



YUCOM

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Human Rights and Democracy Violation Early Warning *Weekly Newsletter* No. 34

*Council of Europe's Commissioner for Human Rights, **Thomas Hammarberg**, paid an official visit to Serbia from Oct. 13 to 17, 2008. An extensive Report on that visit and a broad range of talks he has had with representatives of government authorities and nongovernmental organizations was published on March 11, 2008 on CoE's website¹. The Report abounds with facts, useful information, assessments and recommendations concerning the human and minority rights condition in Serbia today.*

*Since Commissioner **Hammarberg's** views and recommendations -- coming from a high ranking representative of the CoE -- carry great weight not only in view of monitoring Serbia's compliance with conditions put forward when admitting her to CoE membership (as part of the state union of Serbia and Montenegro) 2003, but also as an indication of her attitude towards values associated with the aspired EU membership, this issue of the EWS newsletter carries a selection of topics from the Report pertaining to civil society, human rights, discrimination and the media.*

However, this selection does not suggest that the parts of the Report related to the setup and performance of state authorities and other mechanisms in charge of accelerating the advancement towards an open and democratic society in accordance with universally recognized international standards, are less important.

II. Structural protection of human rights

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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

¹While these are excerpts from the Report, the full text can be viewed at:
https://wcd.coe.int/ViewDoc.jsp?id=1417013&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P193_21128



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responsibilities guaranteed by the UN Declaration on Human Rights Defenders. The legal framework regulating freedom of association appears outdated. A draft law on associations, approved by the government on 17 July 2008, was withdrawn from the further parliamentary procedure on 17 December 2008.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's 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.

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. It appears that the government favour certain NGOs perceived as being "government or state friendly".



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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.

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. 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.



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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. 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.

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). 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



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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.

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 transphobia, 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.

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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.



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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 proactive 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.



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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.

The Report concludes with 34 points of recommendations addressed to relevant authorities in the legislative, executive and judicial branches, as to what measures should be taken in order to bring closer to European and universally acknowledged international standards the level of human, minority and other rights and freedoms, as well as institutions' setup and functioning. This review contains recommendations pertaining to areas covered by the above excerpts from the Report.

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:



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

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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.

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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.

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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.

Outlook:

Commissioner Hammarberg's report represents yet another testimony that Serbia lags far behind universally adopted criteria and standards of human and minority rights observance, protection and promotion. It also indicates that the level of development of the legal instrumentarium and institutional infrastructure in Serbia cannot but be seen as a serious impediment of Serbia's declarative readiness to accede to European integration processes. Particularly important is the clarity of the Commissioner's view that civil society's contribution to these processes can and should be acknowledged, recognized and stimulated.