

YUCOM 2020–22, No 09–10

Introduction
Free Legal Aid
Judiciary tailored to the citizens
Protection of Human Rights in 2020–22 – current issues
The most significant projects
Publications – new editions
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Y09–10

Annual

Report

YEARS AT THE FRONTLINE

TRANSITION

Ministry of Foreign Affairs of the Czech Republic



YUCOM
Lawyers' Committee
for Human Rights

YEARS AT THE FRONTLINE



YUCOM 2020-22
ANNUAL
REPORT



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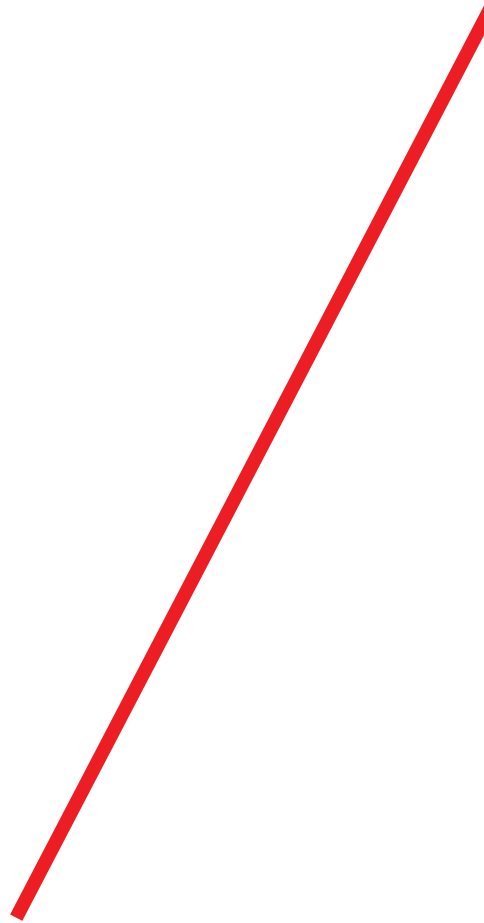
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TRANSITION

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01

Introduction

Two years of crisis: June 2020 – June 2022

Crisis situations require a focused, reactive approach. The two-year epidemiology and safety crisis and the gravest crisis of the democratic Parliament (which is supposed to bring Serbia closer to the European Union) thus far forced the YUCOM team to pay closer attention to and intervene in the work of all branches of government.

The parliamentary elections of 2020 were held without an intense campaign, due to and in the midst of the corona virus epidemic, and boycotted by the majority of opposition parties. The month of June saw the formation of a single-party Parliament which called for the announcement of extraordinary elections in 2022, but also marked the beginning of large spontaneous protests caused by dissatisfaction with the manner in which the pandemic was handled, as well as the downfall of institutions. YUCOM saw the protests as an obligation to inform citizens about their rights in case they are asked to present an ID or detained. The forceful response of the police to the protests took us to Belgrade prisons, for the purpose of preventing torture and completing one of our missions, together with the team of the Protector of Citizens and other non-governmental organizations.

The shortened mandate was accompanied by the accelerated activities of the single-party Parliament and ministries to amend the Constitution and other regulations within Chapter 23. The Constitution, the Law on the Referendum and the People's Initiative, the Law on the Protector of Citizens, the Law on Free Access to Information of Public Importance, the Law on Prohibition of Discrimination, Criminal Code, are only one segment of the legal framework which has undergone amendments or where changes were attempted. Non-governmental organizations, including YUCOM, acted as opposition with regard to the process of drawing up laws during this period.

The amendments to the Constitution which took place since September 2020 in the Parliament were discussed with the Venice Commission, citizens and the media. By doing so, we attempted to provide support to the experts and to ensure citizens have the right to a fair trial, an independent and impartial court and an effective investigation. At the beginning of 2022, amendments to the Constitution were adopted by referendum, which marked a new chapter in the process of monitoring reforms of the Serbian judiciary.

Debates on new regulations were not organized due to epidemiological risks. YUCOM did, however, take the initiative and organized hybrid events – public debates on relevant laws. The Law on the Protector

of Citizens was adopted in the fall of 2021 following a public debate that we organized with the help of the UN Mission to Serbia. The law was adopted while considering numerous reproaches which we presented at the public debate, as well as at the meetings with the working group, where we were invited as representatives of the National Convention.

Although it was not planned, the political agenda managed to amend the Criminal Code, under the guise of protecting journalists. One of the most difficult battles for the protection of freedom of expression was fought in the fall of 2021 in cooperation with the international organization Article 19. The process of amending the Criminal Code was decelerated after YUCOM presented strong arguments regarding possible abuse of planned incrimination.

At the same time, we had to react to prevent the citizens' constitutional right to influence policies, elaborated in the Law on the Referendum and the People's Initiative, from becoming collateral damage of amendments to the Constitution. Through discussions with the Venice Commission and by alerting the public, during the summer of 2021 we prevented numerous policies from being adopted which would leave citizens without any considerable opportunity to exert influence. The requests we presented to the Ministry of Justice, which were not adopted, turned into a petition, which then grew into mass protests throughout Serbia in November and December of 2021. Under the pressure of the protests, the Law on the Referendum and the People's Initiative was amended in record time. The protest against the suppression of civil speech in the creation of public policies, a regular process at first, spilled into the street. It was supported by environmental movements and other citizens who were brought together by the idea of the right to protect the environment and life in Serbia.

The role of YUCOM, as the most outspoken critic of the government, led to attacks and degradation, arriving both from the Parliament podium and the regime's tabloids and social media. Experts networking into a critical mass were labeled as "foreign mercenaries".

In the course of these two years, we sat at the same table with the authorities and were prosecuted at their initiative, accused of financing terrorism. The international community provided support and pointed out an abuse of institutions in Serbia.

Abuse of institutions also occurred on the occasion of suppressing environmental protests. We publicly condemned as unlawful and unacceptable the statements

made by the Ministry of Internal Affairs, aimed at intimidating and trying to incite clashes between protesters and other citizens, while we successfully provided legal aid to individuals across Serbia who had misdemeanor proceedings initiated against them.

Unlike the freedom of assembly, the freedom of expression of the activists was not protected by the judiciary. Verbal protests against local health officials over poor hospital management in the summer of 2020 have been met with numerous lawsuits. The international standards of freedom of expression that we cited as part of our representation did not prevent the courts from convicting healthcare workers and activists who spoke critically.

Apprehending and prosecuting long-time activists during the protest against the mural of Ratko Mladić – a convicted war criminal - in the center of Belgrade demonstrated, just like the boycott of the Parliament, that the state was protecting the downfall of democratic values. While members of right-wing movements cover buildings with murals of war criminals, Hague Tribunal convicts have occupied the media and public spaces for the promotion of violence, xenophobia and the denial of human rights, especially of ethnic and sexual minorities. The expansion of right-wing movements poses a danger to minorities and all those who support democratic values

All these incidents, along with plenty of other types of pressure, have been recorded on YUCOM's incident map. In a large number of cases, we provided legal support to activists before the state and expressed solidarity in the street, in the name of the protection of democratic values.

We show solidarity and fight for everyone's rights with the help of our partners, local and international non-governmental organizations, as well as international organizations whose mandate encompasses the protection of human rights. All of the most relevant international organizations, such as the United Nations, the Council of Europe, the European Union, the OSCE, have provided significant support during these two years, in order to help us protect human rights in Serbia.

Nevertheless, the basic instrument for protecting human rights is the Serbian judiciary, therefore, during these two years we have once again been focused on improving the judiciary. We have been monitoring the "judicial elections" since the winter of 2020, analyzing along the way the process of electing the highest representatives of the judiciary and the

prosecutor's offices. We have also been monitoring the election of members of the High Judicial Council and the State Prosecutorial Council. We have presented to the public the initial reports on the status of the judiciary from the standpoint of the Serbian citizens, as well as reports on challenges our citizens face due to judicial reforms in Kosovo.

Through the portal Open Doors of Judiciary and in collaboration with judges and prosecutors, we have initiated discussions on numerous topics of interest to citizens, who have with full confidence shared with us their doubts and issues, successfully resolved by the free legal aid team for 25 years. It is evidenced by the fact that 2377 citizens contacted us in the last two years. At times, successful representations are only achieved before the Constitutional Court, however, they are the ones setting the standards of protection for all citizens. Therefore, in 2022, precisely ten years after the introduction of hate crime at our initiative, a significant decision was rendered which granted victims of hate crimes greater rights before prosecutors.

At the same time, we have closely monitored the scope and challenges of implementing the Law on Free Legal Aid. The first guides intended to help establish the system were sent to heads of municipalities in early 2022, while guides for citizens were placed in all relevant institutions visited by citizens who are entitled to free legal aid.

The influence YUCOM has had on the work of institutions for 25 years is unassailable, and in the last two years it has become even more prominent. With the strong arguments of our experienced team, which is growing every year, we have managed to help many people regain their dignity and get their life back on track. Unwavering consistency, in terms of looking at the factual and legal situation from the perspective of human rights, has given us additional strength to protect others. Speed, solidarity, trust, networking, expertise, are the qualities of the YUCOM team which have helped us overcome the reactive two-year phase of work, become even stronger and ready to devise new tasks for the state, pertaining to improvement of human rights.

Katarina Golubović, president of YUCOM
in Belgrade, September 2022





02

**Free
legal
aid**

Following the state of emergency and circumstances caused by the COVID-19 pandemic, we have continued to provide free legal aid at an unchanged pace. We attempted to respond to new requests and queries from citizens who placed their trust in our legal team.

The provision of free legal aid and the types of problems our citizens faced during this period were largely impacted by the pandemic (COVID-19) throughout the entire period. The number of citizens who reached out to us was on the rise, despite the fact that the state of emergency was lifted on May 6, 2020. The prolonged pandemic affected the work of the judiciary and administration, as well as work and family relations. During this period numerous civil protests were organized due the announcement of stricter measures, against vaccination, COVID-19 passes and certificates, pollution, all of which contributed to citizens contacting us in larger numbers.

The following chapters contain a statistical overview of the free legal aid provided from 07.05.2020 until 31.05.2022, a review of the civil protests which ensued once the state of emergency was lifted, and a review of selected cases of representation.

1. Statistics

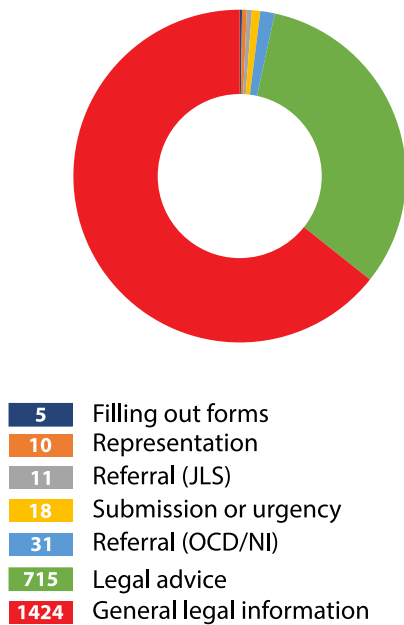
In the period covered by this Report, the Lawyers' Committee for Human Rights was approached by 2377 citizens, who submitted their queries and requests via e-mail, telephone, mail and social media. We had to limit and reduce to minimum the number of clients we received due to aggravated epidemiological situation.

Free legal aid was provided primarily to socially vulnerable categories of persons, but we also assisted other persons whose rights were threatened or violated. Legal aid was also provided to those who used their own example to demonstrate shortfalls in the work of institutions and opened new important issues and topics which provided guidelines on what needed to be rectified in the system in order to protect or improve certain human rights. As in all previous years, we were approached for legal aid by citizens who had already hired attorneys, as well as by attorneys themselves on behalf of their clients, seeking consultation or assistance in the form of advice and guidelines for further work. During this period, we did not encounter any applicants for free legal aid who were referred to our organization on

the basis of the Decision on granting free legal aid in accordance with the Law on Free Legal Aid. Once again, citizens were referred to our legal team by judges, centers for social work, various citizens associations, certain institutions and journalists.

The statistics show that the provision of legal aid in this period was mostly focused on providing general legal information in 1424 cases (59.90%) and providing legal advice in 715 cases (30.07%) needed by citizens to protect and exercise their rights. In 31 cases, we referred our clients to other authorities or independent institutions competent for solving the problem they presented to us. In 19 cases, we provided legal aid in drafting submissions or urgencies, while 10 applicants for free legal aid were represented in order to protect their rights before regular courts and administrative bodies, as well as before the Constitutional Court and the European Court of Human Rights. Five persons received assistance with filling out forms.

STATISTICAL OVERVIEW ACCORDING TO PROVIDED LEGAL AID

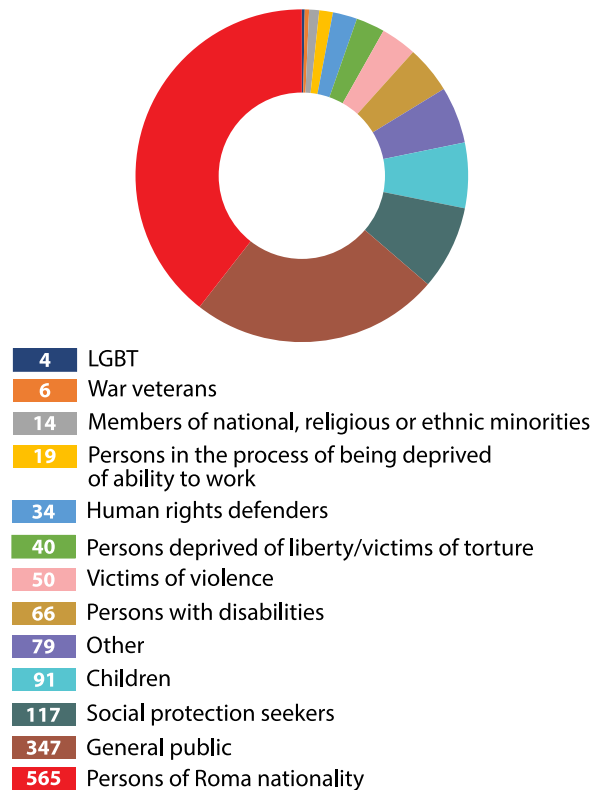


According to the social groups which reached out to us, we received the highest number of requests from citizens belonging to the categories “persons of Roma nationality” (39.45%) and “general public” (24.23%), while the other categories include: social protection seekers (8.17%), children (6.35%), persons with disabilities (4.60%), victims of violence (3.49%),

persons deprived of liberty/victims of torture (2.79%), human rights defenders (2.37%), persons in the process of being deprived of ability to work (1.32%), members of national, religious or ethnic minorities (0.97%), war veterans (0.41%), LGBT (0.27%), while 5.51% comprise the category of “other”.

We should mention that during the observed period, as part of the project “Support to legalization of facilities in Roma substandard settlements”, the provision of free legal aid was aimed exclusively at the Roma population, which led to somewhat different results compared to the previous report when it comes to the number of members of the Roma community seeking free legal aid.

STATISTICAL OVERVIEW ACCORDING TO SOCIAL GROUPS



Once again, the statistics show that certain applicants for free legal aid simultaneously appear in two or more different social categories. For example, persons with disabilities or persons of Roma nationality are most commonly the persons who also need to exercise their right to social protection. The above

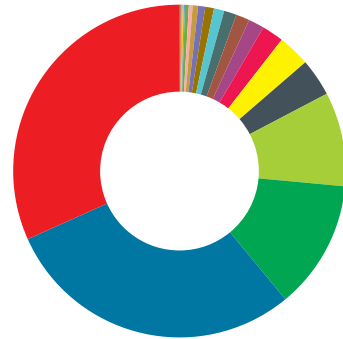
data indicate that there are still multiple threats to the rights of such persons, as well as the absence of a comprehensive system response related to the needs of these social groups.

When it comes to **age group** of those who approached us, the largest number of requests for free legal aid were submitted by citizens belonging to the age group 26-45, however, the number of requests by people aged 46-65 also increased.

As for the **classification by gender**, the ratio is as follows: 52.46% were men, while 47.49% were women.

The statistical overview according to endangered human rights shows that the highest number of requests were pertaining to: right to housing (31.70%), right to good administration (12.54%), right to work (9.15%), children’s rights (3.65%), right to a fair trial (3.12%), right to social protection (2.11%), right to health care (1.53%), right to personal freedom and security (1.32 %), right to a trial within a reasonable time (1.21%), prohibition of discrimination (1.00%), prohibition of abuse and torture (0.84%), right to privacy and family life (0.68%), right to dignity and free personal development and inviolability of physical and mental integrity (0.37% each). An equal number of requests were submitted as a result of the violation of the right to life, to conclude marriage and start a family, to free access to information, freedom of expression and freedom of association (0.10% each), with others amounting to 29.48%.

STATISTICAL OVERVIEW ACCORDING TO ENDANGERED HUMAN RIGHTS



2	Right to life
2	Right to conclude marriage and start a family
2	Right to free access to information
2	Freedom of expression
2	Freedom of association
7	Right to dignity and free personal development
7	Inviolability of physical and mental integrity
10	Right to an effective legal remedy
16	Right to privacy and family life
19	Prohibition of abuse and torture
23	Prohibition of discrimination
25	Right to a trial within a reasonable time
29	Right to personal freedom and security
40	Right to health care
59	Right to social protection
69	Right to a fair trial
173	Children's rights
237	Right to work
553	Right to good administration
599	Other
599	Right to housing

STATISTICAL OVERVIEW ACCORDING TO GENDER



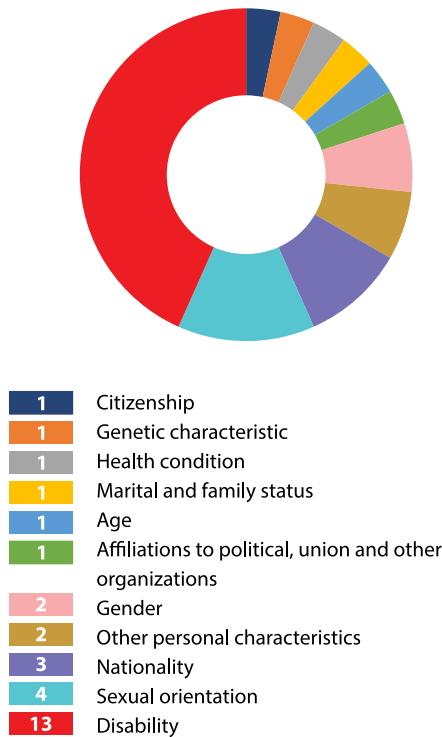
1247	Male
1129	Female
0	Transgender

In the segment of the right to work, we were able to observe issues we were already familiar with such as conclusion and extension of employment contracts and temporary contracts, conclusion of annexes to employment contracts, as well as issues regarding sick and maternity leave. Payment of salaries remains a large problem for employees working for private employers, particularly once the employment contract has been terminated.

We should also mention that, due to the project “Support to legalization of facilities in Roma sub-standard settlements”, the number of queries related to the right to housing in this report largely deviates from the data contained in previous reports.

As for violation of the principle of non-discrimination, the most common were violations based on disability (43.33%), sexual orientation (13.33%) and ethnicity (10%); we recorded the same percentage for violations based on gender and other personal characteristics (6.66% each), followed by violations based on nationality, genetic characteristics, health condition, marital and family status, age and affiliations to political, union and other organizations (3.33% each).

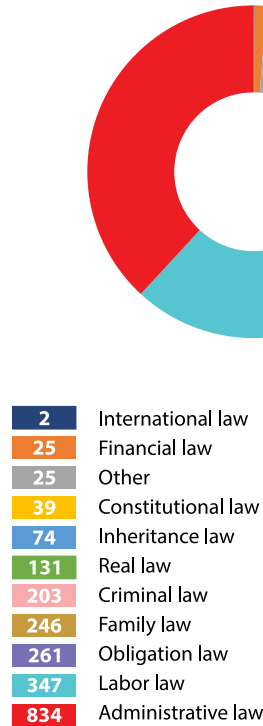
STATISTICAL OVERVIEW ACCORDING TO BASE FOR DISCRIMINATION



If we look at the statistics according to the branch of law in which legal aid was provided, we observe the following: administrative law (37.66%), labor law (16.89%), obligation law (11.78%), family law (11.11%), criminal law (9.16%), real law (5.91%), inheritance law (3.34%), constitutional law (1.76%), with the same percentage for financial law and “other” (0.09%).

We should highlight again that, due to the project “Support to legalization of facilities in Roma sub-standard settlements”, the number of cases related to administrative law has increased.

STATISTICAL OVERVIEW ACCORDING TO THE BRANCH OF LAW

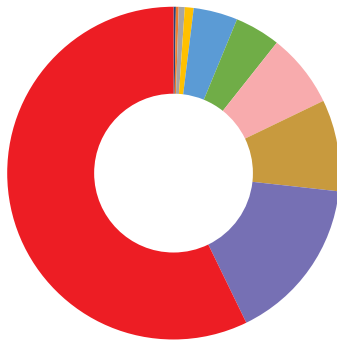


The overview according to the type of proceedings in which legal aid was provided is as follows: administrative procedure (57.12%), litigation (16.01%), criminal (8.88%), executive (7.17%), non-litigation (4, 42%), misdemeanor (0.85%), proceedings before the European Court of Human Rights (0.58%), proceedings before the Constitutional Court (0.22%), administrative dispute (0.27%) and other cases (4 .28%).

In the chart displaying specific cases of representation in which legal aid was provided we are able to observe cases of failure to pay maintenance (20.60%), social protection (16.96%), child custody (14.54%),

cases related to the state of emergency - although the observed period includes the period following the lifting of the state of emergency (12.72%), domestic violence (11.51%), cases of deprivation of work ability (6.66%), torture (4.24%), mobbing (7.27 %), hate speech and corruption (1.81% each), human rights defenders (1.21%) freedom of media (0.60%).

STATISTICAL OVERVIEW ACCORDING TO THE TYPE OF PROCEEDINGS

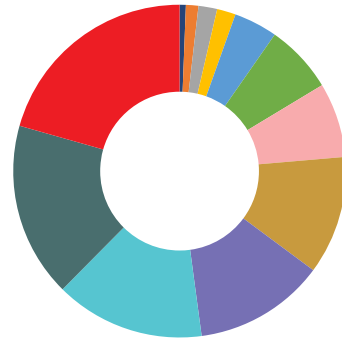


5	Proceedings before the Constitutional Court
6	Administrative disputes
13	Proceedings before the European Court of Human Rights
19	Misdemeanor proceedings
95	Other
98	Non-litigation
159	Executive proceedings
197	Criminal
355	Litigation
1266	Administrative

The statistics clearly show that the need for free legal aid among citizens is still great, which is affected not only by existential and social threats, but also by a complete loss of trust in the state institutions.

Strategic representation is one of our most significant activities. Our legal team accepts certain cases after assessing that these cases, due to their particularities and severity, may have broader social significance. Through strategic litigation, we detect systemic problems in the functioning of institutions, influence changes in the court practice in a certain field, and consequently changes in regulations by submitting legal initiatives. Strategic litigation remains the best indicator of the current relation between the judiciary in a certain field and the protection of human rights.

STATISTICAL OVERVIEW ACCORDING TO SPECIFIC CASES



1	Freedom of media
2	Human Rights Defenders
3	Hate speech
3	Corruption
7	Torture
11	Work ability
12	Mobbing
19	Domestic violence
21	State of emergency
24	Child custody
28	Social protection
34	Failure to pay maintenance

YUCOM's legal team today comprises 9 legal experts, five attorneys-at-law and four law school graduates.

Protests following the lifting of the state of emergency in July 2020

The protests, which were initiated in Belgrade and then spread to other cities across Serbia, occurred shortly after the state of emergency and restrictions on movement were lifted (May 6, 2020). Namely, once the state of emergency was lifted, and particularly ahead of the parliamentary elections held on June 21, 2020, epidemiological measures were significantly eased, which was deemed by numerous healthcare workers to be a premature political move unacceptable from the point of view of epidemiology. The warning given by healthcare workers became reality shortly after the measures were lifted, as the number of people infected with COVID-19 was on the rise. For this reason, on July 7, 2020, the

President of Serbia, Aleksandar Vučić, announced that the curfew would once again be in force during the weekend, from Friday, July 10 to Monday, July 13, 2020. This announcement caused revolt among large numbers of citizens, who began to gather spontaneously in front of the National Assembly in Belgrade in the evening hours of July 7, 2020.

During the assembly, certain protesters resorted to violence. In addition to verbally expressing their dissatisfaction with the announced measures, some of them started throwing rocks and various other objects at the police officers stationed in front of the National Assembly building. The conflict escalated, which led to the use of tear gas and other means of suppression by the police. In the following days, the protests spread to other cities in Serbia, while continuing to grow in Belgrade itself. The said protests were marked by the inappropriate reaction of police officers, especially on the second day of the protests (July 8). One such case was the case of police using batons to hit several citizens on the head and kick them while they were quietly sitting on a bench in Pionirski Park, not posing a threat to the police or other citizens, all of which was broadcast live by a media outlet. Another case took place in Terazije in Belgrade, when a group of police officers chased down a protester, wrestled him to the ground, started beating him with batons and kicking him, while he was lying curled up. Excessive use of force was also observed in Novi Sad, where the police beat an autistic young man who did not participate in the protests.

Excessive use of force towards the protesters by the police was observed while they were being apprehended and taken to police stations during the protests, which was confirmed in the statements given by some of the detainees. On July 15, 2021, they were interviewed by YUCOM's legal advisor during a visit of the National Preventive Mechanism team (NPM) to the Penitentiary facility Padinska Skela in Belgrade together with the representatives of the Protector of Citizens. An official note was drawn up, as an integral part of the report of the Protector of Citizens on the said events.

During the visit to the Penitentiary facility Padinska Skela, we spoke with persons who were imprisoned after the protests in Belgrade on July 10 and 11, 2020. They were initially detained, and then taken before a judge of the Misdemeanor court. The focus was on determining whether the police had used excessive

force when apprehending protesters. During the visit, we requested to see the medical records of those who ended up in the facility due to the said protests and to speak to the physician at the facility. At the time of the visit, of the 14 persons brought to the facility, ten were still there, whereas four were released before our visit. The most seriously injured person, at the time of the visit, was taken for a medical examination.

Of the six persons we interviewed, four of them were beaten, according to the statements they gave us, some during the arrest, some in the Assembly building, some in the police stations. The interviewees complained that they had been beaten even though they had not resisted, that they had been tied, wrestled to the ground from behind and insulted, that some of them had not been given food or water in the police stations. At the same time, all persons confirmed that they had received decisions on detention, as well as that they had been treated with decency in the penitentiary facility.

Legal pressure on participants in the protest: protection of "organizers of a protest held without a permit"

During the protests in November and December 2021, after "Kreni-Promeni" and several environmental movements and organizations announced on social media their plan to conduct peaceful walks every Saturday at a certain time as an expression of revolt caused by the planned exploitation of ores in the valley of the river Jadar and the decision on the Law on the Referendum and the People's Initiative, police officers from the local police stations initiated a coordinated investigation into possible activists and protest participants. In many towns across the country, prior to the protest, the police visited houses of citizens who were active on social media and in the local public life, and warned them of breaking the law for not obtaining a permit for the assembly. The police also invited them to call off the protests and not participate therein. People perceived these warnings as a form of intimidation, but they did, nevertheless, exercise their right to assembly.

The police submitted requests to initiate misdemeanor proceedings against those protest participants, who, in addition to attending, shared information about the protest on Facebook. They were charged with organizing an assembly without a permit, which can be subject to fine in the amount of 100,000 to 150,000 dinars.

Requests to initiate misdemeanor proceedings were accepted by the courts, and the defendants were summoned for hearings in several cities. With the support of Citizen Initiatives and the Civic Committee for the Protection of Human Rights Defenders and Whistleblowers, YUCOM's attorneys provided legal aid in Kovin, Smederevo, Čačak, Senta, Novi Pazar, Pančevo and Kikinda.

YUCOM's attorneys argued that even if the defendants did call for protests on their Facebook profiles, this circumstance itself was not sufficient to establish responsibility for organizing the protest.

According to Art. 10. para. 1. of the Law on Public Assembly, the organizer of an assembly is considered to be the person who, in line with the provisions of the said Law, invites to the assembly, prepares and organizes the assembly. Therefore, in order for someone to be considered the organizer of an assembly, three actions must be performed cumulatively, namely: inviting to the assembly, preparing and organizing the assembly. Persons who submitted the request for initiating misdemeanor proceedings did not cite any actions which would indicate that the defendants prepared or organized the assembly, nor did they present any evidence.

Apart from the allegation that the defendants called for blockades of roads, the request contained claims stating that they were present at the blockade, however, the law does not define such action as misdemeanor.

The Misdemeanor courts accepted all arguments presented by YUCOM's attorneys. The first legally binding decision was rendered in June 2022, when the first-instance decision of the Misdemeanor Court in Pančevo – Division of Kovin was confirmed.

2. Selected cases of representation

Protection from mobbing: Whistleblower in the Ministry of Internal Affairs

In the summer of 2015, the Lawyers' Committee for Human Rights – YUCOM was contacted by an employee of the Ministry of Internal Affairs, War Crimes Identification Service, claiming that he had been subjected to mobbing by his superiors due to the diligent performance of his duties. The motive for mobbing was his drawing attention to irregularities in cases of national importance. That was how this victim of mobbing in a state institution qualified as a human rights defender and whistleblower, which was why YUCOM got involved in his protection and representation. According to this employee of the Ministry of Internal Affairs, the three-year period of mobbing included: transfer to a different position where he did not work on cases, assigning tasks which were not adequate to his position in the Ministry, not being invited to meetings, taking away means for work, spreading misinformation about his past as reasons for termination of employment, slander and insults. Due to the nature of his work, as well as legal regulations, the employee of the Ministry initially reached out to other superiors of the Ministry, both formally and informally, however the Ministry failed to ensure his protection.

As the mobbing did not cease, in November 2015, the aforementioned employee of the Ministry decided to file for a procedure for protection before the court, with the help of attorneys from the Lawyers' Committee for Human Rights. During the seven-year long proceedings, a large number of employees of the Ministry of Internal Affairs were interviewed in connection with actions aimed at degrading this victim of mobbing. The duration of the proceedings was affected by the fact that hearings before the High Court in Belgrade are scheduled twice a year. Furthermore, several witnesses retired in the course the proceedings and the Ministry of Internal Affairs did not provide information about the addresses of its former employees, which made the witnesses unavailable. Several high-ranking members of the Ministry did not answer the witness summons.

A particularly aggravating circumstance was the fact that the Ministry of Internal Affairs declared the jobs description, that is, the jobs systematization within the organizational units, confidential. Despite the insistence of the court, the job description of this employee was never submitted. That is why the prosecutor encountered difficulties while trying to prove what his position in the Ministry implied and what specifically he was prevented from doing, and thus show the extent to which he was degraded as a person.

In the course of the proceedings, the prosecutor was repeatedly subjected to pressures. The employee of the Ministry of Internal Affairs was suspended for a year, because criminal proceedings were initiated against him. He claimed it to be a false report, among other things, caused by the protection procedure he initiated. YUCOM also provided support before the Administrative Court in the suspension procedure. The suspension was lifted as a result of acquittal in criminal proceedings.

Upon assessing all the statements, the High Court in Belgrade accepted the claims that mobbing did occur and ordered the Ministry of Internal Affairs to pay compensation for non-pecuniary damage. The decision was upheld by the Court of Appeals in Belgrade in June 2022, which made it legally binding. The employee of the Ministry of Internal Affairs who was a victim of mobbing continues to perform his duties the way he did before the mobbing began, while those who committed mobbing were transferred to another position, outside the War Crimes Identification Service.

Right to freedom of speech

The COVID-19 pandemic has changed the lives of people around the world. In addition to the high level of threat to public health, it also posed a challenge to respecting certain rights such as freedom of speech.

A particularly grave crisis during the outbreak of the pandemic struck the town of Novi Pazar in June and July 2020. Despite the donated equipment which was delivered in March, the public authorities and the hospital administration were unprepared to tackle the epidemic, which resulted in a humanitarian disaster and numerous casualties whose total number

remains unknown to this day. Specialists of the General Hospital in Novi Pazar publicly pointed out the inadequate management of the hospital by its director, and 37 of them signed a petition for his dismissal. The same medical workers also held a press conference (August 18, 2020) where they once again expressed their demands. However, their efforts to have the hospital director dismissed did not yield results.

For seven months, protests were held in front of the General Hospital in Novi Pazar due to the situation in which the citizens found themselves. Since the end of June 2020, a group of citizens dissatisfied with the overall situation in the General Hospital in Novi Pazar protested every working day demanding the dismissal of the entire hospital administration, primarily the dismissal of the then acting director Meho Mahmutović. All the while, the managers of the General Hospital in Novi Pazar refused to divulge the true extent of the health crisis, as well as the fact that they were unable to handle the epidemic in Novi Pazar.

A large number of citizens stood up against the hospital director. Social media were flooded with posts of angry and disgruntled citizens. Moreover, the citizens of Novi Pazar created several Facebook groups where they discussed the hospital administration. Assemblies and protests continued, where citizens demanded that the acting director of the General Hospital in Novi Pazar Meho Mahmutović, who served as the mayor of Novi Pazar from 2009 to 2012 and 2012 to 2016, be dismissed and held accountable. In the context of the aforementioned events, many citizens of Novi Pazar reacted emotionally on social media, directing more or less harsh criticism at Meho Mahmutović.

Following the said events, Meho Mahmutović filed 37 private defamation lawsuits against the activists and certain fellow medical workers. The Lawyers' Committee for Human Rights represented three medical workers (F.P. DŽ.D. and L.S.) and three human rights activists (M.I. A.P. and A.V.). Of 37 lawsuits, seven were filed against the activist and founder of the Free Citizens' Initiative A.P., who led the protests against the hospital administration, where the protesters demanded that they be held accountable for the poor response of the health care system in this town and the high number of casualties.

The medical workers and activists against whom proceedings were initiated reacted publicly to the issues important to all citizens of Novi Pazar and demanded accountability, as “custodians of public interest”. In their public statements, they presented their own views of the situation in the hospital in Novi Pazar during June and July 2020, as well as all the shortcomings of this institution.

In the cases tried before the Basic Court in Novi Pazar, and for which the second instance jurisdiction is with the High Court in Novi Pazar, two legally binding decisions were rendered rejecting the lawsuit, as well as three legally binding decisions - two against the activist A.P. who was convicted of the criminal offense of insulting the hospital director and one against the medical worker F.P. of the General Hospital in Novi Pazar who was ordered by a decision in civil proceedings to pay for one part of non-pecuniary damage due to defamation.

In the course of the proceedings, the courts showed no understanding for the fact that the statements and posts of the defendants represented their own opinions, which were shared by the majority of their fellow citizens, as well as that the private plaintiff, as an official, should demonstrate a greater degree of tolerance towards such posts.

Lacking any basis, i.e. purely on the basis of the plaintiff’s statement, the acting courts established that the statements made by the defendants referred to the plaintiff personally, and not to an official, entirely disregarding the context of social events in the local community.

Freedom of expression, provided for under Article 10. of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is one of the crucial foundations of a democratic society and does not apply solely to “information” or “ideas” which are accepted or considered offensive, but also to anything that causes offence, harassment or disturbance. Freedom of expression may be subject to exceptions, which, however, must be clearly outlined, while the need for restrictions must be determined as credible. The scope of acceptable criticism is much broader with respect to politicians or public figures in general, than with respect to private in-

dividuals. Unlike private individuals, public figures are inevitably and willingly exposed to the scrutiny of the public, and their words and actions are more thoroughly assessed by the public, therefore, they must display a greater degree of tolerance.

In addition to being a threat to freedom of speech, the aforementioned cases are also related to a fairly new phenomenon in our judicial practice, which is a kind of abuse of rights, namely SLAPP suits. SLAPP is an abbreviation which stands for strategic lawsuit against public participation. SLAPP is based on a claim for compensation due to defamation, which does not have to be founded at all. The purpose of numerous such claims is to force the defendant to mobilize its financial and human resources and redirect them towards defense against the claims, as well as to intimidate activists with high pecuniary compensations and fines. Although the Law of Contracts and Torts contains a provision which prohibits the abuse of rights, in practice, decisions rejecting such lawsuits are few and far between. These are most commonly civil (litigation) proceedings initiated by natural persons against activists, oftentimes the media as well, because an information was made public. In addition to civil proceedings, our law also recognizes the possibility for a SLAPP to appear in the form of a private criminal lawsuit for the criminal offense of insult or a request to initiate misdemeanor proceedings.

Considering that the first and second instance courts did not consider all legal aspects of the problem, the Lawyers’ Committee for Human Rights has thus far submitted two constitutional appeals to the Constitutional Court of Serbia during 2022, claiming that the activist A.P.’s right to a fair trial, the right to freedom of opinion and expression, as well as his special rights were violated.

Violation of the right to a fair trial determined before the Constitutional Court of Serbia

In 2014, the Lawyers' Committee for Human Rights was contacted by M.M. from a penitentiary facility, requesting free legal aid in the proceedings initiated against him for an alleged assault on a prison guard while he was serving his prison sentence. M.M. was convicted and at the moment of requesting free legal aid, the only remaining legal remedy was a constitutional appeal to the Constitutional Court of Serbia. According to the person who submitted the constitutional appeal, he was beaten by prison officers, which led to his already poor health condition further deteriorating. At his own request M.M. was brought to the High Court in Smederevo in order to give a statement before the president of the court about the torture he was subjected to in prison. Among other things, he stated that he had not shown any injuries to the emergency medical staff who had examined him after the incident in fear of being subjected to more torture. He chose to do so as one prison officer was present at all times, contrary to all the standards which apply when using coercion. M.M. was informed by a letter from the High Court that the lawsuit he had filed against P.M. could not be deemed admissible, for he had failed to provide concrete evidence. Dismissing a criminal complaint, as well as deciding on its merits does not fall within the jurisdiction of the court, but exclusively within the jurisdiction of the public prosecutor's office, therefore, the court was obliged to refer this lawsuit to the public prosecutor's office for deciding. Moreover, during the proceedings in which M.M. was tried for assault on an officer, several omissions were made (not a single defense witness was heard, nor did the court accept any defense evidence). Taking these facts into account, the Lawyers' Committee for Human Rights - YUCOM submitted a constitutional appeal in 2017 in which it sought a violation of the right to a fair trial to be determined in several segments, as well as a violation of the defendant's special rights and his right to inviolability of physical and mental integrity.

Five years after the submission of the constitutional appeal, the Constitutional Court accepted the appeal in the segment pertaining to a fair trial and annulled the decision of the High Court in Sme-

derevo, under which M.M. had been sentenced to an additional year in prison. The Constitutional Court ordered the High Court to render another decision on the appeal. The remainder of the appeal was dismissed and rejected. The request for compensation of non-pecuniary damage was rejected, and as for the protection of physical and mental integrity, the Constitutional Court was of the opinion that a preclusion had occurred and that the person who had submitted the constitutional appeal had to file an appeal within 30 days from the day when it became evident that his lawsuit was rejected.

Although justice was partially served in this case, the effectiveness of the constitutional and legal protection of rights may be called into question in case when the decision was rendered five years after the constitutional appeal was filed and four years after the person has already served their prison sentence, and when the High Court was ordered to render a new decision on the appeal. Time elapsed has made certain allegations from the appeal impossible to prove, while the person who was subjected to a form of abuse and served an unfair prison sentence becomes exposed to additional victimization through the repeated procedure after so much time. At the time of drawing up the present Report, it remains unknown whether the High Court in Smederevo has rendered a new decision on the applicant's appeal.

Violation of the right to mental and physical integrity determined before the Constitutional Court of Serbia

In December 2015, the Lawyers' Committee for Human Rights - YUCOM submitted a constitutional appeal to the Constitutional Court of Serbia due to the violation of A.A.'s rights to physical and mental integrity related to the violation of the principle of non-discrimination. In April 2015, A.A. was assaulted in the street by unknown perpetrators due to his supposed sexual orientation. During the attack, the perpetrators shouted insults such as "You're so pathetic, faggot!", which unequivocally indicates a homophobic motive for the assault since the perpetrators and the victim did not know each other. The

Lawyers' Committee filed a criminal complaint and the perpetrators were promptly identified, which led to YUCOM publicly praising the quick and efficient action of the police. However, during the investigation, the motive of hate, although prescribed by the Criminal Code as a mandatory aggravating circumstance, was not considered, which could clearly be seen from the plaintiff's statement and the statements given by the suspects, since the content of the insults directed at the plaintiff was not at all investigated by the competent public prosecutor's office. The prosecutor's office applied the provisions of the Criminal Procedure Code and rejected the criminal complaint for violent behavior, because the suspect discharged his obligation by paying a pecuniary amount to charity (opportunity principle). The constitutional appeal was based on the argument that the prosecutor's office was obligated to investigate the motive of hate and not apply the opportunity principle in that case, which is exceptionally applied to minor criminal offences. Moreover, considering both the social consequences of hate crime and the consequences suffered by the victim himself, in this particular case applying the opportunity principle was not the adequate solution, for this does not fulfill the purpose of criminal sanction, instead the perpetrator of a serious act of violence is "given a gift" by remaining unpunished.

Seven years after the constitutional appeal was filed, the Constitutional Court rendered a decision accepting the appeal, however, it did not decide on the request for non-pecuniary damage. Accepting the argument of YUCOM in its entirety, the Constitutional Court concluded that a violation of the right to inviolability of physical and mental integrity in connection with the violation of the principle of non-discrimination did occur, as well as that the prosecutor's office was obligated to investigate the existence of a discriminatory motive on the part of the perpetrators prior to applying the institute of postponement of criminal prosecution (opportunity principle). The Constitutional Court pointed out that in this particular case, the severity of the physical injuries suffered by the applicant was not crucial for the evaluation of applicability of Art. 25 of the Constitution (prohibition of inviolability of physical and mental integrity). Instead, it should be based on the psychological consequences and the feeling of humiliation and insecurity occurring as a result of this type of assault, which implies a violation of the human dignity of the applicant.

In this particular case, the duration of the proceedings is once again highlighted as an issue, which leaves the plaintiff waiting for justice for an extended period of time. It also remains unclear why the Constitutional Court did not consider in any part of the explanation the proprietary claim raised in the constitutional appeal, especially considering that the court itself acknowledged the gravity of the violation of personal dignity in the specific case. For this reason, a petition was submitted to the European Court of Human Rights with a request to determine the violation of the right to a trial within a reasonable time before the Constitutional Court of Serbia and to grant an adequate compensation for non-pecuniary damage. At the time of drawing up the present report, the procedure was still ongoing.

Endangering safety - threats to a journalist via multimedia

In the practice of the Lawyers' Committee for Human Rights - YUCOM, we have been able to observe that endangering safety of journalists, when done in the form of multimedia, has not been met with understanding by the Special Prosecutor's Office for Cyber Crime. In October 2021, the journalist Snežana Čongradin filed a criminal complaint with the Special Prosecutor's Office in which she submitted audio, video and text messages that she received from an anonymous person via Facebook.

The suspect's extremely aggressive tone could be heard in the audio messages, while the video message showed a person filming himself touching the victim's head on a TV screen where he played an interview with her from the Internet. The content of all the messages referred to the fact that the plaintiff was now "his concern", and in 4 messages he mentioned that the plaintiff upset his "piranhas on land". One of the messages mentions "an ass full of " alluding to sex. In general, the content received by the victim was objectively extremely disturbing, even for someone who was not directly targeted by it. However, the Special Prosecutor's Office for Cyber Crime decided to reject the criminal complaint in this particular case due to lack of elements of a criminal offense.

In its explanation, the prosecutor's office stated that the particular case did involve communication that deviated from usual and decent, however, it failed to identify a clear and unequivocal threat of the suspect assaulting the plaintiff's life or body. The prosecutor's office did not consider the symbolic meaning of the piranha as an extremely predatory species of fish with sharp teeth, or the implicit threat expressed in placing a fist on the TV screen which was showing the plaintiff's head.

An objection to the decision was filed with the Appellate prosecutor's office in Belgrade, and at the time of drawing up the present Report, a decision on the objection has not yet been rendered.

The direct reason for the messages sent to the journalist was her stating that the Republic of Srpska was a genocidal creation. The prosecutor's office did not consider the fact that the defendant continued to post similar content on another social network, directly targeting the plaintiff. It did not even investigate this circumstance, therefore it concluded that there were no elements of the criminal offense of stalking.

Personal status of a child: the right to a personal name

In February 2021, K.F. contacted the Lawyers' Committee for Human Rights, stating that her 10-month old child still did not have first and last name and a citizen's unique personal ID number. The child was born in the Republic of Serbia, at the moment when the divorce of K.F. and a Dutch citizen, who was not the child's biological father, was in progress.

Given that, according to the Family Law of the Republic of Serbia, the husband of the child's mother is considered to be the father of a child born in wedlock or 300 days after the marriage is terminated, the registry office of Savski venac sought the consent of the Dutch citizen as the legal father, in order for the child to be given the name selected by the mother. Since this person was not the child's biological father, and also was a foreign national, the case became more complex, because the father's physical presence or the inspection of his original ID were required. Due to the inability to meet the requirements of the registry office, K.F. was referred to the competent Center for social work in Rakovica, which insisted that the child can be given a name solely with the consent of the mother's ex-husband, even though this Center already had the authority and grounds to assign a personal name to the child.

KF. then reached out to the Ministry of Labor, Employment, Veteran and Social Affairs, which was responsible at the time, and which ordered the City Center for social work to submit a direct request to the Dutch Central Bureau for the Protection of Children's Rights in order to obtain the

father's consent for the child's personal first and last name, referring to the Convention.¹

The Lawyers' Committee for Human Rights immediately reacted with a letter submitted to the aforementioned Ministry, pointing out the fact that the Convention itself explicitly states that it does not apply to the child's personal name, and that it was necessary only to obtain the consent of the competent center for social work, which, according to the applicable Family Law and the Law on Registers, was obligated to determine the child's first and last name upon expiration of 30 days from the child's birth.

Since its birth, the child could not be registered anywhere due to lack of any identification data, therefore, the child could not have a medical record, go for regular check-ups and receive vaccinations mandatory during the first year of life. Without a first and last name, the child could not be assigned a citizen's unique personal ID number nor issued a valid birth certificate, required for exercising all rights.

The actions taken by the competent institutions, or failure to do so, grossly violated basic human and

children rights, such as the right to a personal name and the right to health care. In this case, the best interest of the child, as a principle which all authorities and institutions in the Republic of Serbia must adhere to when deciding on children's rights and obligations, was entirely disregarded. Moreover, the Convention on the Rights of the Child guarantees the child's right to a personal name immediately after birth, as well as the right to be registered immediately.

As the Ministry of Family Welfare and Demography was formed in the meantime, it responded as the competent Ministry to the new letter submitted by the Lawyers' Committee for Human Rights and ordered the Center for social work to determine the child's name as soon as possible in line with the regulations. Ten days and several urgencies later, the Center for social work adopted a Decision on the personal name, under which the child, now V.F. was given a first and last name, and assigned a citizen's unique personal ID number, precisely on its first birthday.

1 Law on Ratification of the Convention on Jurisdiction, Applicable Law, Recognition and Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.



03

**Judiciary
tailored to
the citizens**

1. Law on the Referendum and the People's Initiative

In November 2021, the National Assembly adopted a new Law on the Referendum and the People's Initiative. YUCOM representatives actively participated in the advocacy campaign, media appearances, sending comments on the Draft to the competent Ministry and the Venice Commission, as well as participating in online meetings with experts of this Council of Europe's body. The adoption of the new Law was necessary in order to harmonise the procedure for conducting the referendum on amending the Constitution and strengthening the independence of the judiciary with the Constitution of the Republic of Serbia from 2006. The previous Law on the Referendum and the People's Initiative from 1992, *inter alia*, contained a census for the validity of a referendum that was excluded from the new Constitution, as well as provisions that significantly limited the possibility of implementing the people's initiative in practice. The adoption of the new Law was followed by numerous controversies. First of all, a very short deadline of only 20 days was given for the public discussion scheduled for the end of July, at the time of summer annual leave. The legal minimum of 20 days was determined for the majority of public debates conducted in 2021, which were published exclusively on the websites of the competent ministries, without any media campaign. Bearing

in mind that the discussion of interested parties, in any form, was not envisaged, as well as that the Ministry of Public Administration and Local Self-Government published a non-existent address for sending comments, civil society organisations appealed to the need to repeat the public debate.²

The Draft Law on the Referendum and the People's Initiative, published on 9 July 2021, contained a number of unclear provisions that threatened the direct participation of citizens in decision-making and lower the reached level of human rights. On the day of the end of the public debate, the Ministry of Justice sent the Draft to the Venice Commission for an urgent opinion, in a translation that differed significantly from the original. Bearing in mind the moment of sending the Draft to the Venice Commission, it is clear that the received comments of the interested public were not even considered. Representatives of YUCOM and other civil society organisations sent joint comments on the text of the Draft to the Venice Commission, with whose experts' online meetings were also organised. In the opinion of September 24, 2021, the Venice Commission pointed out numerous shortcomings and inconsistencies, which

² [A joint statement of the Belgrade Centre for Human Rights, Transparency Serbia, CRTA, YUCOM and CEPRIIS organisations, Repeat the Public Debate on the Draft Law on the Referendum and the People's Initiative, July 30, 2021](#)

were also addressed by civil society organisations.³ In mid-October, the competent Ministry published the revised Draft and submitted it to the Venice Commission for a new urgent opinion. The new opinion of the Venice Commission was published on November 9, 2021.⁴ The Commission stated that most of its proposals from the previous opinion had been adopted, but also pointed out certain shortcomings such as: the fee for the authentication of signatures required for a referendum or a people's initiative; extending the deadlines in which a new referendum can be organised on the issue on which the citizens have expressed themselves, positively or negatively; specification of the provision on binding referendum; extending the right to appeal to citizens who voted.

After civil protests, the Law on Amendments to the Law on the Referendum and the People's Initiative was adopted on December 10, 2021, bringing the Law in line with international standards and eliminating most of the shortcomings. The controversial fee for the authentication of signatures, which made the institute of people's initiative meaningless, was repealed and the period of obligation for a positive or negative decision made in the referendum was extended to four years. Certain shortcomings, such as the absence of a remedy to protect citizens' rights in the event that the competent Assembly ignores their citizen's initiatives, have not been eliminated. A contentious issue during the civil protests was also the question of repealing the census, in which many saw a way to facilitate the implementation of the announced local referendums on the exploitation of lithium in the Jadar river valley. The high census stipulated by the previous Law made it very difficult to conduct the referendum, while the complete repeal of the census calls into question the legitimacy of decisions adopted by a small number of votes. The very short deadline between the adoption of the Law and the implementation of the referendum for the constitutional amendments on the judiciary was not in accordance with international guidelines, which suggest that at least one

year should pass in order to prepare and consolidate the referendum legislation.

2. Amendments to the Constitution and laws on the judiciary

Bearing in mind the area of the rule of law and the obligations that Serbia has assumed, 2021, as well as the beginning of 2022, were marked by amendments to the Constitution, mostly in the part related to the judiciary, which should improve the independence of the judiciary in Serbia.⁵ In almost every report on the state of the rule of law and democracy in the Republic of Serbia, there was also a note that, as of 2018, the expected constitutional reforms were missing. A new deadline for the implementation of the amendments to the Constitution of the Republic of Serbia, according to the revised Action Plan for Chapter 23, was set for the end of 2021.

On December 4, 2020, the Government adopted the Proposal on Amendments to the Constitution on the Judiciary and sent it to the National Assembly.⁶ On 26 April 2021, the Parliamentary Committee for Constitutional and Legislative Affairs issued an invitation for a public debate on the topic "Amendments to the Constitution of the Republic of Serbia in the Area of the Judiciary". With this, the process of drafting the Act on amending the Constitution has been returned to the beginning. Civil society organisations and professional associations, gathered within the Working Group for Chapter 23 of the National Convention on the European Union, insisted on this from the moment the Government adopted the Proposal.

Public debates (11 in total) started at the end of April 2021, in 4 cities (Belgrade, Novi Sad, Niš, Kragujevac). In principle, the need to change the Constitution and

3 The Venice Commission, Serbia – Urgent Opinion on the Draft Law on the Referendum and the People's Initiative, opinion no. 1052/2021, Strasbourg, September 24, 2021 available in English: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)015-e)

4 The Venice Commission, Serbia – Urgent Opinion on the Revised Draft Law on the Referendum and the People's Initiative no. 1062/2021, Strasbourg, November 9, 2021, available in English: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)018](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)018)

5 Information obtained through coordination and the work of the Working group for Chapter 23 of the National Convention on the EU and direct involvement of the Lawyers' Committee for Human Rights – YUCOM in the area of judiciary independence and protection of human rights and freedoms

6 See: Paragraph, "A Proposal for the Amendment of the Constitution of the Republic of Serbia– The Text of the Provisions"; available in Serbian: <https://www.paragraf.rs/dnevne-vesti/071220/071220-vest12.html>.

the extent of those changes were discussed. At the debates, apart from the members of the Board itself and representatives of the judiciary, there were also representatives of professional associations, certain non-governmental organisations that follow the work of the judiciary, as well as members of the Judicial Academy. Deciding to stay within the framework of the Government's Proposal, on June 7, 2021, the Members of the Parliament (MPs) adopted the Proposal on Amendments to the Constitution on the Judiciary by a qualified majority and enabled the start of the drafting of the Act on the Amendments to the Constitution.

The Judiciary Sub-group of the NCEU Working Group for Chapter 23 sent a letter to the Speaker of the National Assembly and the Chair of the competent Parliamentary Committee on Constitutional and Legislative Issues.⁷ Pursuant to Article 203 of the Constitution of the Republic of Serbia, as well as Article 44 of the Rules of Procedure of the National Assembly, the group requested that the Board form a special Working group for the drafting of the Act on Amendments to the Constitution, which would include relevant participants, meet the standards of public work and would open the work on the drafting of the Act on Amendments to the Constitution to the interested public. Additionally, it was requested that the legal analysis of the constitutional framework on the judiciary in the Republic of Serbia from 2014, which was supported by the judiciary as a whole in November 2016, be used as a basis for drafting the text. At the end of June 2021, within the Committee, a Working group was formed for the drafting of the Act on Amendments to the Constitution of the Republic of Serbia. The Working group was headed by the Chair of the Committee, and, in addition to the representatives of the Ministry of Justice and representatives of the academic community, its composition also included the representatives of judiciary professional associations, which are also members of the Working Group NCEU for Chapter 23 – the Association of Judges of Serbia and the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia. Therefore, the recommendation of the Working Group for Chapter 23 was partially fulfilled, since

the Working group still took the amendments of the Ministry of Justice from 2018 as a starting point.

After the Working group had finished working on the Draft Act in September 2021, 4 more public debates were held where representatives of the judiciary, professional associations, civil society and the Judicial Academy were invited to present their comments and suggestions for improving the text. The public discussions were inclusive and transparent, but also marked by open intolerance of some of the MPs towards the representatives of certain civil society organisations and their members who were not present at the sessions. Technical proposals were generally accepted, while substantive changes were insufficient. At the session held on September 21, 2021, the Committee set out the text of the Draft Act on the Amendment of the Constitution, which was submitted to the Venice Commission on 23 September 2021.

September and October, the Venice Commission held a series of meetings, both with representatives of the Board and the Working group, as well as with professional associations and civil society organisations. Civil society organisations drew the attention of the representatives of the delegation of the Venice Commission that it was crucial that when giving opinions on the draft constitutional amendments on the judiciary, the state of democratic institutions and the political context, which depended on whether constitutional changes would ensure the essential independence of the judiciary, were taken into account.⁸

The Venice Commission gave two opinions on the draft constitutional amendments the first on October 18,⁹ and the second, an urgent opinion, on 24 November 2021.¹⁰ The opinions were generally posi-

⁷ NCEU Working Group for Chapter 23, A letter to the National Assembly of the Republic of Serbia with regard to the announced sitting of the Parliamentary Committee on Constitutional Affairs and Legislative Issues, June 14, 2021, available in Serbian: <https://www.yucom.org.rs/wp-content/uploads/2021/06/RG-NKEU-23-Pismo-Narodnoj-skup%C5%A1tini-RS-Promene-Ustava-RS-u-delu-koji-se-odnosi-na-pravosu%C4%91e.pdf>.

⁸ A statement of the Belgrade Centre for Human Rights, CRTA the Judicial Research Centre (CEPRIS), the European Movement in Serbia and the Lawyers' Committee for Human Rights – YUCOM, The Venice Commission should take into account the state of the democratic institutions when giving opinion on the constitutional amendments, September 30, 2021, available in Serbian: <https://www.yucom.org.rs/nvo-venecijanska-komisi-ja-treba-da-uzme-u-obzir-stanje-demokratskih-institucija-pri-likom-davanja-misljenja-na-ustavne-amandmane/>

⁹ CDL-AD(2021)032-e, Serbia - Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, October, 15-16 2021): [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)032-e).

¹⁰ CDL-AD(2021)048-e Serbia - Urgent opinion on the revised draft Constitutional Amendments on the Judiciary, issued pursuant to Article 14a of the Venice Commission's Rules of

tive, and they emphasised progress in the abolition of the dominant role of the National Assembly in the selection and dismissal of judicial office holders, the removal of the three-year probationary mandate, as well as better functional independence of prosecutors. On November 30, 2021, the National Assembly of the Republic of Serbia adopted the Act on Amending the Constitution¹¹ and passed the Decision on calling a republican referendum for the purpose of confirming the Act on Changing the Constitution of the Republic of Serbia, scheduling the referendum for 16 January 2022.¹² Two important recommendations of the Venice Commission were not accepted, which caused great dissatisfaction among the professional public. One recommendation related to the composition of the High Prosecutorial Council, in which the majority should be elected prosecutors, which was not implemented in the final text. The future composition of the Council will consist of 5 public prosecutors elected by their colleagues, 4 prominent lawyers who will be elected by the National Assembly, the Minister of Justice and the Supreme Public Prosecutor. The second recommendation referred to the composition and competences of the five-member commission that will elect prominent lawyers to the composition of the judicial councils in the event of the impossibility of reaching a decision by a 2/3 majority in the National Assembly, which, according to the Venice Commission, left room for the regular use of this mechanism and additional political pressure.

Despite the fact that in the period from the decision to the holding of the referendum, several shows and debates on the topic of changing the Constitution were organised on television broadcasting companies with national broadcast frequencies in order to better present the referendum question and the content of the planned amendments to the citizens, the citizens, in principle, did not understand the importance of the proposed amendments, as well as their content. Already at the beginning of the process, civil society

insisted on constant information, predicting that the period from the announcement of the referendum to its holding will be too short to understand the meaning of the reform. Misunderstanding led to additional divisions in society, and some political actors advocated for or against without being able to argue their position. Only three legal entities registered as organisers of the referendum campaign, while, in essence, it was led by numerous actors.

Clearly, the problem arose because of a misunderstanding of the newly adopted Law on Referendum and People's Initiative. A large number of officials did not understand that participation in the referendum campaign is against the law. Regarding the call for a discussion about the upcoming referendum, which the Prime Minister of the Republic of Serbia addressed to the NCEU Working Group for Chapter 23, the majority of the Sub-group of the Working Group for Justice took the position that a conversation with the Prime Minister on the topic of the upcoming referendum during the referendum campaign could threaten the credibility of the National Convention, as well as the legitimacy of the referendum process as a whole.¹³ Civil society, actively and within the scope of its capacities, informed the public about the content of the Act on the Amendment of the Constitution of the Republic of Serbia, so that it could make an informed decision, thus not violating the Referendum Law. It is important to note that for the first time it happened that citizens from the territory of AP Kosovo and Metohija could not vote in the areas where they live, but voted in Novi Pazar, Raška, Kuršumlija and Vranje. The Act on Amendments to the Constitution was confirmed at the referendum held on January 16, 2022 and it was promulgated together with the Constitutional Law for the Implementation of the Act on Amendments to the Constitution at a special session of the National Assembly, which was held on 9 February 2022.

The next, expected step towards the independence of the judiciary is a comprehensive reform of systemic laws on the judiciary - *the Law on Judges, the Law on the Organisation of Courts, the Law on Public Prosecu-*

Procedure on 24 November 2021, endorsed by the Venice Commission at its 129th Plenary Session (Venice and online, December 10-11, 2021): [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)048-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)048-e).

11 The Act Amending the Constitution of the Republic of Serbia, available in Serbian: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2021/2166-21%203.pdf.

12 Decision on open calling a republican referendum for the purpose of confirming the Act on Amending the Constitution of the Republic of Serbia, available in Serbian: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2021/RS80-21%201.pdf

13 WG NCEU for Chapter 23. A letter from the Working Group of the National Convention on the EU for Chapter 23 addressed to the Prime Minister regarding the proposal to discuss the upcoming referendum during the referendum campaign, December 22, 2021, available in Serbian: <https://www.yucom.org.rs/dopis-radne-grupe-nacionalnog-konventa-o-eu-za-poglavlje-23-upucen-predsednici-vlade-povodom-predloga-za-razgovor-o-predstojecem-referendumu-u-toku-referendumske-kampanje/>

tion, the Law on the High Judicial Council, the Law on the State Prosecutorial Council, the Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices and of the Law on the Judicial Academy. In March 2022, civil society reminded the Ministry of Justice that the Venice Commission insisted that the Law specify more closely the criteria regarding the conditions for the selection of prominent lawyers who should be members of judicial councils, the method of decision-making and the organisation of the work of judicial councils, provisions on the budgetary autonomy of judicial councils.¹⁴ Likewise, it is necessary for the Working Group for Chapter 23 of the NCEU to be actively involved in the drafting of the law, either by delegating members to the working groups or as an observer of the work of the Working group, with the possibility of giving comments in the early stages of writing the Draft. It is understood that the formed working groups meet the standards of public work and transparency, that the names of the members of the groups, the procedural rules for action, as well as that their work is open to the interested public, are published.

At the end of March 2022, the Ministry of Justice organised a round table *Presentation of Plans for the Drafting of a New Set of Laws on the Judiciary and the Action Plan for the Implementation of the Judiciary Development Strategy for the period 2020-2025*. Two working groups for drafting the laws on the judiciary were formed on April 15, 2022 – a working group for drafting the working text of the Law on Public Prosecution and the Law on the High Prosecutorial Council¹⁵ and a working group for drafting the working text of the Law on the Organisation of Courts, the Law on Judges and the Law on the High Judicial Council.¹⁶ Despite the demands of civil society, the work of the working groups remained non-transparent to the general public. The NCEU Working Group for Chapter 23 received reports from the sessions, but the observer role of civil society organisations was rejected with the explanation that the members of the working groups also include members of professional associations that are part of the NCEU Working Group.

14 WG NCEU for Chapter 23: The letter to the Minister of Justice Maja Popović – The work on the laws of the judiciary during 2022, March 3, 2022, available in NCEU archive.

15 A decision on forming a Working group available at: <https://bit.ly/3DIZhDAb>

16 A decision on forming a Working group available at: <https://bit.ly/3RUmkt7>

Therefore, civil society does not have a clear insight into the content of the working versions of the Law, which is expected to be published in September 2022. The fight continues, and we hope that the public debate will be meaningful, comments on the drafts will be considered and incorporated into the text before being sent to the Venice Commission for an opinion, in order to truly represent a consensus in society regarding important solutions for the independence of the judiciary in Serbia.

3. More transparent judiciary

The program for a more transparent judiciary has started in 2019 in cooperation with one of the highest judicial institutions, the Supreme Court of Cassation, when 15 basic courts were selected to cooperate with in order to increase citizens' trust in the work of judicial institutions. The idea is to promote positive examples and aspects of our judiciary; therefore these 15 basic courts are precisely those ones that the Supreme Court of Cassation awarded for work efficiency.

The program has been, so far, expanded to more than 65 courts and prosecutor's offices of all jurisdictions, and cooperates with more than 650 representatives of the judiciary, as well as with numerous institutions such as Bar Associations, the Chamber of Public Bailiffs, the Chamber of Public Notaries, the Social Protection Chamber, Centers for Social work, the Ministry of Internal Affairs and various state agencies, international and domestic organizations.

As a part of the program, our team visits a different place every week and discusses on the topic that citizens are most interested in. In court buildings and at scheduled times, citizens have the opportunity to meet with judges, prosecutors, notaries public, attorneys at law, public bailiffs, psychologists, police experts, etc., in order to talk with them about certain topics, ask questions related to the doubts they have and to become informed on how they can exercise their rights.

Opening the doors of judiciary and organizing events both in the courts and online, there have also been identified citizens' priorities regarding judicial reform and more effective communication channels have been established between citizens and judicial institutions in order to better understand citizens' rights and obligations. The communication method is adjusted to both the social structure and the age of the population, and

includes the exchange of information through a digital platform that generates about 1,500 visits on a daily basis, followed by the media – with over 100 published newspaper articles and more than 300 author’s texts where more than 120 authors answered on mentioned issues that citizens have been most often facing with.

4. More accessible justice for Serbs in Kosovo

Belgrade and Prishtina have not addressed the effects of implementation for five years¹⁷

In October 2022, it will be five years since the implementation of the Justice Agreement, which integrated Serbian judges and prosecutors into the judicial system of Kosovo. Apart from the fact that there was no special agreement for administrative staff, but rather the same principle as it was applied for the judiciary was applied, from the moment of integration there was no agreement on how to ensure access to other legal professions and services, such as public notaries or bailiffs, for non-majority communities. Also, there has not been established systematic monitoring of the implementation of the agreement, nor proposals for solving issues that arise as an effect of implementation.

With the Brussels Agreement, it was agreed that Serbian courts, which functioned in parallel with judicial structures of UNMIK for years, should stop solving cases initiated before July 15, 2013, make decisions on other cases by September of that year, and after that to fully integrate into the judicial system of Kosovo.¹⁸ The entire process delayed, and the courts continued to function in a legal vacuum until the implementation of the Justice Agreement in October 2017.

The meaning of the integration of the judiciary should have been not only to find an adequate solution for members of the judiciary who worked in parallel judicial institutions in Kosovo, but also to finally enable equal access to justice for the non-majority population in Kosovo. At this moment, it can be said that only the first part of the aim has been achieved, while the second is impossible to achieve as long as there is no systematic monitoring of issues and legal gaps that arise in the implementation process.

Five years later, the articles of the Justice Agreement relating to work organization and systematization are fully implemented.¹⁹ The Basic Prosecutor’s Office in Kosovska Mitrovica, the branches of the Basic Court in Kosovska Mitrovica, the branches in Zubin Potok, Leposavić, Srbica and Vučitrn, as well as the Court of Appeals Department, have been functioning within the judicial system of Kosovo, applying the laws of Kosovo. The Chief Prosecutor is an Albanian, the Presidents of the Basic Court and the Court of Appeals Department in Mitrovica are Serbs. The Head of the Court of Appeals Department in Mitrovica is a Kosovo Serb. Both Kosovo Serbs and Albanians are represented in all the above-mentioned facilities, whether they were judges and prosecutors or administrative staff. At the beginning of 2022, the full implementation of Article 11 of the Agreement has finally begun, so in the Court of Appeals Department in Mitrovica, in addition to the Head of the Court, four Serbian judges and two Albanian judges work.

As of 2021, 31 judges worked in the court in Mitrovica, of which 17 are Serbs and 14 are Albanians. There are seven judges of Albanian nationality working in the court branch in Vučitrn, and five in the court branch in Srbica, while there are no Serbian judges in these branches. On the other hand, in the court branch Leposavić, as well as in Zubin potok, there are two judges of Serbian nationality, while there are no judges of Albanian nationality. According to the systematization, 20 Serbian judges and 22 Albanian judges should work in the Basic Court in Mitrovica.

The consistent application of Articles 6 and 7 of the Agreement, which refer to the allocation of cases in the Court, that is, the Prosecutor’s Office in Mitrovica, seem questionable. Namely, according to Article 7 of the Justice Agreement, the allocation of cases to prosecutors should be based on their expertise, spe-

¹⁷ The article was originally published in [Newsletter no. 44 of the NCEU Working Groups for Chapter 35](#)

¹⁸ The First Agreement of Principles Governing the Normalization of Relations and Prishtina, Brussels, April 2013, available in Serbian: <https://www.srbija.gov.rs/specijal/283757>

¹⁹ The Justice Agreement, February 9, 2015, available in Serbian: <http://www.kim.gov.rs/p06.php>.

cialization, personal experience and the knowledge of the local environment, in line with Kosovo law. In practice, the principle of arbitrary allocation of cases was applied, as prescribed by the applicable statutory framework and the abovementioned Rulebook, while personal experience and the knowledge of the local environment were not considered. On the other hand, Article 6 of the Agreement stipulates that in Kosovo, the President of a Basic Court decides on the allocation of cases, and the cases were allocated in accordance with Decision on allocation of cases based on the language criteria, from 2018.

The implementation of these two articles was practically stopped after a new information system that enables automatic case allocation, as well as the case management database (SMIL / ISUP) were introduced in February 2020.²⁰ Arbitrary and automatic allocations of cases have not yet been implemented at all levels of courts and prosecutor's offices, but it is applied at the level of basic courts and prosecutor's offices, currently including the Basic Court in Mitrovica and the Basic Prosecutor's Office in Mitrovica as well. Although the system has been introduced for the purpose of improving efficiency and preventing fraud in the managing cases, representatives of the judiciary claimed that it has actually reduced their effectiveness.

The issue of different interpretations of the jurisdiction of the Court of Appeals in Mitrovica, i.e. the interpretation of Article 10 of the Brussels Agreement, which states that councils with a majority of Kosovo Serbs should decide on cases originating from municipalities with a majority Serb population, has not been resolved either. Namely, in certain cases that come from municipalities with a majority Serb population south of the Ibar, the councils, where judges from the Department in Mitrovica are not involved at all, decide on. Referring to the capacities of the Department, the Court of Appeals in Prishtina retains the cases within its jurisdiction. An additional issue is related to the composition of the judicial councils in the Special Department of the Court of Appeals in Prishtina. There is a debate among the professional public in Kosovo whether this Department falls under

the regime of the Brussels Agreement (Article 10) and the Justice Agreement, since it was established after starting the implementation of the latter Agreement.

When it comes to the operational issues of integration, the biggest one is still *the use of language, hiring interpreters and translation quality*. Differently hired interpreters and their different qualifications ensure different translation quality. Expertise in the field of interpreting legal matters is what is most frequently called into question. Half of the interpreters in the Basic Court in Mitrovica, including the branches, were employed through open calls advertised by the state, and the other half were employed by the projects in cooperation with UNMIK. Their contracts expired in June 2022,²¹ arising the question how the court will continue to function operationally after the drastically reduced number of interpreters. The process of translating decisions of the courts of appeals and the Supreme Court into Serbian language has not started yet. Moreover, the Judicial Councils of Kosovo do not have all the documents translated into Serbian, and the quality of translation of the legislative framework, although there has been progress, is still very poor.

There is no systematic solution regarding the preconditions for assuming judicial function for young lawyers from the Serbian community. The biggest impact on this is *the lack of implementation of the Agreement on diplomas*, i.e. it is impossible to verify diplomas from faculties in the Republic of Serbia in Kosovo (and vice versa), but also having the bar exam passed in Serbian system is not recognized. The process of verifying diplomas of the Faculty of Law of the University of Prishtina with the temporary headquarters in Kosovska Mitrovica, which most of the lawyers from Kosovo from the Serbian community graduate from, has not been effectively functioning since the end of 2021. The work of the Commission for verification of diplomas issued by the faculty in Kosovska Mitrovica has been project funded. The procedure is a temporary, affirmative measure for protecting and improving the rights of Kosovo citizens, in order to ensure equal access for all citizens of Kosovo to be employed, with the aim of achieving equal representation of all population groups within employing in institutions in the public sector.²² As of February 2021, none of the diplomas of

20 Report of the High Representative of the Union for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo from 16 September 2019 to 15 March 2020, p. 13; European Commission for the Efficiency of Justice, State of the Implementation of the CEPEJ Cooperation Programs 01.07.2020, p. 11.

21 On February 15, 2022, the contracts with UNMIK for interpreters expired, however, they were extended for another 3 months.

22 See: https://zck-ks.net/repository/docs/FINAL_UMV_Brochure_SRB.pdf, p. 3.

the Faculty of Law have been verified, as the contracts of some members of the Commission had expired. In addition, even though the Government of Kosovo was formed in 2021, the Prime Minister of Kosovo did not propose the members of the Commission, therefore its work is disabled until further notice.

There are additional issues related to performing professional practice and passing the bar exam in Kosovo. Those who graduate from the faculty in Kosovska Mitrovica, in principle, work according to the educational curriculum of the Republic of Serbia, that is, they have a lack of knowledge concerning the legal framework of Kosovo. This is an aggravating circumstance for taking the bar exam in the Kosovo system, so there is an idea that the Academy of Justice organizes special clinics where candidates from the non-majority population could better prepare for taking the bar exam. At the last bar exam in December 2021, some candidates did not pass it precisely due to the poor translation of the test. The EULEX Mission was also observing the exam, reporting that out of 300 candidates, 11 of whom were from the Serbian community, none passed the test.

The Commission, which should have worked on *recognizing court decisions of Serbian judicial institutions* in Kosovo in the period from 1999 to 2017, was formed in February 2019 and was chaired by the president of the Court of Appeals. Two meetings were held, but no significant progress was made. The Office for Kosovo and Metohija believes that the issue of recognizing and enforcing the decisions of the Serbian courts that functioned in Kosovo and Metohija has been put on hold as the Commission did not adopt an adequate document that would define the procedure for recognizing and enforcing all decisions as of September 16, 2017, while the institutions in Prishtina expects the archive to be handed over first. The European Commission clearly highlights and expects a separate agreement or arrangement to be reached with regard to the recognition of such rulings and decisions by Kosovo*.²³

In the entire territory of Kosovo, there is an issue of access to the services of public notaries, particularly in non-Albanian minority communities. In the Kosovo system, there is only one public notary from the Serbian community, and that is for the territory of Novo Brdo. For the entire north of Kosovo, there are no no-

taries in any of the four municipalities, therefore for those services in the Kosovo system, citizens address the public notaries in South Mitrovica. For the needs in the Serbian system, they address the notaries in Novi Pazar, Raška and Leskovac. At the beginning of 2019, the Ministry of Justice of Kosovo announced an open call for more than 70 public notaries. Eight lawyers from the Serbian community applied to the said open call, passed the licensing exam and completed interviews. Due to allusions to corruption and conflict of interest, in 2020 the Ministry of Justice decided to cancel the open call, which had indirect consequences for the Serbian community's access to justice, since, if the open call had not been cancelled, notaries from the Serbian community would have been appointed in Mitrovica, Leposavić, Kosovo Pomoravlje and in the Municipality of Štrpce. Forty-four candidates filed a lawsuit to the Basic Court in Prishtina, demanding the Decision on canceling the open call to be revoked. In March, 2022, the Basic Court in Prishtina rendered a decision accepting the lawsuit and revoking the decision of the Ministry of Justice.²⁴ By the end of the year, the open call will be repeated, and it is still not clear how the candidates who successfully passed the previous exam will be compensated.

There are also few attorneys at law from the Serbian community who are registered in the Kosovo Bar Association, particularly if you consider that they have to represent parties before both Kosovo and Serbian courts. *There is no affirmative solution that would lead to and provide more services of attorneys at law, public notaries or bailiffs from the Serbian community, in order to facilitate access to justice as a whole.*

Briefly, it is clear that, although the Justice Agreement is considered as the pinnacle of the success of the Brussels Dialogue, its implementation on the ground has not provided space for legal security and the enjoyment of the rights of citizens in Kosovo, particularly those from the Serbian community.

Two years ago, a new EU Special Representative for the Belgrade-Prishtina Dialogue, Miroslav Lajčák, was appointed, with a task to achieve a comprehensive normalization of relations between Serbia and Kosovo*, and to contribute to the consistency

23 Report 2021 Kosovo*, European Commission, October 19, 2021, p. 19.

24 *Betimi per Drejtesi - Gjykata aprovon padinë kundër vendimit të MD-së për anulimin e konkursit për noterë:* <https://betimiperdrejtesi.com/aprovohet-padia-ne-rastin-ku-kandidatet-per-notere-kerkuan-anulimin-e-vendimit-te-md-se-me-te-cilin-ishte-anuluar-konkursi-per-notere/>

and efficiency of EU action in the Western Balkans. High-level dialogue resumed in June 2021, but as of March 2022, there were no joint meetings of the main negotiators. The dialogue did not bring progress when it comes to access to justice – this issue was not even a topic of meetings between the negotiators. Also, for the first time, *a referendum was not held, nor voting in elections on the territory of Kosovo.*

A question that had not been raised in public was whether and to what extent the amendments to the Constitution of the Republic of Serbia in the part related to the judiciary, have affected the citizens of Kosovo at all? Without analyzing the obvious violation of citizens' electoral rights, it is clear that even five years after the integration of the judiciary into the judicial system of Kosovo, the citizens of Serbia are not aware that Serbia effectively has no courts in Kosovo. Within the negotiation Chapter 35, Serbia was obliged to pass a special regulation on Serbian judicial institutions integrated into the Kosovo system by December 31, 2013, in accordance with the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices.²⁵ The law will soon be changed; therefore, the question is whether the provisions related to, now phantom, courts will also be changed.

At the same time, the courts in Leskovac have also been working on citizens' cases concerning Kosovo. Based on the Decision of the Court of Appeal in Niš,²⁶ and the Agreement on enforcement of the Decision on temporary transfer of jurisdiction it has been created the temporary transfer of territorial jurisdiction from the Basic Court in Kosovska Mitrovica and the High Court in Kosovska Mitrovica to the Basic and High Court in Leskovac official.²⁷ These Courts took over a large part of the cases from 2008 to 2017. The decision led to the solving some of the cases of citizens who live in Kosovo and resolving some property, family or other issue related to the territory of Kosovo. However, at the same time, *it made the implementation of the Justice Agreement pointless,*

because the citizens are now again situated in two parallel judicial systems, and they just have to go a long way. Two decisions in the same matter, depending on where you want to exercise a right, have already become the new normal, especially in family matters or in the case of inheritance. It is not strange that two courts award custody to different parents, nor that in one system someone has the right to inherit, while in the other they do not.

On the other hand, despite the workload of the Basic Court in Leskovac, which received more than 5,000 cases from Kosovo, the judges managed to solve almost all cases and to adapt to inflow of new ones. Cases tried before the Basic Court in Leskovac predominantly encompass cases pertaining to family law, inherits, as well as those pertaining to labor law in the event of disputes initiated against institutions functioning within the system of Republic of Serbia. As for the proceeding's costs, parties coming from Kosovo bear often large costs which they will not be able to refund at the end of the proceedings if they hire an attorney at law from Mitrovica, such as the costs of transportation of attorneys at law.

All things considered, five years of implementation of the Justice Agreement on the Judiciary has certainly led to the integration of judges and prosecutors from the Serbian community into the judicial system of Kosovo. They achieve norms, equally solve old cases and smoothly communicate with colleagues and parties. On the other hand, the future holders of these positions will face challenges, considering the issues with the verification of diplomas, passing the bar exam and performing professional practice. The issues that have arisen in the meantime have to be eliminated as soon as possible, particularly if it is considered the average age of Serbian judges and prosecutors currently in the system. In addition to the need to fill the positions which holders of judicial office from the Serbian community have not yet been elected for, the number of those positions will increase more in the following period. Adequate access to justice for citizens of Kosovo, particularly for members of the Serbian community, has not still been provided, as these citizens find themselves in legally uncertain situations. *Without systematically solving and monitoring of all the above-mentioned issues that citizens have been facing, both by the office of the Special Representative for Belgrade-Prishtina Dialogue, as well as by the governments in Belgrade and Prishtina, the Justice Agreement on Justice will remain a one-time solution, without a far-reaching and long-term effect on equal access to justice for all citizens who should enjoy their rights on the territory of Kosovo.*

²⁵ European Union, "European Union Common Position, Chapter 23, July 5, 2016", Brussels, 2016, p. 4.

²⁶ Decision on temporary transfer of jurisdiction Su I-1-23/18, the Court of Appeals in Niš, April 16, 2018

²⁷ Agreement on implementation of the Decision on temporary transfer of jurisdiction signed by the President of the Court of Appeals in Niš, President of the High Court in Leskovac, President of the Basic Court in Leskovac, former President of the High Court in Kosovska Mitrovica, former President of the Basic Court in Kosovska Mitrovica and the State Secretary of the Ministry of Justice on April 17, 2018.



04

**Protection of
Human Rights
in 2020-22 –
current issues**

1. Draft Amendments to the Criminal Code – Freedom of Expression

In early October 2021, the Ministry of Justice published the Draft Amendments to the Criminal Code with a 20-day public debate period. The amendments provided for in the Draft relate to three criminal offences - coercion, endangering security and preventing the printing and distribution of printed material and broadcasting of programmes.

The *ratio legis* behind these changes was the protection of journalists in Serbia who are systematically persecuted, insulted and silenced, they receive thousands of messages with extremely offensive and humiliating content, but they cannot do anything, unless it is a direct threat. Skillfully organised attacks on journalists, especially through social networks, very often cannot be qualified as one of the existing criminal offences, even though they are no less disturbing in content, therefore journalists,

from legal mechanisms, are left only with a private lawsuit against an anonymous person of unknown address.

For a while, there has been a tendency in Serbia to solve social problems through the repressive apparatus of the criminal law. When the Criminal Code was changed in 2019, we warned that the introduction of life imprisonment without the possibility of parole violated international standards and pushed the limits of the reached level of human rights. Due to the popular tendency to look for solutions in the criminal law, few people could have understood then that it was not a matter of defending murderers and rapists, but a warning that once the limits of the reached level of human rights is pushed, subsequently, the next time is easier.

In the case of the criminal offence of *coercion*, the Draft provides a qualified form of the offence in which coercion committed in a cruel manner is equated with coercion of a person performing the duties of public importance and which is related to those duties. The Code in the definition of the work of public importance states: “Work of public importance is considered to be performing duties or profes-

sion that has an increased risk for the safety of a person who performs it, and it refers to occupations that are of importance to public information, health, education, public transport, legal and professional assistance before the court and other state authorities”.

According to the published Draft, in the case of the criminal offence of *endangerment of safety*, no longer will the threat of a person attacking the life or body of another or a person close to him only be punishable, but, in addition to attacks on life and body, freedom and property of greater value are added. When imagining what the threat of a person attacking the freedom of another person would look like, we cannot help but remember the sentence that can often be heard in the political discussion in our country: “You will end up behind bars.” Could someone who says this really end up behind bars if they threaten someone with bars? Will a person, who proves that by the term “bars” he or she meant a legally conducted criminal proceedings with respect for the right to a fair trial, without the intention of endangering someone’s safety, prove this from detention? It is especially dangerous if we take into account that the qualified form of endangering safety, for which a penalty of up to five years in prison is envisaged, protects the President of the Republic, MPs, Prime Ministers, members of the Government, judges of the Constitutional Court, judges, public prosecutors and deputy public prosecutors, lawyers, police officers and persons who perform the duties of public importance in the field of public information related to the duties they perform. So, as with the crime of coercion, it is not just about journalists.

In the case of the criminal offence of *prevention of printing and distribution of printed material and the broadcasting* other than the name of the offence, the second paragraph is changed to a completely new criminal offence, so that it reads:

“The penalty from § 1 (*fine or imprisonment of up to one year, ed. author*) shall also punish those who, without authorisation, prevent or obstruct the publication of information of public importance through the media, or who, due to the publication of such information or opinions, use gross insults or abuse, insolent or by reckless behaviour significantly threatens the peace of mind of the person who published the information or opinion.” For this criminal offence, instead of the current prosecution on the basis of a motion of the injured party, *ex officio* criminal prosecution is foreseen.

The explanation of the Ministry of Justice explicitly states the need to protect journalists, however, it follows from the legal text that not only journalists are covered by this protection. Everyone who publishes information of public importance and an opinion about such information is protected. Information of public importance is information at the disposal of a public authority, created in the work or in connection with the work of a public authority and refers to everything that the public has a legitimate interest to know. Therefore, this is almost any information related to the work of state authorities, which can be presented by any person, and any other person can publish his or her opinion about that information - positive or negative. From the explanation of the Ministry of Justice, it can be seen that “in addition to information of public importance, opinion is also protected, since there is a need for wider protection of freedom of expression”, and that apart from journalists, a wider circle of persons who publish different opinions in the media is protected. Without going into the evaluation of the quality of different opinions that appear in the media in Serbia, the question arises whether an opinion should be privileged by being protected by criminal law. In this way, the space for discussion is significantly narrowed down to a choice of words that is acceptable to the person to whom they are addressed and that do not disturb him or her. In the democratic society we aspire to, there is no political discussion without some disturbance, and the messages sent in such a discussion, no matter how unpleasant, are protected by the standards of the European Court of Human Rights and the right to freedom of expression.

The Lawyers’ Committee for Human Rights, in cooperation with international and domestic organisations (Article 19, the National Convention on the EU, the Independent Association of Journalists of Serbia, Civic Initiatives, the Belgrade Centre for Human Rights...), organised discussions and meetings that resulted in the request that public debate continued in order to hear all relevant opinions on this topic. After this request, the discussion was extended and round tables were organised where expert opinions could be heard. The argumentation on which YUCOM based its position is, *inter alia*, that the problem in the non-uniform court and prosecutorial case-law of the criminal offence of endangerment of safety, and not in the legal text itself, which was confirmed in the research “Freedom of Expression in the Digital Space of Serbia – the Analysis of Prosecutorial and Court Case-law” implemented by YUCOM. Public prosecutor’s offices and courts interpret the term threat differently depending on who is

the victim – to the detriment of journalists and other victims, and to the benefit of public office holders. The report on the public debate on this Draft has not yet been published, nor is it known at what stage the Amendments to the Criminal Code of Serbia are in.

2. New Law on Ombudsman

On November 3, 2021, Serbia adopted a new Law on the Ombudsman. Representatives of the National Convention on the European Union (NCEU) were invited to monitor the work of the Working group for writing the Draft and gave their input through written comments, in the phase of public consultations and in the phase of public debate. The comments were adopted in general. YUCOM, in cooperation with the representatives of the Ministry of Public Administration and Local Self-Government, with the support of the UN Human Rights Team, organised an event where all relevant actors had the opportunity to discuss the Draft Act. For the first time, the law gives an explicit mandate to the Ombudsman to cooperate with the international human rights system and civil society organisations. Thanks to this, the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) decided in October 2021 to re-accredit this institution with the highest A status.

The new Law adds budgetary protection to the institution, which allows the annual budget cuts of the Ombudsman only if the cuts also apply to other budget users. It is not clear from the wording whether such cuts must be proportional. Employment is still regulated by the Law on Civil Servants, which limits the institution's access to quality and experienced personnel. YUCOM's proposal regarding the introduction of a budget supplement to the salaries of employees, like the one offered by the State Audit Institution, was not accepted.

The election of the Ombudsman was introduced through a public call to which all candidates who meet the legal requirements can apply. Candidates can also be proposed by parliamentary groups as well as persons who did not previously work in the public institution. Mandatory public interviews with candidates were introduced. The Ombudsman can only be elected for one term of 7 years.

With the new law, the Ombudsman was given the responsibility and performance of the duties of the

national independent mechanism for monitoring the implementation of the Convention on the Rights of Persons with Disabilities, as well as the national rapporteur in the field of human trafficking. With the amendments to the Constitution of Serbia from 2021, the Ombudsman was empowered to elect the members of the High Judicial Council, the High Prosecutorial Council and the Supreme Public Prosecutor. Bearing in mind that the Law did not solve the problem of the outflow of personnel or bring budgetary independence to the institution, the question arises as to how the Ombudsman will be able to respond to the new responsibilities.

Although transitional measure 3.2.1 of the Action Plan for Chapter 23 emphasises that amendments to the Law on the Ombudsman are necessary to strengthen the competencies of the National Preventive Mechanism (NPM), the new Law on Ombudsman did not bring any structural or budgetary improvements to the work of the NPM. For the first time, the law explicitly mentions NPM among the responsibilities of the Ombudsman and foresees that the Deputy Ombudsman, authorised to handle the protection of the rights of persons deprived of liberty, assists the Ombudsman.

However, the new Law on the Ombudsman does not recognise the NPM as a separate organisational unit within the institution, nor does it recognise the existing model of cooperation between the Ombudsman and external experts. Such changes are necessary in order to bring NPM's work into line with international standards. Bearing in mind that the National Preventive Mechanism is one of the main mechanisms within the competence of the Ombudsman, there is still a need to improve and strengthen it.

3. Amendments to the Law on Prohibition of Discrimination

In May 2021, Serbia improved its anti-discrimination legislation. The Law on Gender Equality was adopted, as well as Amendments to the Law on Prohibition of Discrimination. Amendments to the Law on Prohibition of Discrimination are envisaged in the Action Plan for Chapter 23 in order to harmonize with EU legislation. In the Law, sexual and gender-based harass-

ment, as well as incitement to discrimination, were introduced as new forms of discrimination.

A deadline has been set for electing a new Commissioner for the Protection of Equality, who should prevent a situation as the institution was left without a Commissioner after the previous mandate had expired in 2020. The definition of indirect discrimination was adjusted, and segregation was defined more closely as a particularly severe form of discrimination. For the first time, the Law explicitly mandates the Commissioner to cooperate with the international human rights system and civil society, although this has never been a problem in practice.

The Law has preliminarily mandated the Commissioner to cooperate with the international system of human rights and civil society, although this has never been a problem in practice (a similar provision, in accordance with the recommendations of the UN Committee on Economic, Social and Cultural Rights, was also included in the new Law on the Protector of Citizens). Certain terms have been harmonized with EU regulations, and the competences of the Commissioner for the Protection of Equality have been expanded in order to strengthen the institution.

4. Work on the Draft Law on Same-Sex Unions

At the end of February 2021, YUCOM's lawyers made a contribution to the adoption of the Law on Same-Sex Unions in the form of comments on the starting points. We received an evaluation list from the Ministry of Human and Minority Rights and Social Dialogue, which shows that, in principle, all our suggestions have been accepted.

The basic principles have regulated practical issues such as the conclusion and dissolution of same-sex unions, rights and obligations in case of illness, alimentation, joint property, taxes, pensions, inheritance, issues arising from unregistered same-sex unions, etc. They have principally resembled the provisions of the Family Law or contained solutions from the Family Law. However, parts related to parentage, i.e. children's rights, duties and rights of parents, parental rights, adoption, foster care and guardianship are not included, which is a difference compared to the Family Law.

This part of the process took place in parallel with the adoption of the Law on Amendments to the Law on Prohibition of Discrimination and the Law on Gender Equality. Although these two Laws were adopted, the adoption of the Law on Same-Sex Unions stopped, after the President of the Republic of Serbia had announced that he would not sign it. The draft of the Law wasn't adopted at the session of the Government of the Republic of Serbia, therefore the proposal of the Law never entered the parliamentary procedure so that the members of the National Assembly could express their opinion on it.

Passing the Law on Same-Sex Unions is of particular importance for advancing the rights of the LGBT community because it would for the first time and in a comprehensive way regulate all important life issues and bring this marginalized community one step closer to full equality in our society.

5. Protection of Human Rights Defenders

"We are safe as long as the international community protects us." – although said many years ago, experienced human rights defenders in Serbia still repeat that sentence today. Being so factual, it has set before us the task that, in addition to consistent legal aid we have been providing to human rights defenders, in cooperation with experienced organizations throughout Serbia, we present pressures on those who acted and spoke in our country in the name of protecting the public interest. Mapping different types of attacks, presenting them in scope and time, linking them to the victim and to the attacker as well as to the events which these attacks resulted from; presenting violations of rights, aid actions, but also state authorities and international organizations reactions, today represents the real position of human rights defenders outside the analysis of legal regulations.

It can be said that 2021 was extremely challenging, because there was no opposition in the Parliament. For this reason, those who criticize and reject possible cooperation were labeled as political opponents, but also as "foreign mercenaries", "agencies", "Sorosiens", "Rockefellers", and some new ones as "fake environmentalists", primarily by private media and individuals. Along with labeling, there was illegally obtained evidence – statements from the bank accounts of certain organizations that became public

after the action undertaken by the state, which the international community also condemned. The attacks and pressures being recorded so far on [the Map of Incidents](#) are continuous, and only 1/5 represent individual attacks. The passivity of the prosecutor's office contributes to this situation, as well as a quarter of a century of impunity for attacks on organizations such as on those whose field of expertise is dealing with the past, so that institutional protection has to be sought and obtained directly from international organizations and bodies such as the European Court of Human Rights – ECHR is.

The Report on Attacks on Human Rights Defenders in Serbia records the most frequent attacks and the most frequently violated rights of citizens of the Republic of Serbia. These are: freedom of expression, freedom of association and freedom of assembly. Freedom of assembly certainly represents the least violated right, but it includes the largest number of citizens. During February 2022, we recorded the consequences of restricting the freedom of assembly. Proceedings are being conducted against individuals before the misdemeanor courts in Serbia, based on the posts on social networks where prominent human rights defenders had called for protests as well as participated in them. YUCOM has always been ready to record human rights violation and to provide direct legal support, both cooperating with local organizations identified during the three-year networking within the “Solidarity for the Rights of All” network, and with informal groups and individuals. In addition, we will continue to educate what being a human rights defender means, because doctors who speak in the public interest are also human rights defenders, people who work in state institutions are also human rights defenders, if their activities are led by values that are the core of human rights, namely: non-discrimination, equality, equal rights for everyone, regardless of political orientation (as it is very problematic in Serbia today and highlighted in the reports that YUCOM has done in the past period). The result of joint activities can be seen through the high level of support, political and legal of the international community in protecting human rights. In the past period, in Serbia, but not in the world, there have been strategic lawsuits and frivolous litigation against those who advocate for the public interest. The attackers are usually individuals, who initiate frivolous litigation and demand high amounts as compensation. Lawsuits are repeated against certain persons and represent a burden for those persons, but also a threat for all those who stand up for the public interest.

In regard to the previous situation, it should be emphasized that up to this moment this phenomenon mainly involved a narrow circle of prominent activists, non-governmental organizations, journalists or politicians. In this category of cases, it can be found media disputes, criminal disputes due to verbal or physical attack on an activist, etc. However, the circumstances which we live in today have led to the fact that citizens are no longer able to withstand the pressure, social and economic threats, so they are raising their voices more and more if they feel that something is not in accordance with the law or it threatens their rights. For this reason, within the scope of such disputes there are cases that have arisen after numerous protests in Serbia, and not only environmental protests, but also those during the COVID-19 pandemic, which led to the breakdown of the system, i.e. indicating irregularities being present in the system for a long time, and during the pandemic they just emerged.

When we are talking about SLAPP lawsuits (Strategic Lawsuits against Public Participation), the fact is that we are talking about numerous lawsuits filed against a large number of citizens which goal is not only to succeed in the dispute. As an example, there are cases in Novi Pazar, where a large number of proceedings are being conducted against the alleged violation of the honor and dignity of the Director of the General Hospital in Novi Pazar. There were more than 25 lawsuits initiated, both criminal and civil, for protecting honor and reputation, regarding the content that citizens, dissatisfied with the situation during the pandemic, published most often on their Facebook or Instagram profiles. The very fact that so many lawsuits were filed on the same occasion, although in a formally legitimate way, looks like an abuse of that right. It can be concluded that it is necessary to establish a mechanism that will not prevent activists from dealing with the issues which they initially raised their voices for because they have to focus on the lawsuits filed against them. Those procedures are conducted in a specific way, and open up the issue of the existence of the rule of law, that is, the level of respect for the rule of law in our system. By going to a trial, there is no respect for the due process principle and the principle of equality of the parties in the proceedings, as it is generally the situation with SLAPP lawsuits. In addition to economic inequality, we must not ignore the fact that it was often about political inequality. On this occasion, YUCOM conducts proceedings throughout the country, from Vojvodina in the north to Sandžak in the south.



05

**The most
significant
projects**

1. Towards more efficient administrative justice in Serbia

Duration: May 2022 – May 2025

Donor: The German Agency for International Cooperation – GIZ

About the project: Administrative law covers a wide range of different areas such as construction, traffic, public procurement, property restitution, pensions, taxes and others. Administrative acts have a great impact on citizens' daily life, which is why it is important that citizens have the right to appeal against administrative acts that affect their rights or obligations. The competence of the Administrative Court is very important for entire state system to function, because the Administrative Court exercises judicial control over the legality of acts of the executive power. Guaranteeing judicial control of administrative acts by an impartial, efficient and independent court is essential for the protection of human rights and the rule of law.

The main reason that affects the efficiency of the work of the Administrative Court, excluding the lack of judges and insufficient quality work of administrative bodies, is that, starting from 2010, every year a number of new laws have been passed regulating completely new administrative areas. Due to the large inflow of new cases and jurisdiction expansion, the efficiency of the Administrative Court is the lowest comparing to all courts in the Republic of Serbia.

The project “Towards more efficient administrative justice in Serbia” aims to improve the efficiency of the administrative justice sector in order to provide better access to justice for the citizens of the Republic of Serbia. Improving the work of the first-instance authorities in the administrative procedure, raising the awareness of citizens about the possibility of using their rights during the administrative procedure for its successful conclusion resulting with reduction of administrative disputes, would lead to achieving the goal.

The Lawyers' Committee for Human Rights – YUCOM, in cooperation with the German International Cooperation Organization (GIZ) has been implementing the project “Towards more efficient administrative justice in Serbia”. The project is a part of the program of the Ministry of Justice of the Republic of Serbia and GIZ “Support to the Ministry of Justice in the reform of the administrative judiciary”, which aims to strengthen the capacity of the Administrative Court.

Civil Society Engaging for Citizen's Rights

Duration: April 2022 – October 2022

Donor: Embassy of the Czech Republic – TRANSITION FUND



About the project: The main goal of the project is to contribute to the improvement of access to justice for citizens and help to further improve the rule of law in Serbia. YUCOM, as an organization that provides free legal aid and support and creates recommendations for improving the legal framework that led to the adoption of the first national Law on free legal aid, will continue providing free legal aid and support to citizens whose human rights are threatened.

The socio-economic changes caused by the COVID-19 crisis has left significant consequences for citizens to realize their own rights, due to the increased level of social inequality and legal uncertainty. The project recognized the need of citizens to improve access to the court and obtain relevant legal information. Through the project, citizens whose rights are threatened and who seek to obtain free legal aid and support, as well as legal information on how to solve a certain legal issue, would be helped. Also, the project, through an information campaign will work on raising citizens' awareness of the existence of the right to free legal aid and the ways how citizens can exercise certain right within their local self-governments.

The Lawyers' Committee for Human Rights – YUCOM has been implementing the project "Civil Society Engaging for Citizen's Rights" within the Program for Transformation Cooperation financed by the Ministry of Foreign Affairs of Czech Republic.

Protection of freedom of speech on the Internet

Duration: November 2021 – September 2022

Donor: The American Bar Association's Rule of Law Initiative (ABA ROLI)

About the project: The Internet provides a wealth of information and knowledge opening up new opportunities but also challenges for freedom of expression. The principle of freedom of expression can be applied not only to traditional media, but also to the Internet and all kinds of media platforms, which contribute to the development of democracy and dialogue. Although the right to freedom of expression is a basic human right, it is not absolute. Like most rights, freedom of expression can be legally limited in the situations when the restrictions are reasonable and justified in an open and democratic society. Despite the declarative commitment to freedom of expression, many journalists, human rights lawyers, activists, and ordinary citizens face misdemeanor and criminal charges, civil lawsuits, and different types of persecution.

The project "Protection of Freedom of Speech on the Internet" aims to creating a more favorable environment for information pluralism and diversity of opinion in Serbian cyberspace. The potential implications for freedom of expression related to Internet communication are most obvious when speech or expression are criminalized. Different forms of criminalization of "insult" and spreading "fake news" are likely to become increased in the future, which may cause significant damage to freedom of expression. Bearing in mind that civil society has an important function as a guardian of democratic values and human rights, the project has analyzed the changeable legal and regulatory framework, related to freedom of speech on the Internet and relevant case law. Rec-



ommendations for policy makers have been created aiming to foster an enabling environment for freedom of expression on the Internet. As part of the project, YUCOM lawyers represented activists and doctors in criminal and civil proceedings brought against them due to criticisms they addressed online. Also, journalists were represented in criminal proceedings for endangering security through social networks. Organizing trainings on Internet security, as one of the activities within the project, the capacities of civil society organizations have also been raised.

The Lawyers' Committee for Human Rights – YUCOM has implemented the project “Protection of Freedom of Speech on the Internet” as part of the Rule of Law Initiative program of the American Bar Association – ABA ROLI.

Towards Stronger Judiciary through Citizens' Monitoring: Justice Agreement Monitoring: Phase 3

Duration: September 2021 – July 2022

Donor: Balkan Trust for Democracy (BTD) / the Embassy of the Kingdom of Norway



Foto: mc.rs

About the project: Although facing numerous challenges, Serbia continues to work on advancing judicial reform through the Action Plan for Chapter 35 (together with Chapter 23), which is an important step for Serbia toward necessary progress in the rule of law.

YUCOM has continued to monitor the effects of the Brussels Justice Agreement on access to justice for the citizens of Serbia and Kosovo. The team has been

focused on current cases before the integrated judiciary in Mitrovica and presented case studies of parallel cases before the courts in Mitrovica and Leskovac.

In addition to case studies, the team has also organized online discussions on the already established *Open Doors of the Judiciary* platform on the topics: “Why were citizens, living in the north of Kosovo, interested in a referendum on the independence of the judiciary?”, “Labor disputes related to the territory of Kosovo and Metohija”, “The issue of availability of public notaries from the Serbian community in the territory of Kosovo”.

YUCOM team visited the Basic Court in Leskovac, the Basic Court in Mitrovica and the competent prosecutor's office, and talked with the relevant actors in order to gain a better insight into the issues related to the assigned and parallel cases. The collected data have been used to present case studies of citizens who have to claim their rights before both courts. The results of the research have been presented in the third published [“Report on the Implementation and Effects of the Justice Agreement”](#).

The Lawyers' Committee for Human Rights – YUCOM has implemented third phase of the project “Towards Stronger Judiciary through Citizens' Monitoring” with the support of Balkan Trust for Democracy (BTD) and the Embassy of the Kingdom of Norway.

Strengthening access to justice for women victims of violence in Serbia

Duration: April 2021 – September 2021

Donor: Embassy of the Czech Republic – TRANSITION FUND

About the project: The project was focused on the issue of lacking adequate free legal aid and support for victims of gender-based violence in Serbia. It aimed to provide protection to victims of gender-based violence and domestic violence whose human rights have been threatened, since national providers of free legal aid are not working at full capacity.

Serbia is one of the first countries to ratify the Istanbul Convention, which is the core standard to ensure equal access to justice for women victims of violence. Many of its provisions aim to ensure the right



of access to justice and to provide adequate protection and assistance during judicial proceedings. Although the national Law on Free Legal Aid came into force in October 2019 and recognized victims of domestic violence as beneficiaries of free legal aid, there is still no real evidence as to whether the newly established system works in reality. Also, the new Law on Free Legal Aid, in addition to domestic violence, does not recognize other forms of violence covered by the Istanbul Convention as beneficiaries of free legal aid.

Within the project, free legal aid and support to victims of gender-based violence was provided, which was on the rise during the COVID-19 pandemic, bearing in mind that the health crisis has long-term, wide-ranging consequences. Also, the project managed to identify challenges in establishing a national legal aid system throughout the country.

The Lawyers' Committee for Human Rights – YUCOM implemented the project “Strengthening access to justice for women victims of violence in Serbia” within the Program for Transformation Cooperation financed by the Ministry of Foreign Affairs of Czech Republic.

Open doors of judiciary

Duration: January 2019 – January 2024

Donor: the United States Agency for International Development (USAID)

About the project: The overall objective of the project is to strengthen citizens' confidence in the work of judicial institutions in the Republic of Serbia through improved communication between citizens and representatives of the judiciary. The project is implemented by a coalition of 12 organizations

engaged in human rights and the development of democracy, as well as professional judicial associations:

1. Lawyers' Committee for Human Rights (YUCOM);
2. European Policy Centre (CEP);
3. Association of Public Prosecutors and Deputy Public Prosecutors in Serbia;
4. The Network of the Committee for Human Rights in Serbia (CHRIS Network);
5. Judges' Association of Serbia;
6. Transparency Serbia;
7. Belgrade Centre for Security Policy (BCSP);
8. Partners for Democratic Change Serbia (Partners Serbia);
9. Belgrade Centre for Human Rights (BCHR);
10. Judicial Research Center (CEPRIS);
11. People's Parliament;
12. Forum of Judges of Serbia.

One of the three main goals of the project is establishing of proactive relationship between the representatives of judiciary and the citizens, and their better understanding of the system that would contribute to their better understanding of their rights, and how to exercise them. The project intends to establish such a relationship through several channels of communication with the citizens, which are adjusted to different social structures, age groups and levels of education. This includes communication through digital platform, digital media and blog posts, as well as local advisory services in 15 towns and municipalities in Serbia. Following the example of the developed democracies, the project intends to adopt the principle of open dialogue between the citizens and the judiciary, and encourage their greater involvement in the local communities. The task of the project is to help citizens better understand



the rights guaranteed by the Constitution, but also to inform the citizens how the justice system works and how judges and prosecutors make decisions that are fair and rational.

The second goal of the project is the work of the organizations on research and recognition of the primary needs of the citizens in their daily experience with the judiciary in Serbia. This activity seeks to understand and explore the reasons for the citizens' low level of trust in the judicial system, through extensive monitoring of citizens' experiences with the judiciary. As a result of this activity, the coalition on the project will produce three comprehensive reports that would serve as means to further formulate public policies that support the needs of citizens.

During the last two years, the digital platform [Open Doors of Judiciary](#) has been actively updated. All content created within the project can be found there. More than [230 texts](#) have been published clearly and visually explaining to citizens how to exercise a certain right, understand complicated procedures, or approach the meaning of certain laws/regulations. The authors have been judges, prosecutors, lawyers, law professors, public officials and legal experts – experts in the certain fields that the texts consist of. [22 infographics](#) have been created showing the ways in which certain rights can be exercised. The platform generates about 1,500 visits on a daily basis.

In cooperation with the Supreme Court of Cassation, initially 15 basic courts were determined (Basic Court in Sombor, Basic Court in Pančevo, Basic Court in Zrenjanin, Basic Court in Novi Sad, Basic Court in Šabac, Basic Court in Kragujevac, Basic Court in Kraljevo, Basic Court in Ivanjica, Basic Court in Užice, Basic Court in Kruševac, Basic Court in Negotin, Basic Court in Niš, Basic Court in Leskovac, Basic Court in Vranje, Basic Court in Knjaževac) where the activities will be carried out, and which during 2017 and 2018 were recognized by the Supreme Court of Cassation for their contribution to improving the efficiency and quality of the judicial system. After more than three and a half years of implementation of the activity, the project has been expanded to more than 65 courts and prosecutor's offices of all jurisdictions, where Thematic Open Doors have been continuously held every week on various topics that citizens had been interested in. The goal is to open courts to citizens and establish communication, so that citizens have the opportunity to address certain questions to the representatives of judicial authorities. Up to this time, 62 topics which citizens had been interested in have been covered, such as: "Why do trials take

so long?", "My rights in the enforcement procedure", "Availability of the prosecution to citizens", "Why are criminal charges dismissed?", "Do the victims have the rights in criminal proceedings?", "What should we know about the costs of court proceedings?", "Rights and obligations of citizens who came to testify in court proceedings", "Everything about divorce before the court", "Domestic violence before the court", "Mediation as a quick and efficient way to resolve a dispute", "Right to free legal aid", "Why are different verdicts handed down in two courts?", "Defense ex officio", "What if I am dissatisfied with my attorney at law?", "How does judicial protection of whistleblowers work?", "Cases of missing babies", "Rights of the accused and defense in misdemeanor proceedings", "The misdemeanor court is calling you. Who started the proceedings and who is prosecuting you?" and others. More than 200 representatives of the judiciary participated in the debates.

Part of the activities is to create educational guides on different topics explaining in a simple dictionary to citizens, devoid of complicated legal terminology, how to exercise a certain right or how to behave in certain situations. The following guides have been created:

- Guide through the Law on misdemeanors – my rights and obligations;
- Guide through the probate proceedings;
- Guide for individual submissions to United Nations Committees.

In addition to the Report on Monitoring the State of the Judiciary for 2020 and 2021, a ["Report on the Need to Solve the Problem of Mass Litigation and the Possibilities of Introducing a Collective Lawsuit in the Legal System of the Republic of Serbia"](#) has been prepared. The subject of this Report is an examination of the possibility of influencing and solving problems related to the negative phenomena that were identified in the previous reporting cycle of monitoring the state of the judiciary for 2021. This document represents a special thematic report that connects two identified problems, namely: the phenomena of the so-called mass litigations, which in the reporting period was emphasized especially in the area of protection of the rights of users of financial services ("banking cases"), and the phenomenon related to that problem, which is the overloading of the judiciary of Belgrade with individual litigations.

The Lawyers' Committee for Human Rights – YUCOM has been implementing the project "Open doors of judiciary" with the support of the United States Agency for International Development (USAID).

Support to the transparency of the work of courts

Duration: April 2021 – December 2021

Donor: Organization for Security and Co-operation in Europe – OSCE (Mission in Serbia)

About the project: The project was aiming to enable closer communication between representatives of the judiciary and citizens and thus increase the transparency of the work of courts and the trust of citizens in the work of judicial institutions, with a special focus on the work of Misdemeanor courts. Within this project, a set of thematic open doors were implemented on topics that are within the jurisdiction of Misdemeanor courts. In addition to the judges of Misdemeanor courts throughout Serbia, the panelists were, depending on the topic, representatives of the Ministry of the Interior, Centers for social work, Bar Chamber etc. In addition to the events that were held in a adjusted online format, within this project, the blog posts of representatives of the judiciary for which there is always the greatest interest of citizens have been continuously published. Some of the most current topics have been translated into the form of infographics.

The Lawyers' Committee for Human Rights – YUCOM implemented the project "Support to the transparency of the work of courts" with the support of Organization for Security and Co-operation in Europe – OSCE (Mission in Serbia).

Defending the Defenders

Duration: January 2020 – December 2022

Donor: Delegation of the European Union (European Instrument for Democracy and Human Rights (EIDHR))

About the project: The main goal of the project is to strengthen the capacities of human rights defenders both nationally and locally in Serbia. It has been implemented together with two partner organizations: the People's Parliament and the Belgrade Center for Security Policy (BCSP). The project aims to improve the situation for human rights defenders such that

they can perform their tasks with more confidence; advocate for greater alignment of the existing legislation to international human rights standards; and develop an early warning mechanism for reporting breaches of rights and pressures. The project has involved and referred to different categories of human rights defenders (women HRDs, HRDs dealing with the past, LGBT rights HRDs, environment HRDs etc.)

In recent years, human rights defenders in Serbia have been experiencing a growing number of systematic attacks intended to silence their voices. While Serbia has developed a legal framework to protect freedoms of assembly, association and expression, in practice, there is an alarming level of harassment, verbal and physical violence, death threats, smear campaigns and hate speech perpetrated towards human rights defenders.

Up to this time, two annual reports on the implementation of policies and legal frameworks for the protection of human rights defenders in Serbia have been published. The reports included all relevant information, providing necessary and easily accessible data that can be used as guidelines for the preparation of objective international reports on monitoring the situation in the field of human rights defenders' protection.

During the project it has been created [Map of Incidents](#), continuously developing. The aim is to raise public awareness of attacks on human rights defenders. This updated database with relevant information on activists' rights violations is the first of its kind in the region, as it identifies cases of activists' rights violations and pressures on them. The database has also been used to write national and international reports, as well as to encourage advocacy actions, changes in legislation and public policies, based on the collected evidence.

During the project period, free legal support has also been provided to human rights defenders who have experienced major human rights violations. During the two years of project implementation, YUCOM attorneys at law has represented more than 20 cases of violation of HRDs' rights before the court.

One part of the project has been dedicated to educating human rights defenders about their rights and safety, as well as the principles of activism. Trainings were held in different parts of Serbia as

well as online, during the COVID-19 virus epidemic. Trained local human rights defenders, civil society organizations and activists have acquired skills that will help them to more effectively identify and report cases of human rights violations, as well as to respond to them in a timely manner.

In accordance with project scheme, [the Grant Award Program](#) was implemented, including eleven projects of civil society organizations and three projects of activists in the grant support. Organizations and informal groups of activists being supported within the grant program are: Women in Black, Forca, Academic Initiative FORUM10, KOKORO, Center for the Development of Civil Society PROTECTA, Civic Reading Room “Libergraf”, Group b1, Res Publika, Association Svetlost, ROSA, the activist organization REFORMA, IMPACT 21 and Culture to the people from Šabac.

The Lawyers’ Committee for Human Rights – YUCOM has been implementing the project “Defending the Defenders” within the Program of European Instrument for Democracy and Human Rights (EIDHR) and with the support of the Delegation of the European Union.

Impact of the COVID-19 virus on access to justice for national minorities in the Republic of Serbia

Duration: December 2020 – December 2021

Donor: Ministry of Foreign Affairs of the Republic of Bulgaria

About the project: The project was implemented aiming to improve access to justice for members of national minorities and other vulnerable groups, during the crisis caused by the COVID-19 virus pandemic.

The COVID-19 virus pandemic has been much more than a health crisis and represents major challenge in respecting human rights, especially the rights of vulnerable groups. The pandemic has created an increased risk of discrimination and exclusion of marginalized individuals, groups and communities. One of the most endangered social groups during the pandemic were members of national minorities.

The project was focused on the impact and consequences of emergency measures and their imple-

mentation on the rights of national minorities in the Republic of Serbia during the pandemic. Members of national minorities have been often facing discrimination during the state of emergency, as well as a lack of relevant information in minority languages, which preventing adequate information and hindering access to justice.

Testing access to legal aid for persons belonging to national minorities in local self-government units, as well as organizing a legal aid program, providing support and representation before the court, YUCOM’s activities have provided better access to justice.

The Lawyers’ Committee for Human Rights – YUCOM implemented the project “Impact of the COVID-19 virus on access to justice for national minorities in the Republic of Serbia” with the support of the Embassy and the Ministry of Foreign Affairs of the Republic of Bulgaria.

Support for legalization of facilities in Roma substandard settlements

Duration: October 2019 – September 2021

Donor: the European Union and implemented by the Standing Conference of Towns and Municipalities (SCTM)

About the project: The quality of housing of the Roma population, as well as the legal uncertainty which the ownership of illegal housing has caused, are the reasons why the Standing Conference of Towns and Municipalities (SCTM) and the Lawyers’ Committee for Human Rights (YUCOM) support the legalization of housing in Roma substandard settlements in 10 local self-government units. The project has included legal, technical and logistical assistance, on the one hand, to the competent bodies of local self-government units working on legalization processes, and on the other hand, to the Roma community. It has been available in Leskovac, Pirot, Aleksinac, Vršac, Požarevac, Surdulica, Mladenovac, Sombor, Paraćin and Lebane.

The first goal of this activity has been to map the issues in the field of legalization, which often occur during the procedure, as well as good practices that municipalities have in order to implement le-

galization as efficiently as possible. Additionally, providing direct support to the Roma population in the process legalizing housing, this project has also aimed to improve the inclusion of Roma in Serbia, further on developing living and housing conditions.

“Report on the situation in the sector of legalizing housing in Roma sub-standard settlements” includes 2153 cases on the legalization of buildings of the Roma community from the archives being analyzed, ten local self-government units with the specified recommendations as well as certain local action plans for each of the ten local self-government units. It was created based on analyzing archives of requests for legalization. Also, during six months, YUCOM legal team had been providing legal support for legalizing facilities for 563 residents of Roma sub-standard settlements in Sombor, Vršac, Mladenovac, Požarevac, Paraćin, Aleksinac, Pirot, Leskovac, Lebane and Surdulica.

The project was organized within the program “EU Support to Roma Inclusion – Strengthening Local Communities for Roma Inclusion”, funded by the European Union and implemented by the Standing Conference of Towns and Municipalities (SCTM).

Monitoring the elections for the High Judicial Council and the State Prosecutorial Council in 2020

Duration: October 2020 – December 2020

Donor: Organization for Security and Cooperation in Europe – OSCE (Mission in Serbia)

About the project: The project has aimed to monitor compliance with election procedures during the selection of members for the High Judicial Council and the State Prosecutorial Council. Election monitoring enabled greater transparency and fairness of the procedure. The presidents of both bodies welcomed the idea of independent observers and invited the OSCE Mission in Serbia to participate in this process. On behalf of the OSCE Mission in Serbia, the Lawyers’ Committee for Human Rights – YUCOM was a part of the staff that monitored the elections for the High Judicial Council and the State Prosecutorial Council. Observers from YUCOM were present at the polling places and had been monitoring the

process in order to detect possible irregularities and issues. Interviews with randomly selected judges and prosecutors were conducted on the basis of standardized questionnaires, with the possibility of adding other respondents’ comments.

The objective of the initiative of the OSCE Mission in Serbia was to ensure that impartial and objective observers monitor the elections for the High Judicial Council and the State Prosecutorial Council. The results are [“Report on the Monitoring of Peer Elections to the High Judicial Council of the Republic of Serbia \(2021\)”](#) as well as [“Report on the Monitoring of Peer Elections to the State Prosecutorial Council of the Republic of Serbia \(2021\)”](#) which give a clear picture of how the election process for Council members took place. For the purposes of creating these reports, in addition to monitoring the election process, there were conducted interviews with 115 judges from 41 courts (14 basic courts, 10 higher, 10 misdemeanor, 6 commercial and 1 appellate courts), as well as interviews with 109 public prosecutors and their deputies from 34 different public prosecutions.

Towards Stronger Judiciary through Citizens’ Monitoring – Phase 2

Duration: March 2020 – December 2020

Donor: Balkan Trust for Democracy (BTD)/ the Embassy of the Kingdom of Norway

About the project: Facing a number of challenges in the field of human rights and the judiciary, Serbia continues to make great efforts to advance judicial reform, especially those outlined in the Action Plan for Chapter 23, necessary to improve the rule of law. As Chapters 23 and 35 are key chapters and an unavoidable condition for final progress in all aspects, YUCOM, with the support of the Balkan Trust for Democracy, had been implementing the second phase of the Civil Monitoring for a Stronger Judiciary project. Monitoring the implementation of activities related to the judiciary in these chapters measured the effects on access to justice of the citizens of Serbia and Kosovo, with the aim of presenting the collected data to the public and all relevant actors.

In line with the situation and state of emergency that befell Serbia from March to May 2020, project activities were focused on recording restrictions on human rights and freedoms caused by government

measures in response to the SARS-CoV-2 pandemic COVID 19. YUCOM team will prepare a series of infographics showing important information regarding the restriction of these rights during the state of emergency. YUCOM team has prepared a series of infographics providing the citizens with important information regarding the limitations of these rights during the state of emergency. Based on the collected information, the team has also prepared an [“Analysis of constitutionality of individual measures, including the effects of the trials held via the Skype application”](#).

At a later stage of the project, YUCOM continued to monitor the effects of the Brussels Justice Agreement with a focus on the burden on some other courts in the Republic of Serbia due to the transfer of cases from Kosovska Mitrovica. Through field [re-search](#) and document analysis, YUCOM worked on increasing the transparency of the process related to the integration of the judiciary in Kosovo, as part of the negotiating Chapter 35.

The Lawyers’ Committee for Human Rights – YUCOM implemented second phase of the project “Towards Stronger Judiciary through Citizens’ Monitoring” with the support of Balkan Trust for Democracy (BTD) and the Embassy of the Kingdom of Norway.



06

**Publications
- new
editions**

1. Guides

How to exercise your right to free legal aid – A practical guide for citizens

Despite the fact that the Law on Free Legal Aid has been in force for almost three years, many citizens are not informed about the right to free legal aid and how they can exercise this right. If we consider the numerous new issues citizens face that have arisen due to the outbreak of the COVID-19 pandemic, it is evident that citizens need an informative guide. The right to work, health insurance, relations between parents and children, the right to education, the right to move, the circulation of goods and services, are just some of the areas in which numerous new issues have been opened after the change in legal regulations adapted to the epidemiological situation.

Guide [“How to exercise your right to free legal aid – A practical guide for citizens”](#) is intended for everyone who wants to exercise the right to free legal aid or to be informed how to exercise this right. The guide should inform citizens what free legal aid is, who it is intended for, what the conditions for its realization are, how to submit a request for free legal aid, who can be providers and how citizens can protect their right to free legal aid. The purpose of this guide is purely informative. At the end of the guide there is also a form for submitting a request for legal aid with tips how to fill it out.

Free legal aid – Guide for city and local self-government units

The right to free legal aid is an integral part of the right to a fair trial, which is proclaimed by international treaties that establish guarantees for human rights, concluded under the auspices of the United Nations and the Council of Europe. This right is guaranteed by the Constitution of the Republic of Serbia from 2006 (Article 61 paragraph 1-3), which determined that, in addition to the legal profession, local self-government units are providers of free legal aid, and should provide for the performance of these tasks as primary.

From October 1, 2019, when the Law on Free Legal Aid came into force, city and local self-government units are obliged to implement the system law of the Republic.

[“Free legal aid – Guide for city and local self-government units”](#) aims to facilitate the realization of the right to free legal aid by helping local self-government units in implementing the Law on Free Legal Aid, which is based on the principles of public work and availability, efficiency and sustainability. The law prescribed new competencies and duties, the implementation of which requires the coordinated engagement of several public officials, therefore the Guide is divided into three parts:

- 1) Instructions for the head of the city and local self-government units,
- 2) Instructions for the authorized person's acts,
- 3) Instructions for providers in the Free Legal Aid Service.

Data from the Ministry of Justice on the results of the implementation of the Law on Free Legal Aid in the first two years show that the main issue in its implementation is that citizens are not enough familiar with the system of free legal aid. There are numerous self-government units that have not decided on a single request for the approval of free legal aid. For this reason, this Guide also contains certain suggestions on how to inform citizens about the system of free legal aid.



Guide through the Law on misdemeanors – my rights and obligations



“Guide through the Law on misdemeanors – my rights and obligations” is intended for those who encounter misdemeanor proceedings, as well as those who would like to know more about this topic. The guide is written in simple and comprehensible language, without quoting legal provisions, with some examples. Certain misdemeanor institutes and procedural norms are presented in a simple form and cannot completely replace adequate legal assistance or the advice of an attorney-at-law. Also, the listed practical examples are only instructive in order to better understand the stipulated provisions of the Law on Misdemeanors.

Guide through the probate proceedings

“Guide through the probate proceedings” was created in order to bring the basic rules of the probate procedure closer to citizens, and to familiarize them with their rights and obligations in the procedure before the court and public notaries in time. The aim of this Guide is to show the flow of inheritance in a simple and graphic way and remove doubts when it comes to inheritance. The guide, in a concise and practical way, provides basic information about probate and contains an overview of the most common situations in practice, but does not replace professional legal assistance. For complete protection and exercise of rights, you should contact an attorney-at-law or the legal aid service of the self-government unit.



Guide for individual submissions to United Nations Committee

This Guide strives to bring citizens closer to one of the international mechanisms for the protection of human rights, which has not been used to a significant extent so far, so that it represents an unknown even for lawyers, attorneys-at-law and activists who work on the protection of human rights. In question is the possibility of submitting a petition to special bodies created under the auspices of the United Nations (UN) – the so-called treaty bodies for the protection of human rights. They are called contractual bodies because their establishment and work are stipulated by special international agreements (conventions).

The guide will answer the questions of who, when, why and how can submit an individual petition to the UN human rights committees for the violation of a human right, and how the committees act on such petitions. In order to better understand how this protection mechanism works, a review was also given of the most important documents that form the backbone of international human rights law, as well as the role and importance of the UN in supervising their implementation.



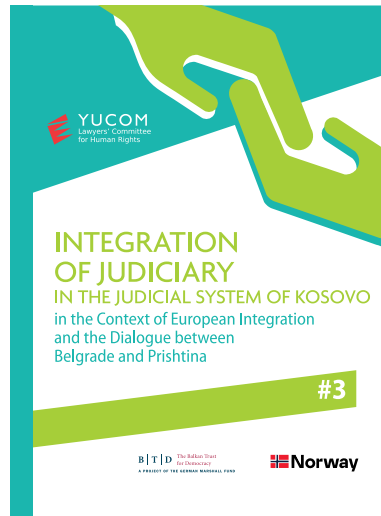
2. Reports

Report No. 3 on the implementation and effects of the Justice Agreement

Publication [“Integration of judiciary in the Context of European Integration and the Dialogue between Belgrade and Prishtina”](#) is the result of a research which the Lawyers’ Committee for Human Rights – YUCOM conducted in the period from January 2021 to April 2022. The report includes information on all five years of Justice Agreement’s implementation and shows the current state how integrated judicial institutions have been working, as well as the challenges that the judiciary in Leskovac have been facing with, as it is now in charge of resolving an amount of cases from Kosovo.

The report contains the latest relevant information on the work of the integrated judiciary in the mentioned reporting period, retaining basic information on the content of the agreed obligations within the Brussels dialogue. It focuses in particular on the obstacles to adequate and complete access to justice for citizens living or exercising their rights on the territory of Kosovo. It is reviewed the issue of access and communication with public notaries and attorneys at law from the Serbian community in Kosovo and through examples it shows the legal uncertainty of citizens when addressing two judicial systems.

Even with the new enlargement methodology, Chapter 35 is settled as one of the key chapters in the process of accession of Serbia to the European Union, to the extent that it has not been included in



any of the six clusters, but fulfilling preconditions for its closure will be separately decided. The rule of law is a condition for progress in the European integration process of Kosovo, therefore the authorities in Prishtina should enable all citizens to receive equal treatment before judicial institutions. Through the dialogue between Belgrade and Prishtina, both sides are obliged to ensure the conditions for citizens living on the territory of Kosovo to exercise their rights as well as to ensure their access to justice.

The integration of Serbian judges and prosecutors into the judicial system of Kosovo was initiated by the Brussels Agreement, and it was accomplished at the beginning of the implementation of the Justice Agreement in 2017. Since then, there have been no new agreements for relevant legal professions and services. In addition, systematic monitoring of Agreement’s implementation has not been established, nor proposals for solving issues arose as an effect of its implementation. As before, this research starts precisely from the expected and unexpected effects that the Agreement has had on citizens’ rights and provides recommendations for overcoming the identified obstacles.

Report on the situation in the sector of legalizing housing in Roma sub-standard settlements with recommendations for improving the process

Publication [“Report on the situation in the sector of legalizing housing in Roma sub-standard settlements with recommendations for improving the process”](#), was created based on the analysis of more than 2000 cases of legalization of illegal housing in 10 local self-government units.

The publication analyzes the legal framework that treats implementing illegal housing into the legal framework, key issues that prevent the effectiveness of the completion of the legalization process, specifics regarding the housing conditions of the Roma community and recommendations for improving the process.



The aim of the Report is to map the issues in the sector of legalization of facilities in Roma substandard settlements and obstacles in the system that often arise during the procedure, as well as to find good practices that local self-government units have in order to implement the law as efficiently as possible.

The Lawyers' Committee for Human Rights – YUCOM created the report as a part of the program “EU Support to Roma Inclusion – Strengthening Local Communities for Roma Inclusion”, funded by the European Union and implemented by the Standing Conference of Towns and Municipalities (SCTM). The report was created within the framework of support to local self-government units in the field of legalization of facilities in Roma sub-standard settlements, through cooperation with competent authorities for the implementation of the legalization of facilities and the inclusion of Roma.

Reports on attacks on human rights defenders in Serbia for 2020 and 2021

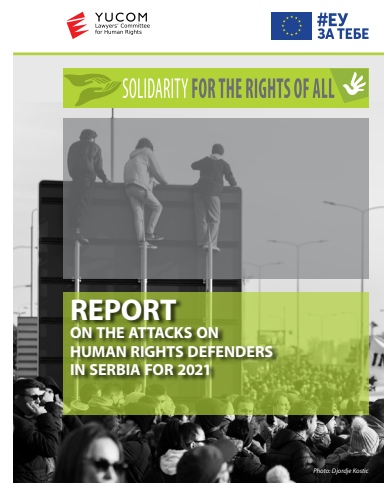
“Reports on the attacks on human rights defenders in Serbia for [2020](#) and [2021](#)” have been prepared based on the collected data during two years of action of the Solidarity for the Rights of All team, led by the Lawyers' Committee for Human Rights – YUCOM, in partnership with the Belgrade Center for Security Policy (BCBP) and the Association People's Parliament, with the support of EU Delegation, Eu-

ropean Instrument for Democracy and Human Rights (EIDHR).

On November 7, 2020, the Lawyers' Committee for Human Rights – YUCOM started the first interactive map of the attacks and pressures on the human rights defenders in Serbia. Two years of data collection has confirmed the necessity of such impartial and facts-based tool, which points to increasingly difficult position of the activists and organizations that advocate for the human rights. The attacks and pressures have become more serious and they have been increasingly directed against the citizens who are not activists, but have provided support for the protection of the human rights. After researching publicly available data and interviews with victims of pressures and attacks, 100 pressures and attacks were registered on the map in 2020, while 73 attacks and pressures were registered in 2021, both on activists involved in the protection of human rights and on citizens, who, due to their actions, found themselves in that role and suffered the consequences.

There is a statistical overview, available on the Map to enable the public to gain insight into data on the gender and place of residence of the victims of the attacks, whether the repression is suffered by an individual directly, colleague or family member. Data on the attacker, type of attack and type of threatened right are also available. Based on all the data collected so far, it can be concluded that during 2021, the most vulnerable rights were freedom of assembly, freedom of expression and freedom of association, and these rights were

chosen to be the focus of the second annual report on attacks on human rights defenders in Serbia in 2021. The reports aim to provide the interested domestic and international public with a simple insight into the current situation and information on the position of human rights defenders in Serbia.



Reports on monitoring the state of judiciary for 2020 and 2021

“Reports on monitoring the state of judiciary for 2020 and 2021” were created within the project “Open doors of judiciary”, supported by USAID. They are based on the platform of cooperation of civil society organizations gathered around the common value of improving the rule of law, strengthening the mechanisms of judicial legal protection of citizens. Preconditions for the realization of these values are an independent judiciary, expertise and impartiality of judges, indiscriminate and independent action of public prosecutors, but also a number of material, technical and organizational conditions for the successful and efficient functioning of the judiciary. Based on a special, original research methodology, these systemic preconditions have been observed and evaluated in the context of the real environment and the realization of the protection of citizens’ rights in court proceedings. The subject of these Reports is the analysis of the situation in Serbian judiciary, according to the current legal framework, in the given institutional environment and real circumstances that significantly affect the exercise and protection of citizens’ rights in court proceedings, as well as other rights and interests of citizens within the judicial system, including judicial services. The report should fill the existing gap in terms of being an independent evidence-based mechanism for monitoring the progress of judicial reform.

The data collected and presented in the monitoring reports will be used to define civil society proposals in the current and forthcoming processes of formulating public policies in the judiciary field that support the needs of citizens. Continuous monitoring of judicial reform by civil society organizations, which relies primarily on the perception of system users, experts, and the general public, is important from the aspect of strengthening the participation and inclusiveness of the process of monitoring judicial reform. The ultimate goal of the monitoring and reporting process presented here is to contribute to a better understanding of the results of the judicial reform process so far and to point out possible improvements and directions for future strategic activities in the field of judicial reform.



3. Analysis

Freedom of expression in the digital space of Serbia - Analysis of prosecutorial and court practice



SLOBODA IZRAŽAVANJA U DIGITALNOM PROSTORU SRBIJE

Freedom of expression as a basic civil and political human right has an essential role in a democratic society. The development of digital technologies has brought the possibility for ideas and thoughts to spread at a speed that, just a few decades ago, was unimaginable. As it is a right that is not absolute, but is subject to certain limitations, along with developing the right it comes its abuse: in the form of the spread of fake news, various forms of harassment on the Internet, the spread of national, racial and religious hatred and intolerance, etc.

The subject of the analysis “Freedom of expression in the digital space of Serbia – Analysis of prosecutorial and court practice” are criminal proceedings conducted by the Higher Public Prosecutor’s Of-

office in Belgrade - Special Prosecution Office for High-Tech Crime and competent courts, which are most often associated with freedom of expression in the digital space. The aim of the research is to identify the pressures on journalists, activists and ordinary citizens, as well as the issues these people face when trying to protect their rights in court. The impact of proceedings against individuals due to alleged threats to public officials, who by the nature of their profession have a greater obligation to endure criticism, was a special focus of this analysis. Appearing in public dictates that criticism must be heard and endured, so the protection of the judicial system against criticizing public officials would often have to be absent or the sanctions should be less severe against critics.

Has the judicial system built an effective mechanism to adequately protect the victims of the so-called e-verbal offenses or has become an instrument of pressure on harsher critics of officials, can be assessed by analyzing the five-year criminal prosecution of the competent prosecutor's office and the judicial practice of the competent court. In the background of this analysis is the need to distinguish between real dangers such as the spread of hate speech and attacks on individuals and vulnerable groups or endangering freedom of expression due to critical views expressed on social networks, which contributes to the growth of self-censorship. Freedom of Expression in the Digital Space: Analysis of prosecutorial and judicial practice was prepared with the support of the Rule of Law Initiative program of the American Bar Association – ABA ROLI within the “Protection of Free Speech on the Internet” project.

The position of national minorities in the Republic of Serbia during the COVID-19

Publication “[The position of national minorities in the Republic of Serbia during the COVID-19 epidemic](#)” deals with the rights of national minorities in the Republic of Serbia during the epidemic. Special focus in the Publication refers to the impact of the measures of the Government and local self-government units in preventing the epidemic, as well as the consequences of those measures in relation to the following rights: the right to health, freedom of movement, access to justice and information of members of national minorities.

The research is focused on national minorities that traditionally live in border areas, bearing in mind the issues of restrictions on freedom of movement and the proximity of their home countries. A significant issue during the epidemic crisis was the frequent changes and additions to the regulations due to which national minorities were not properly informed about their rights and obligations, although the sanctions for their violation were often very strict and high. Special health risks were related to the most vulnerable layers of society, such as the inhabitants of sub-standard Roma settlements, due to the lack of access to water, electricity and sewage. In this way, the epidemic further deepened the existing issues the Roma population in Serbia face on a daily basis. Publication “The position of national

minorities in the Republic of Serbia during the COVID-19 epidemic” was created with the financial support of the Bulgarian Development Assistance.



The right of national minorities to free legal aid

Publication [“The right of national minorities to free legal aid”](#) was created on the basis of research on providing free legal aid in 2020. The research showed that during 2020, free legal aid to members of national minorities was available to a limited extent, which is a consequence of inherited issues which the Law on Free Legal Aid did not provide an adequate response to, but also new circumstances that led to the closure of institutions for citizens.

Enjoying the right to legal aid for members of national minorities is difficult to achieve without enjoying the right to official use of the minority language and script. The use of complex legal terminology represents an obstacle in exercising rights even for those citizens who are active users of Serbian language. Ignorance or poor knowledge of the language can represent a significant obstacle for members of national minorities to equally participate in legal proceedings. Publication [“The right of national minorities to free legal aid”](#) was created with the financial support of the Bulgarian Development Assistance.

The right to free legal aid for victims of gender-based violence in Serbia in 2020

Publication [“Right to free legal aid for victims of gender-based violence in Serbia in 2020”](#) was created as a result of research performed in 2021 on the availability of free legal aid and support at local self-government units for victims of gender-based violence.

The publication shows that the Law on Free Legal Aid did not adequately recognize gender-based violence as an issue where it is necessary to provide free legal aid and support to all victims without discrimination. The specificity of this form of violence, which mainly affects women, is recognized only in cases of domestic violence. In all other cases, the victims are forced to prove the fulfillment of the property condition in a complicated procedure and expose themselves to additional victimization.

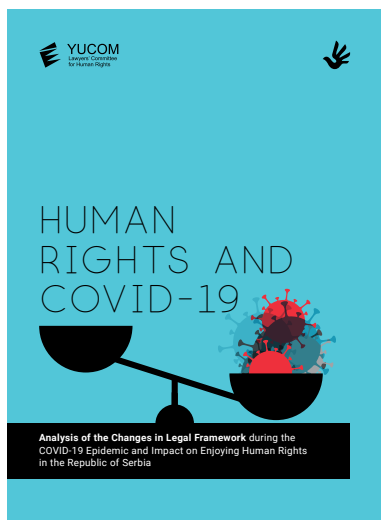
The Law also did not sufficiently recognize citizens’ associations as providers of free legal aid, especially when it comes to women’s organizations and organizations that work specifically on cases of gender-based violence and that have many years of experience in these areas. The research identified that the consequence lies in a small number of submitted requests for free legal aid compared to the number of reported criminal acts,

which indicates that an adequate awareness raising campaign was not performed, in order women to be informed that they can apply for free legal aid to the municipality where they have a residence.

Publication [“Right to free legal aid for victims of gender-based violence in Serbia in 2020”](#) was created within the project the [“Strengthening access to justice for women victims of violence in Serbia”](#) performed within the Program for Transformation Cooperation financed by the Ministry of Foreign Affairs of Czech Republic.



Analysis of the Changes in Legal Framework during the COVID-19 Epidemic and Impact on Enjoying Human Rights in the Republic of Serbia



Publication [“Human rights and COVID-19”](#) presents an analysis of changes in the legal framework during the COVID-19 epidemic and their impact on exercising human rights.

The Constitution of the Republic of Serbia allows restrictions on certain human rights (such as freedom of movement) when public health is endangered and the state decides to manage the epidemic through formal restrictions on human rights, with severe and expeditious sanctioning for violating regulations.

Human rights restrictions culminated during the state of emergency that was introduced on March 15th, 2020 and lasted until May 6th, 2020. During the state of emergency, regulations affecting human rights, were changed on daily basis, as the authority that needed to adopt them had passed from the National Assembly to the executive. The pandemic, as a global phenomenon, activated international human rights organizations taking into account that human rights restrictions, due to public health needs, represent a global challenge.

Starting from the principle of the rule of law, the analysis shows the decision-making manner which limits human rights, control of the consequences of new regulations in practice, with a systematic presentation of the rights that have suffered the most formal restrictions (freedom of assembly, freedom of movement, right to fair trial, right to health care and freedom of expression). The analysis also shows the limitations of other rights, such as freedom of religion and the right to personal and family life, which have arisen as an indirect consequence of the undertaken measures. There are also presented the problems which mentioned measures and restrictions created to vulnerable groups, the initiatives and proposals submitted to the state bodies in order to solve or mitigate the observed problems, as well as state’s response to the initiatives.

The analysis shows the compliance of human rights restrictions with the appeals of the United Nations bodies and the instructions which this organization had been giving during the pandemic.

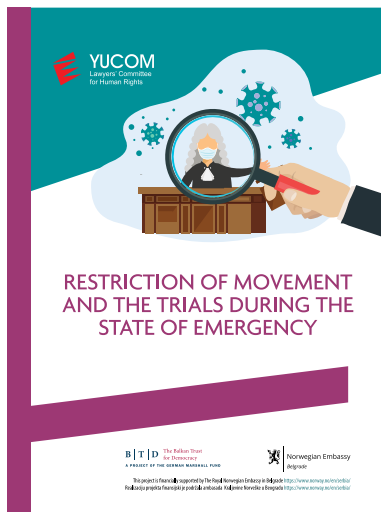
Analysis – Restriction of Movement and the Trials during the State of Emergency

The COVID-19 virus pandemic is one of the biggest global pandemics of our time. There are almost no countries that were ready to meet such a threat for the public health of their citizens. Countries have taken many and varied measures to protect their populations from the spread of this highly contagious disease.

Analysis [“Restriction of Movement and the Trials during the State of Emergency”](#) has two focuses. The first one is on the attempt to respond to the question whether restriction of the right to the freedom of movement during the state of emergency was in accordance with the Constitution of Serbia and international treaties ratified by Serbia because of its impact on other rights of the citizens of Serbia. In the second part of the analysis, there were presented our observations from the hearings we observed during the state of emergency for the criminal offence Failure to Act Pursuant to Health Regulations during Epidemic. The right to a fair trial, as one of the absolute rights, which cannot be restricted even during the state of emergency must be guaranteed even during the crisis such as this one. Enabling public access to the hearings, as the integral element of the right to a fair trial must be con-

sistently implemented even when the measures and the new method of questioning of the defendants through use of technical means are introduced. When a new legal concept is introduced during the state of emergency or the existing one is changed, the role of the civil society is to monitor these changes and report its finding to the professional community and public.

YUCOM prepared the publication “Restriction of movement and the trials during the state of emergency” within the project “Towards a Stronger Judiciary through Citizens’ Monitoring: phase 2”, implemented with the support of the Embassy of the Kingdom of Norway and the Balkan Trust for Democracy (BTD).



Law on Free Legal Aid – The First Six Months of Implementation

Analysis “[Law on Free Legal Aid – The First Six Months of Implementation](#)” was prepared within the project “Free Legal Aid Unpacking” with the support of the Embassy of the Kingdom of the Netherlands in Serbia.

The new Law on Free Legal Aid came into force on October 1, 2019. The focus of this research are the first six months of application of the Law on Free Legal Aid and the work of services and individuals in charge of providing free legal aid in the cities and municipalities in Serbia, with special reference to the position of associations in the system of free legal aid.

Having in mind the lawmakers’ assessment of the number of beneficiaries, and the fact that enough time was given to prepare implementation of the Law on Free Legal Aid, the research has found that the current situation cannot be seen as satisfactory. Although the percentage of approved requests, especially when it comes to members of vulnerable groups, is encouraging, the total number of beneficiaries shows the need for implementation of a continuous media campaign

Six months after the official beginning of implementation of the Law on Free Legal Aid, many municipalities and towns have still not established their own free legal aid offices. Where the free legal aid is available, it is most often provided by the individuals who also perform other duties. There are no standards regarding the number or structure of



employees or adequacy of office space. The Rulebook on the appearance and more detailed content of the application form for approval of free legal aid has expanded the circle of existentially vulnerable beneficiaries outside of the strict requirements for social assistance. Significant number of approved requests is related to members of vulnerable groups, although some categories have not yet exercised this right.

Limited human and financial resources of local self-governments are insufficient to ensure equal access to this service to all of their citizens. Attorneys’ fees, although significantly reduced compared to regular lawyers’ tariffs, can still be too high for the local self-governments in underdeveloped parts of Serbia, and insufficient to motivate attorneys and ensure effective representation. Marginalization of the role of associations and limitation of their ability to provide free legal aid is a missed chance to utilize their potential for creation of comprehensive and functional free legal aid system

Unclear and imprecise provisions of the Law on Free Legal Aid introduce legal uncertainties in the work of providers and negatively affect availability of free legal aid services.



07

**Other
activities,
cooperation
and
contribution**

1. International level networking

Networks for cooperation with the United Nations

The Platform of Organizations for Monitoring the Recommendations of UN Human Rights Bodies has been established by the civil society organizations with significant experience based on reporting before UN human rights mechanisms and monitoring recommendations, recognizing the need and importance of continuous evidence-based reporting processes, monitoring the implementation of recommendations issued by the mechanisms to the Republic of Serbia, and interaction with the Government bodies for monitoring the implementation of UN recommendations for human rights. Along with the Lawyers' Committee for Human Rights – YUCOM, the Platform was founded and is comprised of the following organizations: Astra; Atina; A11 – Initiative for Economic and Social Rights; Belgrade Human Rights Centre; Centre for Independent Living of Persons with Disabilities of Serbia; Centre for the Rights of the Child; FemPlatz, Group 484; Initiative for the Rights of Persons with Mental Disabilities MDRI-S; International Assistance Network IAN; Network of Organizations for Children MODS; National Organization of Persons with Disabilities; SOS Vojvodina Network and Standing

Conference of Roma Citizens' Associations, and Gayten-LGBT.

During 2021, YUCOM participated in the submission of alternative reports to the United Nations Committee Against Torture (CAT) and the United Nations Committee on Economic, Social and Cultural Rights (CESCR). Milan Filipović, legal advisor in YUCOM, participated in the regional consultative meeting “Peaceful protests in crisis situations” with the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, Kleman Vulen. The aim of the meeting was to prepare a special report that should be presented at the fiftieth session of the UN Human Rights Council. During 2021, in cooperation with other civil society organizations, YUCOM also sent a report to the Global Alliance of National Institutions for Human Rights (GANHRI) regarding the reaccreditation process of the Protector of Citizens. We have also participated in the work of the governmental Council for Monitoring the Implementation of the Recommendations of the United Nations Human Rights Mechanism, as an associate member without voting rights.

Networks for cooperation with the Council of Europe

The Lawyers' Committee for Human Rights – YUCOM is a member of the European Implementation Network – EIN (Network for the implementation of judgments of the European Court of Human Rights). The network gathers non-governmental organizations of member

states of the Council of Europe, whose main activity is to advocate for the full and timely implementation of the decisions of the European Court of Human Rights. According to data from the map of the implementation of this network in Serbia, 19% of ECtHR judgments adopted in the last ten years have not been executed. Some of those judgments, such as *Kačapor v. Serbia* are related to the rights of tens of thousands of citizens whom social enterprises owe money to. EIN has been providing support to organizations from Serbia in communication with the Committee of Ministers of the Council of Europe, in order to adequately execute the judgment of *Zorica Jovanović v. Serbia*. After YUCOM had addressed it four times, in 2020 the Law on establishing facts about the status of newborn children suspected to have disappeared from maternity wards in Republic of Serbia was adopted, aiming to fulfill Serbia's obligations in the judgment of *Zorica Jovanović v. Serbia*. YUCOM continues to monitor the execution of the judgment in the case of *Jovanović* and other ECtHR judgments against Serbia and prepares statements to address the Committee of Ministers of the Council of Europe.

On January 26, 2022, in Strasbourg, the Lawyers' Committee for Human Rights – YUCOM participated in establishing *CURE – Campaign to Uphold Rights in Europe* a new international initiative, as a coalition of 14 non-governmental organizations. CURE aims to make the Council of Europe strong and effective in fulfilling its statutory role of protecting human rights and fundamental freedoms, supporting the rule of law and true democracy. Milan

Filipović, legal advisor at YUCOM, was elected as a member of the CURE Steering Committee. On May 19, 2022, this network for the first time organized an event in Turin, parallel to the annual meeting of the Committee of Ministers of the Council of Europe. The event was an opportunity for representatives of civil society and the academic community to discuss current challenges, the need to evaluate the previous work of the Council of Europe, as well as possible systemic changes. The focus of CURE is to involve civil society more in the work of the Council of Europe, improving the implementation of the European Convention on Human Rights, increasing the importance of expert bodies of the Council of Europe and a stronger reaction of this interstate organization against states that systematically refuse to fulfill the obligations arising from membership.

Networks for cooperation with the European Union

The EU-Serbia Joint Consultative Committee (JCC) is a body composed of representatives of the European Economic and Social Committee (EESC) and representatives of social partners and civil society organizations in the Republic of Serbia. The Joint Consultative Committee promotes dialogue and cooperation between these entities in the EU and Serbia, related to all relevant aspects of relations between the EU and Serbia in the process of accession negotiations.

Katarina Golubović, president of YUCOM, was elected as a member

of the JCC and she participated in its twelfth session on November 26, 2021, where the Joint Declaration was adopted. On March 25, 2022, a representative of YUCOM participated in the thirteenth session of the Joint Consultative Committee of Civil Society (JCC), where the Joint Declaration was adopted. In this Declaration, among other things, Serbia was re-called to provide a free and favorable environment for the work of civil society, and deep concern was expressed regarding the continuous attacks and pressures on human rights defenders in Serbia.

2. National level networking

National Convention on the European Union (NCEU)

As one of the founders of the National Convention on the European Union (NCEU), YUCOM coordinates the work of the NCEU Working Group for Chapter 23 – Judiciary and Fundamental Rights. During 2021 and 2022, the NCEU Working Group for Chapter 23 has been actively monitoring the process of amending the Constitution of the Republic of Serbia in the part related to the judiciary, as well as the regular implementation of the revised Action Plan for Chapter 23. Members of the Working Group attended all public hearings that were organized in the process of amending the Constitution, and participated in numerous public

debates regarding amendments to laws, including the Law on Civil Procedure, the Criminal Code, the Law on Police, but also in working groups for developing strategic documents.

In the reporting period, two sessions of the Working Group were held, and the group was informing the public on the results and issues in the European integration process through press releases and media appearances. As it has been emphasized at the sessions, and repeated in the *NCEU Book of Recommendations*, the main recommendations are related to the independence and efficiency of the judiciary, the fight against corruption, public administration, access to information of public importance, free legal aid, protection of personal data, children's rights, national minorities' rights, the position of human rights defenders, as well as the position of independent institutions. We criticized the organization of public hearings, since they have to be held in accordance with the legal framework, i.e. they must not necessarily and always last 20 days, which is the minimum period stipulated by the Law and the Rules of Procedure of the Government.

The NCEU Working Group for Chapter 23 has 59 members, representatives of non-governmental organizations, professional associations, legal and academic communities, institutes, as well as individuals, who actively contribute to its work. It continues to actively monitor the process of European integrations, to emphasize shortcomings of the proposed reforms and inform the public and relevant European Union stakeholders on them.

The Three Freedoms Platform

The *Three Freedoms Platform* was founded in 2019 to preserve the space for civil society in Serbia, aiming to protect and promote freedom of association, assembly and information, during the International Civil Society Week. The platform has been operating for three years and regularly issues reviews on cases of violations of basic human rights in Serbia. The environmental protests at the end of 2021 were an opportunity for the Platform to engage in the networking of legal and financial support for citizens who have been prosecuted as a misdemeanor for participating in blockades.

The Three Freedoms Platform is consisted of: Civic Initiatives, Youth Initiative for Human Rights, Center for Research, Transparency and Accountability (CRTA), Transparency Serbia, Belgrade Center for Security Policy, Belgrade Center for Human Rights, Lawyer's Committee for Human Rights YUCOM, Center for Cultural Decontamination, Trag Foundation, Our Endowment, Serbia on the Move, New Optimism, Policy Center, Slavko Ćuruvija Foundation, Autonomous Women's Center, A11, Helsinki Committee, Catalyst Balkans, National Coalition for Decentralization, Partners Serbia.

Network “Solidarity for the Rights of All”

The Lawyers' Committee for Human Rights – YUCOM, the Belgrade Center for Security Policy (BCSP) and the National Parliament lead the network *Solidarity for the Rights of All*. Within the network, the first interactive map of attacks and pressures on human rights defenders in Serbia has been launched. Two years of collecting data have justified the existence of this kind a map, which, based on facts, indicates the increasingly difficult position of activists and organizations that advocate for human rights.

Attacks and pressures are becoming more serious and more often target citizens who are not activists, but have provided support for human rights protection. Researching publicly available data and interviewing victims of pressures and attacks, 183 attacks and pressures have been registered on the map so far, both on activists who work on human rights protection, and on citizens who, due to their actions, found themselves in that role and suffered consequences.

The large number of incidents in Belgrade brings up the lack of information from the local level. The real number of attacks is probably significantly higher, but cases outside of major cities have not been

reported nor have attracted attention of the local media. The plan is to expand the network through a program of legal and financial support, as well as training for local organizations and activists. This will enable information to be timely and completely obtained from the spot in order to plan activities to protect and improve the position of human rights defenders. In addition to the map, two annual reports on attacks and pressures on human rights defenders have been published as well as a series of periodical newsletters that have been distributed via e-mail.

