitutionality of laws, rather than deal with constitutional complaints. Therefore, they will have to receive more training. The modernisation of the Constitutional Court system is also a priority, including IT training.
59. The Commissioner recommends that the Serbian authorities allocate sufficient resources to increase the number of Registry lawyers at the Constitutional Court and to ensure that the legal status of the Constitutional Court judges is clarified so that no judge is permanently employed as a full-time University professor.

3.6. *Corruption*

60. Despite the fact that the fight against corruption has been a priority for all Serbian governments since 2002, corruption remains widespread and continues to present a serious problem. The widespread perception of corruption in the public and private sector seriously undermines citizens' trust in the proper functioning of state institutions and in political decision-making processes. It also negatively affects the development and implementation of the reform agenda and weakens foreign investment.
61. Some positive steps, mainly focusing on strategy-development, lawmaking and institution-building, had been taken in the past, but they were either flawed or incomplete. The National Anti-Corruption Strategy was drafted in 2005, but the complementary 2006 Action Plan on the implementation of the Strategy lacks clear deadlines for implementation and concrete action, and fails to identify the necessary human and financial resources. A comprehensive package of laws regulating the fight against corruption was adopted between 2002 and 2006 improving the legislative anti-corruption framework, but the laws are in need of further improvement.²⁴
62. As an institutional response, the Anti-Corruption Council was established in 2001. It is an advisory body mandated to provide support to the government in the implementation of anti-corruption policies, but has no executive or standard-setting powers. The Council's President confirmed the efforts in law reform, but criticised the lack of strong institutions and the inconsistent implementation of anti-corruption provisions. The three key problems identified by the Council are legal uncertainty, weak institutions and the fact that laws are instrumentalised by political and business circles for personal vendettas against opponents. Poverty and the difficult economic and political transition process are root causes facilitating corruption. Political parties control all spheres of political life and decision-making. Checks and balances introduced by the constitution remain without effect as the judiciary and legislature remain largely ineffective and do not perform their monitoring functions. According to the Council president, the key solutions to remedy this situation have to include a revision of the election law and the law on political party financing, as well as introducing an independent budgeting of the judiciary.
63. The new Anti Corruption Agency Act was adopted by parliament in December 2008. The Act establishes the Agency for combating corruption as an "autonomous and independent government body",²⁵ and is due to start its work in January 2010. Among other tasks and responsibilities, the Agency shall supervise the implementation of the Anti-corruption Strategy and Action Plan. It shall also have normative functions and draft legal opinions thus ensuring early warning of "corruption risks" in emerging draft

²⁴ Reference is made for instance to the new law on the financing of political parties that sets forth weak measures for supervision and control; the new law on the prevention of conflict of interest does not include all officials and establishes rather weak sanctions; the role of the public procurement agency is not strong enough; the material and procedural criminal legislation could also be further improved, in line with recommendations made by Council of Europe experts.

²⁵ Art. 3 para. 1 Anti Corruption Agency Act.

- legislation. In order to improve efficiency in the investigation and prosecution of corruption, a Department for the Fight against Corruption was established in the General Prosecutor's Office.
64. Implementation of the 2004 law on access to information of public importance continues to be slow, with access often denied in practice, especially in crucial issues of public interest. In his March 2008 report, the Commissioner for Free Access to Information concluded that compliance with his requests was improving but was still poor. In discussions with the Commissioner, many NGOs complained about their requests for information being frequently unanswered by government actors.
 65. There is a need to create a more operational structure to strengthen the enforcement of anti-corruption and ensure a better co-ordination between different anti-corruption policies and mechanisms. The appointment of judges and prosecutors must be more transparent and free of political influence in order to start rebuilding public confidence in the judiciary and prosecution. Efficient mechanisms to monitor the implementation of the Anti-Corruption Strategy and the Action Plan should be introduced.

IV. Police

4.1. *Ill-treatment by the police*

66. Various sources indicated that police ill-treatment has decreased in Serbia since the Council of Europe Committee on the Prevention of Torture ("CPT") visited in 2004. While it now appears that allegations of police violence are the exception rather than the rule, police violence has not yet been completely eradicated. NGOs and representatives of the legal community pointed out that many people still fail to report incidents of violence for fear of retaliation by the police.
67. The Commissioner was made aware of a number of disturbing reports about the *Gendarmerie*, a paramilitary special police force, and its involvement in heavy-handed action. During its visit to southern Serbia, the Commissioner's delegation witnessed a convoy of *Gendarmerie* vehicles on joint patrol with the army. Several interlocutors voiced their concern that their mere presence was intimidating to the local community. Moreover, joint patrolling with the army risks blurring the lines between the responsibilities and functions of the two.

4.2. *Training of the police*

68. Efforts are ongoing to improve initial and continuing training for law enforcement officials. The Commissioner's delegation visited the new police training centre in Preševo. The OSCE has worked intensively with the Serbian authorities on training for police recruits. New police cadets are being recruited after having completed their secondary education. Last year, there were over 4 000 applications. This is a positive sign as recruitment has been difficult in the past, *inter alia* due to the low level of remuneration of officers, which at approximately 400 Euros per month is beneath other public sector workers. The Commissioner supports the efforts of the Serbian authorities to improve the recruitment procedure. A well-educated and trained police force that unequivocally rejects police violence is the best possible guarantee against ill-treatment. Adequate salaries for police officers help to alleviate the risk of corruption.
69. With a view to bringing the police closer to the community and restoring public trust in the police, a strategy for community policing has been developed with the assistance of the

OSCE, the British Embassy, the Norwegian Ministry of Justice and the Swiss Police Authorities.

70. According to the Ministry of the Interior, approximately 2.6% of the police force is composed of national minorities. The Commissioner encourages further efforts to increase the level of minority participation in the police service, in particular from the Roma population. The Commissioner supports the efforts of the authorities to ensure a multiethnic police service in South Serbia.

4.3. *Police Accountability*

71. Within the Ministry of the Interior, complaints regarding police misconduct are dealt with by the Internal Control Sector ("the Sector"). The Sector was first established in 2003 when it started functioning as a department of the General Directorate of Police. The new law on Police 2005 established it as a separate department within the Ministry. The Sector supervises the lawful performance of the police forces and their respect for human rights. It may act upon complaints by individual citizens, NGOs, the Ombudsman or on its own initiative. Its aim is to restore confidence between the individual and the police.
72. The Sector is directly responsible to the Minister of Interior and consists of a Directorate with three departments for criminal operations, complaints, and coordination of the four regional centres. A bureau within the Sector identifies areas of concern and makes suggestions for improvement. The Commissioner met with an Assistant Minister, who is the head of the Sector.
73. Police misconduct is monitored by special commissions established in each of the 27 regions of the Republic. These commissions consist of three members, namely a police officer, one representative of the Sector and a local citizen. The new Law on Police permits police officers to file complaints against fellow officers for misconduct.
74. The head of the Sector informed the Commissioner that since its establishment there have been 2 500 to 3 000 complaints each year, with an 11% decrease in the number of complaints brought in 2008 compared to 2007. From 2003 to 2007, the Sector opened 150 formal investigations against police officers, compared to 350 in 2008 alone. In the Commissioner's opinion the police complaints mechanism is still in its infancy and its impact in practice cannot yet be gauged.
75. The Commissioner's delegation visited the "29 November" Police Directorate in Belgrade, where police complaints at the local level were discussed. From the beginning of January 2008, 20 complaints had been made directly to this police station, of which three were found to be justified and ten not justified, while seven were still being considered. There were 17 physical injuries recorded as a result of police involvement during the period mentioned. Ten resulted in disciplinary proceedings and four in criminal proceedings. According to the head of the department for criminal investigations, police violence was not a problem in Serbia.
76. The Commissioner welcomes the establishment of the new mechanism for police complaints in Serbia. He stresses the fundamental importance of the role of the police in protecting human rights and the necessity for independent, transparent and effective investigation of allegations of police misconduct. The Commissioner will continue to monitor the future development of this mechanism.

V. Places of detention

5.1. Prisons

77. In 2001, a joint Council of Europe – OSCE assessment on the prison system of Serbia identified the major problems as the inexistence of training programmes for prison staff, overcrowding, substandard material conditions as well as treatment of prisoners. Since then, the government has made significant efforts to tackle the shortcomings and improve the penitentiary system.
78. The Penal Reform Strategy was adopted in 2004. The government undertook to improve prison conditions in line with Council of Europe standards and paid particular attention to the situation of vulnerable groups, such as juvenile offenders. It also prioritised the reduction of overcrowding, the improvement of material conditions and the introduction of initial and continuing training for penitentiary staff. The Council of Europe supported the implementation of the Strategy, in particular the development of a complaints and inspections system, the introduction of a comprehensive and multi-disciplinary approach to juvenile offenders, and the promotion of alternative sanctions. In addition, an innovative risk assessment procedure for detainees and prisoners entering prisons is being developed.
79. The law on the Execution of Penal Sanctions foresees internal inspections as well as the possibility for external monitoring. Mainly due to staffing shortages in the Department for Internal Control of the Central Prison Administration, internal inspections are not carried out in a consistent and regular way. Because the Ombudsman Office has not been operational and the Parliamentary Committee for prison monitoring had not yet been established, there has been an almost complete absence of domestic monitoring of detention places. The lack of effective monitoring contributes to fragmented, inconsistent practices in the prison sector, where every prison implements legislation in its own fashion resulting in the same categories of prisoners being subject to different regimes, depending on the institution they are placed in rather than based on an objective assessment.
80. The Commissioner's delegation visited the Požarevac Zabela prison consisting of two separate units for convicted and remand prisoners. The prison has the capacity to hold 1 000 prisoners but currently is accommodating 1 223. Although this situation still amounts to almost 25% overcrowding, the Commissioner recognizes the progressive improvements to reduce overcrowding in recent years. The main prison buildings housed open, semi-open and closed prison regimes. Accommodation in the open regime is provided by way of large collective rooms of 15 prisoners or more. At the time of visit, approximately 900 prisoners were held in the closed regime. The buildings and gardens were well kept. The kitchen had been recently renovated and was of a satisfactory standard. The Commissioner would like to encourage the Serbian authorities to move away from collective rooms for large numbers of prisoners, which do not permit any individual privacy.
81. There was one full-time doctor, one medical specialist and two dentists working at the hospital. Two additional GPs are contracted from the local hospital, visiting each afternoon. The Deputy Governor confirmed that it is difficult to recruit prison staff, and in particular, medical personnel.
82. According to the Deputy Governor, approximately 60% of the prison population are drug addicts or users. The prison management is trying to reduce drugs being smuggled into the prison, but with little success. In the framework of a harm-reduction programme,

- addicts receive methadone treatment based on a judicial decision. The Commissioner recommends that the authorities step up efforts to provide treatment and rehabilitation for all drug users within prisons, in close collaboration with Ministry of Health officials.
83. A new separate wing for organised crime and war criminals has been built on the prison grounds. The wing is highly modern and boasts the latest security technology. All the cells are individual, each with a toilet and shower. At the time of visit, the wing was not yet in use because the legislation to keep convicts under the strict regime envisaged had not been adopted by Parliament.
84. The Commissioner urges the Serbian authorities to pass the relevant legislation to make the new wing in the Požarevac Zabela prison operational as soon as possible. The Commissioner expresses his regret that the Council of Europe's involvement in the joint OSCE-COE prison reform project will end in March 2009 due to lack of future of funding.
85. The Commissioner encourages the Ministry of Justice and the Central Prison Administration to review the existing system of inspection and to facilitate the introduction of effective monitoring mechanisms, especially by the Ombudsman and professional NGOs. Based on the underlying concept of cooperation and constructive dialogue, external, independent and objective monitoring helps to identify and remedy shortcomings. It can have additional positive side effects, if it includes monitoring of conditions for the staff as well.
86. The Commissioner recommends that the Serbian authorities publish and widely disseminate the CPT report among all stakeholders in order to facilitate speedy implementation of their recommendations.
- 5.2. *Pre-trial detention*
87. The law limits the length of pre-trial detention to two years for most cases, but allows detention for up to four years for crimes that carry the maximum penalty.²⁶
88. The Commissioner visited the Belgrade District Prison, where the great majority of the inmates are detained on remand. The Commissioner was struck by the inadequate living conditions, in particular that no cell had direct access to fresh air or light. There are plans to build another wing of the prison and construct some cells with natural daylight. Another ambitious project is to relocate the prison completely, since by 2021 the prison will have to be moved from its current premises.
89. The conditions in the new special detention unit for organised crime were markedly better than those in the rest of the establishment. The governor expressed his hope that the whole of the prison could be renovated to the standard of the special detention unit. Further renovation work was being undertaken on the kitchen, which was due to be completed within the next 6 months. A special room had been opened for consultation with lawyers and another for family visits.
90. The issue of over-crowding was also of particular concern to the Commissioner. At the time of his visit, there were 1 011 prisoners in remand detention and 120 convicted prisoners, together with a further 550 in the prison hospital. The prison had three times as many inmates as capacity.²⁷

²⁶ The maximum sentence is 40 years imprisonment

²⁷ At the time of the CPT's visit to the same establishment in 2004, there were 720 inmates altogether, excluding the prison hospital.

91. The governor explained that 490 wardens plus 33 novices work in the prison. He also highlighted that the demands of the job were enormous, as the prison, building itself was huge with over 12 kilometres of corridors. The volume of work for the prison wardens was increasing, with a large number of people taken in and out of the prison building each day for court appearances and medical appointments. While the number of inmates had increased, staff numbers had not. Nevertheless, the higher number of job applications received this year is an indicator of an increasing interest.
92. Another serious problem in this institution is drug addiction. The Commissioner was informed that a large number of those detained on remand were drug users. Of the 120 convicts held in the establishment, only 30 could work, as the other 78 were intravenous drug addicts. There was no special treatment for drug addiction in the prison itself, although a methadone programme was available for those in the prison hospital who had been prescribed a mandatory methadone treatment as part of their sentence.
93. The governor conceded that there were difficulties in treating those with mental health issues. The prison employed psychiatrists who conduct visits on a regular basis; however, their sole treatment was by way of prescribing medication. According to the Ministry of Health, it was difficult to recruit doctors to work in prison establishments.
94. The governor informed the Commissioner that the inmates did not spend enough time outside. The exercise yard was 95 metres long. A partition wall had been constructed to enable more inmates to take exercise together, taking into account that certain inmates were not to come into contact with others. There appeared to be no or very few activities organised.
95. The Commissioner spoke with eight juveniles detained on remand. There was no separate wing for juveniles. They were kept in a separate room together. They complained about being locked up all day long with nothing to do. Two of the juveniles said that they had been roughly treated or abused by the police when they were arrested. Two had not had the opportunity to contact a lawyer or their parents to inform them of their arrest and detention.
96. The Commissioner agrees that the design faults of the Belgrade District Prison cannot be improved through renovation and therefore would support plans to move the prison to another location. It is essential that detainees be allowed at least one hour of recreation per day. The Commissioner urges the Serbian authorities to respond to the pervasive problem of drug addiction and use in its prisons and detention centres. Treatment programmes should be made available to those in prison.
97. The Commissioner's delegation also visited the pre-trial detention section of the Požarevac Zabela prison as mentioned above. The facility is located in the centre of the town away from the main prison, in a small single-storey building that previously served as army barracks. The accommodation is collective. Some rooms accommodate five detainees and some ten. There were three single cells, each of 7m² and a cell of 20m² for eight detainees. The material conditions in the detention centre are basic, but adequate. There was one large communal shower room, with a separate entrance hall with a communal sink. The facilities were dilapidated and in need of renovation.
98. There was no apparent over-crowding in the centre at the time of the visit, accommodating 52 detainees with a capacity of 61. At the time of visit, there was one female but no juvenile remand prisoner. Detainees stay for a period ranging from one month to two years. According to the supervisor, most of the detainees were drug users.

99. Medical check-ups are mandatory for all newly arriving detainees. Every detainee has his/her personal file that includes medical records. In case of urgency or more serious health problems, the detainee is sent to the Belgrade Prison hospital.
100. According to the supervisor of the remand section, positive developments in the centre include the provision of new beds, newly painted rooms and a television in each room. Detainees were allowed to watch television from 2 pm until midnight on weekdays and additionally from 8 am to 1 am at the weekend. Outdoor exercise was said to be for one hour per day, except every second Friday when family and other visits are organised. There neither are recreational activities organised nor is there any individual treatment given. It is essential for all detainees to enjoy at least one hour of outdoor exercise per day. The Commissioner encourages the Serbian authorities to provide some form of recreational activities for remand prisoners.
101. Members of the Commissioner's office spoke to some detainees held in the centre. Male and female detainees are held separately. One young woman, 22 years of age, had been in the detention centre for six months. For the last month, she had been alone in her cell because there were no other female inmates. She complained of the solitude, which she found unbearable. She was alone for the whole day except for 10 minutes when she was allowed some exercise. She also complained of the cold, since the heating in the centre was fixed and could not be turned on before 15 October. The delegation inquired if alternative accommodation could be found in this case, but were informed that owing to the location of the court, relocating her was impossible. The Commissioner calls upon the authorities to adopt a pragmatic approach with a view to avoiding similar situations in the future, whereby persons may find themselves in conditions amounting to *de facto* solitary confinement.

5.3. *Police detention*

102. The Serbian Constitution prohibits arbitrary arrest and detention. When a person is arrested, the Prosecutor is informed and decides on the detention order. The detainee can be held for a maximum of 48 hours in police detention before she or he is brought before the investigative judge. If the Prosecutor asks for police detention, interrogation by the police must take place in the presence of a lawyer within 8 hours. Visiting the "29th November" Belgrade Central Police Station, the Commissioner's delegation was informed that the local Bar Association gives each police station a list of eligible lawyers each month. The Duty Officer informs the person arrested of his/her right to a lawyer and the duty officer searches for such a lawyer from the Bar Association's list. The Police Station then pays those lawyers who are hired.
103. There were eight detention cells in the police station. The cells were clean but basic; overall, material conditions were satisfactory for short periods of detention but not suitable for over-night stays. There were no beds, mattresses or sheets, but simply short wooden benches, which did not enable the detainees to lie down fully. The detainees to whom the Commissioner's team spoke complained that they were cold; none of them was given a blanket. The interviewed detainees had no complaints to make concerning police treatment but criticised the inefficiency of the judicial system. The Commissioner also visited the Novi Sad central police station. All detention cells were empty, but the same observations as in Belgrade apply, namely that the conditions were not adequate for over-night stays.
104. The Commissioner stresses the need to ensure that formal safeguards against ill-treatment in detention are upheld, namely the right to have the fact of detention notified to a close relative or third party, the right of access to a lawyer, and the right of access to a doctor. The Commissioner welcomes the recent appointment of Mr Miloš Janković as

Deputy Ombudsman for persons deprived of their liberty and supports the intention of the deputy Ombudsman to monitor places of police detention. The Commissioner encourages the authorities to facilitate his work.

VI. Non-discrimination

6.1. Legislative framework

105. Article 21 of the Constitution offers a general prohibition against discrimination, while Articles 50 and 76 prohibit discrimination in specific situations such as in relation to media activities and in the framework of minority protection. Nonetheless, the importance of enacting a general comprehensive anti-discrimination law was underlined by many of the Commissioner's interlocutors during his visit.
106. There are two anti-discrimination drafts currently before Parliament. The first was drawn up by national experts and NGOs and submitted to parliament by one political party, but never debated in parliament or in the wider public. A second draft was prepared by the Ministry for Labour and Social Policy. According to the Ministry, this draft provides a clear definition of direct and indirect discrimination, as well as of other forms of discrimination.²⁸ The draft law sets out specific forms of discrimination, *inter alia* discrimination at work, discrimination in providing public services, and discrimination on the basis of gender. The draft also provides for a Commissioner for the Protection of Equality, and lists his/her specific competences.
107. The Ministry for Labour and Social Policy's draft law was submitted to the Council of Europe's Venice Commission for an opinion. The latter highlighted the lack of clarity regarding a general definition of direct and indirect discrimination.²⁹ NGOs and independent experts criticise the Ministry draft for its focus on the monitoring mechanism. The Commissioner urges the Serbian authorities promptly to enact comprehensive anti-discrimination legislation, and suggests that the substantive elements of both drafts currently before Parliament should be considered to be brought together into one text and enacted without delay.

VII. Rights of Lesbian, Gay, Bisexual and Transgender persons

108. Lesbian, Gay, Bisexual and Transgender (LGBT) persons remain victims of discrimination, prejudice and intolerance in Serbia. Their plight is largely hidden from public view, and when they are referred to in public debate it is often in negative terms. Many of those persons who speak-up for LGBT rights - regardless of their sexual orientation or gender identity - are themselves often victimised with impunity.
109. The Commissioner recognises the precarious plight of transgender persons in Serbia, who have become a particularly victimised and vulnerable group.
110. Same-sex consensual relations were decriminalised in the Republic of Serbia in 1994. The age of sexual consent is fourteen years for heterosexuals and homosexuals. The Constitution of Serbia defines marriage as a union between a man and a woman.

²⁸ Such as the violation of the principle of equal rights and obligations, victimization, collusion for the purposes of discrimination, hate speech, molestation and humiliation.

²⁹ Opinion on the Draft Law on Prohibiting Discrimination of the Republic of Serbia, Opinion no. 453/2007 dated 22 January 2008.

111. A survey of public perception of homosexuality and attitudes towards LGBT persons was carried out in Serbia early in 2008 by the Gay-Straight Alliance/Centre for Free Elections and Democracy (CeSID).³⁰ The survey indicates a far-reaching negative perception of LGBT persons, with 70% of the sample interviewed considering homosexuality as a sickness, and only 7% considering “pride parades” as a legitimate way of seeking equal rights for LGBT persons. Strikingly, only 38% of persons considered homosexuals as “the same human beings as we are”. This survey confirms reports received during the Commissioner’s visit. In the Commissioner’s assessment, the notion of rights for lesbian, gay, bisexual and transgender persons is in its infancy in Serbia, and safe, open discussion on the issues remains taboo.
112. The Laws on Labour, Broadcasting, Higher Education and Public Information ban discrimination on the basis of sexual orientation. The draft anti-discrimination law prepared by the Ministry of Labour and Social Affairs grants everybody the right to express their gender identity and sexual orientation and prohibits discrimination based on gender identity and sexual orientation. According to the drafters, these rights would also apply to cases of transsexuality.
113. Discriminatory comments and reporting in the media and from political figures appear to go largely unpunished, as there is no provision in the Serbian Criminal Code banning hate-speech. The Commissioner recalls Committee of Ministers Recommendation No. R (97) 20 which stipulates that all governments should establish a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.³¹
114. A number of committed non-governmental organisations and human rights defenders are continuing to advocate for the rights of the LGBT population and to sensitise the wider community. At times, these NGOs and human rights defenders place themselves in a vulnerable position and the Commissioner has been informed of many incidents of violence, threats, including verbal and psychological abuse against these individuals.
115. A prerequisite to changing attitudes is the provision of targeted sensitising education. Raising awareness regarding LGBT persons, challenging homo- and trans-phobia, mainstreaming equal rights for all persons, promoting sexual health education and the inclusion of young people are all crucial elements to breaking a perpetuated stigma against LGBT persons. Further training of other officials including law enforcement, judicial and medical personnel should be a focus of government action.
116. The Commissioner welcomes the Ministry of Culture’s recent allocation of funding for an online news website dedicated to the LGBT population within the country and the Serbian Diaspora, to increase LGBT visibility and fight homophobia in society.³²

VIII. Rights of Persons with Disabilities

117. According to the Ministry of Labour and Social Policy, there are between 500 000 and 800 000 people with varying levels of disabilities living in Serbia. They are one of the most vulnerable groups in society since they lack access to education and employment,

³⁰ *Homophobia In Serbia: A survey on the perception of homosexuality and LGBT population in Serbian public*, Carried out on behalf of Gay-Straight Alliance (<http://www.gsa.org.rs>), Belgrade by Centre for Free Elections and Democracy (CeSID), Belgrade, February – March 2008.

³¹ Principle 1, Committee of Ministers Recommendation No. (97) 20, adopted 30 October 1997.

³² *Queeria*, <http://www.queeria.com/>.

- adequate healthcare services and suffer from widespread prejudice and discrimination. Of this group, persons with intellectual and mental disabilities may be considered among the most at risk. Children with disabilities are particularly susceptible to social exclusion.
118. The legal framework has developed positively in recent years. In April 2006, Parliament adopted a Law on the Prevention of Discrimination against Persons with Disabilities. The Law consists of a general prohibition of discrimination based on disability, provides procedures for the protection of persons who have been victims of discrimination and sets out measures to be taken in order to promote and encourage equality and social inclusion. The Law also prohibits indirect discrimination. Proceedings may only be initiated by the person claiming to have been a victim of discrimination.
119. To date, there have been relatively few judicial proceedings based on the legislation, which may be a result of a lack of awareness. The Commissioner welcomes the adoption of the Law on the Prevention of Discrimination against Persons with Disabilities, and would encourage the authorities to enhance the understanding of this law among the public, to ensure it is applied in practice. A public information campaign could be a good starting point in this regard.
120. The government adopted a Strategy regarding socially vulnerable persons and persons with disabilities for the period 2007-2015. The Strategy provides for increased community housing and other services. In April 2007, the government selected 40 municipalities to participate in a programme of support to local authorities in the provision of social care.

8.1. *Education*

121. It is estimated that only 15% of children with special needs are included in the education system. Many are home-bound and do not receive any formal education. Others are in institutional care, with limited possibilities for personal and psychological development. According to estimates, over 90% of mainstream elementary and secondary schools are inaccessible for persons with disabilities. The families are often left without adequate state support. Because of lack of precise data, it is difficult to plan for the adequate provision of education and other services in a comprehensive manner.

8.2. *Employment*

122. Despite the significant numbers of persons with disabilities, this vulnerable group has little access to employment. According to National Employment Service statistics, some 25 000 persons with disabilities are registered as unemployed. In 2006, the National Employment Service enabled 328 unemployed persons with disabilities to find jobs and 401 persons in 2007. Prejudice about the productivity of persons with disabilities and lack of access to the workplace have been among the key factors causing high unemployment, underemployment, and lower earnings compared to persons without disabilities. In Serbia, the poverty rate among persons with disabilities is 70% and only 13% have the opportunity to work.
123. Physical accessibility to the workplace is a precondition for persons, particularly those with reduced mobility, to engage in employment. The authorities, and private enterprises alike, should make every effort to ensure premises are disabled-friendly. Accessibility to public buildings, services and infrastructure should be rigorously adhered to in the planning and construction of new buildings.

8.3. *Mental healthcare*

124. Instability in the country and the region has caused a marked increase in the prevalence of mental and behavioural disorders in Serbia in recent years.³³ In Serbia, there are 17 residential social care institutions for people with disabilities, of which five are for children. 1 900 patients are accommodated in Serbian hospitals for psychiatry and neuropsychiatry, while 5 500 beds for psychiatric patients are available in all health care institutions (including general hospitals). Although the government has repeatedly recognized de-institutionalisation as a priority, the Commissioner is concerned with the delays in progress owing to a number of legislative, structural and practical problems.
125. The Mental Health Law has not yet been adopted. The government adopted a Strategy for Mental Health in 2007, although during discussions with the Ministry of Health, there was no available information regarding its implementation. NGOs and international organisations alike informed the Commissioner that the Strategy is not being implemented satisfactorily. The Commissioner calls upon the authorities to reassess their implementation of the Strategy in line with their obligations under both national and international law in the field of mental healthcare.
126. The Commissioner's delegation visited the specialised neuro-psychiatric hospital in Kovin, which had been visited by the CPT in 2007. The institution currently accommodates 600 patients, with a capacity of approximately 800. It houses no children. The facility provides mainly medical treatment. Other rehabilitative and therapeutic activities are underdeveloped.
127. The physical conditions of the hospital could be described as poor to very poor depending on the ward. Although the grounds are spacious, the facility itself is very old and dilapidated, and clearly in urgent need of renovation. The delegation was informed that following a budget allocation by government, there is a plan for a new building to be constructed with 250 beds, together with premises for community health care. The Ministry of Health were unable to give further details on when this would be started. The Commissioner stresses the need to ensure that this building work is prioritised in order to improve the difficult living conditions of the patients.
128. The staff of the facility appeared to be both professional and committed to the genuine care of the patients, albeit within the difficult confines of limited resources, poor physical conditions and low wages. Although according to the government, employees have received pay increases in the past years.
129. While recognising that the hospital has reduced its use of physical restraints, the Commissioner is concerned about the potential use of medical restraints and sedatives to serve the same purpose. Given the serious effect restraints have on patients, their use should be the subject of clearly defined policy. Initial contact with agitated or violent patients should, as far as possible, be non-physical. The delegation was informed that this is already the case and procedures are strictly followed at all times. Staff also informed the delegation that recourse to restraints is recorded systematically and inspected regularly by both the Ministry of Health at a national and provincial level and by the ethical board.
130. Every health care institution has its own patients' ombudsman and the procedures for complaints are set out in the Law on Healthcare. In reality, the mechanisms seem under used. The Commissioner highlights the importance of ensuring that patients have a right to have their voices heard regarding concerns, without any fear of prejudice. In such

³³ A13.5% increase according to the World Psychiatry (Official Journal of World Psychiatric Association). 2007 June; 6(2): pg 115–117.

facilities, an accessible and independent complaints mechanism is particularly important, as, by virtue of their reduced mobility or capacity, these patients may not have the possibility to contact other outside complaints mechanisms, such as the national ombudsman, or the Ministry itself. The Commissioner hopes that the Ministry of Health, in conjunction with the deputy Ombudsman and civil society organisations could collaborate and consider the best solution to this problem, to ensure that all persons have an opportunity to communicate their concerns.

8.4. *The de-institutionalisation process*

131. The process of de-institutionalisation of children from mental health institutions appears to be progressing in a steady manner. For adults the results are not quite so positive. Many patients in psychiatric facilities are there on a long-term basis, and a proportionately high number may remain in such facilities for the remainder of their lives. A problem highlighted by the Ministry of Health and hospital staff is that in very many cases, the families of these persons are either unwilling or unable to take care of them at home – therefore there is no choice but for them to remain in institutional care. Noting the complexity of this problem, the Commissioner also recognises that there is no adequate financial and systematic support to families within the framework of community-based services, to promote the return of some patients to their families. This has the effect of limiting the possibilities for de-institutionalisation.
132. The Commissioner would suggest that the authorities bear in mind their commitment under Article 33 of the UN Convention on the Rights of Persons with Disabilities, which will oblige Serbia in due course to create a national mechanism to promote and monitor implementation of the Conventions provisions, upon ratification. The Commissioner would suggest that the authorities adopt a proactive approach to this element in advance of ratification.

IX. Gender Equality

133. Patriarchal stereotypes concerning the respective roles of women and men in Serbian society are deeply rooted, leading to inequalities between the two sexes, particularly in the field of employment and public participation. In South Serbia, women are especially vulnerable as they marry young and face economic hardship.
134. Article 15 of the new Serbian Constitution guarantees equality for women and men and the development of an equal opportunities policy. Institutional mechanisms for promoting gender equality include the Parliamentary Committee for Gender Equality of the National Assembly and the Council for Gender Equality, established in 2004. While the latter's mandate within government has been strengthened, it has not received an increased budget to perform its new role. The government has also drafted a National Action Plan for the Empowerment of Women and the Advancement of Gender Equality (2007-2010), which *inter-alia* provides measures to combat violence against women. Despite its starting point in 2007, the Action Plan has not yet been adopted by the government.
135. Violence against women, including domestic violence remains a persisting problem in Council of Europe countries and Serbia is no exception. Domestic violence and marital rape are now criminal offences under the Serbian Criminal Code and the civil law also provides for protection from domestic violence through protection and restraining laws. Yet some penalties for domestic violence have decreased and sexual harassment is no longer a criminal offence under the 2005 amended Criminal Code.
136. According to NGOs with whom the Commissioner met, there is a leniency in the judicial system when it comes to sentencing men who have been convicted of domestic violence

against women. At the same time, violence against women is on the rise. According to figures provided by one NGO, since the beginning of 2008, 21 women have died as a result of domestic violence in Serbia. There is a tendency that women have to run away and find refuge, rather than men being excluded from the family home. While the police are quicker to respond than in the past, they are not yet sufficiently effective in their response.

137. The Commissioner recommends that the Serbian authorities make concerted attempts to break down patriarchal stereotypes through awareness-raising campaigns. The Council for Gender Equality should be sufficiently resourced and the Draft National Action Plan for the Empowerment of Women and the Advancement of Gender Equality (2007-2010) adopted promptly by the government. A comprehensive domestic violence act, which would bring together the relevant provisions from the Family Law Act and the Criminal Code, would be welcome. The Commissioner also recommends that the Serbian authorities bring together all government bodies which deal with gender equality and domestic violence in order to promote better co-operation. The Commissioner urges that the government implement the concluding comments of the UN Committee on the Elimination of Discrimination against Women in relation to Serbia adopted on 11 June 2007.

X. Rights of the Child

10.1. Strategies and plans

138. The Constitution of Serbia, adopted in 2006, explicitly recognizes the rights of the child under Article 64. A number of other positive steps have been taken through the adoption of the Family Law Act, the Law on juvenile offenders and criminal justice for juveniles, and the Criminal Code, all in 2005; the Law on the basics of the education system (amended in 2004) and the Law on protection of persons with disabilities from discrimination in 2006. Serbia still lacks a comprehensive Children's Act for the protection and promotion of children's rights, to harmonise the domestic legal framework fully in line with the UN Convention on the Rights of the Child.
139. Serbia has demonstrated a commitment to improving the protection and promotion of children's rights in recent years, in particular since 2005. Collaboration with national non-governmental partners and international partners such as the Council of Europe, UNICEF and the OSCE, has resulted in positive steps being taken.
140. Numerous strategies with the aim of improving the state of children's rights in Serbia have recently been approved, such as the National Action Plan on Children, which defines policies and priorities until 2015 and provides for the monitoring of progress. Others address poverty reduction, the rights of persons with disabilities, the protection of children from abuse, neglect and exploitation, a strategy for youth development and health, the protection of children from human trafficking and the inclusion of Roma children. At the local level, units for children have been established in three municipal Ombudsman offices and local action plans adopted in 16 municipalities. The Commissioner welcomes such positive steps, but reiterates that planning is merely one-step towards ensuring the realisation of children's rights. Effective practical coordination among relevant Ministries is necessary to move from principle to practice.
141. The Commissioner is encouraged by the establishment of the Council for Child Rights in 2002 as an inter-departmental advisory body of the government. Its core responsibilities include advising the government on ways to keep policy developments in line with international standards and to ensure the implementation of the National Action Plan on

- children. The government should adopt a proactive approach to the recommendations of the Council for Child Rights, and ensure full inter-ministerial coordination on children's rights issues. In the Commissioner's view, the Ministry for Human and Minority Rights should support this inter-ministry coordination. The Commissioner calls upon the Serbian government to implement the concluding observations of the UN Committee on the Rights of the Child.³⁴
142. The Commissioner welcomes the appointment of Ms. Tamara Lukšić-Orlandić as Deputy Ombudsman with responsibility for the protection of children's rights. This national deputy ombudsman should complement existing regional structures such as the provincial Ombudsman's Office for the Province of Vojvodina, which also has a Deputy for Child Rights, Ms. Marija Kordić.
 143. Violence against children, although illegal, remains a concern, in schools, institutions and in the home with only a limited number of cases being reported and prosecuted. The government adopted the General Protocol for the Protection of Children against Abuse and Neglect (in 2005) which provides guidelines for action to all providers of services dealing with children and families. The guidelines provide advice on how to work jointly for the well-being of children in situations where there is a suspicion of abuse or neglect, or a threat of such abuse. Regrettably, there appears to be no monitoring of its implementation, and recent cases of abuse have revealed that institutions do not follow the prescribed procedure in reporting and dealing with such cases. A draft Strategy for the Protection of Children against Violence has been drafted, but at the time of visit had not yet been adopted.
 144. A UNICEF Multiple Indicator Cluster Survey revealed that in Serbia, 73% of children aged 2–14 years were subjected to at least one form of psychological or physical punishment by their mothers/caretakers or other household members, the highest figure in Eastern Europe.
 145. Roma children in Serbia suffer from a combination of poverty, discrimination and social exclusion. Many Roma children are living in difficult or very difficult living conditions without appropriate access to adequate health, safety and security conditions. The rate of infant mortality is also higher among Roma. Many Roma children do not attend school, are placed in special schools or drop out early. An increased focus should be placed on mainstreaming early education for Roma children in order to begin to normalise a routine of regular school attendance.
 146. There appears to be political will to improve the situation of children with disabilities, but many still risk spending their entire lives in institutions in harsh conditions and occasionally in the same wards as adult patients. For those with milder disabilities, they nevertheless often remain entirely segregated from other children in the mainstream education system. There is a need to address the general lack of resources and specialized staff for these children.³⁵
 147. The Commissioner emphasises the duty of the authorities to remove organisational, physical and social barriers to integration for all children, and particularly within the education system. Further de-institutionalisation and improved social and community care options for children with disabilities are particularly encouraged. A related concern is the uncertainty surrounding the actual numbers of disabled children in Serbia – as UNICEF and others have identified, in rural areas, many disabled children may be unregistered.

³⁴ UN Committee on the Rights of the Child, Concluding Observations: Republic of Serbia, CRC/C/SRB/CO/1, 20 June 2008.

³⁵ For more on the Rights of persons with disabilities, see Chapter 7.

148. The lack of comprehensive and up-to-date disaggregated statistical data is a matter of concern. Data is sporadic, inconsistent or inaccurate at best, but also very often entirely non-existent within many ministries on issues related to children. Indeed the authorities confirmed that they have no clear figure for the number of children in Serbia. The Ministry of Education is making concerted efforts to improve the situation, although their budgetary means are severely limited. The Commissioner encourages the government to proceed with its efforts to establish a consolidated system for the comprehensive collection and analysis of disaggregated data allowing for comparative analysis covering all children, in order to plan effectively for children who are in need of special protection.

10.2. *Right to Education*

149. The budget allocation for education in the Republic of Serbia is one of the lowest in Europe at approximately 3.7% of GDP, according to the Ministry of Education. This falls far short of the European average of approximately 6% of GDP. Recalling how crucial education is to the realisation of a society based on human rights, the Commissioner strongly recommends that the government increase budgetary allocation for education.

150. Social, material or administrative obstacles to education exist for many children, especially children suffering from poverty and social exclusion, such as Roma, refugee children and children with disabilities (particularly mental and intellectual disabilities).

151. Only 3.9% of Roma children and 1% of children with disabilities have access to pre-schooling. 84% of IDP children and 98% of Roma IDP children are not included in any form of pre-school education. According to UNICEF, the majority of children with disabilities do not have access to education, with only 1% integrated into mainstream schooling and approximately 15% attending special schools. Very few disabled children have the opportunity to receive a full cycle of primary and secondary education.

152. Segregation of Roma students from others is still practised and must be actively avoided. According to UNICEF, over half of the pupils in special schools are from the Roma population. Attendance and full integration of all Roma students into mainstream schooling should be the goal, and the Commissioner would urge the authorities to take all feasible measures to realise this goal.

153. During the delegation's visit to the Salvatore Roma Refugee camp in South Serbia, it was noted that the authorities make limited efforts to ensure that Roma are aware of enrolment requirements for school. Furthermore, there was a feeling that at the local level, schools did not actively seek to inform socially excluded Roma.

154. The Commissioner was encouraged to hear that the Ministry of Human and Minority Rights intend to introduce human rights education in the curriculum in primary schools following an initial pilot project.

XI. Rights of National Minorities

155. Serbia is a richly diverse multi-ethnic state. There is a stable atmosphere and on the whole positive relations between most communities, though some exceptions exist. The last official national census was conducted in 2002 and provides an overview of the Republic's ethnic composition.³⁶

³⁶ The major ethnic group are Serbians (82.9%). There is a Hungarian minority (3.9%), mostly in the Province of Vojvodina. Bosniaks (1.8%), Roma (1.5%), Yugoslavs (1.1%), Croats and Montenegrins (0.9%)

156. The human rights situation of national minorities is largely dependent on the economic context, and the region, in which the minorities live. Minority rights in the province of Vojvodina, for example, are comparatively better protected than in other parts of the country. The Roma community remain the most disadvantaged minority group in Serbia, and their position is precarious vis-à-vis the rest of the Serbian population in terms of all social indicators – education, health, housing and employment. Other minority groups such as the Muslim Slavs/Bosniaks in the Raška³⁷ region and the Albanians in Southern Serbia find themselves in a difficult position owing to economic underdevelopment in these regions.

11.1. *Legal Framework*

157. Article 14 of the Constitution provides that the Republic of Serbia shall protect the rights of national minorities and guarantee special protection to them for the purpose of exercising full equality and preserving their identity. Chapter 3, Article 76 protects national minorities against discrimination and Article 77 ensures an appropriate representation in public administration. Article 81 of the Constitution provides that in the field of education, culture and information, the state shall encourage a spirit of tolerance and intercultural dialogue and shall take effective measures to promote mutual respect, understanding and co-operation among all people living in Serbia irrespective of their ethnic, cultural, linguistic and religious identity. In practice, respect for and protection of minority rights appears to be inadequate.

11.2. *National Minority Councils*

158. The Law on the Protection of Rights and Freedoms of National Minorities provides for the establishment of national councils for minorities. Sixteen such councils have been formed, representing most of the minority communities in Serbia. These councils have been set up to promote and safeguard minority autonomy in the areas of culture, education, information and minority language. They also provide a forum for communicating their views to Parliament. The Albanian minority is the only minority community who had not formed such a council at the time of visit.

159. The law regulating the election of these councils, their competences and financing has not yet been passed, and is now approximately 6 years overdue. The delay in passing this crucial piece of legislation has resulted in the mandates of these councils expiring, and no new councils can be elected. The Ministry for Human and Minority Rights has prepared a draft law on National Minorities Councils, which will regulate the competencies, election procedures, funding and relations with state and local authorities. The Ministry of Human and Minority Rights plans to establish a separate state-sponsored fund for the stimulation of the social, economic, cultural and general development of national minorities.

each), Albanians and Slovaks (0.8% each), while Vlachs, Romanians, Macedonians, Bulgarians, Bunjevci, Muslims, Ruthenians, Ukrainians all register at less than 1% of the total population. There are also very small communities of Jews, Gorani, Slovenians, Germans, Russians, Greeks, Czechs, Turks, Ashkalis and Egyptians. Framework Convention on National Minorities, Serbia Periodic Report, ACFC/SR/II(2008)001, 2008.

³⁷ "Raška" is the official name for the ethnically mixed Muslim-Slav (Bošnjak) majority region in the southwest of Serbia bordering to Bosnia in the west, Montenegro in the south and Kosovo in the southeast, also known internationally and by local populations as the "Sandžak" region.

160. The Ministry for Culture is responsible for securing the rights of national minorities and secures funding for promoting minority language and culture from the state budget. Since 2003, it has granted funds for various minority projects or programmes. The national minority councils in Vojvodina have been particularly active in proposing various projects for funding. The State Council for National Minorities set up in 2004 has convened only once in the past four years. Many NGOs and other human rights activists both nationally and regionally have expressed their dissatisfaction with the functioning of the State Council. The Commissioner sees value in having minority councils only if their election, mandate and financing are clear. In addition, they must genuinely represent the views, concerns and priorities of the minorities in question. The Commissioner recommends that the government pass the necessary legislation on the National Minority Councils immediately.

11.3. *Participation*

161. The level of participation of national minorities in public administration is an issue of concern, in particular in relation to law enforcement and the judiciary. The government adopted a Resolution on increasing the number of national minorities in State employment several years ago. The vast majority of public servants and applicants for jobs refrain from declaring their ethnic identity; therefore, there is a data deficit in this respect. The Regional Ombudsman of Vojvodina carried out research on the representation of persons from national or ethnic minorities in the province's administration and found that it was not always proportional to the size of the populations concerned, especially in the police force.³⁸ It is important that national minorities be fairly represented in terms of employment in state bodies, public services, bodies of autonomous provinces and local self-government. In order to ensure this, the government must improve systematic and comprehensive data collection processes regarding the population in order to achieve disaggregated statistics regarding ethnicity and other social indicators.

162. The Law on Local Self- Government and media-related laws strive to protect the right to information in minority languages. However, in recent years, there has been a decrease in the availability of broadcast and print media in minority languages. This appears to be due to the effects of the media privatization process since there is a greater cost-benefit in broadcasting and printing Serbian language products. Although according to the authorities, private broadcasters do broadcast minority language programmes because they receive financial support from all levels of government.

11.4. *The Raška Region*

163. The Raška region, predominantly inhabited by Bosniaks, suffers from a high level of unemployment and poverty as a result of a weak economy and low levels of investment. The problems are exacerbated by an ill-developed infrastructure, which restricts the attractiveness of the region for further economic development.

164. Noting that economic sustainability is a precondition for social development, the Commissioner calls upon the government to promote economic development actively in the region. The goal should be to reduce poverty, increase economic sustainability and ensure regional stability.

³⁸ Parliamentary Assembly Council of Europe report on *The situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia*, Doc. 11528, 14 February 2008.

11.5. South Serbia

165. The South Serbia municipalities of Preševo, Bujanovac and Medvedja are inhabited by 90% of the ethnic Albanians in Serbia. The regions are comprised of largely Albanian, Serbian and Roma ethnic groups. Relations between the ethnic groups are largely stable and improving throughout the three municipalities, with the exception of the Roma who continue to be marginalised. The Commissioner was encouraged to hear that there is a prevailing wish by both local politicians and non-governmental organisations to engage fully and participate with the government to improve the situation for all people in the South.
166. A number of key issues, such as access to education for all and equitable representation in the police and the judiciary are high on the local agenda. The Commissioner was encouraged by the visit of the Minister of Public Administration and Local Self-Government, Milan Marković, shortly after his appointment to the position as head of the Coordination body for South Serbia. The Commissioner urges increased cooperation and engagement between the central and local authorities.

XII. Rights of Roma

167. The situation of the Roma population in Serbia is very precarious. They are subjected to prejudice, systematic discrimination, marginalization and exclusion. Negative stereotyping by the majority of the population, often due to insufficient knowledge about their history, culture and tradition and a lack of personal contact with Roma, perpetuates a cycle of discrimination.
168. According to the 2002 census, 108 193 persons identify themselves as Roma, or approximately 1.44% of the total population, although the actual number is deemed to be much higher. According to some studies³⁹ there are 247 591 Roma in Serbia, while Roma leaders claim that there are between 400 000 to 800 000 Roma, or up to 10% of Serbian population.⁴⁰ The reason for the lack of clarity may be that in many cases the Roma identify themselves as Serbs rather than Roma.
169. In 2008, Serbia took over the Presidency of the Roma Decade until 30 June 2009. There had been rather limited investment in the Roma cause nationally until then. In discussions with the executive, the Commissioner was encouraged by their openness to accept that the problems facing Roma remain one of the great challenges in Serbian society. The Commissioner was encouraged by the notification from the Deputy Prime Minister, Mr. Božidar Đelić, in November 2008 that over 1 billion dinars would be allocated for the improvement of the position of Roma in Serbia in 2009. The Commissioner hopes that these funds will be managed and utilised in a targeted manner based on the most pressing concerns.
170. There are approximately 600 Roma settlements in Serbia, with the largest concentration of Roma in southern and central Serbia. Large numbers live in informal or unofficial settlements with intolerable living conditions, which lack basic utilities and services. Access to education and healthcare are severely restricted for most. As a result, women and children are the most vulnerable and at-risk minority sub-group. According to information provided by the Ministry of Health, funds have been made available to the Institutes of Public Health to carry out projects aimed to assess the hygienic and epidemiological status of Roma settlements in eight cities in Serbia. As a result, a set of

³⁹ "Pregled" – 2002.

⁴⁰ Many Roma have been displaced from Kosovo. Please see Chapter 12 regarding *Concerns of Refugees, Internally Displaced Persons (IDPs) and Asylum Seekers*.

- measures have been proposed to the Ministry of Health and local self-governments for improving the living conditions of Roma settlements. In 2009, the same analysis will be conducted in three new cities and will be continued in two.
171. The Commissioner visited one Roma settlement just minutes away from Belgrade's newest shopping mall. Apparently, there are 150 such settlements in Belgrade alone. The settlement was located on a plot of land adjacent to a large office-building site. Approximately 200 families lived in makeshift shelters with cardboard roofs. These Roma were internally displaced persons from Kosovo. They had left everything behind and the majority have lost relatives. There was neither electricity nor running water. In the summer, the living conditions are truly appalling, because of the lack of water and terrible heat. In the winter, the inhabitants suffer from the cold and rain, lacking even blankets. The Commissioner was told that the settlement was a breeding ground for infectious diseases. None of the children who live in the settlement went to school and this had been the case for the 8 years during which they had lived there. For the most part, they were all unemployed, except for a few who earned a small amount by collecting cardboard or scraping.
 172. The representatives in the settlement told the Commissioner that they could not meet with any local or municipal representative to discuss their living conditions, as no door was open for them. They would like the local authorities at least to supply them with water once a week. Apparently, the Commissioner was the first official person to visit their settlement.
 173. Some of the Roma on the settlement had identification papers. Others were without a single document. The majority of the children were unregistered and had not received any vaccinations or immunizations. The conditions in the settlement were truly appalling and were some of the worst that the Commissioner has seen during his various visits to Council of Europe member states.
 174. In response to the problem of identification papers, the Ministry for Human and Minority Rights has launched an initiative for a new law on Legal Subjectivity. The aim of the law is to resolve the problem of those persons who have not been registered at birth and as a result are not legally recognised. A draft law has been prepared and a number of round tables have been organised to discuss the text, in co-operation with international partners, one NGO, and in the presence of all relevant government representatives. In 2009, the National Council of the Roma Ethnic Minority will conduct a project "Become a citizen" to support the issuance of personal documents, such as health cards.
 175. There is strong public opinion against relocating Roma. One specific problem is that when the Serbian authorities propose that the Roma will be re-located to appropriate housing, local populations protest and refuse to agree to a Roma population moving in as their neighbours. The government cite this as a reason for their inactivity. The Commissioner recommends that the Serbian authorities make concerted efforts to sensitive local populations to the needs and rights of the Roma population who live side by side them.
 176. Discrimination has become so common for most Roma that they themselves have a lower threshold of defining discrimination, and put up with more intolerant attitudes than other groups in Serbian society. It appears that very few cases of discrimination or intolerance towards Roma are brought to the notice of the authorities. Indeed, at times, high-ranking public officials, including Mayors, have spoken about Roma in a discriminatory way. The authorities must be vigilant towards such unacceptable intolerance, and political leaders must assume responsibility to promote tolerance, inclusion and cultural diversity within the communities they serve.

177. 62% of Roma children have either dropped out or not attended school at all. Many have not enrolled owing to financial limitations and a lack of the necessary documents such as birth certificates and proof of residence. Only 9.6% of Roma have completed post-primary education. Roma children without any learning disabilities are also overrepresented in schools for children with special needs and mental health problems,⁴¹ often because of their insufficient knowledge of the Serbian language. The Commissioner has been made aware that on occasion there have been financial incentives encouraging Roma parents to enrol their children in such schools.
178. Roma education is a priority in the Strategy for Education (2005-2010) and while the Ministry of Education have pushed forward a number of positive projects within the confines of extremely limited funding, much remains to be done. An expansion of pre-school education and active encouragement of Roma to remain in primary and secondary schooling should be enhanced by the authorities. In addition, further training is needed for all teaching and other staff who engages with Roma.
179. Although the National Strategy for Employment (2005-2010) and the National Action Plan for Employment (2006-2008) have programmes specifically for Roma, the unemployment rate in the community is very high and few have full-time jobs. When they do, these jobs are frequently in low-skilled sectors. Roma who live in unregistered settlements find it difficult to register with the National Employment Service in their local area. Societal discrimination further compromises employment perspectives while a lack of formal education is also a predominant barrier to gaining full employment. The Commissioner stresses the need to ensure positive measures are taken to increase the employment of Roma.
180. The Serbian Government has made efforts to address the economic and social situation of Roma in recent years, particularly in terms of access to healthcare. According to the Law on Health Insurance, the right to health care is provided for persons from vulnerable population groups, which include the Roma. Thus, for these persons the State budget covers the contributions for the compulsory health insurance scheme. In 2009, the Ministry of Health will educate health professionals in order to increase their understanding of the needs of the Roma population and to improve communication with vulnerable groups.
181. In January 2005, an action plan for Roma Health was adopted within the Decade of Roma Inclusion 2005 – 2015 and given a budget line for its implementation. Aiming to improve the health and health care of the Roma, the Ministry of Health encouraged project proposals from health institutions in co-operation with Roma NGOs. As a result in 2007 and 2008 113 projects were implemented covering 17 345 Roma. In addition, 31 projects will be conducted in 2009. Furthermore, in 2009, the Ministry of Health will finance four projects with the aim of educating and providing health care for Roma working with waste materials.
182. The Ministry of Health also informed the Commissioner of 15 Roma mediators who have been appointed as the interface between Roma and the Ministry – engaging directly with the Roma community on a local level. These mediators were appointed in line with the Roma Decade and the National Action Plan on healthcare protection, within the Ministry of Health's Programme for the Health Advancement of Special Population Groups.⁴² This

⁴¹ In some of these schools 50 to 80% of the children are Roma.

⁴² According to information provided by the Ministry, the mediators have visited 5 250 families and have provided 594 health cards. As a result of their work 872 children have been vaccinated, 61 women have had their first gynaecological examination and 141 went to their first systematic medical examination, while 24 children were enrolled in school. It is planned to employ 60 more Roma mediators in 2009.

- initiative is something, which the Ministry has found to be successful and intend to develop further. The Commissioner would recommend that local authorities become more actively involved in this process.
183. On a regional level, some positive developments must be noted. A Roma Inclusion Office with a dedicated budget was set up in Vojvodina in 2005. It carried out three studies on the situation of the Roma in the province, in the areas of housing and the position of teachers from the Roma community. Although understaffed, the office represents a strong commitment to inclusion of Roma in that region. The office was also involved in the framing of the Strategy for improving the situation of Roma and works closely with the regional ombudsman. Also on a local level, international organisations such as the ICRC, the OSCE and the United Nations teams are implementing numerous awareness-raising projects throughout the country. The Commissioner encourages the government and local actors to work together with international and non-governmental organisations in the delivery of these projects.

XIII. Concerns of Refugees, Internally Displaced Persons (IDPs) and Asylum Seekers

184. During the periods of conflict in the former Socialist Federal Republic of Yugoslavia (SFRY), Serbia faced a serious refugee crisis, and responded by receiving huge numbers of refugees and displaced persons. The financial cost of responding to these refugees has been huge for the government. During the 1996 Census of Refugees and War Affected Persons, 538 000 refugees and 72 000 war affected persons were registered. The number of refugees decreased to 346 000 in 2001 and 104 246 in 2004/5. In 2008, approximately 210 000 IDPs were registered in Serbia.⁴³
185. The UNHCR has identified three major groups of persons who remain vulnerable in Serbia: refugees who came because of the disintegration of the former SFRY, asylum-seekers and mandate refugees from outside of the former SFRY and IDPs from Kosovo.
- 13.1. *Legislative framework*
186. Article 57 of the Constitution establishes the right of asylum for anyone outside the country of their nationality with a reasonable fear of persecution based on race, religion, and nationality, membership of a particular social group or political opinion. While a Law on Refugees was adopted by Serbia in 1992, the Parliament adopted an Asylum Law⁴⁴ in November 2007, which marked a turning point in the fulfilment of international obligations in the area of refugee protection. The adoption of national legislation consistent with international norms and standards represents one of the accession commitments the country made to the Council of Europe and the process of association with the EU.
187. The Commissariat for Refugees is the main governmental institution concerned with refugee and IDP issues and there are two national strategies, the National Strategy for resolving issues of Refugees and IDPs of 2002 and the Poverty Reduction Strategy of 2003. In principle, the Ministry of Labour and Social Policy is in charge of ensuring the integration of IDPs, refugees and others into Serbian society in appropriate cases.

⁴³ Including IDPs from Kosovo that are now in Serbia, but *not* including IDPs in Kosovo.

⁴⁴ Official Gazette RS, No.109/2007.

13.2. *Internally Displaced Persons (IDPs)*

188. A large number of persons were displaced from Kosovo during and after the conflict in the late 1990s. More than 75% of the IDPs in Serbia are of Serbian ethnicity, followed by Roma and more than 10 other ethnicities. 55% of the registered IDPs from Kosovo have settled in the southern part of Serbia and have not returned.
189. IDPs have three possible durable solutions to their situation and status in Serbia, namely to return to their homes in their place of origin, to return elsewhere in Kosovo, or to integrate into their place of displacement. There is a need for a renewed effort by all stakeholders to enable those who *wish* to return to do so as soon as possible, recognising repatriation as the most satisfactory solution, and to facilitate integration for those unable or unwilling to return. According to the Commissariat for Refugees, the most vulnerable IDPs are provided with temporary accommodation in collective centres⁴⁵. They can also access special employment programs of the National Employment Service but the reintegration into the job market is very difficult with a general unemployment rate of some 30%.
190. The most vulnerable of the displaced population are the Roma IDPs, who are in a more precarious position than domestic Roma. Large numbers of Roma IDPs are living in terrible conditions, often in unregistered settlements without appropriate access to the most basic services, and suffering from intolerance and discrimination by the local community. The Commissioner's delegation visited one such camp – *Salvatore* – in South Serbia. At the time of visit, the camp – originally designed to host 250 persons – housed more than 700 persons with no more than 222 persons holding identification and civil registration documents.
191. The IDP Living Standard Measurement Study (LSMS) conducted in 2007⁴⁶ has established that almost 30% of Roma IDPs lack identification documents, hindering their access to rights. This has the effect of creating situations of *de facto* statelessness.⁴⁷ According to the authorities, IDPs are able to exercise their right to register because of Article 1 of the Law amending the Law on Registers.⁴⁸ A procedure of re-registration of births, marriages or deaths was introduced in 1999 and is still on going. Accordingly, all those who had not been entered in the birth register were entitled to subsequent registration (although the deadline provided by the law has already expired). A draft law on Registers, which provides for the recording of the fact of birth in the birth register, is currently in the parliamentary process.
192. The Commissioner urges the Serbian authorities to simplify administrative procedures to obtain civil registration documents, as well as to adopt measures to provide free legal assistance to IDPs.
193. Although almost a decade has passed since the end of the Kosovo conflict, the situation of IDPs in Serbia continues to deteriorate, as they remain stuck between an uncertain future in Kosovo and considerable obstacles to integrate into Serbian society. Kosovo's Unilateral Declaration of Independence also appears to have stalled progress on this issue. The Commissioner calls upon the authorities to identify an inter-ministerial coordination body, which will assume responsibility to address IDP issues in a coordinated and effective fashion. The Ministry of Human and Minority Rights would appear to be the most suitable candidate to fulfil such a role.

⁴⁵ Presently, 4 800 IDPs are accommodated in 64 collective centres nationwide.

⁴⁶ World Bank Living Standard Measurement Study, 2007, <http://www.worldbank.org/LSMS/>

⁴⁷ The UNHCR estimates that ca. 17 000 persons could be considered *de facto* stateless in Serbia.

⁴⁸ Official Gazette of the Republic of Serbia, No. 57/03.

13.3. *Refugees from Bosnia and Herzegovina (BiH), and Croatia*

194. Today, the Republic of Serbia hosts 97 354 persons with refugee status originating from Bosnia and Herzegovina and Croatia. Of this figure, approximately 75% are refugees from the Republic of Croatia.
195. Refugees from the former SFRY were granted refugee status as they arrived in Serbia from 1991 to 1995, under the 1992 Refugee Law. Liberalization of the naturalisation legislation,⁴⁹ as well as significant efforts of the Serbian Government (with strong support from the UNHCR and later the European Union) towards local integration, led to a significant decrease of approximately 80% in the number of refugees in Serbia. According to Serbia's Commissariat for Refugees, between 1996 and 2008 the refugee number decreased to less than 100 000. In terms of their future, it is expected that the majority of these persons would opt for local integration.
196. Local integration remains a difficult and expensive process. In terms of access to full economic and social rights, many refugees from Bosnia and Herzegovina and Croatia have not reached an adequate standard of living and are still far from achieving full socio-economic integration.
197. In Bosnia and Herzegovina, the law instigated by the Office of the High Representative allowed for full property restitution including the repossession and possibility for purchase of the former socially owned apartments (the occupancy/tenancy rights) thereby facilitating the return of refugees to their homes in Bosnia and Herzegovina., With regard to Croatia, 125 000 ethnic Serb refugees are registered as having returned to Croatia, of whom 55 000 remained permanently.⁵⁰ Based on a controversial law, 30 000 occupancy/tenancy rights had been terminated by the Croatian authorities, making repossession and purchase of socially owned apartments (under occupancy/tenancy rights) impossible for more than 100 000 refugees (or former refugees), the majority of whom reside in Serbia. The housing care options currently offered by Croatia are designed to assist socially vulnerable cases only. With regard to return and integration of refugees from Croatia, only half of those refugees officially repatriated to Croatia decided to remain and live in their former places of residence.

13.4. *Refugees from outside the former Yugoslavia*

198. The new Asylum Law of the Republic of Serbia, adopted in November 2007 came into effect as of 1 April 2008. It is in line with the 1951 Refugee Convention. As of 1 April, the government took over responsibility for refugee status determination from the UNHCR, as well as the care of asylum seekers and refugees from outside the region of the former Yugoslavia. The Commissioner is encouraged by the first months of the implementation of the Asylum Law and considers the progress encouraging.
199. Asylum seekers enjoy freedom of movement in Serbia, once their identity is established and they lodge an application for asylum. They are entitled to social assistance, which includes accommodation and food, but they are not allowed to work until they are recognized as refugees.
200. There is one reception centre for asylum seekers in Serbia, in Banja Koviljača, on the border with Bosnia and Herzegovina. The Commissioner for Refugees of the Republic of Serbia (SCR) is responsible for management of the asylum centre and in charge of the

⁴⁹ The 2005 Law on Citizenship of Serbia provides for facilitated naturalization of refugees in terms of procedures, timeframe and costs; more than 200 000 refugees had made use of this possibility to acquire Serbian citizenship, one of the largest refugee integration processes in Europe in the past two decades.

⁵⁰ UNHCR statistics.

status and care of refugees from the former SFRY. However, for administrative and financial reasons, the SCR has not yet taken over full management of the centre from the UNHCR. The Commissioner looks forward to full budgetary and human resources being provided to the competent authority to take charge of this centre effectively.

201. One point of concern is that asylum seekers, notably those considered to have inadequate documentation, are placed in detention before referral to the asylum reception centre. The Commissioner emphasises that seeking asylum is not a crime, but a right. He encourages the authorities to do everything to ensure a full and expeditious implementation of a fair and efficient asylum procedure, through the establishment of a comprehensive referral mechanism for asylum seekers from border crossings and other points of entry, to the asylum centre.

XIV. Freedom of the Media and Access to Information

202. The Constitution of Serbia provides for the right to freedom of expression (Article 46), freedom of the media (Article 50) and the right to access to information (Article 51), in line with international standards.
203. The media in Serbia is diverse and reasonably active. Many media outlets and journalists support the democratic process by informing society of the news in an impartial, factual and constructive manner. Notwithstanding this, the broader media is often undermined by politicisation, lapses in professional conduct and insufficient oversight mechanisms. Certain outlets are regularly hijacked for political purposes, or engage in an unhealthy commentary regarding certain groups, in particular, LGBT persons, Roma and human rights defenders. These factions are not only undermining the reputation of the profession but are damaging to the democratic and human rights agenda. Responsible journalists, particularly those who are out-spoken on certain issues have found themselves victims of abuse, threats and even physical attacks.
204. One problem, faced by investigative journalists, relates to the accessing of public information, or information of public importance. Journalists or individuals seeking such information are regularly denied access although this right is constitutionally guaranteed. The Commissioner for Access to Information of Public Importance, Mr. Rodoljub Šabić, is able to accept and follow up complaints from individuals when requests for such information have been denied.
205. The Commissioner for Human Rights is greatly encouraged by Mr. Šabić's pro-active approach to his mandate, which have at times unfortunately been met with slow official response or none at all. The Commissioner calls on the authorities to ensure public information is available and accessible and that the Institution of Commissioner for Access to Information of Public Importance is given full human and financial support.
206. At the time of the Commissioner's visit, there was no law on the protection of personal data, although many concerns were expressed regarding a draft law that was pending before Parliament. Mr. Šabić had threatened to resign if the draft law were to come into effect, as certain provisions ran contrary to his mandate.
207. Many international monitoring missions, including the Parliamentary Assembly of the Council of Europe and the Advisory Committee on the Framework Convention for the Protection of National Minorities have identified the transparency of ownership of certain media outlets as another problematic issue. The public has a right to be entirely clear about who or what potential political forces may be behind any media reporting. The privatisation process has lacked an appropriate level of transparency, and has not resulted in clarity of ownership in some cases.

208. The Commissioner is very concerned about the regular instances of inappropriate reporting and hate speech in the media, which he witnessed first hand while in the country. Such reporting towards certain individuals, human rights defenders, groups or organisations within society should not be tolerated, and cannot be justified under any circumstances.
209. Serbia does not yet have an independent Media Council responsible for receiving complaints against the media in such instances. The Commissioner urges the authorities to set up an independent Media Council to protect the rights of citizens vis-à-vis media reporting.
210. A related problem is the inexistence of a binding code of ethical practice by the media associations. The Commissioner was informed that a code of ethics has existed for some years, which is not binding and is regularly flouted. Two media associations exist, of which 3 000 of the approximately 8 000 journalists in Serbia are members of, but their relationship and cooperation is minimal. There appears to be a need to address the flaws in the media self-regulation system, in order to protect ethical and legal standards.
211. There is also a fundamental need for education and training for the professional development of journalists in Serbia. While the profession is comprised of many highly qualified persons, for many others there is an apparent lack of awareness of some core journalistic principles.

XV. Trafficking in Human Beings

212. Serbia is a country of origin, transit, and destination mainly for women and girls mostly for commercial sexual exploitation. Several indicators underline a decreasing trend in trans-border trafficking, while internal trafficking of identified domestic victims is increasing, corresponding with similar trends in other countries of the region.⁵¹ The number of child victims of trafficking continues to increase, but it is unclear whether this fact points to a trend or is merely the result of improved monitoring mechanisms and victim identification. Romani children and children from poor rural communities are most vulnerable for the purpose of coercion into street begging, labour exploitation or to be lured into theft rings. Another trend is the increase in identified cases of arranged marriages and trafficking of babies and children for adoption.
213. The Ministry of the Interior warned of a rising trend in trafficking for the purpose of labour exploitation. There is no official data available on trafficking in human organs in Serbia, but several internet pages boasted advertisements of people either selling or seeking to buy organs. With the exception of the current investigations by Serbia's War Crimes Prosecutor on organ trafficking during the Kosovo war, there is no information on current investigations either against the internet providers or the advertisers.
214. Serbia has adopted the 2006 – 2009 National Strategy to Combat Trafficking in Persons, but failed to complement the strategy with an action plan to ensure implementation of the strategy goals. Serbia has upgraded its legislative framework and institutional capacities considerably over the past years. The legislative framework appears sufficient, with the exception of the reduction of the minimum sentence for child trafficking from five to three years imprisonment in the new Criminal Code. This may make criminal prosecution and sentencing of traffickers more difficult as witness protection measures may only be

⁵¹ The number of identified Serbian victims has increased from one victim in 2001 to 70 in 2007. Many interlocutors argued that the statistics show only a fraction of the actual number of victims of internal trafficking.

- requested for suspected crimes with a ten-year minimum prison sentence or, in exceptional cases, for crimes warranting a four-year prison sentence. National legislation does not incriminate the *knowing* purchase of services from trafficking victims. The Commissioner invites legislators and decision-makers to re-assess the Criminal Code's relevant provisions in light of the 2002 Council of Europe Parliamentary Assembly Recommendation 1545, which urges governments to make the *knowing* use of services of female trafficking victims a criminal offence.⁵²
215. A National Team for Combating Trafficking in Human Beings exists and is headed by a National Coordinator who was appointed in November 2008 following the position being vacant for a year. The lack of leadership adversely affected both policy-making and implementation as no meetings were conducted and the implementation of the national strategy and preparations to draft a complementary national action plan came to a standstill. The Commissioner expresses his hopes that the appointment of the National Coordinator will help to regain momentum in this area. The national team is complemented by a Ministerial level Anti-Trafficking Council as an advisory body headed by the Minister of the Interior and consisting of the Ministers of Justice, Labour, Health, Education and Finance. The Council, however, only met once thus far and its relationship with the National Team remains unclear, as does its own tasks and responsibilities.
216. The Police have investigated a number of high-profile cases against law enforcement officers and one state prosecutor. Evidence continues to be based almost exclusively on the testimony of the victim(s) while hardly any additional or other evidence is included in the judicial decision-making. Trafficking trials are often excessively long and marred with procedural and other loopholes which traffickers are exploiting skilfully for their purposes. Furthermore, sentences being handed down appear to inadequately reflect the severity of the crime.
217. Serbia has established a good National Referral Mechanism (NRM).⁵³ The Agency for the Coordination of Protection of Victims of Trafficking ("Agency"), located in the Ministry for Labour and Social Policy, ensures the identification and referral of victims to specialized institutions and service providers offering medical, social, psychological, legal and other specialist services. The role of the Agency should be strengthened by increasing its human and financial resources. Its mandate should also be clarified to improve intra- and inter-Ministerial coordination.
218. The Witness Protection Law has been in force since 2006, but apparently has been applied only once in the past two years. The Commissioner's interlocutors indicated that victims are often subtly pressured to testify against traffickers. The Commissioner is concerned about apparent court practices whereby victims may be called upon to appear in court, in the presence of their traffickers. This practice appears unacceptable against the background of the heavy psychological trauma which victims of trafficking have endured. The Commissioner emphasizes the need for more awareness-raising on the special needs of trafficking victims and training for judges and prosecutors.
219. The Commissioner welcomes Serbia's positive practice of issuing temporary residence permits to trafficking victims not conditioned on their willingness to co-operate with law enforcement agencies. As a rule, victims formally identified by the Agency are not detained or otherwise penalised for acts committed as a result of having been trafficked. To enhance professional capacities in victim identification and to avoid failed identifications leading to victims being treated as criminal suspects, the training

⁵² CoE PACE Recommendation 1545 (2002), para 10i

⁵³ Institutionalised mechanism for the referral of trafficking victims to specialised institutions and service providers; the police detects potential victims, the Agency subsequently works with the victims on identification and referral to service providers.

- programme for law enforcement officials has been stepped up. During the last three years, not a single victim referral has taken place from the Reception Centre for Foreigners⁵⁴ or from other detention centres. National law allows victims to file civil law suits for compensation, but so far such compensation has only been awarded to one victim.
220. The lack of comprehensive and disaggregated data on trafficking prosecutions, convictions and sentences is problematic. The National Coordinator appears under-resourced to carry this out effectively. The Commissioner emphasises the importance of an accurate centralised data collection system for the timely detection of trafficking trends. The Commissioner invites Serbia to consider appointing a *National Rapporteur* tasked to collect and analyse all trafficking-related information centrally, report publicly and provide advice to relevant state agencies on strategies and specific counter-measures.⁵⁵
221. In general, the co-operation between the authorities and NGOs is positive. The Commissioner urges the government and relevant Ministries to work closely with NGOs and other service providers in victim identification and support. Comparative practice from other Council of Europe member states shows that best results are achieved in countries which have institutionalised cooperation schemes between law enforcement on the one hand and NGOs and service providers on the other.⁵⁶ With the exception of one NGO, the government did not provide funding to NGOs. The delegation's interlocutors criticised the lack of transparent procedures for the distribution of government funding.
222. NGOs providing services to trafficking victims largely concentrate in Belgrade. Only one NGO is operational outside Belgrade, which constitutes a problem, as rural and poor populations are particularly at risk of being lured into trafficking chains. There are two shelters nationwide which have accommodated close to 40 victims in the course of the past year. The SOS phone lines installed some years ago operate eight hours a day and are closed during the summer.

XVI. Freedom of Religion

223. Freedom of thought, conscience and religion is enshrined in Article 43 of the Constitution. Article 44 establishes the secular principle that the church is separate from the state and that all churches and religious communities are equal in the organisation of their internal structure.
224. According to the Council of Europe's European Commission against Racism and Intolerance (ECRI)⁵⁷ and several NGOs with whom the Commissioner met, the 2006 Law on Churches and Religious Communities is problematic in a number of ways. The law categorises religious communities as either "traditional" or "non-traditional". Seven traditional religious communities are registered, namely the Serbian Orthodox Church, the Greek Orthodox Church, the Reformed (Lutheran) Christian Church, Judaism and Islam. Under Article 18 of the law, all other religious communities must register again, even if they had been registered under previous laws. The registration procedure entails giving personal data of about 75 members of each community. While some "non-traditional" religious communities have also been registered under the law, many have been denied legal status for a number of reasons.

⁵⁴ Under the authority of the Ministry of Interior.

⁵⁵ A convincing model is that of the *National Rapporteur* in the Netherlands.

⁵⁶ By way of example, reference is made to the practice in some *Bundesländer* of Germany, such as Nordrhein-Westfalen.

⁵⁷ Report on Serbia adopted on 14 December 2007 and made public on 29 April 2008CRI(2008)25.

225. The Commissioner discussed these issues with the Minister of Religion. In the Minister's view, the Law on Churches and Religious Communities gives equal legal standing to all religions. The reference to traditional churches and religious communities was designed to help continuity with the past. The approval of "special status" is related to the system of registration, which is very simple. Even without this provision the community can function. However, NGOs informed the Commissioner that non-registered communities cannot legally own, buy or sell property, publish literature, hold a bank account, or employ anyone. Only registered communities can benefit from the Restitution Law governing the return of confiscated property passed in 2006. While the Minister admitted that everyone should be guaranteed the same rights and opportunities under the law, he stressed that the Serbian Orthodox Church covered 85% of the population.
226. The Commissioner is concerned that the current wording of the Law on Churches and Religious Communities does not help to foster an atmosphere of religious harmony in Serbia. Accordingly, the Commissioner recommends that the Law on Churches and Religious Communities is amended to remove the restrictions as to registration in Article 18.
227. There are currently very unfortunate tensions between the two Islamic communities in Serbia. One community based in Novi Pazar is called the Islamic Community *in* Serbia and is headed by Muhamer Zukorlić, the mufti of Novi Pazar. This community looks towards Bosnia and Herzegovina for its religious leadership. The other community, called the Islamic Community *of* Serbia, is headed by Adem Zilkić and based in Belgrade and sees Serbia as its spiritual home. Unfortunately, since October 2007 tensions have been growing between these two groups.
228. According to one opinion expressed to the Commissioner, the split had been caused by government intervention. Others argued that the government had been too passive in the face of this crisis. The Minister of Religion himself said that he very much regretted the current schism in the Islamic communities in Serbia, but stressed that the State could and should not interfere with any religious community including the Muslim community.

XVII. Recommendations

The Commissioner, in accordance with Article 3 paragraphs b, c and e and with Article 8 of Resolution (99) 50 of the Committee of Ministers, recommends that the Serbian authorities:

1. Consider drafting a comprehensive national action plan for human rights incorporating all existing strategies and action plans, and ensure inclusion of civil society.

Ombudsman Institutions

2. Allocate the various ombudsmen offices sufficient human and financial resources to carry out their mandate effectively.

Civil Society, NGOs and Human Rights Defenders

3. Investigate and prosecute cases of hate speech and other forms of verbal and physical attacks against human rights defenders, including journalists, and send clear messages from the highest political authority condemning such acts.

Rule of Law

4. Ensure full implementation of the national judicial reform strategy and the complementary Action Plan.
5. Facilitate the acceleration of civil and criminal proceedings. Introduce a civil remedy for lengthy proceedings, including financial compensation. Improve enforcement procedures for civil judgments, particularly in the field of family law.
6. Allocate sufficient resources to increase the number of Registry lawyers in the Constitutional Court. Ensure that the legal status of the Constitutional Court judges is clarified so that no judge is permanently employed as a full-time University professor.
7. Thoroughly implement the Anti-corruption Action Plan in accordance with the recommendations of the Council of Europe Group of States against Corruption (GRECO).

Police

8. Continue to incorporate human rights education in police training, with a particular focus against ill-treatment.
9. Increase the level of minority participation in the police service.
10. Further strengthen the mechanism for police complaints with sufficient resources and authority.

Prisons

11. Step-up efforts to provide treatment and rehabilitation for all drug users within prisons, in close collaboration with Ministry of Health officials.
12. Continue efforts to address the issue of over-crowding in Serbia's prisons.
13. Translate, publish and widely disseminate the CPT report among all stakeholders.

Discrimination issues

14. Adopt a general anti-discrimination law as soon as possible.

15. Adopt the Draft National Action Plan for the Empowerment of Women and the Advancement of Gender Equality (2007-2010) and ensure sufficient resources for the Council for Gender Equality.
16. Implement the Mental Health Strategy and monitor its implementation.
17. Increase the provision of social and community care possibilities in order to realise large-scale de-institutionalisation.
18. Implement the concluding comments of the UN Committee on the Elimination of Discrimination against Women in relation to Serbia adopted on 11 June 2007.
19. Formulate and adopt a comprehensive Children's Act, following consultation with non-governmental and international partners.
20. Ensure the full implementation of the General Protocol for the Protection of Children against Abuse and Neglect.

Rights of National Minorities

21. Enact the Law on National Minority Councils without delay.
22. Improve systematic and comprehensive data collection to achieve disaggregated statistics regarding ethnicity and other social indicators (health, education, employment etc.).
23. Actively promote economic development in underdeveloped regions, through engaging in infrastructural development and other projects, to reduce poverty, encourage sustainability and promote regional stability

Rights of Roma

24. Adopt proactive measures to provide opportunities for Roma, Refugees and disabled children to access mainstream education.
25. Take immediate action to resolve the precarious living conditions of the Roma, particularly displaced Roma, and those living in informal settlements.
26. Implement and expand programmes to ensure that Roma have access to education, healthcare and employment. Capitalise on Serbia's presidency of the Decade of Roma Inclusion. Actively cooperate with Roma civil society organisations.
27. Support and facilitate birth and citizenship registration of both domicile and displaced Roma from Kosovo, in order to minimise the risk of statelessness.

Freedom of the Media and Access to Information

28. Establish an independent Media Council to protect the rights of citizen's vis-à-vis media reporting.
29. Develop and promote training on professional standards and reporting techniques for journalists, in cooperation with international and non-governmental organisations. Facilitate a collective review of the existing codes of media ethics in order to draft a revised version.
30. Ensure full transparency of ownership and financing of media outlets.
31. Cooperate fully with the Institution of the Commissioner for Access to information of Public Importance and support the Institution with sufficient human and financial resources.

Trafficking in Human Beings

32. Ensure full implementation of the National Strategy to Combat Trafficking in Persons through a National Action Plan.
33. Continue to address corruption related to trafficking in human beings by vigorously prosecuting and punishing officials who facilitate trafficking.
34. Ensure institutionalised cooperation between state organs and NGOs, especially in victim identification and support.

Annex 1: List of interlocutors met and sites visited

National authorities and state bodies & institutions

1. **Prime Minister of Republic of Serbia**, Mr. Mirko Cvetković
2. **Ministry of Foreign Affairs:**
 - a. Mr. Radojko Bogojević, State Secretary
 - b. Ms. Kristina Milosavljević, Director of the OSCE and CoE Department
 - c. Ms. Olga Ćosić, Senior Adviser, OSCE and CoE Department
3. **Ministry of Interior:** Mr. Dragan Marković, State Secretary
4. **Minister of Justice**, Ms. Snežana Malović
 - a. The meeting was also attended by the Head of the Central Prison Administration
5. **Minster of Public Administration and Local Self-Government**, Mr. Milan Marković
6. **Minister of Labour and Social Policy and President of National Council for Cooperation with the ICTY**, Mr. Rasim Ljajić
7. **Minister of Human and Minority Rights**, Mr. Svetozar Čiplić
8. **Ministry for Education**, Mrs. Vesna Fila
9. **Minister of Religion**, Mr. Bogoljub Šijaković
10. **Ministry of Health**, State Secretary, Mr. Tomislav Stantić
11. **Deputy Speaker of the National Assembly of the Republic of Serbia**, Ms. Gordana Čomić
12. **Public Prosecutor of the Republic of Serbia** (acting), Mr. Slobodan Radovanović
13. **President of the Supreme Court**, Ms Vida Petrović-Škero
14. **President of the Constitutional Court**, Ms. Bosa Nenadić
15. **State Commissariat for Refugees**, Mr. Vladimir Cucić
16. **War Crimes Prosecutor**, Secretary General, Mr. Bojan Lapčević
17. **President of the Anti corruption council**, Ms. Verica Barać
18. **President of the Working group on Missing Persons**, Mr. Veljko Odalović
19. **Ombudsman**, Mr. Saša Janković
 - a. Deputy Ombudsman – Ms. Tamara Lukšić-Orlandić, Ms. Zorica Mršević, Mr. Goran Bašić, and Mr. Miloš Janković
20. **Commissioner for Free Access to Information of Public Importance**, Mr. Rodoljub Šabić

Novi Pazar (“Sandžak region”, *Raška oblast*):

- **Mayor of Novi Pazar**, Dr Mirsad Đerlek

Novi Sad (Capital of Autonomous Province of Vojvodina)

- **Assembly of the Autonomous Province of Vojvodina**, Mr. Šandor Egereši, Vojvodina
Assembly Speaker
- **Executive Council of the Autonomous Province of Vojvodina**, Mr. Bojan Pajtić,
President
- **Vojvodina provincial Ombudsman**, Mr. Petar Teofilović
- **Provincial secretary for management regulations and national minorities rights**, Mr.
Tamaš Korhec

Meetings were also held with parliamentary parties, and politicians on a central and local level throughout the country, representing all parties.

Representatives of Non-Governmental Organisations (national)

- **Helsinki Committee for Human Rights**, Mr. Nebojša Tasić
- **Humanitarian Law Centre**, Ms. Sandra Orlović
- **YUCOM**, Ms. Biljana Kovačević-Vučo and Mr. Dejan Milenović
- **Group 484**, Mr. Vladimir Petronijević
- **Gay-Straight Alliance**, Mr. Boris Milićević
- **Labris** – Ms. Dragana Vučković, Ms. Radenka Grubačić
- **Counseling Against Family Violence**, Ms. Vesna Stanojević
- **Child Rights Center** – Ms. Tanja Bogićević
- **Women in Black** – Ms. Jelena Čelebić
- **Asylum Protection Centre**, Ms. Maja Milenković, Mr. Radoš Đurović
- **Minority Rights Centre** – Ms. Andrea Čolak
- **Centre for development of civil society** – Mr. Vladmimir Ilić
- **Vojvodina centre for Human Rights** – Ms. Danica Živković
- **Novi Sad school of journalism** – Ms. Mirjana Pusić, Director, & Ms. Bela Aisenberger
- **Helsinki Committee for Human Rights, Novi Sad** – Mr. Pavel Domonji

- **Humanitarian Centre for Integration and tolerance** President of management board Mr. Ratko Bubalo
- **Vojvodina Centre for Human Rights** – Ms. Aleksandra Vujić
- **Mental Disability Rights International**, Ms. Dragana Ćirić Milovanović

Others:

- Mr. Goran Svilanović, former Minister of Foreign Affairs of FRY
- Mr. Vojin Dimitrijević, Professor of Law
- Mr. Vladimi Goati, Chairman, Transparency International
- Mr. Ivo Visković, Professor (international relations), Faculty of Political Sciences
- Mr. Jakša Ščekić, Journalist
- **“Islamic Community in Serbia”** Meeting with Mufti Muamer Zukorlić
- **“Islamic Community of Serbia”** Meeting with Mufti Adem Zilkić

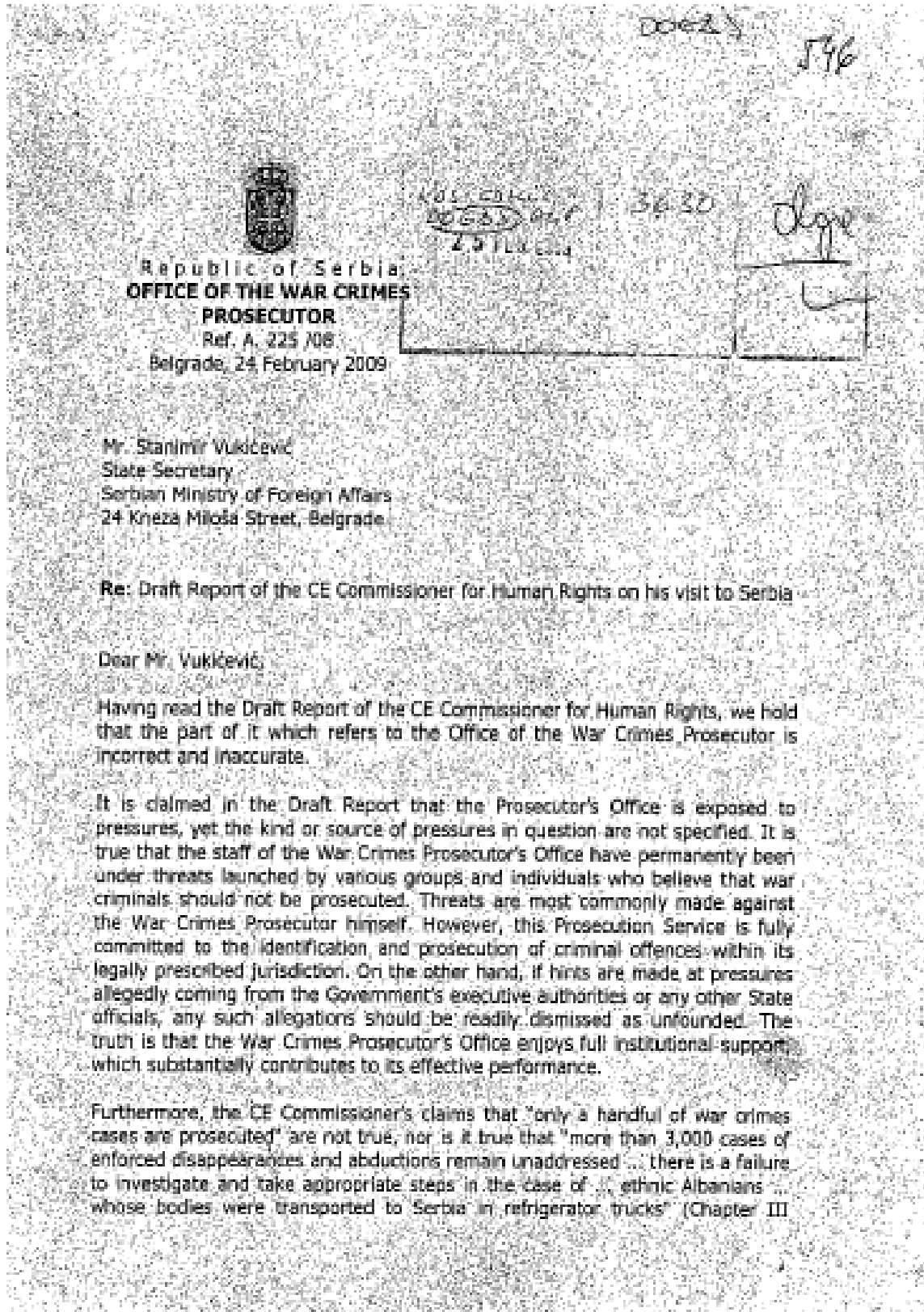
Representatives of international organisations

- Special Representative of the Secretary General of the **Council of Europe**, Ambassador Yerocostopoulos
- **OSCE** Mission to Serbia. Ambassador Hans Ola Urstad
 - **OSCE Municipal office – South Serbia**, Mr. Martin Brookes, Municipal Co-ordinator.
- **UN** Resident Coordinator and UNDP head, Mr. Lance Clarke
- **UNHCR**. Mr. Lennart Kotsalainen
- **UNIFEM**, Ms. Birna Thorarinsdottir
- **UNICEF**, Ms. Judita Reichenberg
- **Office of the Resident Coordinator/OHCHR**, National Human Rights Programme Officer, Ms. Marija Raus
- **European Commission**, Head of Delegation to Serbia, Ambassador Josep M. Lloveras
- **ICRC** Regional Detention Delegate, Mr. Ralph Wehbe

Institutions/Sites of HR concern

- Roma settlement Belgrade - *block 67 (behind Delta city shopping mall)*
- Roma settlement, Preševo
- Psychiatric institution in Kovin
- Belgrade Prison (incl. Prison hospital)
- Požarevac Remand Prison
- Police Station “29 November”, Belgrade
- Police station, Novi Pazar
- Police station, Novi Sad
- Police station & Training Centre, Preševo

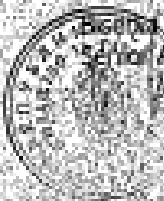
Annex 2: Comments of the Serbian Authorities



Paragraph 40). Namely, the War Crimes Prosecutor's Office has launched proceedings – which are currently at different stages – in 11 cases related to the disclosure of mass gravesites in Batajnica, Perućac and Petrovo Selo.

Representatives of the War Crimes Prosecutor's Office are at all times ready to present the CE Commissioner for Human Rights with their work, lest such imprecise conclusions should be made on any future occasions.

Yours sincerely,


Biserka Živković
Senior Adviser to the War Crimes Prosecutor



Република Србија
МИНИСТАРСТВО ЗА ЉУДСКА И
МАЊИНСКА ПРАВА
Сектор за унапређење и заштиту
људских права
Број:
Дана године
Београд

Republic of Serbia
Ministry for Human and Minority Rights
Sector for the Advancement and Protection
of Human Rights
No. 390-040337-00-1/09
Date: 3/03/2009
Belgrade

MINISTRY OF FOREIGN AFFAIRS
Directorate for the OSCE and the CE
Kneza Milosa 24
11000 Belgrade
Serbia

Subject: Report of the CE Commissioner for Human Rights on his visit to the Republic of
Serbia – Final version
Regarding: Your correspondence no. 3416/09 of February 20, 2009

Dear

With regard to the Final version of the report of the CE Commissioner for Human Rights on his visit
to the Republic of Serbia (October 3-17, 2008), which you submitted along with the above-mentioned
correspondence, in accordance with the competencies of the Ministry for Human and Minority Rights,
we hereby provide the following comments:

XI. Rights of National Minorities

11.2. National councils of national minorities

Item 159

In this item the text: "The Ministry of Human and Minority Rights plans to establish a separate state
sponsored fund..." should be replaced with the following text:

The Ministry of Human and Minority Rights shall, in accordance with the provisions of the
article 20 of the Law on the Protection of Rights and Freedoms of National Minorities, launch
the initiative for the establishment of the Fund for the stimulation of the social, economic,
cultural and general development of national minorities.

Yours sincerely,

Assistant Minister
Sanja Jasarevic-Kuzic

Министарство за људска и мањинска права Владе Републике Србије,
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Телефон: +381 (0)11 311 24 55, Факс: +381 (0)11 311 38 29

**Comments on Draft Report by Commissioner for Human rights, Council of Europe
on his visit to Serbia 13-17 October 2008**

**Chapter XIII Concerns of Refugees, Internally Displaced Persons and Asylum
seekers**

Paragraph 190-old paragraph 189

When completing your report and in particular with reference to paragraph 190 kindly consider to review the existing text to match official data from the Commissariat for refugees office in relation to the Salvatore Camp in Bujanovac; also note that those official data are confirmed in the statistics from a local NGO working in Bujanovac area

In your draft Report, the paragraph 190 (previously indicated as 189) states that: "Large number of IDPs are living in terrible conditions often in unregistered settlements without appropriate access to the most basic services and suffering from intolerance and discrimination by the local community. The commissioner delegation visited one such camp Salvatore in South Serbia, at the time of visit the camp that originally design for 250 persons house more than 700 persons with no more than 222 persons holding identification and civil registration documents"

The Salvatore camp in Bujanovac is one of four registered collective centers in Bujanovac area supported by the funds of the Commissariat for refugees (accommodation, food, electricity and water).

According to the above mentioned data, the Salvatore Kooptejneri camp hosts 190 IDPs. Near Salvatore camp in unregistered collective center Tehnicka skola about 160 IDPs and local Roma are living. All IDPs hosted in registered part of Salvatore have been issued IDP cards and have registered their temporary residence in Bujanovac. According to our local trustee and NGOs working in Bujanovac area, majority of the persons in unregistered CC have civil registration documents as well. In addition NGOs were conducting projects in the end of the last year in order to assist in obtaining birth certificates for 40 children born in Bujanovac parents being IDPS or IDPs and local.

Following up on your report the Commissariat for refugees has conducted checks on the ground (in addition to regular) as well as discussed your Salvatore figures with UNHCR and NGOs operating in the area. As result of such investigation the Commissariat for refugees can report that there is no evidence that, as stated in your draft report, 700 persons are residing in Salvatore camp and that only 222 have identification documents. The most recent data collected at the end of 2008 by the local NGO Nexus, assisting IDPs and local Roma in Bujanovac area in psycho social support (funded by EC trough Care International) do not show any significant increase in the number of IDPs and confirm the official figures of the Commissariat for Refugees (data are enclosed to this message for your review).

The Commissariat for refugees is actively involved in the municipality of Bujanovac to directly assist IDPs and refugees as well as coordinating with non-governmental programs; however, the socio-economic situation in the whole south of Serbia region remains difficult and more activities/funds are needed. Within that context, we also suggest you to offer your sources of the information about the situation in Salvores camp to get in contact with the Commissariat or UNHCR, in order to clarify this misunderstanding and eventually organize the necessary assistance.



NEXUS

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ROJEKTOVANJE I ODRŽAVANJE ODRŽIVOSTI

br	Opisina	Naziv kolektivnog centra Svrha specij. Projeog Društvo	Broj izbeglih pojedinaca	Broj izbeglih porodica	Broj interno premeštenih lita	Broj izl. porodica
3	Vranje	Posrednik	0	0	114	7
4	Vranje	Doni Učenici	0	0	27	6
5	Vranje	Bele Jagnje	0	0	13	3
6	Vranje	Moljanica	0	0	15	5
11	Bujanovac	Selektivni kompart	0	0	187	45
12	Bujanovac	Selektivni Tehnicki škola	0	0	182	36
13	Bujanovac	Molai	0	0	91	28
14	Bujanovac	Doni Vranje	0	0	88	27
15	Bujanovac	Stara Caparna	1	1	68	18
19	Vranje	Vrhovos	0	0	13	4
21	Vranje	Zastavice	0	0	16	1
	Total		0	0	886	166
	TOTAL					

number of IDPs
number of IDPs families

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