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The Republic of Bulgaria
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YUCOM
Lawyers' Committee
for Human Rights

YUCOM 2017-18 ANNUAL REPORT

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ANNUAL REPORT

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FOREWORD

Introduction

Writing an editorial for YUCOM's Annual Report has just become my delightful habit, and I already need to hand it over.

From the first Annual Report that we had presented in 2013, our report has been the reason to line up, to gather at the end of the year and create topics overview that preoccupied us, as well as a list of the activities we performed. It is always an opportunity to summarize the trips around Serbia and the region, successes, to boast about a bit and, most importantly, to present how we helped citizens, how much legal advice was given, how many representation before the court we had. Since YUCOM has been established, a rough estimation is that over one hundred thousand citizens directly felt YUCOM's kindness, and above all, thousands of citizens who, each year, since the first representation before the court and judgment from 1997 to the present day, have received free legal aid. There are also tens of thousands of our citizens who, during the 1990s did not want to participate to the wars, so they were amnestied based on the Law written by this organization, which has done everything to ensure its adoption as the first Law following the October 5's changes in 2000, and then everyone who used conscientious objection.

In the course of 2018, we were leading true trench warfare to amend the Constitution in the field of justice, standing with the judges and prosecutors when it was hardest for them and when it was necessary to support their energy and the need to show integrity. We left the room where a public debate on amendments to the Constitution was held as a sign of support to colleagues in the struggle for the separation of powers.

The separation of powers is not something that someone gives or hands over to you. Above all, it is a constitutional category, and then it is a value which, in every society, you have to fight for. We have taught people around us that once the rights have been won, they have to be preserved and that the constitutional provision that tells us that the attained level of human rights must not be reduced, is the basis for understanding human rights work.

We have also been leading the "tiny" decade struggle for adopting the Law on Free Legal Aid, the Law that after all recognizes civil society organizations, legal clinics at law faculties, in a real easy manner. I was a member of the working group and said that I was going to retire once this law would be adopted, but the Ministry of Justice, and then the National Assembly, afterwards, with voting, confuted me. The Law recognizes the wider categories of vulnerable citizens, those who have deserved free legal aid, patiently waiting for more than ten years for the country to implement it.

We got the first case before the court for hate crimes, after we managed to include this provision into the

Criminal Code in 2012. The famous Article 54a has finally been successfully used, from our lawyer, through the prosecutor, to the judge and ultimately to the public who has received information that these crimes are being punished and that it is not in vain to file criminal charges.

We have also participated in the "internal dialogue on Kosovo", said openly what we think about the frozen conflict, and the wish to make it disappeared from the front pages. We expect the frozen conflict to start melting, but not to heat the conflict up, which we clearly said at the end of March in 2018 within the conversation with the President of the Republic of Serbia, Aleksandar Vucic.

The rule of law marked out 2018, as two words which all of us have been turning back to, but also as the ideal we have been aiming to.

It is more correct to say European integration of Serbia than the European integrations of Serbia, as an attempt to start reforming Serbia, it will probably have got two open chapters, a few days after my editorial writing. They will additionally occupy the state administration in order to try to be improved, and at the same time to depoliticize, with our wholehearted support. We need a miracle, but I believe in miracles, and the European Union believes too.

During the National Convent in which we participated in leading Working Group for Chapter 23, as well as the Working Group for Chapter 35, we sat at the table, discussed the laws and their implementation, and the aforementioned Constitution. Using the non-legal language we also clarified in the media why we have started with the reforms, what human rights serve for – that they were not accidentally enrolled in our Constitution, in the best international conventions, documents that bound our country and all three branches of government.

Two mandates i.e. exactly eight years as a Head of YUCOM, a period when I was able to get to know the organization, build its capacities along with a team that has been growing, recognize the strength in anyone who has become part of the organization and solidified the team. It was an opportunity to develop myself in these transition years, from student protests in the nineties, to the present day.

The fact that the organization is stable today, that it primarily respects human rights and that mutual dialogue has been open, it is the greatest success I present to you here and which I am personally proud of. Everyone in the organization has fought for this, as they have to continue fighting outside the office, in their home, in institutions, in front of the stronger.

"Lead by your own example" has always been my motto, but also the motto of the team that works in YUCOM, and I'm sure it will remain the same.

Milan Antonijević
Former Director of the
Lawyers' Committee for Human
Rights – YUCOM

In other words

The struggle for preserving human rights institutions was in the focus of YUCOM in 2018. The struggle was characterized by solidarity with those whose work we have criticized the most in our work. Higher interests, which are the interests of citizens and the right to a fair trial, have united human rights organizations, judges and prosecutors in order to eliminate the political influence on the election of judicial representatives.

For the end of the year, we sent a call to protect one more institution: the Commissioner for Information of Public Importance and Personal Data Protection, through the request that the process of electing the head of this institution include the most prominent candidates.

This year, the organizations themselves and their work on providing legal information should have been preserved. YUCOM's work on the Self-Representation Guide came under public condemnation of bar associations, but not because of lack of quality. On the contrary, the high quality of this guide is reflected in the fact that most courts and municipalities have accepted it, promoted it and made it available to the citizens on the front pages of their web portal. We openly opposed to a written call to stop spreading the legal information to citizens, encouraging other organizations to continue their work.

In addition to providing legal advice, in two years, together with partners from eight Danube Region countries, we have succeeded to develop the Danube Compass Internet platform that provides all the relevant information, critical for the integration of migrants into society. Launching the Danube Compass, which has been translated into 5 languages, is a crown of work on providing information and making it easily available to vulnerable people. Bearing in mind that the project has been selected as one of the best within the EU, we have once again shown that we have a team capable to respond to the everyday problems of citizens through innovative approaches and solutions.

Problems in access to justice, in terms of procedural costs and misunderstanding of the legal language, have been analyzed in detail. The best ways to overcome these issues are presented in two new guides that we created in 2018, in order to help a large number of citizens. On the other hand, the most vulnerable individuals have received from YUCOM more than information – support in the form

of representing before court. Abuse from superiors – at work, in the family, in prisons, in institutions – is another kind of force we have been fighting for others. There is only a selection of cases that is shown in this Report. The reason for the small number of cases presented here is great work on many others.

The work of YUCOM does not end in the courtroom. The enforcement of domestic court judgments and the European Court of Human Rights is one of our requests and subjects of monitoring in front of domestic authorities and international mechanisms. This year, the Committee of Ministers of the Council of Europe has respected our appeals that Serbia should responsibly approach the obligation to execute the verdict Zorica Jovanovic v. Serbia.

Strengthening the influence of the non-governmental sector in the enforcement of the judgments of the European Court is becoming a strategic determination within the international network for executing judgments whose founders we have been. At the domestic level, YUCOM is one of the founders of the Platform of Organizations to Monitor the Recommendations of the UN Body for Human Rights formed in the middle of the year. The platform is a response to the need for continuous collaborative work of experienced organizations in reporting on the state of human rights.

The media also followed our activities this year and invited us to comment on certain phenomena in society. We noticed that the way of approaching certain topics violates the rights of others, and we entered the critique of "collaborators". YUCOM's criticism is always accompanied by an educational moment: in December, a *Guide on Reporting in Criminal Proceedings* was published.

And to conclude: the struggle of YUCOM has been traced for 21 years, and we are present on many tracks. Most importantly, Biljana Kovacevic-Vuco stamped, and Milan Antonijevic certainly expanded the front fighting, retained the old and gained new allies. We thank him for his great dedication and we are sure that his knowledge of the civil sector and the needs of our society will strengthen not only the foundation that he leads, but other organizations, which he was doing so far with YUCOM. YUCOM's aims, agenda and team will remain the same, because we believe that we jointly contribute to the promotion and protection of human rights in Serbia.

Katarina Golubović
Director of the Lawyers' Committee
for Human Rights

02

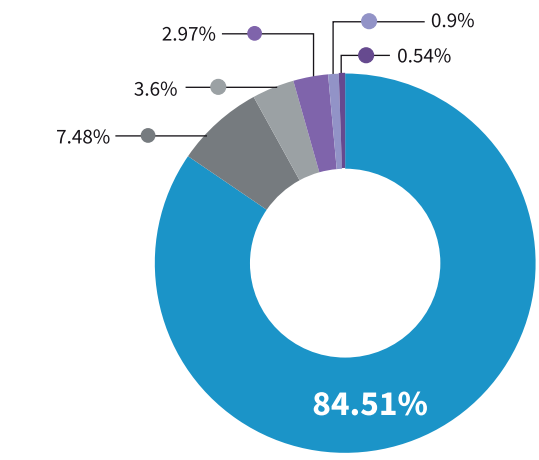
Free legal aid

Free legal aid August 2017 – October 2018

When we are talking about our primary activity, providing free legal aid, with no exception for the period 2017-2018, we tried to enable access to justice to as many citizens as possible, aside from their economic, social or other statuses that would otherwise be an obstacle to the exercise of their rights. Despite a large number of requests, we managed to respond to all the requests for free legal aid, as well as to meet and answer all the questions that citizens asked us.

During the mentioned period spreading through August 2017 to October 2018, over 2000 citizens contacted us and showed their trust in our legal team. The most common way of contacting us was by phone or e-mail, as well as through letters, but also through social networks. From this year's statistics, we can conclude that the given legal advices (70.10% of cases) and information (24.21% of cases) were significant to ensure the exercise of their rights in front of the competent courts and other institutions, not only domestic, but also international ones. Legal assistance was also provided when drafting submissions or urgent appeals in 102 cases, while in 63 cases our legal team took the representation in order to protect the rights before the courts, administrative bodies or the Constitutional Court, as well as the European Court of Human Rights.

SOCIAL GROUPS

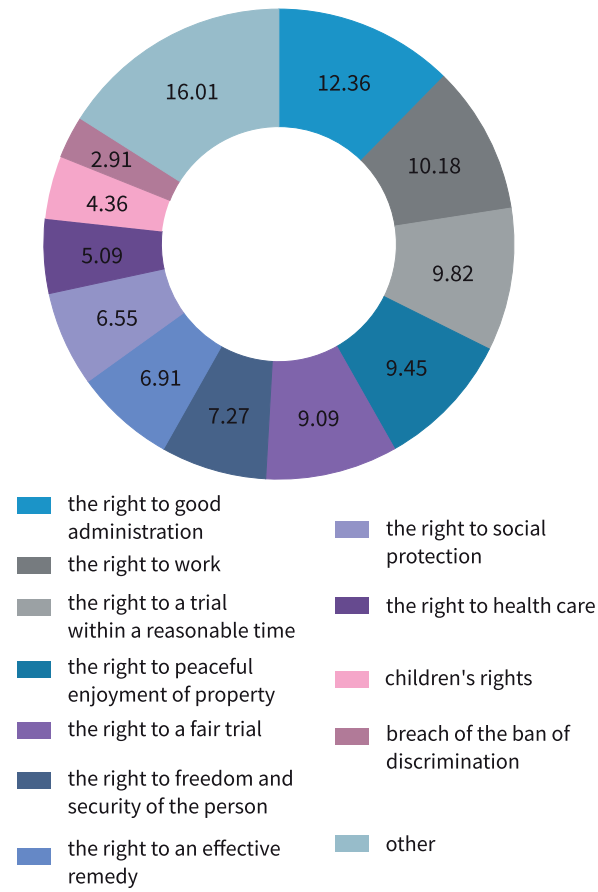


In relation to social groups, persons in the category of"broader public" (68.83%) are still the most represented, while the other categories are social welfare seekers (7.48%), children (3.60%), persons with disabilities (2.97%), persons deprived of their liberty (0.90%), LGBTQ+ persons (0.54%), as well as Roma, displaced persons and returnees, as well as foreign citizens and human rights defenders. Often, some free legal aid seekers simultaneously belong to more than one social category; for instance Roma and people with disabilities can often be social protection seekers at the same time. The majority of citizens who contacted us belong to the age group of 26-45 years old, but the number of citizens aged 46-65 (31.72%) is not negligible, while the gender division is fairly equal.

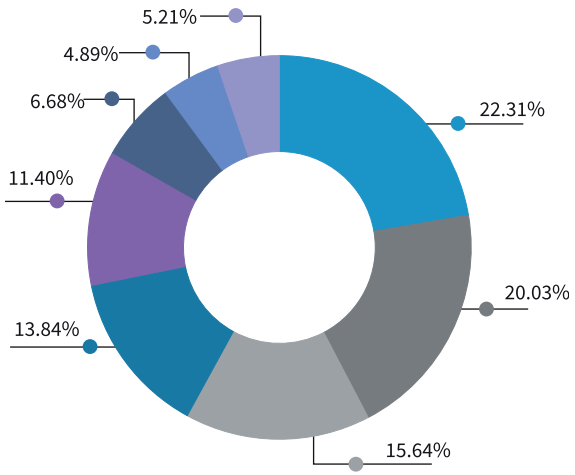
Regarding human rights violations, the highest complaints of violations are regarding the right to good administration (12.36%), followed by the right to work (10.18%), where unfortunately, as a special category, pregnant women and pregnant women that had problems with unpaid earnings and contributions, their further treatment, as well as the evident problem related to the conclusion of contracts for temporary and occasional jobs (they do not correspond to the employee's status, and they do not have the rights that arise from that status). Next is the violation of the right to quiet enjoyment of property (9.45%), violation of the right to a trial within a reasonable time (9.82%) and the right to a fair trial (9.09%), the right to an effective remedy (6.91%), the right to social protection (6.55%), the right to health care (5.09%), the violation of the right to freedom and security of the person (7.27%), but also the rights of the child (4.36%), breach of the ban of discrimination (2.91%), where the most commonly observed violations were based on nationality (41.67%), sexual orientation (16.67%) and disability (16.67%), and, in a smaller number of cases, on the basis of earlier convictions (8.33%) and political affiliation of marital and family status.

The increase recorded in respect of the violation of the right to quiet enjoyment of property, in many cases, is related to the endangered rights of "third parties" in the enforcement proceedings, who can not protect their property, despite the objection, as this obviously does not represent an effective legal remedy even though the protection of third parties in enforcement proceedings is an existing legal re-

ENDANGERED HUMAN RIGHTS



BRANCH OF LAW



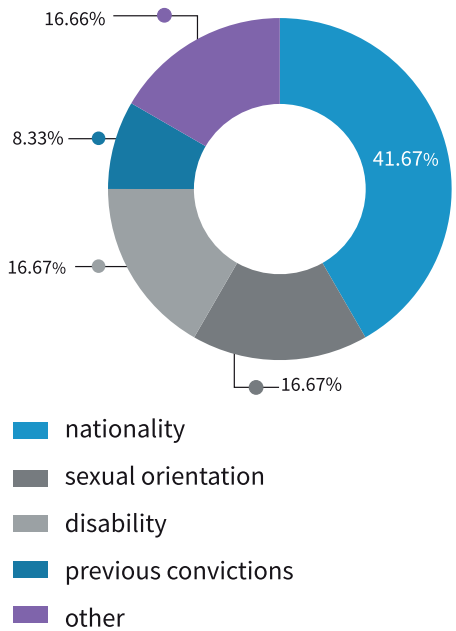
course. Article 58 of the Constitution of the Republic of Serbia enshrines the right to quiet enjoyment of property and other property rights acquired on the basis of Law, and the right to property is protected in Art. 1. Protocol 1, along with the European Convention for the Protection of Human Rights. It is therefore justifiable to raise the question of the effectiveness of legal remedies in the enforcement procedure and their role in relation to the rights guaranteed to citizens. Regarding the enforcement procedure, compared to the period from the previous report, the citizens are slightly better informed about their rights and obligations arising from the enforcement procedure, but there are still some doubts and misunderstandings in certain stages of the enforcement procedure, the charging of expenses by the enforcement agent and similar. As practice has shown, citizens need help by clarifying or providing timely information in exercising certain rights in the enforcement procedure, as there are still uncertain questions remaining in the application of certain articles of the Law on Enforcement and Security Interest which requires a transparent response in order to harmonize the practice of conduct.

According to the branch of law in which legal help is provided, labour law is still in focus (22.31%), but thereupon are family law (20.03%), law on contracts and torts (15.64%) and criminal law (13, 84%). The number of cases in the field of property rights (11.40%), inheritance rights (6.68%) and administrative law (4.89%) is not negligible.

When specific cases of legal aid are concerned, domestic violence (27.93%) and abuse at work (12.61%) are unfortunately still the most frequent reasons for addressing. Special attention is paid to family disputes, mainly about non-payment of alimony (21.62%) and custody of children (22.52%). There is an increase in cases of determination and denial of paternity, which until now represented true exceptions.

The Law on the Prevention of Domestic Violence, which came into force on 1 June 2017, did not significantly affect the reduction of domestic violence cases in our records, but it certainly affected the propensity of the victims of domestic violence to report, since the quick and effective reactions of the police in the primary protection of the victim, enabled the victims

VIOLATION OF THE RULES ON THE PROHIBITION OF DISCRIMINATION



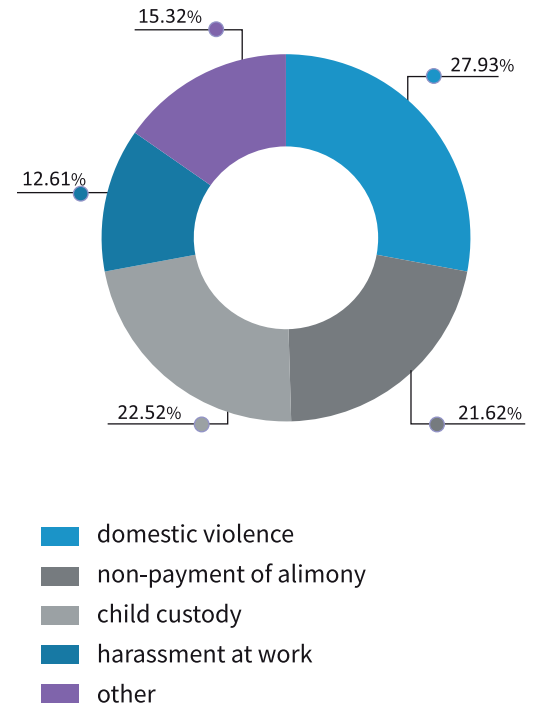
to regain a little trust and to report the violence. The law on the protection of the right to a trial within a reasonable time shows certain effects, citizens submit complaints that are being decided and a large percentage of these objections are legally based, but the question remains how much the same decision on the merits of the trial within a reasonable time really affects the final outcome of the proceedings in which they were complained.

Strategic litigation continues to be one of our most important activities as these cases may result in changes in regulations, legislative initiatives, changes in the current practice of dealing with courts or other state authorities.

We have devoted a special part of this report to selected advocacy cases.

YUCOM's legal team currently consists of seven lawyers, of whom four lawyers and three law graduates. If you or someone you know has a problem and believe that his human rights are endangered, you can contact us by phone 0700400700 or e-mail office@yucom.org.rs and talk to one of our lawyers. If necessary, the legal team will request to gain insight into the documentation and, after consultation, provide the answer or information requested.

SPECIFIC CASES OF PROVIDING FREE LEGAL AID



Selected advocacy cases

1. Deprivation of liberty due to a Facebook post

A criminal proceeding was initiated against F.J. in June 2018 for allegedly committing a criminal offence causing panic and disorder. On June 14, in the evening, on his Facebook profile, he published a post stating that the water in Belgrade was contaminated, that some carcinogenic substance was spilled into it, and it should not be drunk during the day. This news was already circulating in all the social networks since the very morning, and had been transmitted by several online portals. The very next day, F. J. received a call to report to the police, the Organized Crime Department, which he did. In the meantime, his computer and cell phone were taken.

After a police interrogation, F.J. was detained for 48 hours, and then detained for 13 more days. Respecting the appeal of YUCOM lawyer, the decision on detention was revoked, but he was imposed a measure of home custody, which is still ongoing.

After being released from custody, YUCOM lawyers repeatedly tried to make a point to the prosecution and the court regarding the groundlessness of the measure imposed. However, decisions rejecting appeals against the extension order, as well as the solutions rejected by the court to abolish this measure, justified the negative decisions simply by stating that it poses the danger the defendant repeats the act “keeping in mind the high availability of computers and the Internet”. In no way did the institutions rely on the arguments the defendant raised in his appeals: he did not repeat the act during the five months he spent in “home custody” even though he had the opportunity to do so, since he stayed with his parents who have smart phones, and was visited by friends, who could also allow him to repeat the act on their phones, tablets or laptop computers.

F.J. decided to sign a plea agreement with the prosecutor’s office, although he was instructed by the defence counsel that there were no elements of a criminal act. His decision was a result of the pressure exerted by the unfounded detention and the fear of losing his job. Nonetheless, the measure of “home custody”was extended again. What is more, the determination of the date of the hearing during which this agreement on the recognition of the criminal offence was examined by the court was unjustifiably late.

The court was also contacted by the company employing the defendant, requesting to suspend the

measure for the purpose of coming to work. In the application, the reasons justifying for the presence of F.J. at work were very important and it was also guaranteeing that he would not be allowed to use social networks, or that he would solely use Internet for job purposes. This request was not accepted, and F.J. lost his job.

Since in its decision the High Court provided insufficient explanation to justify the further detention of the defendant, the Lawyers' Committee for Human Rights addressed the Constitutional Court of Serbia, pointing out the violation of the right to liberty and security, as well as the limited duration of detention. At the same time, it was also requested from the Constitutional Court to issue a provisional measure to abolish home custody until the Constitutional Court renders a decision on the appeal. The procedure is still ongoing.

2. Violence motivated by homophobia

The case of long-term domestic violence provoked by a son, I.S., sharing his homosexuality to his family members has received a judicial epilogue five years after the trial began. YUCOM wrote about this case in the 2015 report. We recall that I.S. was for many years a victim of psychological and physical violence from his father, as well as his mother, who stood in his defence. Constant psychological violence, threats and blackmail were followed by frequent acts of physical violence, especially in situations that would be seen as an additional trigger by the Defendant – for example, when the victim brought his boyfriend, or even his friends, at the apartment. After addressing the YUCOM legal team, it was decided to run in parallel civil and criminal proceedings in order to protect the victims of domestic violence.

Litigation was concluded with a legally-binding verdict in less then two years. Among other things, the decision ordered the eviction of the father from the family apartment, as well as a ban on further violence and harassment toward the plaintiffs. All the material collected during this civil procedure was successively submitted to the Acting Prosecutor, which was very significant, as it included an expert testimony stating that I.S.' and his mother's profiles matched the profiles of victims of violence, while the profile of the Defendant corresponded to the authentic profile of the abuser.

Although the Acting Prosecutor did not include the above-mentioned provision in his initial indictment, it was done during the last main hearing. The Prosecution accepted the argument of the injured that the motive for the commission of this criminal offence was precisely the "awareness" of his son's sexual orientation, and it was important that Article 54a of the Criminal Code, which sanctions hate crime, was included in the indictment. An additional argument for the application of this aggravating circumstance was the defendant's own defence, who considered that the sexual orientation of his son was a justification for violence against him, adding the institutions would share the same attitude, that is, justifying his legitimate struggle against his son's "illness". He lived in a firm belief that his son's homosexuality could be corrected by treatment, for which he insisted for years, and the refusal of his son to undertake "cure treatment" led to the escalation of violence.

The First Basic Court in Belgrade convicted the defendant with the criminal act of Domestic Violence committed out of hatred due to the son's sexual orientation, and it represents the very first verdict in Serbia which takes into account Article 54a of the Criminal Code when fining the sentence. We consider this verdict extremely important, since it is the result of many years of work in the intersectoral working group for the fight against hate crimes in the Republic of Serbia, where YUCOM participated with representatives of the Prosecutor's Office, the Police, the OSCE Academy of Justice and several civil society organizations. We hope that the judgment will influence the institution's handling of future similar situations in order to provide an adequate protection to members of vulnerable groups who must benefit from a greater protection, but also to raise awareness on the harm done by hate crimes on the whole society, thereby contributing to its general prevention.

3. Antonela Riha against the defendant NIN-a

The Court appreciated the specifics of the journalistic profession in assessing the legal employment status.

Antonela Riha, editor of the political section and journalist of the social-political magazine NIN, received a sudden resignation on April 16, 2015.

Riha was the editor of the political section, certainly the most important section in the NIN. At the same time, she worked on authorial texts, and occasionally she had headlines. YUCOM took over representation in this case given that the manner in which Riha was dismissed and, at the same time, the credibility she had as a journalist in the society showed that she was both an editor and a journalist for some "undesirable" reason. YUCOM decided to run this strategic case of labour law, ***because the working position of journalists is crucial for media freedom.***

The first instance procedure was conducted before the First Basic Court in Belgrade from 15 June 2015 to 15 March 2018. The length of the proceedings is due to the number of witnesses who have been examined, since the Plaintiff proposed that all the employees and workers speak before the court about the internal company's policy, in order to avoid that only some colleagues exposed themselves to, in her opinion,"an unenviable situation".

During 2016 and 2017, numerous hearings were held where witnesses – journalists – testified about her qualities, professionalism and her cooperation. It is particularly important to underline the fact that they were all absolutely surprised by the dismissal of Riha.

Namely, NIN claimed that the post was abolished almost a month before the decision on the resignation was made, and the amendment of the Ordinance on internal organizationand job classification. However, none of the journalists affected by this Ordinance were familiar with the changes. This raises the question of the uncertainty of the legal employment status of journalists and the possibilities of influencing freedom of expression.

The explanation that the resignation was the result of a bad economic situation and the lack of necessity for such a job (editing) did not correspond in any way to the factual situation.

During the proceedings, the court appreciated the specifics related to the journalistic profession. When issuing the verdict, which annulled the decision of the defendant NIN d.o.o., ruled it as unlawful, and at the same time notified the defendant to return Antonela Riha to her previous position in accordance with the qualifications of the Plaintiff, the court gave the following reasoning:

"In the following case, the Defendant did not manage to specifically define and identify the organizational and economic changes justifying why the Plaintiff got fired as well as the dismissal decision itself, which does not stand out from the testimony of witness Milan Culibrk, the editor-in-chief of NIN, who decided to dismiss the Plaintiff during the same meeting where he was informed that, following management's request, one person had to be dismissed, hence he decided it would be the Plaintiff without providing any clearly explained criteria for such decision, and keeping in mind that employee's evaluation had not yet been conducted at that time. In addition, the Defendant did not offer to Plaintiff the second measure of employment, although the cancellation of the employment contract can only be followed if none of the measures of employment led to results.

Thereby, two weeks after the Plaintiff was dismissed, the Defendant hired another journalist who continued to conduct political interviews in the political section, and the Plaintiff also worked on that job until the dismissal. In addition, the Defendant hired many

part-time associates even though he has already had 35 employees as journalists, even the editors were part-time associates, and for each number of NIN there were ordered texts of public figures, experts, experts paid for it, some of them working on a regular basis, so that the financial resources for the work of journalists were set aside for part-time associates in accordance with the budget for that year. According to the finding of this Court, Defendant could not have declared the Plaintiff as a surplus before offering a job which they were engaged part-time associates for, regardless of the fact that they were not employed for an indefinite period precisely because of the specificity of that type of work and organization of work of the Defendant – to engage part-time associates and for the workplaces envisaged by the systematization of the Defendant.

In particular, the Court kept in mind the fact that until the dismissal of the Plaintiff, it had never happened before that the political section remained without an editor, and the Court determined that there was always a need for an editor position in the political section, due to the testimony of the examined witnesses and the Plaintiff, as well as from the fact that those jobs were dismissed by the editor-in-chief ..."

4. Sexual orientation discrimination

In the divorce proceedings between S.S. and her husband, in which there was an issue regarding the custody of her minor children, S.S., who was sued as a mother of children, was represented by the Lawyers' Committee for Human Rights – YUCOM. Since in the meantime S.S. had engaged in a same-sex relationship, the opinion of the competent Social Welfare Centre evaluating the parents and their children was highly discriminatory against the mother. In the opinion of the Social Welfare Centre, discrimination was reflected through the subjective transmission of the statements of both sides and the insistence on the sexual orientation of the mother. The Centre determined that one of the two minor children was highly bonded to the mother, given the age of the child, and that" both parents have the eligibility to exercise parental rights. Parents have cooperation that functions in the realization of the basic needs of underage children and the need for stimulating their cognitive development. Both parents invest positive emotions in relation to underage children." Despite this, the Social Welfare Centre concluded, without any explanation, that the father adequately saw the interests of his underage children and decided it was in their best interest to be entrusted to the father's care and custody as the dominant parent. Having in mind the contradictory nature of the established facts and the final opinion of the Centre, as well as the manner in which the observation of parents and children was conducted, the Committee of Lawyers for Human Rights submitted a request to the Ministry of Labour, Employment, Veterans' and Social Affairs for extraordinary supervision over the work of the competent Social Welfare Centre, due to discriminatory treatment towards the mother of children based on her sexual orientation.

The Ministry found gaps in the work of Social Welfare Centre, among other things, "that the argumentation is given in general terms and is unclear, not explaining what are the children's interests that are said to be adequately looked at, which the mother does not conceive, putting her in a more unfavourable position in terms of the possibility of parental rights alone". After the inspection, the Centre was instructed to re-evaluate the situation, especially given the developmental needs of the children and to review their decision. In repeated surveillance, which was done much more thoroughly than the previous one, more conversations with children and parents were carried out, as well as several home visits. The finding of the Centre completely changed, relying on the developmental needs of children, rather than on the sexual orientation of the mother, and the opinion was that the mother was the parent to whom the parental right should be left. Despite numerous difficulties, the litigation procedure of divorce ended after two years with an agreement on the joint exercise of parental rights.

5. Discrimination based on religious beliefs

D.M., from Kragujevac, was a victim of domestic violence, which was not established by a final court decision, since the lawsuit for violence was withdrawn, but the Social Welfare Centre, immediately before the withdrawal of the lawsuit, handed over to the court its opinion stating that there was domestic violence toward D.M., and that protective measures should be issued.

After the divorce proceedings, D.M.'s former husband received a restrictive permission of seeing the children. In 2017, he filed a lawsuit for changing this permission. Since D.M. had a lawyer in the proceedings, the Lawyers' Committee for Human Rights –

YUCOM, intervened in this procedure at the request of D.M. upon her lawyer's advice, at the moment when the Social Welfare Centre delivered an opinion on the new access permission between children and father. The Social Welfare Centre, in its delivered opinion, repeatedly insisted on the religious beliefs of the mother, who is a member of the religious community of Jehovah's Witnesses, thus finding for one of the minor children: "that there are elements of introducing a child to religious contents and rituals that are not adequate for his age, interests and social maturity, and are contrary to the child's will". The Center for Social Work formed this opinion after the child's statement saying he was constantly watching cartoons related to god, and was allegedly afraid of it, despite the fact that the members of the expert team, at the mother's suggestion, were asked to look at the kind of cartoons the child was watching, but they categorically refused. The Centre completely ignored its previous opinion stating it was appropriate to issue protection measures against domestic violence and, with emphasis on the religious commitment of the mother, delivered the opinion that the children needed to spend half of their time with another parent, that is, the father.

The Lawyers' Committee for Human Rights – YUCOM, once again addressed to the Ministry of Labour, Employment, Veterans' and Social Affairs with a request to supervise the professional work of the Social Welfare Centre, since this opinion violated the constitutional prohibition of discrimination based on religious beliefs. We pointed out that children of Orthodox parents are exposed from the earliest age to religious rituals, such as baptisms, weddings, going to the church, as well as religious contents, and that there is no single justification that something like this might be offended for someone who is not Orthodox, as long as these contents do not compromise the psychological and physical integrity of children, which the Social Welfare Centre was certainly unable to determine, since it refused to inspect the allegedly problematic religious contents.

Six months after this memo, we were informed that the Ministry supervised the work of the Social Welfare Centre and that in the repeated procedure, a new opinion was passed in which the observation was downgraded to the relations between parents and children, and not based on the personal characteristics of parents, which are irrelevant on determining their parental capacities.

6. M.Dj. The right to health care

M.Dj., who is serving a prison sentence at the Juvenile detention centre in Nish, suffered for a long time of a chronic inflammation of the ear causing him severe pains. After addressing the Health Care Service of JDC Nish in 2016, it was established that the operation was necessary, but until June 2018, when he first contacted our organization, the operation had not yet been performed.

The Health Care Service of the JDC Nish has taken the necessary actions to have the operation scheduled several times in 2017 and 2018 in JDC in Nish. However, the operation did not occur twice, once due to a malfunction of the apparatus, and another time due to the procedure of scheduling in JDC Niš, since the information about whether the person was on the schedule for next week's surgery was only received on Friday. Thus, M.Dj. could not be operated since every time the pre-operative analysis was outdated for the operation, all of this because the health care service of the JDC Nis was unable to implement the pre-operative analyses in the time required.

As Article 113 paragraph 3 of the Law on Enforcement of Penal Sanctionsstipulates that "A convicted person who can not be provided with appropriate health care in the institution, is referred to a Special Prison Hospital or other medical institution for medical examination ...", there was an obligation of the Juvenile Detention Centre in Nish to provide M.Dj. with an operational intervention in a health institution where it was possible to perform the necessary intervention.

M.Dj. sent several urgent requests and asked the warden of the JDC in Nish to allow the operation, but thesedemandsdid not lead to the realization of his requests. At the end of 2017, he addressed the execution judge, invoking that his right to life and physical integrity was endangered, but this request was rejected as unfounded, and he was again sent to the Health Care Service within the institution, which he had repeatedly addressed on that occasion, but the Health Care Service responded by referring exclusively to JDC in Nish.

The Lawyers' Committee for Human Rights – YUCOM received the call from M.Dj. who contacted us for legal aid after using all the remedies mentioned. Our Organization sent a complaint to the Ombudsman on 10 July 2018 concerning the conduct of the Juvenile Detention Center in Niš, based on that, the Ombudsman initiated a procedure to control the legality and

regularity of the work of that Centre. The Juvenile Detention Centre delivered a report from the Head of the Health Care Service in Nish to the Ombudsman, which stated that the service has made great efforts to carry out the treatment of M.Dj., but that cooperation with that clinic was lacking. As stated by the Ombudsman, since the aforementioned report of the Service did not contain any concrete data on the undertaken actions, additional clarifications have been requested about what specific actions the JDC have been undertaking since 2017.

Afterwards, on October 18, 2018 the JDC submitted to the Ombudsman that M.Dj. would be taken for operative treatment in JDC scheduled for October 19th and finally that the operation was realized.

7. D.C. The right to a free attorney

D.C., a victim of domestic violence by her husband, filed a divorce lawsuit in which she decided, inter alia, on the custody of a minor child. After the hearing, the judge panel reached a decision in which the Plaintiff was warned that, in this legal matter, an attorney was necessary. Then D.C. addressed the Lawyers' Committee for Human Rights – YUCOM seeking legal advice on how to act since she was not able to hire a lawyer.

The Legal team of the Committee found that there were grounds for the Plaintiff to submit a **Proposition for exemption from payment of costs of proceedings and recognition of the right to free attorney** in accordance with the Civil Procedure Act and the Law on the Prevention of Domestic Violence, which was finally submitted in early April 2018.

The proposal specifically emphasized the nature and type of the dispute's matters, apart from divorce, which included the custody of a minor child, the protection against domestic violence andespousal support, which spoke of the assets of the Plaintiff and her position in the community. On April 13, 2018 when the Law on Free Legal Aid was in the draft stage, the Trial Chamber reached a decision declaring the right to free legal aid in a civil case and ordered a free attorney to be appointed to the Plaintiff.

The President of the acting court reacted urgently, and at the hearing, a lawyer, appointed by the President of the court appeared, whereby YUCOM, with legal advice and quick reaction, applied articles of the Civil Procedure Act stipulating free legal aid, which, according to the research, are very difficult to use.

8. Discrimination based on the trade union affiliation

In front of the High Court in Belgrade in the procedure for protection against discrimination, the trade union "Eurovozac", founded within the City Traffic Company in Belgrade (GSP), was represented by the Lawyers' Committee for Human Rights.

Representatives of trade unions rose to YUCOM legal team's attention actions that were undertaken within the mentioned public company toward the trade union members, which resulted in a violation of the rights of the trade unions to freely conduct their activities.

Due to the union's program that did not correspond to the governing structure, the members of the trade union were being imposed difficult working conditions: most of them were reassigned in short deadlines for new jobs that did not correspond to their professional qualifications,they were assigned to jobs with difficult working conditions, they were transferred to work on lines located in distant municipalities from their place of residence, which was not a common procedure in the company.

Trade union members were subjected to pressure and threats of dismissal unless they withdrew from the "Eurovozac" trade union, which resulted in a reduction in the number of members from more than 1000 to less than 300, whereby the union lost its representativeness and thereby the opportunity to receive donations and effectively participate in decision-making regarding issues concerning the rights of employees.

YUCOM filed a lawsuit in order to protect against discriminatory treatment based on union affiliation. Initially, the lawsuit was dismissed since, according to the First Basic Court, the association of citizens has no right to file a lawsuit for protection against discrimination. Since such a decision was contrary to the provisions of the Law on Prohibition of Discrimination, we filed a complaint that was adopted, and the procedure was resumed. Although the Law prescribes the urgency of dealing with anti-discrimination lawsuits, this procedure was completed by a judgment solely six years following the date the lawsuit was filled.

This is also the first procedure in Serbia in which the existence of discrimination based on union affiliation has been established.

Preliminary Assessment of the Draft Free Legal Aid Law in Serbia

The American Bar Association (ABA) Center for Human Rights has prepared a preliminary analysis of the Draft Law. Based upon that review, it has concluded that the law as proposed risks undermining access to legal counsel of one's choice in Serbia.

As a general matter, international standards require equal access to courts and protection of the right to a fair trial. According to Article 6 § 3(c) of the European Convention of Human Rights, a person is eligible for free legal aid if (1) the person does not have means to pay for legal assistance and (2) the "interests of justice" require the provision of free legal aid. Although the Convention explicitly covers access to free legal assistance in criminal proceedings, the European Court of Human Rights has held that the "interests of justice" prong may also require free legal assistance in civil cases depending on the circumstances of a case, including, "the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively."

The Center's primary concern upon review of the Draft Law is that it does not make sufficiently clear that its provisions are aimed only at providing an infrastructure for government-funded legal aid services and not at regulating the provision of free legal services more broadly. Governments may legitimately put conditions and restrictions on how taxpayer funds are used so long as such restrictions are not arbitrary, discriminatory, or constitute violations of other fundamental rights, such as the right to equal protection of the laws, among others. However, additional structures and limits on the provision of free legal services from other, qualified sources amount to an impermissible infringement on the right to access counsel of one's choosing and impermissible restriction on lawyers' right to set their own fees and to offer their services on a pro bono basis. In addition, as a practical matter, limiting access to qualified lawyers willing to provide such services at no cost will remove a potentially significant source of legal services from the community. Such services are often a vital supplement to restricted government budgets that must necessarily make difficult choices about prioritizing limited funds.

Assuming the law is only meant to apply to government-funded legal aid, which it should be immediately amended to reflect, several provisions may still inadvertently limit, instead of expand, access to counsel in Serbia.

First, the Draft Law requires lawyers who wish to provide legal aid be approved by the Serbian Bar and their names maintained in a registry with the Ministry of Justice. By adding an additional barrier to otherwise qualified lawyers, the Draft Law again risks limiting the pool of available legal aid providers. It also creates an additional gatekeeping function for the Bar that goes beyond its already established role in supporting an independent legal association. To the extent names are included or excluded from the list, it creates an additional point at which political influence or bias may lead to arbitrary or even discriminatory decisions on who is providing legal aid in Serbia. While these and other concerns may be addressed by the anticipated implementing mechanism for the registry, it would be best addressed by either making the registry voluntary, as opposed to mandatory and therefore limiting, or by making it clear the registry will simply be the provision of all those qualified to provide the services under existing rules.

Second, the Draft Law appears to limit the type of legal professional who will be allowed to provide legal aid above and beyond already existing rules and regulations governing the legal profession. For example, Serbian law allows legal trainees to provide a number of legal services. Legal trainees are not referenced in the Draft Law, however, and so, assuming some of those services might be in legal matters that would otherwise qualify for legal aid, the law as is inadvertently cuts off a pool of potential legal aid providers in Serbia. This increases the likelihood of delays and overworked legal aid providers. It also could amount to an interference in the right to access counsel of one's choosing as the legal trainees are otherwise qualified to provide the legal services. In addition, as a general matter, as discussed above, it is concerning when governments attempt to put in place additional, apparently arbitrary, restrictions on who may provide legal counsel in any specific type of case above and beyond those regulations for professionalism and qualification that apply to the profession more generally. Such regulation inevitably poses a risk of arbitrary or discriminatory enforcement and undermines the independence, real or perceived, of the legal profession.

Third, the Draft Law overly centralizes the process for seeking and receiving legal aid to a separate government authority rather than the courts. Yet the courts are typically in the best position to weigh the request for legal aid in the context of the specific case both as a matter of efficiency and expertise. Requiring a separate case be made to another government authority increases delays and puts additional burdens on individuals seeking equal access to courts. It is also not clear from the law what sort of hearing and appeal process individuals will have should their request be denied. The law should be revised to either put the decision with the court or include additional information and guidance to ensure that the process to seek legal aid through the designated government authority is as simple and transparent as possible, including an appellate process.

Overall, the ABA Center for Human Rights preliminary conclusions are that the law may go too far in its desire to create an infrastructure for government-funded legal aid within Serbia and additional analysis and comment seeking on those provisions it has highlighted in this preliminary analysis would likely be helpful and appropriate. Most importantly, the law and any accompanying materials should make it absolutely clear that its provisions are meant to regulate government-funded legal aid services pursuant to its obligation to ensure equal access to the courts under the European Convention. It should in no way impact or be seen as regulating the provision of pro bono legal services by individuals, civil society organizations or law firms in any legal matter where they are otherwise qualified to do so.

03

Protection of human rights in 2017 and 2018 – current issues

The Law on Free Legal Aid

The Law on Free Legal Aid[1] was adopted by the National Assembly of the Republic of Serbia in November 2018, and as a result which was expected for more than a decade, has been completed. Adopting the systemic law in the area of free legal aid is a big step. However, the assessment of long-standing providers of free legal aid is that this Law does not essentially fulfill the basic idea of free legal aid – to help everyone in need in order to implement and protect their fundamental rights.

Although EFFECTIVE and EQUAL ACCESS TO JUSTICE has been proclaimed as the objective of this Law, the question is whether the solutions it offered are enough and whether it substantially justifies the proclaimed objective. The Law on Free Legal Aid did not fully recognize the need to regulate the field of free legal aid both in normative and qualitative terms, because its limitations do not meet the needs of all citizens and do not respect the current free legal aid providers from civil society organizations who have established that system, maintained it for more than twenty years, and enjoyed the trust of the citizens.

In the Drafting process of this Law, it was primarily needed to search for the citizens' real needs, as well as the real capacities of all former legal aid providers who had actively helped citizens during the 1990s and had allowed them access to justice, in order to interconnect and coordinate in the citizens' best interest However, it led to the finding of acceptable legal solutions that would allow associations to continue without hindrance to provide legal aid and expand the circle of providers in order to preserve and strengthen an effective and sustainable system of free legal aid all together.

The traditional practice of law was the first to stand against civil society organizations which, in the past twenty years, have been providing free legal aid not only to the poorest population, but to all marginalized, sensitive and vulnerable groups. Very often, due to the high costs and duration of court proceedings, access to the court was difficult or disenabled to many citizens. Additionally, citizens were able to ask for and get information and legal advice from associations of citizens. In

1 The Law on Free Legal Aid, "*Official Gazette of the Republic of Serbia*", no. 87/2018.

this regard, free legal aid, mainly in the form of legal advice, was also provided to those whose basic human rights were not undermined but who did not have any alternatives, including other free legal aid providers, such as municipalities and bar associations, which did not foresee any provision regarding that type of legal aid.

A large number of lawyers and legal advisors in non-governmental organizations have been formed, specialized, and, in a responsible and high-quality way, have provided assistance and have been engaged in the protection and promotion of human rights in areas related to the organizations' purpose and mandate., In accordance with other procedural laws, these organizations have built a viable and efficient system of legal assistance and gained the trust of a large number of citizens. In spite of the results and the trust that citizens have put into these associations until the present day, bar associations have called them "pretended scribe and laymen". Some organizations have even received "warning letters" where they were threatened that alternative measures would be undertaken if they would not stop providing free legal aid, referring to the "exclusivity that the practice of law has in accordance with the Constitution".

Conflicted opinions and misunderstanding of the role of civil society organizations by the practice of law led to an unnecessary conflict between bar associations and civil society associations, resulting in great pressure from the practice of law to the Ministry of Justice. In this regard, the current proposed solutions that restrict the foregoing work of civil society organizations in the field of free legal aid are the result of a compromise between the practice of law and the Ministry of Justice. The Law, which aims to provide effective and equal access to justice to all citizens, instead of granting rights to the citizens, limits them by derogating existing legal solutions and recognizing the right to free legal aid to a very limited circle of people. At the same time, it prevents associations from offering that type of aid, a service they have been providing for the last twenty years.

Although civil society organizations have been consulted in the process of drafting the Law on Free Legal Aid, the text of the Draft was not in accordance with the previous text for which they had also participated in the drafting. It was not published in a transparent manner, leaving the interested public unable to adequately and qualitatively take good note of it and read it. Also, the Ministry of Justice did not adequately familiarize the public with the adopted text of the Draft, mainly due to a complete lack of explanations of the stipulated solutions. During July and August 2018, the Ministry of Justice opened a public debate on the Draft Law on Free Legal Aid. The Office for Cooperation with Civil Society of the Government of the Republic of Serbia informed civil society organizations about this on August 3, 2018, leaving a three-day deadline (during weekend days) to review the text of the Draft and to submit comments. During that period, YUCOM, like many other organizations, provided concrete comments and suggestions to modify it, but the Working Group that drafted the final version of the Draft Law did not respect most of the comments. The Government of the Republic of Serbia adopted the Law on September 20, 2018 and sent it in the form of the Proposal of the Law on Free Legal Aid to the National Assembly for consideration.

Imposing such legal aid means that it can only be provided by practice in law or in departments of local government, while associations (not all, although, for instance, trade unions under other procedural laws, have the right), can only provide free legal aid on the basis of special laws' regulations (in the field of asylum and discrimination). It further discards the strategic direction of the Republic of Serbia that was engaged in the Strategy for Development of the Free Legal Aid System, which meant preserving and improving the existing resources in the field of free legal aid, and creating conditions for training and specialization of free legal aid providers in certain areas.

Bearing in mind the importance of the Law on Free Legal Aid and the Law on Personal Data Protection (which were simultaneously discussed in the parliamentary procedures), it was also the topic of the Working Group for Chapter 23 of the NCEU held on November 1, 2018. Although it was envisaged that the representatives of the Ministry of Justice should address it during both sessions as an introduction to the further discussion of the Working Group, representatives of the Ministry, unfortunately, canceled their participation right before the meeting, explaining that, according to the order of the Minister of Justice, they had been working on amendments of the Draft Law that were discussed at that moment in the National Assembly.

The session dedicated to the Draft of the Law on Free Legal Aid was an opportunity to discuss the system of free legal aid envisaged by the new Draft Law and the reasons why it did not explicitly recognize the multiannual activity of associations that had been providing free legal aid to the most vulnerable people.

The opinion of the representative of the Bar Association of Serbia was that, after many years of waiting for the Law on Free Legal Aid, it was great that the Law entered into the procedures and would be adopted. It was also pointed out that in 2014, the practice of law had reached an agreement with the Ministry of Justice stating that no law regarding the practice of law would be adopted without its agreement, a promise kept by the Ministry so far. Aware that YUCOM had submitted amendments to the Draft of the Law, the representative of the Bar Association of Serbia pointed out that the practice of law would dislike the fact that amendments brought upon the Assembly would be at the detriment of the practice of law, since it was known that the practice of law did not unreservedly support this proposal, considering that some provisions of this law were unconstitutional and that the practice of law had made a compromise.

Within the discussion that followed, representatives of the civil sector recalled the conflict between bar associations and civil society associations, as well as the fact that many organizations and individuals received warning letters from the Bar Association of Belgrade regarding the alleged criminal offense of pretended scribe due to the provision of legal aid services. Asked about the opinion of the Bar Association of Serbia when the Law on Free Legal Aid came into force, the representative of the Bar noted that it might continue to send warning letters since he believed that the practice of law was right from the standpoint of the Constitution and the provision stipulating who can provide legal aid.

It took the ten-year process to pass the Law resulted in a legal text only understood by those who participated in drafting the Law. It is pretty vague, especially when it comes to provisions regarding free legal aid providers, which is actually the result of a compromise. In the explanation of the Law, the Ministry wrote that NGOs and other law offices could continue with their work. The purpose of this Law is to establish restrictions only when organizations have been financed from the free legal aid's budget, and the issue lays in the fact that these clarifications do not stand in the Law, but in the explanation and in several other comments that were sent. Many reviewers stated that the formulation regarding free legal aid providers was unclear, including the Administrative Court. However, the Ministry explained that such a formulation was necessary to overcome the conflict with bar associations.

Due to the deviation of the provisions of the Draft Law from the explanation, YUCOM has submitted amendments to Article 1 and Article 58 of the Draft Law. The aim of the amendments was to ensure that the rights and obligations of free legal aid providers arising from the Law on Free Legal Aid were relating exclusively to providers financed from the budget of the Republic of Serbia and the budget of local self-government units, but that there was still freedom to register associations in a separate Register of Providers that would be the Ministry of Justice's responsibility. In this way, the demands for the state to regulate the system of free legal aid in accordance with their financial capabilities would be fulfilled, as well as citizens' request to freely elect their representatives, whose expertise would certainly be taken into account by the body in charge of the procedure.

The amendments were in line with the expert opinions of the American Bar Association of Human Rights (ABA), approached by YUCOM, which stated, *inter alia*, that *the state should have the right to impose restrictions when it comes to spending budget money, but additional restrictions regarding experts are affecting the violation of rights when it comes to freely choosing representative*. This organization has also given several other important comments on essential needs that had also been omitted from the Law.

This Law is clearly only declaratively, but not substantially, complying with the highest international standards established within the UN and the Council of Europe, as well as the achieved level of law in the legislation of developed countries. The prescription of free legal aid by the state has been required for decades, and the citizens have waited for this Law for a long time. According to the current legal solution, the property censorship for free legal aid is at an extremely low level, therefore only citizens who meet the conditions for social assistance and child allowance with restrictive exemptions can get it. In this respect, it is justified to raise the issue of the right to access to the justice for those citizens who, under this Law, are not entitled to free legal aid, although they are economically and socially vulnerable. Therefore, the Law meets only the minimal requirements, which goes against the purpose of this Law, namely,an effective approach to justice for all.

Access to justice and the possibility of exercising rights before institutions and courts are issues that directly relate to the mere possibility of exercising human rights.

With a free legal aid system, the state should provide equal access to justice and equality for its citi-

zens before the law, as well as respect for the rule of law. However, some solutions stipulated in the recently adopted Law on Free Legal Aid are raising a reasonable doubt that the long-time expectations for an effective and affordable free legal aid will be let down. Until the Law enters into force, YUCOM will make additional efforts to ensure that the Rulebook that should be adopted by a consensus of all providers reduces the lack of clarity regarding free legal aid providers, since due to legal uncertainty, the citizens are the most affected.

YUCOM and Universal Periodic Review (UPR)

The Lawyers' Committee for Human Rights – YUCOM is an organization that, since its establishment, has been engaged in promoting respect for human rights in the Republic of Serbia. Among other things, YUCOM monitors the implementation and compliance with international documents that the Republic of Serbia has ratified and has committed to their full implementation. In this regard, we continuously monitor not only the full implementation of certain documents, but also the implementation of recommendations made by United Nations bodies to the Republic of Serbia in order to comprehensively apply these documents.

In this text, we want to emphasize on the important activity we had in this reporting period, which relates to the third cycle of the Universal Periodic Review (UPR) which Serbia passed through at the beginning of 2018. Namely, the UPR is a comprehensive review of the respect of human rights in each of the United Nations Member States. The review is organized in such a way that countries evaluate each other regarding the respect of human rights, and then make recommendations for necessary improvements. In the previous one, namely the second cycle, Serbia received numerous recommendations from Member States, and at the beginning of 2018, it was analyzed whether recommendations from the previous cycle had been met, as well as the general state of human rights in the country in the past 5 years.

Within the Pre-UPR session organized by UPR-info, the Lawyers' Committee for Human Rights – YUCOM had participated in the preparation of the Shadow Report presented to the United Nations in Geneva in December 2017. On this occasion, we highlighted the most important issues that the citizens of the Republic of Serbia have met while exercising their human rights. We also stressed the denial of freedom of expression, freedom of the media, freedom of public assembly and the bad position of human rights defenders.

In the past 5 years, Serbia has passed the media laws prohibiting the monopolization of media ownership and presupposes media pluralism. However, in practice, the media privatization process has led to an increased concentration of ownership over local media. The hostile environment where journalists are placed in has led to an increased self-censorship among journalists and the media. In February 2017, RTV publicly acknowledged that it regularly censured journalists and pointed out several cases where they were forced to remove certain media content after receiv-

ing the "order". In its research, independent association of journalists (*NUNS*) emphasized that since 2013 there have been at least 230 assaults on journalists, of which at least 42 were physical attacks. In 2016, 69 journalists were attacked, while at least 45 were attacked in the first half of 2017. Unfortunately, investigations in these cases are very rare and do not lead to convicting criminal verdicts. It was also pointed out that a large number of journalists have been receiving death threats, without an adequate response from the State. We suggested to the representatives of the Member States to consider the following recommendations in this area for the new cycle for Serbia: conducting adequate investigations regarding threats and attacks on journalists and bringing the perpetrators to justice; enabling the enjoyment of freedom of expression and media freedom with the full implementation of international standards; enabling journalists to work freely, without fear of retaliation for expressing critical thinking or reporting about a specific – sensitive to the government – subject.

Also, in this reporting period, particularly in 2016, after the previous Law was declared unconstitutional, a new Law on Public Assembly was adopted, containing a number of imperfections, as the previous Law did. Although the new Law allows a spontaneous public gathering, in practice many spontaneous gatherings are interrupted or prevented. In particular, the security services prevented activists from the initiative "Let's not drown Belgrade" to protest in front of the mayor's office on March 7, 2017. A public gathering marking the 20th anniversary of the Srebrenica genocide, organized in July 2015 by the Youth Initiative for Human Rights, was banned with a reference to the security risk. The pride parade was banned until 2014, also for security reasons, while in 2014, 2015, 2016 and 2017 it was held, but with a high presence of the police. The next public gathering that was prevented for security reasons is the Falun Dafa gathering in June 2016. Also, freedom of assembly in the pre-election and post-election period of 2016/2017 has been violated on several occasions, raising the "so-called" security reasons. Due to all of the abovementioned, the recommendations we have sent to the representatives of the Member States to consider the new cycle for Serbia primarily concern amendments to the Law on Public Assembly, in order to make changes guaranteeing the exercise of freedom of assembly.

The position of human rights defenders for the previous period was terrible. Human rights defenders have been targeted countless times and subject to dirty campaigns in the media. At the beginning of 2016, the Human Rights House was attacked. Although the investigation was formally performed, we were never informed of the outcome, nor were the assailants identified. As early as last year, 9 activists of the Youth Initiative for Human Rights were physically attacked by SNS supporters during a public debate at the Beshka Cultural Center in Vojvodina. Activists were protesting against Veselin Sljivancanin, a war criminal, who was one of the speakers in that public debate. Two activists were injured and one car was damaged in the attack. On that occasion, the police did not conduct investigation and, in a media statement, the SNS Party called the activists "fascists" and "hooligans" and asked for their arrest. After the event, the organization was intimidated, attacked and subjected to a dirty media campaign countless times. Therefore, the recommendations we have sent to the representatives of the Member States to consider the new cycle for Serbia suggest taking concrete measures that would enable a safe environment for civil society and adequate investigations of all attacks and harassments of human rights defenders, bringing the perpetrator to justice, as well as facilitating the activities of human rights defenders without fear of attack, obstruction or media hacking.

Considering the outcome of the third Universal Periodic Review, that is, the number of recommendations that the Republic of Serbia has received in this cycle, as well as the fact that a large number of them rely exactly on the recommendations that we have sent, we are very pleased to know that we are able to successfully identify problems and we hope that we have an effect on improving human rights' respect in the Republic of Serbia.

There is still no light at the end of the tunnel called “the Missing Babies Affair”

For many years, the Lawyers’ Committee for Human Rights has been continuously monitoring and appealing for urgent resolution and clarification regarding the missing babies’ cases from maternity wards and other institutions in the Republic of Serbia, but the State gate remains tightly closed. Bearing in mind that in several previous annual reports on its work, YUCOM was concerned by this subject and paid great attention to this issue, we will present only the new circumstances raised in the second half of 2017 and in 2018.

In a nutshell, the issue of missing babies from maternity wards and other institutions dates back to decades. These cases have yet to be resolve as it has not been found out what happened in all of them, nor the exact status of these children. At one point, the State took certain steps, but they were stopped before they gave the desired results. In 2013, the European Court of Human Rights (ECHR) issued a verdict in the case of Zorica Jovanovic v. Serbia, where a violation of Article 8 of the European Convention on Human Rights was found, that is, the infringement of the right to respect the private and family life of Ms. Jovanovic, because the State failed to determine what had happened to her missing child after birth. The ECHR, in view of the large number of similar complaints that have been submitted, also introduced in the verdict the obligation of the State to enable all other parents in a situation similar to Ms. Jovanovic to find out all relevant facts about the status of their children who are suspected to be missing from maternity wards and other institutions right after birth.According to this verdict, the Republic of Serbia has been given a deadline of 1 year to adequately execute these obligations, which expired in September 2014. On the expiry of the deadline, the Committee of Ministers of the Council of Europe, which oversees the proper implementation of the European Court of Human Rights’ verdict, has conducted regular meetings to discuss the implementation of this verdict. In the following period, Serbia has received several decisions of the Committee of Ministers of the Council of Europe, pressing the urgent implementation of the verdicts, and putting emphasis on the continuation of monitoring in order to ensure that the State respects its obligations under the European Convention on Human Rights.

In the previous Annual Report, the text on missing babies concluded that the next session of the Committee of Ministers of the Council of Europe was expected to be held once the implementation of the verdict Zorica Jovanovic against Serbia would be discussed again. The Committee of Ministers met, *inter alia*, in September 2017. Once it was concluded that the verdict had not been enforced, an interim resolution against the Republic of Serbia was adopted – the harshest deci-

sion indicating the state grossly violates its obligation as a member of the Council of Europe and signatory to the European Convention on Human Rights.

Following this resolution, the State addressed the representatives of the Committee of Ministers, stating, *inter alia*, that the Draft Law was created, that the Commission which would be involved in this issue was being established, and that even without the implementation of the verdict, Serbia had been largely working to clarify the missing babies' cases, and, as an example, reference was made to the verdict of the Basic Court in Kikinda under the number P490/2017.

The Draft Law has remained unchanged, and is inadequate for the entire and complete resolution of the missing children's cases. More specifically, the provisions of the Draft Law do not allow the conduct of adequate investigations to determine all relevant facts. The text of the Draft provides for extra-judicial proceedings, and states that the out-of-court agreement can make a decision that cannot determine what happened to the child. We believe that most of the procedures had ended this way, which is contrary to the basic idea of the Law and the very verdict of the ECHR.

Furthermore, the Commission mentioned by the State in a letter was formally established by the Government of the Republic of Serbia on March 16, 2018. The decision of establishing a Commission to investigate the treatment of State authorities in the resolution of reported cases of missing children envisaged that the Commission would determine the circumstances regarding the investigations of reported cases. Bearing in mind that, until this Annual Report was finished, the Commission did not start its regular work, we can only assume that, if it begins its work, the Commission will only determine whether all initiated procedures are obsolete, that is, it will determine if the Prosecution adequately assessed obsolescence in every single case. Also, among the Commission's members, one of them is the parent of a missing baby. However, there is no explanation for the reason why this person was chosen, which has been repeatedly opposed.

Certainly, it is of outmost relevance to mention the verdict of the Basic Court in Kikinda under the number P490 / 2017. In this regard, it is necessary to raise the question whether the efforts – to implement the verdict in the case of Zorica Jovanovic – are needed at all, if the State considers that there is already an effective mechanism in Serbia for finding out the facts about missing babies. It is important to point out that the aforementioned verdict was decided through the ordinary litigation procedure for compensation of damages which, in accordance with domestic legislation, can be conducted whenever a person considers that he/she is harmed by an act or omission of another person, and that this is by no means a procedure that can determine the facts relating to the status of missing children. We believe this represents one more indicator that the State may be ready to pay certain amounts of money to parents, but not to allow them to find out where their children are and what happened to them, which is the parent's only wish, but also the State's obligations according to of the ECHR verdict.

Until finishing this Annual Report, Serbia has not still enforced the verdict of the European Court of Human Rights in the case of Zorica Jovanovic v. Serbia. We continue to report and appeal to the Committee of Ministers of the Council of Europe to closely monitor and warn Serbia for failing to comply with the obligations it has as a member State of the Council of Europe and signatory to the European Convention on Human Rights, hoping that the missing babies' cases will eventually be solved and that such practices will not be repeated again.

Amendments to the judiciary-related provisions of the Constitution

In order to increase the independence of the judiciary in Serbia, it has been proven to be a priority for the High Judicial Council and the State Prosecutorial Council, as the authorities in charge of guaranteeing and securing the independence and autonomy of judges and prosecutors, to increase their strength and to suppress all forms of political influence.. The competence and composition of these bodies are envisaged by the *Constitution of the Republic of Serbia* (the "Constitution"), and thus, to achieve this priority, provisions of the Constitution must be amended. Regarding the consolidation of the independence of the judiciary, the Ministry of Justice has proposed additional amendments to the Constitution relating to the election of judges for the first time (for a probationary period of three years), the election of the President of the Supreme Court of Cassation and the President of other courts, the termination of judicial and prosecutorial functions, the Judicial Academy as the starting point for judicial functions, and other related issues.

The change process begun in 2017; in October 2018, a harmonized version of the amendments to the judiciary-related provisions of the Constitution with the Opinion of the Venice Commission was announced. Throughout the process, civil society and professional associations, as well as the High Judicial Council, highlighted the fact that many of the solutions offered, especially those related to the composition of judicial councils and the role of the Judicial Academy, were inadequate for our judicial system and did not serve the purpose for which they were proposed, namely, to increase the independence of the judiciary. From this unique attitude, in the end of the process led by the Ministry of Justice, newly formed associations and professional associations[2] had left, giving legitimacy to the entire consultation process and the discussions presented below. Some international associations had expressed concerns about the support of government officials and pro-government media to this type of organizations.[3]

In order to comprehensively review the proposed solutions, this text outlines the basics for amending the Constitution from the point of view of the European Union accession's process, the process of drafting an amendment to the Constitution as well as criticisms of civil society, for which YUCOM's formulation and presentation played a significant role.

2 For example, the Association of Judges and Prosecutors, formed on September 4, 2018. One of the characteristic of the whole Constitution amendment's process is that during the public consultation, certain associations supporting all the proposals of the Ministry of Justice from the very beginning were formed The formation of these organizations underlined the fact that the founders objected to the amendments, and then, accepted them as adequate.

3 European Association of judges and prosecutors for democracy and freedom (MEDEL), MEDEL Report on Pro-government NGOs, November 17, 2018, available at: https://bit.ly/2PST4aJ.

Amendments to the judiciary-related provisions of the Constitution according to the obligations provided for in the negotiation process of Chapter 23

In the process of negotiating and joining the European Union, Chapter 23 focuses on issues related to the judiciary and fundamental rights. Recognizing the importance of having an independent and efficient judiciary, a number of recommendations for reaching judiciary's impartiality, integrity and high standards are defined in the European Union.[4] A serious commitment is required to eliminate external influences on the judiciary, to allocate adequate funds, and to provide training for justice representatives and further strengthen it. Regarding the independence of the judiciary, and as set forth in the Action Plan for Chapter 23, in the National Strategy for Judicial Reform for the period 2013-2018, the need for amendments to the Constitution was identified regarding the interference of legislative and executive bodies in the process of appointment and dismissal of judges, presidents of courts, public prosecutors and deputy public prosecutors, elected members of the High Judicial Council and the State Prosecutorial Council, together with other issues.[5] The High Judicial Council and the State Prosecutorial Council, in line with strategic goals, should become key judicial institutions with full capacities of their competencies and a precisely defined system of transparency and accountability.

Speaking of the criteria for opening negotiations, according to the *Screening Report for Chapter 23*[6], Serbia, with the support of experts, provided a thorough analysis of existing solutions and possible amendments to the Constitution, while taking into account the recommendations of the Venice Commission and European Standards. The criteria were designed to ensure the independence and account-

4 A few of the documents produced in the negotiating process for Chapter 23, including the *Screening report and the Common position of the European Union.*

5 *National strategy for judicial reform for the period 2013-2018*, available at: https://bit.ly/2Dnziww

6 *European Commission, Report on the compliance of Serbian legislation with EU legislation (Screening report) for Chapter 23 - Judiciary and fundamental rights*, April 15, 2014

ability of the judiciary and envisaged changes that should be related to the following items:

- "...the system of employing judges, presidents of courts and prosecutors, their selection, appointment, transfer and removal from office should be independent of political influence, and the High Judicial Council and the State Prosecutorial Council should be responsible for its functioning. Entry into the judicial profession should be based on objective criteria based on merit, the procedures for selecting these functions should be fair, open to all qualified candidates and transparent in terms of the possibility of public control. The High Judicial Council and the State Prosecutorial Council should be authorized to exercise managerial functions and give them the authority to administer the justice system, including immunity matters. The members of these bodies should be different members, without the involvement of the National Assembly (unless it is exclusively declaratory), with at least 50% of members coming from the judiciary, representing different levels of jurisdiction. Members of these bodies to be elected should be selected by colleagues;
- legislative and executive authorities should not have the authority to supervise work, nor to monitor the functioning of the judiciary;
- the length of probationary period should be reconsidered to three years for judges and deputy prosecutors' candidacies;
- the basics for removing judges from functions should be clarified;
- the rules for the termination of judicial office for judges of the Constitutional Court should be clarified. "[7]

In the process of drafting the Action Plan for Chapter 23, the previous criterion, as a priority, was explained in 8 specific activities.[8] In addition to a concrete analysis of the existing provisions of the Constitution and proposing possible changes in accordance with the Opinion of the Venice Commission and European Standards, other activities related to the standard procedure of amending the Constitution were carried out, including the initiation of a change in the Constitution and the adoption of proposals for amending the Constitution in the National Assembly, drafting the working text of the Constitution and launching public hearings and referring the Constitutional proposal to the Venice Commission. Other activities also included the adoption of a new Constitution, followed by the adoption of the Constitutional Law, the harmonization of judicial laws with the new Constitutional provisions,[9] and the harmonization of sub-legal acts with amended judicial laws.

The negotiating position of the Republic of Serbia published in June 2016 stated that the mentioned analysis of the provisions of the Constitution of the Republic of Serbia was at the final stage,[10] and that the next step was to initiate a process that should have led to the adoption of the new Constitution, which would have been done by the end of 2017. However, it did not happen in the said new deadline. Regarding the changes in the deadlines in the negotiating position, it was stated that in order to harmonize with the new provisions of the Constitution of the Republic of Serbia, but also to implement the recommendations from the Screening Report, it was planned that in 2018 all judicial laws would be amended and the process would continue during the course of 2019, including amendments to the by-laws and internal acts.

It was also alleged that the High Judicial Council would end the appointment of all remaining court presidents in the upcoming period, which was initiated in November 2018.[11] It is necessary to mention that in the EU Common Position[12], it was concluded that Serbia had initiated preparations for amending the Constitution in 2017, bearing in mind the recommendations of the Venice Commission and European Standards, and to respect the temporary measures proposed by Ser-

7 Ibid, p. 32.
8 *Ministry of Justice, Action plan for Chapter 23*, Activities 1.1.1.1.to 1.1.1.8, 2016.
9 The Law on the organization of courts, the Law on headquarters and areas of courts and public prosecutor's offices, the Law on judges, the Law on the public prosecutor's office, the Law on the High judicial council, the Law on the State prosecutorial council, the Law on the Judicial academy
10 Government of the Republic of Serbia, *Negotiating position of the Republic of Serbia within the Intergovernmental conference on accession of the Republic of Serbia to the European Union, Chapter 23 - Judiciary and fundamental Rights*, Belgrade 2016, p. 47-48.
11 High judicial council, Decision of the High judicial council from 01.11.2018.on the proposal of candidates for presidents of courts, available at: https://bit.ly/2RVZAtU
12 Council of the European Union, *Common Position of the European Union - Chapter 23 - Judiciary and fundamental Rights*, 5 July 2016, p. 3.

bia for removing the main shortcomings before the amendment of the Constitution. It was also stated that amendments to related laws and the drafting of bylaws had to be made transparently and with a wide public discussion. The EU stressed the need to establish an inclusive process in consultation with professional and civil society associations, and invited Serbia to monitor all "legal changes and the impact it creates, especially in the context of removing political and other impacts on the judiciary."

The transitional criterion relating to the mentioned changes go as follows:

"Serbia should strengthen the independence of the judiciary, and in particular:

– Serbia should adopt new provisions of the Constitution, bearing in mind the recommendations of the Venice Commission, in accordance with European Standards and on the basis of a comprehensive consultation process. Subsequently, Serbia should amend and implement the Law on the Organization of Courts, the Law on Headquarters and Areas of Courts and Public Prosecutor's Offices, the Law on Judges, the Law on the Public Prosecutor's Office, the Law on the High Judicial Council, the Law on the State Prosecutorial Council and the Law on the Judicial Academy. Serbia should establish an overview of the results on how to implement a fair and transparent system based on evaluating the work of judges and prosecutors, including employment, as well as evaluating the work and promotion of judges and prosecutors on the basis of periodic performance reviews. "

It should be noted that the implementation of all the activities from the Action Plan for Chapter 23 (apart from the last two) relating to the amendments to the Constitution were foreseen for 2015, 2016 and 2017, and that the delay to complete them was several months. The latest report on the implementation of the Action Plan for Chapter 23, drafted by the Council for Monitoring the Application of the Action Plan for Chapter 23, stated that three activities have been fulfilled. An initial analysis, not publicly available, was made, which is the basis of the first version of the amendment to the Constitution; the working text of the Constitution was drafted and was the subject of a public hearing, and finally, a coordinated proposal was sent to the Venice Commission for the provision of opinions. Below we will cover chronologically, and substantively, the whole process of initiating the amendments of the Constitution relating to the judiciary. Unfortunately, not only have the majority of the activities been delayed, but some of the activities that are reported as being fulfilled, are in fact not fully met, neither the procedure nor the content.

Procedure for amending the Constitution

According to Article 203 of the current 2006 *Constitution of the Republic of Serbia*, voters, deputies, the President of the Republic and the Government have the right to submit a motion for revision.[13] A referendum is mandatory when the content of the proposal for the revision of the Constitution relates to the preamble of the Constitution; human and minority rights and freedoms; regulation of power; declaring war and state of emergency; deviation from human and minority rights in the state of emergency and war; procedure for amending the Constitution.[14]

The amendments require a two-thirds majority in the National Assembly of Serbia. The right to promulgate the act amending the Constitution belongs to the National Assembly,[15] which is at the same time one of the authorized proposers of changes. The procedure regarding the vote fora proposal to amend the Constitution provides that no less than 2/3 of the total number of deputies must vote, but it is seen as quite complicated and hard to achieve. It is very difficult to secure so many votes without the consensus of all political parties in the National Assembly, which means that the amendment of the Constitution is almost impossible.[16]

However, since the proposed changes may have also been related to the regulation of government, it is not excluded that the draft amendment will have to be subject to the citizens' decision-making in a referendum. This means that after the adoption of the act changing the Constitution in the Assembly, citizens will be able to adjudicate in a referendum within 60 days. The amendment of the Constitution has not yet been formally initiated, nor the Proposal for an Amend-

13 Pajvančić, Mirjana, *Commentary on the Constitution of the Republic of Serbia*, Konrad Adenauer Foundation, Belgrade, 2009, p. 270.
14 Ibid, p. 271.
15 Ibid, p. 272.
16 Radenković, M., Stjelja, I., Vujić, K., Antonijević, M., *Constitution at the turning point, Report on constitutional practice, the defects of the Constitution and ways of its improvement*, Lawyers Committee of Human Rights - YUCOM, Belgrade, 2011, p. 29.

ment to the Constitution has been found in front of the deputies, but the Ministry of Justice reported that this would happen by the end of November 2018. In the process of the previous changes, the National Assembly did not even propose amendments to the Constitution, but the initiative was in the Ministry of Justice, which is not an authorized proposer.

Public consultations of the Ministry of Justice and interested actors

According to the Action Plan for Chapter 23 of the Constitution, amendments are planned for 2018. Having in mind the obligations and timeframe of the Action Plan for Chapter 23, expert justice associations have repeatedly encouraged the Ministry of Justice to initiate a public debate based on the already established direction regarding the changes in the Constitution in order to strengthen the independence of the judiciary. According to the position of the Venice Commission, when it comes to the independence of the judiciary, it is necessary to check several criteria in order for the State to meet this standard.[17] The Venice Commission, among other things, expresses the view that the judiciary is independent of other state authorities and that all decisions relating to the appointment and professional career of judges should be based on the application of objective criteria, within the framework of the law. The criteria also state that "the appropriate method for guaranteeing the independence of the judiciary and the judicial council has a decisive influence on the decisions on the appointment and career of judges."[18] The Venice Commission recommends that the states form an independent council. With the exception of members *ex officio*, judges who will be members of the council should be elected or appointed by their colleagues. Similar standards are also envisaged for prosecutorial councils – they should be made by prosecutors from all levels, with other actors such as lawyers or professors, and the impact of parliament should be minimized.[19]

In the absence of basic directives for constitutional amendments and the expected wide public debate, on May 19, 2017, in cooperation with the Office for Cooperation with Civil Society, the Ministry of Justice issued a public invitation for the civil society organizations to participate in the consultative process related to amendments of the Constitution in the judiciary's area .[20] In addition to civil society organizations, all bar associations, state and private law faculties, scientific institutes, and professional associations were invited to the consultations. The public call was open until June 30, 2017, and 15 written proposals were received.

The consultative process was organized in the form of several roundtables during which a number of professional associations and civil society organizations were given the opportunity to express their views, but without true possibilities for the exchange of arguments.[21] The roundtable topics were prepared in advance by the Ministry of Justice, but the discussion almost always went towards proposals that were actually strengthening the mechanisms fostering political influence on the judiciary. Facing the avoidance of a debate on constitutional solutions, as well as distracting the public's attention and ignoring the idea of the independence of the judiciary, which is what the debate should be based on,, civil society organizations and professional associations have decided to stop further participation in the consultative process. Nevertheless, they appealed to the Ministry of Justice to present to the public its proposal to amend the Constitution of the Republic of Serbia and "enable a comprehensive and substantive debate of state organs and society, thus providing the necessary legitimacy to the constitutional process."[22] The basic condition for returning to the consultative process was for the Ministry of Justice to come up with a concrete proposal for amendments.

The expert public has already warned about the intention of becoming a prerequisite for judicial office the appointment of the Judicial Academy, and the tendency to raise it to the constitutional level. It was

17 Venice Commission, *Report on the Independence of the Judicial System Part I: The Independence of Judges*, Strasbourg, 16 March 2010.
18 Ibid, p. 7-8
19 Venice Commission, *European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service*, Strasbourg, January 3, 2011, p. 12.
20 Office for Cooperation with Civil Society, *Consultations on Amendments to the Constitution*, available at: https://bit.ly/2zc5dwZ
21 Association of Judges of Serbia, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Center for Judicial Research, Belgrade Center for Human Rights, Lawyers Committee for Human Rights, Public *Announcement on the Public Debate on Amendments to the Constitution in the Judicial Sector*, September 2017, available at: https://bit.ly/2DFPxGg
22 Association of Judges of Serbia, *Professional and Associations for the Rule of Law interrupted participation in the so-called consultative process for amending the Constitution*, October 2017, available at: https://bit.ly/2Q1C9Ce

pointed out that leaving the selection process to the non-judicial body could further reduce the role of judicial councils. Also, concerns were expressed regarding the involvement of the President of the RS in the procedure for appointing judges and prosecutors, and the possible changes to the provisions regarding the competencies of the Ombudsman, which would put this institution in a position that would clearly allowed it to control the work of the judiciary, and which would be completely appointed by the legislative branch. The third issue was regarding the idea that judicial practice should be introduced as a source of law in the Republic of Serbia. The last item is certainly the composition of judicial councils, as well as the reduction of the number of members (from 11 to 10) and the giving of a "golden vote" to the president of the council who would put the judges in a minority position when voting on the most contentious issues.[23]

Public debate and the first draft of the Amendment to the Constitution

On January 22, 2018, the Ministry published a Draft Amendment to the Constitution of the Republic of Serbia related to the Judiciary section and opened a public hearing that would last until March 8, 2018, until the submission of written comments was still possible.[24] The Ministry re-organized the discussion. Civil society organizations and professional associations welcomed the final announcement of the amendments and, as an issue to be addressed before submitting concrete proposals, emphasized that with this text, influence of the legislature was more important than ever, which was reflected in the composition of the High Judicial Council and the High Prosecutorial Council, as well as in the role of the Judicial Academy's choice, which was discriminating against access to a judicial / prosecutorial call.[25] Opinions and comments were made by the High Judicial Council,[26] the State Prosecutorial Council[27] and the Supreme Court of Cassation.[28]

The public hearing broke out in a hostile atmosphere for civil society organizations and professional associations. For this reason, the members of the Working Group for Chapter 23 of the National Convention on the EU, as well as representatives of the Bar Association of Vojvodina, left the public debate.[29] Since they could not get answers during the public debate itself, the members of the above-mentioned Working Group for Chapter 23 of the NCEU then sent questions to the Minister of Justice, Nela Kuburovic, concerning:

- the objective pursued by the organization of roundtables in the framework of a public hearing when it is stated at the same time that only written comments would be taken into account with specific proposals for amending the Draft Amendment;
- the outcome of the draft of the Amendment beyond the strategic frameworks adopted by Chapter 23 and the contradiction of its decisions with regard to the solutions from the Legal Analysis of the constitutional framework on Justice in the Republic of Serbia, prepared in 2014 by the Working Group of the Judicial Reform Commission;
- failure to comply with written proposals or oral decisions by professional associations and organizations dealing with the judiciary and human rights, in the consultation process of 2017;
- the composition of the working group of the Ministry of Justice, which drafted an amendment and its presence at roundtables in the framework of a public debate on the Draft Amendment.[30]

23 Letter sent to the Venice Commission by the Association, November 7, 2017

24 Office for Cooperation with Civil Society, *Public Discussion on the Working Text of the Ministry of Justice's Amendment to the Constitution of the Republic of Serbia*, 22 January 2018, available at: https://bit.ly/2zbmNkN

25 Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Belgrade Center for Human Rights and Lawyers Committe for Human Rights, *Press Release on the working text of the Amendments to the Constitution published by the Ministry of Justice*, January 2018, available at: https://bit.ly/2DICB2g

26 High judicial council, *Press Release of the High judicial council to the working text of the Ministry of Justice amendment to the Constitution of the Republic of Serbia*, January 2018, available at: https://bit.ly/2yOABlf

27 State Prosecutorial Council, *Publication and Opinion of the State prosecutorial council on the working text of the amendment of the Ministry of Justice to the Constitution of the Republic of Serbia*, February 2018, available at: https://bit.ly/2FnrrBH

28 Supreme Court of Cassation, *Notice of the General Session of the Supreme Court of Cassation*, February 2018, available at: https://bit.ly/2AKgDt7

29 N1, *the Associations abandoned the public debate on amendments to the Constitution*, 19 February 2018, available at: https://bit.ly/2DnItgz

30 Letter of the Working Group on Chapter 23 of the National Convention on the European Union addressed to the Ministry of Justice, 12 February 2018, available at: https://bit.ly/2yY55Bt

Submitted questions were never answered. In order for a public hearing to have a professional character, it is necessary that it primarily involves representatives of the academic community, experts in constitutional and legal matters, political system experts, human rights experts, and such.[31] The public discussion organized by the Ministry cannot be viewed as The Association of Serbian Judges and the Association of Prosecutors of Serbia, with the support of YUCOM, organized an event called *Public discussion with the professors*[32] on February 20, 2018, which goal was precisely to give space for discussion of professorship which should not only be part of the public debate, but should also compose working groups that would make amendments to the Constitution. Constitutional law professors have largely agreed that the amendments to the Judiciary-related part of the Constitution were not good.

The basic conclusions from this event were:

- *Procedural issues* – Not only did the professors get the opportunity to express their opinion for the very first time, but first and foremost they could emphasize on the fact that the Ministry of Justice was not competent to propose a change to the *Constitution but the Government*, and, therefore, a legitimate legal debate could not take place. They highlighted that the working text of the amendment was in conflict with the Judicial Reform Strategy and the accompanying Action Plan, as well as the Action Plan for Chapter 23, and that it was not drafted by a working group specifically created for that purpose;
- *Divisions of authority* – misinterpreting the principle of the division of authority and preventing the judiciary from gaining legitimacy from the profession, professional skills and type of work. The rule of equilibrium and control relates to executive and legislative power, and judicial independence must be ensured.
- *Nomotechnical issues* – the text of the amendment is on low nomotechnical level and is lacking of precisions.
- *The views of the Venice Commission* – the attitudes are tendentious and ill-interpreted, with the separation of certain parts, while the rest, which gives the meaning and functional whole, is not emphasized.

Also, in the conclusion, it is stated which parts of the working text are superfluous for the text of the Constitution, and which have not been included in the text. It is also noted that a large area allowing political influence has been left in the part concerning the election of judges, "golden vote", the functions of judges / prosecutors, with the Minister of Justice being authorized to initiate disciplinary proceedings, as well as choosing the composition of the Council itself.[33]

The Ministry of Justice has received more than 35 documents with comments on the Draft Amendments prepared by various state bodies, civil society organizations (including those who asked for the withdrawal of the text), professors, lawyers and citizens. Together with the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia and the Belgrade Center for Human Rights, YUCOM submitted a proposal for possible amendments to the Constitution.[34] Suggestions were related to the alteration of provisions in relation with the position, composition and selection of members for the State Prosecutorial Council and their competencies, as well as similar changes in relation to the High Judicial Council. The submitted proposal sought to improve the decision regarding the appointment and appointment of judges and prosecutors, as well as with the composition of the High Judicial Council, that is the High Prosecutorial Council. Suggestions were given in order to further strengthen institutions and prevent the growth of public distrust in the judicial system. However, in the version that was prepared following the reception of the comments, none of the main ones were included.

The members of the Working Group for Chapter 23 of the NCEU, as well as numerous civil society organizations, called upon the Ministry of Justice to withdraw the published working text of the amendments to the Constitution before the end of the public hearing "because the proposed changes [would] not lead to the creation of conditions for strengthening the independence of the judiciary and independence of the prosecutors according to the signatories of the letter, but also according to a large number of

31 Jerinić, J. and Kljajević, T., *Analysis of professional and political proposals for constitutional reform - Public proposals presented in the period 2006-2016*, Friedrich Ebert Foundation, available at: https://bit.ly/2A0mmcC, p. 25.

32 Video *Public discussion with the professors*, available at: https://bit.ly/2ONvveh

33 Key views on the working text of the Amendment to the Constitution of the Republic of Serbia, *Public discussion with the professors*, available at: https://bit.ly/2DG3zaT

34 Available at: https://bit.ly/2B9xHJs

professors of constitutional law, participants in the recently held public discussion in the organization of professional associations."[35] The same was done after the public hearing opened with an open letter to the public, which drew attention to all the shortcomings of the previous change process.[36]

First and foremost, *disrespect of the constitutional review procedure and the Action Plan for Chapter 23* was pointed out. As we already stated, Article 203 of the Constitution provides that the procedure for amending the Constitution begins with the submission of a motion for change, which must be adopted by the Assembly with a two-third majority of the total number of deputies.[37] It is thus clear that the drafting of new constitutional solutions can only begin after that vote. The Assembly has not yet made a decision on joining the Constitution, which implies that the previous procedure for amending the Constitution is informal, since it is conducted by the Ministry of Justice, which can't be the proposer of amendments to the Constitution. The Government, as an authorized proposer, has not yet spoke out on constitutional changes.

In addition to the breach of almost all the foreseen deadlines for implementation of the measure 1.1.1. of the Action Plan for Chapter 23, the Legal Analysis of the Constitutional Framework on the Judiciary in the Republic of Serbia from 2014[38] was ignored, the amendment of the Constitution in the Assembly was not initiated, and a working group for the drafting of an amendment text was not formed. In content, the first draft of the amendment, as well as the latter, do not clearly fulfill the obligations from point 1.1.1 of the Action Plan. Functionally speaking, judges would be a minority in the High Judicial Council because they would have 5 out of 11 votes; Prosecutors would become a minority in the State Prosecutorial Council as they would elect 4 of the 11 members of the Council. The role of the Serbian Assembly in the election of members of the judicial councils would not only be declarative, as required by the Action Plan, but essential – due to the parliamentary election of members who will control the judicial councils with the decisive vote left to the president or by a voting majority.

Another important topic related to the Commentary Draft Amendment is the *lack of explanation of the Working Paper of the Amendment*. The proposed explanations have not been presented in accordance with the Uniform Methodology for the drafting of regulations which requires that each proposed regulation must state the reasons for its adoption: an analysis of the current situation, the problems that the regulation should address, the objectives that are regulated and the answer to why the adoption of regulations is the best way for problem solving. Reasoning was not offered for even ten constitutional amendments.

The third problem is the obvious *exclusion of specialized and professional public*. Proposals by professional associations of judges, prosecutors and assistants and citizen associations that participated in the consultative process were not taken into account during the preparation of the Draft, and the Ministry of Justice, however, stated that the text of the amendment was the result of public consultations with civil society. The withdrawal of this document was proposed by not only civil and professional associations, but also by the most judicial institutions and experts, such as the High Council of the Judiciary, the State Council of Prosecutors, the Supreme Court of Cassation, all courts that held the judges' sessions by that time, but also the most eminent professors of law.

Although civil society organizations, professional associations, judicial institutions and other relevant actors submitted individual concrete proposals for changes, they agreed on the following objections that we transmit in full:

1. The election of judges and deputy public prosecutors is shifting from the previous parliamentary competence to the institution training the judiciary, namely the Judicial Academy, which *de facto* selects its participants preliminary and decides who will be the judge or deputy public prosecutor (because only the holder of a judicial function in certain courts and prosecutors' offices shall be chosen by a complete trainee of such an institution); the Academy itself, or any other institution that would have these pow-

35 Working Group on Chapter 23 of the National Convention on the European Union, A press release on the published working text of the amendment to the Constitution of the Republic of Serbia and a public hearing held at the Ministry of Justice call, February 2018, available at: https://bit.ly/2DFhYEh

36 Serbian Judges Association, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Center for Judicial Research - CEPRIS, Association of Judicial and Prosecutorial Assistants of Serbia, Association of Judicial Counselors of Serbia, Lawyers Committee for Human Rights - YUCOM and Belgrade Center for Human Rights, Open Letter on the Conclusion the process that the Ministry of Justice conducts in connection with the changes of the Constitution of the Republic of Serbia, March 2018, available at: https://bit.ly/2TgddFS

37 Article 203, Constitution of the Republic of Serbia, "Official Gazette of RS", no. 98/2006.

38 Legal analysis of the constitutional framework on the judiciary in the Republic of Serbia, 2014, available at: https://bit.ly/2B7SI7i

ers, without guarantees of independence, will become very quickly, if not already, the prey of political parties. The reason why the Judicial Academy tends to become a constitutional category without having a clear guarantee of its independence remains unclear.

2. The selection of judges and deputy public prosecutors (for courts and public prosecutor's offices with exclusive first instance jurisdiction) is essentially displaced of both the High Judicial Council and the High Prosecutorial Council, whose roles in the choice of judges become only a protocol (since the choice is made from the ranks of candidates selected by the Academy).
3. The governing party majority (based on the votes of the five members of the High Judicial Council elected by the Academy and the decisive vote of the President) allows, in the case of "reorganization" of the judicial system, to displace the judge against his/her will in another court, of any kind, degree and area, thereby removing immovability as one of the guarantees of judicial independence. The immovability of prosecutors, as the standard of independence of prosecutors, is also abolished.
4. By requiring a judge or prosecutor to perform a "private function", the right to professional association is permitted and the persecution of politically "disobedient" is also allowed.
5. The judiciary is "disciplined" by the authority of the Minister of Justice to initiate disciplinary proceedings against judges and the procedure for dismissal of judges and public prosecutors, thus allowing the administrative official to decide on the termination of the judicial profession.
6. The goal of the Judicial and Prosecutorial Council, and its role, have been played since the ruling political majority is authorized to elect any lawyer as a member of the Council, because the Assembly Committee, in which one does not have to be a lawyer, is authorized to – between candidates who have submitted their candidacy to the Assembly – nominate candidates to be members of the Council, who, by the very act of their election, become "prominent lawyers".
7. A new way of party's influence on the judiciary has been incorporated, and the institutional impact of legislative power has shifted from the Assembly to the ruling majority in the following way:

- it is stipulated that the Assembly choose five members of the High Judicial Council with a two-thirds majority, and if there is not 2/3, most of the 5/9 votes of all deputies (139 MPs, the current ruling majority)
- it is forbidden for the President of the Council to be a judge,
- it is stipulated that the President of the Council has a decisive ("golden") vote in the event of an equal number of votes,
- reduced the number of members of the High judicial council from 11 to 10,
- the number of judges of the High Judicial Council is reduced from 7 to 5, as well as the number of prosecutors of the High Prosecutorial Council from 7 to 5,
- it is regulated that minority judges are in the High Judicial Council because they have 5 out of 11 votes, and that minority prosecutors are in the High Prosecutorial Council because they elect 4 of the 11 members of the Council,
- the High Judicial Council can take decisions without any "judicial vote" since the quorum is met with only one judge attending the session. For the decision-making in that situation, his/her vote is not necessary – only attending judges may vote against, thus the decision is legally passed. Regarding the High Prosecutorial Council, it is allowed to make decisions without any elected prosecutor.[39]

Referral of Draft Amendment to the opinion of the Venice Commission

Despite all the aforementioned omissions and civil society complaints, the Ministry of Justice sent a revised proposal to the Venice Commission, which did not include the proposed changes. As stated in Report no. 1 and no. 2 of the Council for Monitoring of the Action Plan for Chapter 23, the Ministry pointed out that it would prepare a report on the public

39 Serbian Judges Association, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Center for Judicial Research - CEPRIS, Association of Judicial and Prosecutorial Assistants of Serbia, Association of Judicial Counselors of Serbia, Lawyers Committee for Human Rights - YUCOM and Belgrade Center for Human Rights, Open Letter on the Conclusion the process that the Ministry of Justice leads in relation to the changes of the Constitution of the Republic of Serbia, March 2018, available at: https://bit.ly/2TgddFS.

hearing justifying the acceptance or not of individual proposals, but did not do so by the time this report was drafted.[40] The same Report stated that, at the 63rd session of 12 April 2018, at the proposal of the Ministry of Justice, the Government adopted a Conclusion approving the Draft Amendment to the Constitution of the Republic of Serbia in the field of justice prepared by the Ministry of Justice.

The European Commission's Annual Report on Serbia of April 2018 stated that the Serbian authorities and interested parties had to enter into wider and more open debates because civil society has already raised the issue of the inadequacy of the proposed measures in relation to the judiciary (including the composition of the High Judicial Council – HJC).[41] The report drew attention to the significance of the constitutional reform process in the country, the outcome of which should be reflected in the Draft sent to the Venice Commission.

At the request of the Serbian Judges Association, the Consultative Council of European Judges (CCJE) published its opinion on May 2018, reminiscent of a potentially problematic solution to the composition of the High Judicial Council and the independence of the judiciary in general, and affirmed the concern expressed by domestic associations.[42]

The Venice Commission has published the Opinion on Draft Amendments to constitutional provisions concerning the judiciary of the Republic of Serbia on June 25, 2018.[43] In conclusion, the following recommendations were made:

1. **Composition of the HJC and the role of the National Assembly:** The selection of non-party members of the HJC by the Assembly, including the first round (majority of 3/5) and the second round, if all candidates have not been all elected (this time with a majority of 5/9) provides a weak incentive for the majority of the National Assembly to avoid the second round of voting. This creates the opportunity for half of the members of the HJC to be a coherent group of like-minded people consenting to the wishes of the current authorities. Since it is unlikely for this amendment to be appropriate for ensuring pluralism within the HJC, the Venice Commission invited the Serbian authorities to find a second solution.
2. **The composition of the HPC and the role of the National Assembly:** Similarly to the HJC, it is important for the HPC not to be dominated by the current majority in the National Assembly in order to ensure credibility and gain public confidence in the system. Accordingly, the fact that 5 out of 11 members are elected by the National Assembly with the Minister of Justice and the Supreme Public Prosecutor of Serbia – also elected by the National Assembly – is a cause for concern. As in the case of the HJC, a better solution should be found to ensure pluralism in the Council, and the issues raised for judges in the HJC are also applicable to prosecutors in the HPC, to the extent appropriate.
3. **Dissolution of the High Council of Judiciary**: If the HJC does not make a decision within 30 days, the mandate of all of its members is terminated, which can lead to decision-making being hurried or to frequent dissolutions of the HJC. Taking into account the composition of the HJC of 5-5, the blocking of the decision-making process may possibly be challenged by the members of the HJC elected by the National Assembly against judges or vice versa, thus making it possible for the HJC to be rendered inoperative. This opinion should be deleted or, at least, the conditions for dissolution should be stricter.
4. **Dismissal due to incompetence:** Disciplinary responsibility for judges and prosecutors is not covered by the Draft Amendment, which provides very unclear reasons for the dismissal of judges and deputy public prosecutors. It is important for the terms related to disciplinary responsibility and dismissal in the Draft Amendment to be explained in more details. The use of unspecified terminology such as "incompetence" without further clarification should be avoided and, therefore, excluded.
5. **The manner of ensuring the uniform application of rights**: The Venice Commission proposes

40 Council for monitoring of the Action plan for Chapter 23, *Report no. 2 on the implementation of the Action plan for Chapter 23*, p. 5-6.

41 *European Commission*, *2018 Annual Report on Serbia*, April 2018, available at: https://bit.ly/2HcTrEz, p. 13-14.

42 *Opinion of the Bureau of the Consultative Council of European Judges on Constitutional Amendments*, available at: https://bit.ly/2Fq4hL8

43 European Commission for Democracy through Law (Venice Commission), *Opinion on Draft Amendments to Constitutional Provisions Concerning the Judiciary of the Republic of Serbia*, CDL-AD (2018) 011, Opinion No. 921/2018, Strasbourg, 25 June 2018. https:// bit.ly/2PxYpUZ, p. 20-21.

to delete the third paragraph of Amendment V, which states that: "The law regulates the way in which the uniform application of laws by the courts is ensured." If, however, it is considered that the provision of harmonization of court decisions should be included in the Constitution and that referring to the role of the Supreme Court in amendment X is not deemed sufficient, then the first paragraph of this amendment could consider paying due attention to court decisions.

6. **Public prosecutors and deputy public prosecutors**: The Supreme Public Prosecutor and public prosecutors are elected by the National Assembly and are responsible to it. It is acceptable for the Supreme Public Prosecutor to be elected by the National Assembly and to be responsible for the overall policy of implementation of the law, however, other public prosecutors should not have a direct connection with the National Assembly. Amendment XIX and XXI should be amended accordingly.

It has been added that other solutions from the Draft have to be reviewed and altered as recommended in this Opinion.[44] Civil society took this opportunity to invite the Ministry of Justice to form an expert working group that will prepare new proposals for amendments to the Serbian Constitution in the part relating to the judiciary based on the opinion received, followed by a public debate. Members of the Working Group for Chapter 23 of the NCEU organized a meeting with the President of the Government, Ana Brnabic, in order to directly sharetheir previous remarks. The RS Government, the authorized proposer of the constitutional amendments, stood aside with the proposal of the Ministry of Justice and pointed out that the final act amending the Constitution in the part of the judiciary will be the topic of another roundtable, before the act is forwarded to the National Assembly. The aim of the changes is to set the basis for an efficient, responsible and. above all, independent judiciary, but, as she stated, to respect the voice of the profession.[45]

New Draft and final opinion of the Venice Commission

On September 11, 2018, the Ministry of Justice drafted the third Draft of the amendment,[46] as well as the Draft of the Constitutional Law, in the same spirit as all the previous ones, and scheduled the round table.[47] Representatives of YUCOM, at a roundtable held on September 18, 2018, summarized the disagreements of the new Draft with the Action Plan for Chapter 23 and the Opinion of the Venice Commission.[48]

Namely, according to the harmonized text, the members of the HJC can be prominent lawyers with a certain work experience and personal reputation. There is no obstacle for representatives of the executive and legislative authorities to join the ranks of prominent lawyers. In the Opinion of the Venice Commission, it is explicitly stated that representatives of the executive cannot play a role in the decision-making process of the HJC, if an, at least as far as the transfer of judges is concerned. In addition, the Action Plan for Chapter 23 clearly stipulates the declaratory role of the National Assembly in the process of election of judges, and, according to the agreed amendments, there are no obstacles for the professional members of the Parliament to be elected in these two bodies, thus giving them the opportunity to directly decide on the choice of judges. Secondly, the working experience of prominent lawyers is defined in a way that the professional representatives of the National Assembly and the professional officials in the Ministry of Justice are precisely meeting the set criteria since they need to have at least 10 years of working experience in legal profession's fields that are of importance for the jurisdiction of the High Judicial Council, and these authorities (in addition to the court) have competencies, which, according to the offered solution, have a HJC.

The Venice Commission issued a series of recommendations to improve the current position of the

44 Venice Commission, *Opinion on the Draft Amendment to Constitutional Provisions Concerning the Judiciary*, Strasbourg, 25 June 2018, https://bit.ly/2FAOIAz

45 Working Groups for Chapters 23 and 35 NCEU, *Report from the Working Meeting with the President of the Government of the Republic of Serbia at the House of Human Rights and Democracy*, September 2018, available at: https://bit.ly/2FpPqAu

46 Ministry of Justice, *Third draft amendment to the Constitution*, 11 September 2018, Available at: https://bit.ly/2zVy1tr

47 The text of the working version of the amendment to the Constitution of Serbia is available on the website of the Ministry of Justice.

48 Lawyers' Committee for Human Rights YUCOM, *New Working text of Constitutional Amendments does not remove political influence on the judiciary*, available at: https://bit.ly/2QPgOJv

Public Prosecutor's Office. Recommendations regarding the responsibility of the Supreme Public Prosecutor are not fully met, and he/she remains unaccountable for his/her instructions in the event that directly lower public prosecutors consider them as illegal. Therefore, a legal remedy against the instructions of the Supreme Public Prosecutor is not envisaged by the amendments. The composition of the High Prosecutorial Council does not guarantee the exclusion of political influence on the prosecution. In addition, political influence is higher than in the past. New solutions contemplate the election of 6 members by the National Assembly (including the Minister of Justice and the Supreme Public Prosecutor), while only 4 members of the Prosecutors' Representatives would be elected by colleagues. Due to the way decisions are made, the relevance of the presence of prosecutors in this body is diminished. Finally, the possibility of terminating the mandate of all members of the HJC and the HPC, unless they make a decision within 60 days on a number of issues, is an additional pressure on the guarantees of independence of the judiciary, which has been severely criticized by the Venice Commission.

Despite the expressed opposition of the expert public, on October 11, 2018, the Ministry of Justice published the fourth draft of the Amendment, on which a new debate was not opened, and on 24 October, it was announced that members of the Venice Commission had considered the Draft Plan at the 116th plenary session of the Commission. The Ministry's press release claims that the Venice Commission concluded that the latest version of the amendment was in line with the recommendations of the Venice Commission, which were formulated in its Opinion, on June 2018. The conclusion in the Memorandum stated that "it has been handled in accordance with the recommendations made by the Venice Commission in its opinion CDL-AD (2018) 011."[49]

By publishing the documents, the question was raised why this time the regular procedure of giving opinions on certain changes by the Venice Commission did not follow. The Memorandum was prepared and submitted by the Secretariat of the Venice Commission, which is an administrative body. At the public's request to answer why it was handled in a short procedure, the Venice Commission claimed that the Memorandum was the opinion of the Venice Commission and that the proposal sent by the Ministry had been forwarded to the rapporteurs and presented to the members of the commission at the session. The Memorandum was not formally adopted because the proposal of the changes arrived a few days before the session and there was no time for a complete procedure. New questions have not been opened, so the new text of the amendment is only compared to the previous Venice Commission Opinion of June 2018.

Instead of the conclusion

The professional public remains dissatisfied with this decision of the Venice Commission, since the opportunity has been missed to correctly present the key objections before the debate held at the National Assembly. It was announced that the Government would forward to the National Assembly an initiative for amending the Constitution, and only following an adoption with two thirds of the votes, would the amendment texts be considered. They would be forwarded to the Committee on Legislation and Constitutional Affairs, which would formally be the official proposer of the changes.

To date, it is unclear why it was decided to make the procedure for amending the Constitution this circumvented. When asked to the Ministry of Justice whether a working group was formed within the Ministry to work on the drafting of the first and later versions of the amendments, it was answered that there were no working group and that they were "formed by the Ministry of Justice", without further specifying why a working group was not organized, and who from the Ministry was working on it.[50]

In the spirit of inadequately organized consultations with the expert public and public discussion, we note that, according to our data from previous surveys, 91% of the elite and 43% of citizens support a broad public debate on the forthcoming changes of the Constitution; 88% of elite members think

49 Venice Commission, *Memorandum of the Secretariat on the Compatibility of the Draft Amendment to Constitutional Provisions on the Judiciary* in the text provided by the Ministry of Justice of the Republic of Serbia on 12 October 2018 with the *Venice Commission's Opinion on Draft Amendments to Constitutional Provisions on Justice*, Venice, 19-20 October 2018 , p.6. available at: https://bit.ly/2zVy1tr

50 Ministry of Justice, *Response to Request for access to information of public importance*, no. 7-00-332 / 2018-32, available in the YUCOM archive.

that citizens and their associations, including civil society organizations, should play an active role in initiating constitutional changes, primarily through the organization of public hearings, the articulation of arguments in the areas that are their fields of expertise, suggestions for proposals, active citizens' participation in the discussion on changing the Constitution, etc. A potential opportunity for proposed amendments to be announced would be if a public hearing was organized in the competent parliamentary committee, involving judges, prosecutors, constitutional law professors, as well as representatives of the non-governmental sector.

At a session held on November 29, 2018, the Government, as stated, adopted the Proposal for the Amendment of the Constitution of the Republic of Serbia, which refers to courts and public prosecutors. According to the Government's announcement, changes were made to the provisions related to the organization of judicial authorities and the position of public prosecutors, in particular the provisions of Article 4 of the Constitution, or Articles 142-165, as well as the changes of members concerning the competence of the National Assembly, the decision-making process in the National Assembly and the election and appointment of judges of the Constitutional Court. The assumption is that the text of the Proposal that is to be sent to the National Assembly is exactly identical to the 4th version of the Amendment prepared by the Ministry of Justice.[51]

With the belief that there will be a truly formal and substantive public debate, and bearing in mind that the essence of the Draft Amendment proposed by the Ministry has not changed over time, we emphasize that we are concerned about the following key solutions:

- Allowing a political majority in the National Assembly to elect half of the members of the High Judicial Council and most of the members of the future High Prosecutorial Council;
- Opportunities for the five-member Commission to select half of the members of the High Judicial Council, four members of the High Prosecutorial Council, as well as the Supreme Public Prosecutor with only three votes;
- Obligations to terminate the mandates of all members of the High Judicial Council and the High Prosecutorial Council in cases where a decision is not made within 60 days;
- Authorization given to the Speaker of the National Assembly to influence the termination of the mandate of all members of the High Judicial Council and the High Prosecutorial Council;
- Maintaining the status of Public Prosecution's Office not as independent, but as autonomous, with a strict hierarchy, despite European tendencies towards the construction of an independent criminal prosecution;
- Differences in the position of Public Prosecutors and Deputy Public Prosecutors when it comes to reasons for termination of office and calling for disciplinary responsibility (unlike Deputy Prosecutors, Public Prosecutors cannot be dismissed due to serious disciplinary offense and incompetence), which suggests the possibility of political reasons for holding the functions of Public Prosecutor;
- Enabling the Judicial Academy to be the only starting point in the judicial system, without guaranteeing the independence of the institution (leaving the definition of the Judicial Academy's position to future regulation). According to the proposed solution, the management body of the Academy would reflect the composition of the High Judicial Council and the High Prosecutorial Council. According to the relevant changes, it would mean that the attitude of the members appointed by the National Assembly and the members appointed by judges and prosecutors would be of 11 to 9 in favor of the representatives of the National Assembly and the Government, which would ensure political influence on entry into function in the judicial system.

51 Government Communication of the Government of the Republic of Serbia, the Government adopted the Proposal to amend the Constitution of the Republic of Serbia, 29 November 2018, available at: https://bit.ly/2Pd43qe

04

The most important projects

Project title:
Effective access to justice in Serbia
Project duration:
December 2017 – December 2018
Donor:
Embassy of the Federal Republic of Germany

The main purpose of this project is to monitor and evaluate the process of implementation of activities from the Action Plan for Chapter 23. Negotiations on the accession of the Republic of Serbia to the European Union have been formally opened by the Intergovernmental Conference on 21 January 2014 in Brussels. Chapter 23 *Judiciary and fundamental rights* is one of the most important chapters, and effective implementation of the given measures in this chapter is a prerequisite for further progress in Serbia's accession to the EU. The project *Effective access to justice in Serbia* aims to point out the problems and weaknesses of the system through the debate on the situation in the judiciary and basic rights and recommendations for their overcoming. Through Chapter 23, the project specifically focuses on the respect of the principle of innocence and reviews the compliance of codes of conduct adopted to prevent the appearance of commentaries on court proceedings by representatives of the authorities, which exerts pressure on the work of judges and prosecutors.

The project *Effective access to justice in Serbia* also provides the opportunity for citizens of a weaker property status to have equal access to justice. The state of Serbia postponed the adoption of the Law on Free Legal Aid for 12 years and is the only state in Europe that does not have such law. The Lawyers' Committee for Human Rights has been working continuously for more than 20 years to provide free legal aid in Serbia. We led the development of a free legal aid system and improved access to justice in the country. Through this project, YUCOM continues to work on providing free legal aid to the most vulnerable citizens until the State passes laws and systematically establishes a mechanism for helping citizens.

Within the project, three conferences on the judiciary and fundamental rights were organized on the topic: changes to the Constitution, the presumption of innocence and the right to freedom of assembly and the right to privacy. YUCOM has developed a *Report on compliance with the code of conduct of the members of the Government and the deputies on the limits of the permissibility of commenting on court decisions and procedures*that cites numerous examples of incomplete implementation of the adopted codes. Also, politicians and public officials continue to exert pressure on the work of the courts, publicly suggesting the potential outcome of court's proceedings or criticizing the conduct of judges in certain cases.

Project title:
Towards stronger judiciary through citizens' monitoring
Project duration:
April 2018 – March 2019
Donor:
Balkan Trust for Democracy

The Civil monitoring project for a stronger judiciary is being implemented with the support of the Balkan Trust for Democracy, and aims to improve the process of Serbia's accession to the European Union by monitoring the implementation of the judiciary measures provided for in the Action Plan for Chapter 23 as well as measures relating to the judiciary covered by Chapter 35. The Action Plan for Chapter 23 foresees that Serbia will continue to work on improving the legal and normative framework for the protection and promotion of basic human rights in accordance with the *acquis communautaire* and with European and international standards. In line with the above, the objective of this project is to identify and assess the progress made by Serbia in the field of judicial reform and basic human rights and other reforms foreseen in the Action Plan for Chapter 23 and Chapter 35.

The Lawyers' Committee for Human Rights, in the framework of project activities, monitors the non-enforceable measures in relation to the judiciary. These activities include the necessary constitutional changes, the disciplinary responsibility of judges

and public prosecutors, disciplinary procedures and the jurisdiction of professional judicial bodies, as well as the implementation of measures envisaged for the functioning of the judiciary in the territory of northern Kosovo.

The project brings together a number of relevant actors such as judges, prosecutors, lawyers, representatives of the Ministry of Justice, as well as representatives of civil society. It also means informing the general public about the implementation of theactivities of Action Plan for Chapter 23 and the implementation of the envisaged measures, thus achieving the confidence of citizens of Serbia in the judiciary.

One of the significant results of the project is to formulate conclusions, recommendations and concrete proposals through the objective exchange of views of all interested parties to improve the implementation of the activities envisaged by the Action Plan for Chapter 23, and how to successfully implement the measures provided for in Chapter 23 concerning the judiciary.

The team began monitoring the implementation of measures from the Action Plan for Chapter 23 relating to the judiciary, with a focus on 5 areas: amendments to the Constitution in the part relating to the judiciary; transfer of budgetary powers to the High Judicial Council and the State Prosecutorial Council; the distribution of cases and the disciplinary responsibility of judges and prosecutors. The fifth theme, which deals with Chapter 23 and Chapter 35, is precisely the integration of the judiciary in Kosovo. In the following period, the team will draft a preliminary report and hold consultations with judges and prosecutors on the above issues. A visit to Kosovska Mitrovica was also planned, in order to collect more data on the functioning of the Brussels Agreement on the Judiciary.

In the House of Human Rights and Democracy in Belgrade, in September 2018, an initial working meeting of members of the Working groups of the National Convention on the European Union for negotiating Chapters 23 and 35 was held with the President of the Government of the Republic of Serbia, Ana Brnabic. The topics of the working meeting were the changes to the Constitution, the reform of the judiciary and the negotiations between Belgrade and Pristina. YUCOM, together with the Center for the Advocacy of Democratic Culture from Kosovska Mitrovica, on the occasion of the anniversary of the implementation of the Judicial Agreement, invited the authorities in Belgrade and Pristina to react responsibly to the implementation of the commitments related to the integration of the judiciary, and to regularly report to the public on the application of the Agreement.

Project title:
Human rights beyond the chapters
Project duration:
January 2018 – December 2018
Donor:
Ministry of Foreign Affairs of the Republic of Bulgaria

The challenges facing the Republic of Serbia in the process of European integration are most visible in the area of providing free legal aid, given the lack of a law that would regulate this issue in detail. This situation places citizens to whom legal assistance is necessary, but also guaranteed by international regulations and the Constitution of the Republic of Serbia, at a disadvantage.

Accordingly, the goal of this project, implemented with the support of the Ministry of Foreign Affairs of the Republic of Bulgaria, is to ensure the protection of human rights by providing free legal aid to citizens. The project puts emphasis on particularly vulnerable groups of people: national minorities, people with disabilities, LGBTQ+ population.

Also, the project's activities include the training of local journalists on discrimination, hate speech and hate crimes, with a special focus on minorities, with the aim of making media representatives more sensible to report on these sensitive issues. A continuous media campaign that deals with human rights and discrimination and the publication of information on these important issues leads to the strengthening of democracy.

One of the project objectives is also support for good governance and strengthening of democracy that the Lawyers' Committee for Human Rights provides by monitoring the implementation of measures for Chapter 23, the Action Plan for Minorities and the goals of sustainable development of the UN.

The significant result of this project is the preparation and release of a publication containing information on how to combat discrimination, as well as concrete recommendations for improving the implementation of the current legislation in the areas of discrimination and the protection of the rights and freedoms of national minorities.

During the project on discrimination, four round tables were organized in Dimitrovgrad, Vranje, Subotica and Belgrade, with the participation of local journalists.

Project title:
Empowering legal clinics for anti-corruption trials monitoring – Phase III
Project duration:
May 2018 – November 2018
Donor:
Organization for Security and Co-operation in Europe – OSCE, Mission in Serbia

The project will contribute to the improvement of the rule of law in Serbia, notably testing the functioning of the criminal justice system and the fight against corruption through the construction of a sustainable national network of students for monitoring anti-corruption trials.

Trial monitoring with elements of corruption should motivate persons in charge of detection, prosecution, trial and punishment of corruption crimes to more effectively address these cases. The exchange of knowledge between OCD lawyers and activists with experience in monitoring and legal clinics will enable the students already involved in the work of legal clinics to gain practical experience in courtrooms and develop the skills of observing and analysing cases. Also, students will be able to deepen their essential legal knowledge and form their professional identities.

As in the previous year, students of finishing years and master studies of Law Faculties in Belgrade and Nis took part the project. This year, the third phase of the project lasted 6 months, and was intended to improve the capacity of students for monitoring legal clinics through training and mentoring. Also, students were provided with study visits to anti-corruption bodies in Serbia.

In October 2018, YUCOM organized a study visit to anti-corruption bodies for students from Belgrade and Nis. We talked with the representatives of the Anti-Corruption Council, the Sector for Prevention, the Sector for Property Control and Revenue of Officials and the handling of complaints, as well as the Sector for resolving the conflict of interest of the Anti-Corruption Agency. Also, students had the opportunity to exchange experience with trials with elements of corruption and organized crime with a journalist from KRIK, Crime and Corruption Research Network.

Project title:
Access to Justice in Serbia
Project duration:
December 2017 – May 2018
Donor:
World Bank Multi Donor Trust Fund for Justice Sector Support in the Republic of Serbia

The main goal of this project is to create several expert analyses and guides that address specific issues, so that citizens can access justice more easily and at no extra cost. Information and expert advice in publications are an ancillary instrument for citizens, a step closer to realizing their rights.

The Multi Donor Trust Fund for Justice Sector Support in Serbia, in cooperation with the Lawyers' Committee for Human Rights, conducts the project *Access to Justice in Serbia*, and proposes several actions to improve access to justice, through the following topics: the right to exemption from court fees, Interactive map of free legal advice providers and access to the judiciary of vulnerable groups. YUCOM chose these topics as representative examples in which ordinary citizens, with the help of professional support in the form of specially designed

guides or analyses, can significantly improve their position in access to justice.

YUCOM has prepared a brief guide to citizens in which they can be informed about the right to exemption from court clauses. Since there is no harmonized case law regarding the processing of requests for exemption from court costs, YUCOM has come up with information through questionnaires forwarded to judges. The purpose of the questionnaire was to identify common applicants in case-law.

During a survey conducted by the YUCOM office, it was also observed that courts with an obligation to officially use the language of national minorities do not have basic information about court rules on their web portals. It was found that there is no information about the rights of parties in the proceedings, including the right of national minorities to interpreters. Also, legal information was not presented on the web sites of the National Councils of National Minorities. Bearing in mind that there is a guide First time before the court and first time in a courtthat has been translated into five languages, YUCOM has prepared a short Guide to the right to court interpreters, in addition to the previous guide.

In the absence of the Law on Free Legal Aid or other appropriate legal provisions for providing free legal aid, there is a need for expert analyses and guides in Serbia that can be a bridge for easier access to justice for all citizens.

Project title: A Nation-Wide Awareness Campaign on Self-Representation in Serbia
Project duration:
December 2017 – April 2018
Donor:
World Bank Multi-Donor Trust Fund for Justice Sector Support in the Republic of Serbia

Citizens are usually unaware of their rights and obligations, which makes them justifiably afraid when they meet court procedures they do not know, and whose outcome can sometimes have a decisive impact on their lives. An unhealthy economic situation and lack of money pose an additional problem. In order to make the position of citizens facing certain situations somewhat easier, the World Bank Multi-Donor Trust Fund for Justice Sector Support in the Republic of Serbia has developed two guides in cooperation with the Lawyers' Committee for Human Rights: Guide for self-representation of citizens and Guide – First time before the court and first time in the court, which in a simple and illustrative way expose problems related to court proceedings and proceedings before independent institutions.

All citizens meet with the judicial system, at some point, and are often forced to participate in court proceedings. There is an additional fear, because they mostly do not have any knowledge or experience, and they stand on completely unknown ground. This applies not only to laws, but to all rules, often unwritten, which can be overcome only through years of study and practice. The purpose of these guides is to bring legal proceedings closer to citizens, using simplified language and terminology and to make complicated terms clearer to ordinary citizens. These publications provide answers to questions that citizens usually ask before deciding

to go to court, such as: costs of proceedings, filing lawsuits, giving statements and responses to lawsuits, hearings, evidence, submissions, access and insight into the case, acceleration of proceedings, judgments and remedies. Also, publications respond to some trivial questions, including:"What do you bring to court?", "What to wear?", "Where is the courtroom?" and so on.

Guides explain the procedures themselves, but also warn about details that only lawyers know. However, it is important to note that guides cannot replace a legal advice that can be obtained from a qualified expert and do not constitute a promotion of self-representation.

For the duration of the project, guides were distributed throughout Serbia, delivered to all municipalities, courts, prosecutors' offices and social welfare centres, and in electronic form placed on the sites of most of these institutions. Presentation of the guides was organized in Novi Sad, Vrbas, Kikinda and Belgrade.

Project title:
Judicial relations towards media freedom
Project duration:
1 April 2017 – 31 January 2018
Donor:
Open Society Foundation

The main goal of the project is to monitor media and media freedom through court proceedings against printed and electronic media, and their right to report without being disturb on court proceedings. In addition to the monitoring of selected cases, the goal of the project is to harmonize court practice,to take into account the advocacy of up to 3 strategic cases, and also to draw attention with media promotion to certain problems, such as: judgments in absentia, length of proceedings, delay of proceedings, explanation of judgments, use of standards ESLJP and others. The results obtained should be used to provide information to the European Commission when compiling the Progress Report, as well as when compiling a quarterly progress report.

A great deal of research and analysis points to the fact that the situation in which the media in Serbia is located is not at a satisfactory level. Most of these analyses invoke to parts *of Serbia's Progress Report for 2016* which suggest that biased media coverage and leakage of information about investigations (with disregard of the presumption of innocence and the violation of the secrecy of the investigation) are the reasons for serious concern. Threats, violence and intimidation of journalists are also a major problem, while investigations and final verdicts for attacks on journalists are rare. One of the general conclusions of this report is that there is no condition for the full exercise of freedom of expression. The problem of tabloid reporting is largely present and affects the general public's trust in the media, which, according to the CeSID's research for 2016, is only 18%, and has been steadily decreasing over the past several years.

Similar to the media, the situation in the judiciary is devastating. The Anti-Corruption Council has repeatedly suggested in its reports on the state of the judiciary that it has to stop the following practice where first politicians talk in the media about crimes, then ministers report that certain persons have been arrested, and, following that statement, the prosecution is involved in the media story.

On the one hand, through active counselling and representation of journalists for whom the contract of employment was unfoundedly terminated, as well as through criminal reports to the Office of the Prosecutor in case of threats to journalists, we advocated for professional integrity and the right of journalists to work. On the other hand, we have initiated proceedings before the Court and the Press Council, and in that way actively worked on the fact that media activity in Serbia remains within the Constitution, the Law on Public Information and the Media and the Code of Journalistic Ethics.

Project *Relation of the judiciary to the media freedom* was implemented in the course of 10 months, on the territory of the Republic of Serbia, with a special focus on the places where proceedings were conducted in domestic courts against electronic or print media.

Project title:
Empowering the reporting on rule of law standards in Serbia, Macedonia, Albania, Kosovo and Bosnia and Herzegovina
Project duration:
January 2018 – October 2018
Donor:
American Bar Association, Rule of Law Initiative

The Lawyers' Committee for Human Rights – YUCOM conducted a regional project under the auspices of the Balkan Regional Rule of Law Network (BRRLN) in cooperation with the Helsinki Committee for Human Rights in Macedonia, the Tirana legal aid society (TLAS) from Albania, the Balkans Policy Research Group (BPRG) from Kosovo and the Helsinki Committee for Human Rights from Bosnia and Herzegovina.

The main objective of the project is to improve the capacity of journalists to report on progress in the rule of law in all five countries, as well as to support better cooperation between bar associations, journalists and civil society organizations in those countries and in the region.

For the duration of the project, trainings for journalists were organized and a manual for monitoring of court procedures was prepared. The focus was on strengthening professional reporting while respecting the presumption of innocence and protecting the rights of minors. During the project, special attention was devoted to monitoring the quality of media reporting related to rule of law issues.

YUCOM worked intensively on raising the level of communication and information exchange between journalists and lawyers who are well-aware of the standards of fair trial. Training for public relations attorneys from bar associations and other interested lawyers was organized to make communication more effective. During the project, special attention was paid to establishing new lines of communication between bar associations and civil society organizations in the region, as well as creating a sustainable front for monitoring progress in the rule of law in all five countries.

Project title:
Freedom of expression and privacy protection on the Internet in Serbia
Project duration:
February 2017 – December 2017
Donor: American Bar Association, Rule of Law Institute

The main goal of this project is to educate key users on issues and challenges related to the freedom of expression and privacy protection on the Internet in Serbia, as well as their training in building their own capacity to advocate and exercise these rights. Also, the aim of the project is to educate the general public on these issues and to ensure continuation of the debate on this topic and general activism necessary for the reform of key areas in Serbian legislation and after the project is completed. YUCOM has developed an analysis of the existing legal framework and practice by comparing it with European and international principles and standards in order to find the best examples of practices and solutions that can be applied in Serbia. A comprehensive media campaign was realized throughout the project, in order to inform the public about the activities, goals and tasks of the project. In cooperation with organizations dealing with these topics, YUCOM organized a focus group in the key cities of Serbia, designed to encourage discussion and gather information for the analysis. The networking campaign was conducted to bring all interested parties together into an informal group that would regularly discuss freedom of expression and privacy issues on the Internet, share ideas and coordinate further plans for activities in this field.

YUCOM has followed key Internet media to gain insight into the situation on the ground and assessed whether there were any violations of the freedom of expression on the Internet and their exact nature and to provide legal representation in a single strategic case. The findings and results of the sur-

vey were presented by YUCOM at meetings with the main actors in order to lobby and advocate for legal reforms necessary to achieve unrestricted freedom of expression and privacy protection on the Internet, as well as harmonize legislation with international and European standards.

Project title:
Danube Region Information Platform for Economic Integration of Migrants – DRIM
Project duration:
January 2017 – June 2019
Donor:
Transnational program of the Danube region, co-financed by the European Union

About the project: The goal of DRIM is to strengthen the capacity of public institutions to provide information when integrating economic migrants, which is seen as an equal approach to employment and work. The DRIM project aims to contribute to the improvement of the capacity of institutions and their ability to respond to the needs of newly arrived and already settled migrants through effective information exchange. The main result of DRIM is the instrument (information platform) that forms the basis of information infrastructure and enables the integration of economic migrants in eight Danube countries.

Transnational Information Platform *Danube Compass* is one of the main results of the DRIM project and provides information on various aspects of work and life in eight Danube countries: Austria, Croatia, the Czech Republic, Hungary, Germany, Serbia, Slovenia and Slovakia.

Danube Compass is a system of eight national databases containing information on the integration of migrants into six main categories: work, arrival and stay, education, learning local language, everyday life and health. Information can be accessed via a computer or mobile phone: www.danubecompass.org

Danube Compass is an innovative platform aimed at improving the capacities of state authorities to create and facilitate easier integration of economic migrants in the wider Danube region. Through the *Danube Compass*, public authorities will be able to efficiently transfer migrant information on the labour market of each country individually.

Migrants will be able, through this platform, to find the necessary information on the labour markets of different countries and to be informed of their specificities (e.g. work safety, health system, work qualifications, educational opportunities, etc.). At the same time, public sector employees and sectorial agencies, as well as members and volunteers from non-governmental organizations, will receive a mechanism for information exchange, as they will be able to learn directly about labour market information, as well as rules and regulations on immigration in the countries of the Danube Region.

Danube Compass platform has been translated into five different languages. Each partner has selected a language group based on their own migrant context and migrants located in each country individually. During 2018, the platform was launched in all eight countries.

Project title:
Implementation of the Council of Europe Convention on the preventing and combating violence against women and domestic violence (Istanbul Convention), through the analysis of the Criminal Code and the Law on the Prevention of Domestic Violence
Project duration:
July 2018 – February 2019
Donor:
Canadian Embassy

The project deals with the quality and level of adequate implementation of the Istanbul Convention, the Law on the Prevention of Domestic Violence and the National Strategy for Gender Equality, with the aim of improving the government's activities in combating domestic violence in order to reduce it to the lowest possible level.

The project represents the support of civil societies to the State of Serbia through increasing the efficiency of preventing domestic violence and providing protection and support to victims of domestic violence. The basic prerequisite for improving the behaviour of officials, and thus the successful suppression of domestic violence, are specialized training and improvement of the knowledge of police officers, which will primarily be used when assessing risks and imposing urgent measures.

The project envisages the implementation of a focus group with employees of regional administrations that are responsible for preventing domestic violence and providing protection to victims of violence.

The aim of the focus group is to transfer the experience of police officers to the previous implementation of specialized training in preventing violence and providing protection to victims, detecting system weaknesses and improving existing practices.

Based on the information obtained through the focus group, YUCOM will create an online publication with recommendations for improving the existing normative framework.

Project title:
Fight against torture and impunity
Project duration: December 2017 – December 2019
Donor:
Delegation of the European Union to the Republic of Serbia
Partner: International Aid Network – IAN

The main goal of this campaign is to contribute to the eradication of torture and impunity in Serbian society and rehabilitation from the consequences of torture. Torture is one of the most serious crimes against humanity and dignity of a person. The person who is tortured is dehumanized and treated as an object or an animal. Torture is an extreme, interpersonal trauma, which leaves the consequences for the psychological and physical health of the victim, her family and friends, and society in general.

The action contributes to an important aspect of democratic consolidation of Serbian society in order to eradicate torture – one of the most serious violations of basic human rights, along with the right to freedom from torture, being one of the rights that cannot be derogated. This goal can only be achieved through a coordinated action of all relevant actors and decision-makers, relevant legal adjustments in Serbian law (revision of the definition of torture and adequate punishment of perpetrators), as well as the full implementation of the right to rehabilitation and compensation for victims.

The proposed action directly supports the efforts of the United Nations and the Council of Europe to combat torture, given that the aim is to implement the recommendations of the UN Committee Against Torture in the *Concluding observations on the second periodic report of the Republic of Serbia* at the 54th Session of the UN, held in Geneva, from April 20 to May 15, 2015.

The proposed activities will fulfil their goals through:

1) Combating torture and impunity by monitoring the implementation of the Action Plan for Chapter 23 and advocating for legislative changes.
2) Ensure adequate compensation and rehabilitation of victims through a campaign for the right to rehabilitation and compensation.
3) Ensure comprehensive and effective rehabilitation programs for victims.

During the first year of the project realization, working groups were formed and aimed at creating a strategy and accompanying actions following the recommendations of UN CAT. The working group consists of more than 15 civil society organizations dealing with the topic, as well as representatives of independent state institutions and representatives of international organizations. Visits to closed psychiatric institutions and detention units within the NPM were organized, the first training in a series of one-day training for employees in correctional institutions and district prisons was organizedunder obligations arising from international documents and practical application of standards, more than 30 legal advices were provided and were used to represent two cases of torture.

05 Publications – New Editions

Analysis of case-law - Conduct of courts on proposal for court fees exemption in civil proceedings

In April-May 2018, the Lawyers' Committee for Human Rights, in partnership with the Multi Donor Trust Fund for Justice Sector (MDTF-JSS), conducted a survey which aimed at analysing case-law on a motion for exemption from paying court fees in civil matters.

According to the Law on Civil Procedure, the first-instance courts are responsible for deciding on a motion for exemption from paying court fees for proceedings, and in April 2018, the Lawyers' Committee for Human Rights submitted requests for free access to information addressing the 24 Basic Courts. The request was demanding the courts to provide information on the number of requests for court fees exemption for procedure for 2017 as well as two decisions in which the request for court fees exemption was resolved, namely: the decision that was adopted and the decision that was rejected or rejected request for court fees exemption..

Numerous courts submitted the requested decisions, based on which an analysis of the conduct of courts was conducted on the proposal for court fees exemption in civil proceedings. For the purposes of the analysis, the 20 decisions tabulated in the annex have been processed, so that research users can obtain additional conclusions on the case-law related to this matter. Examples are regrouped as a representation of the court proceedings according to a precisely determined legal regulation, and are the basis for comment on the application of certain provisions of the relevant laws.

The right to be exempt from paying court fees forproceedings is an integral part of the right to a fair trial, which is guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. According to the European Court of Human Rights, inaccurate court fees represent potential actual constraints on the right to access to justice.

Exemption from paying the court fees of proceedings in civil proceedings is regulated by the Law on Civil Procedure (Articles 168-173). Exemption from paying the court fees is regulated by the Law on Court Fees (Articles 9-20). Some provisions of specific material laws contain provisions on exemption from court fees (e.g. Law on Consumer Protection (Article 140, paragraph 2 10).

Guide for Exercising the Right to a Court Interpreter - a Translator

Guide for Exercising the Right to a Court Interpreter – a Translator-Guide for exercising the right to a court interpreter – a translator is designed for the parties (for the plaintiff and the defendant) and other participants in civil proceedings in order to enable everyone to participate before the court on an equal footing.

During the development of the Functional Analysis of the Judiciary in Serbia from 2014, theMulti Donor Trust Fund for Justice Sector in Serbia noted as a deficiency an inadequate access to information on translation service providers, that is, court interpreters and the need to make the price of this service reasonable for effective access to justice, i.e. the judiciary.

Guide for exercising the right to a court interpreter – a translator should serve to raise awareness of the role and the right to a court interpreter. In a convenient way it provides basic information about court interpreters, how they are engaged, and the costs that a party or other participant must pay, if used by this law. In this way, the party and other participants in the civil proceedings may be instructed in the manner of exercising this right.

The main goal of the Guide is to provide access to justice to people who do not use Serbian language, that is, the language of the national minority in the courts where this language is in official use, as well as help to deaf, mute and blind persons, as they are given instructions on how to exercise the right to judicial interpreter in civil proceedings.

Guide to the right to a court interpreter – a translator wasprepared by the Lawyers' Committee for Human Rights – YUCOM in cooperation with the MDTF group. The guide is also translated into the languages of national minorities: Albanian, Bulgarian, Romanian and Hungarian and English.

Inclusion of youth perspectives and the needs of young people in the work of National Councils of national minorities

With the support of the OSCE Mission to Serbia, the Lawyers' Committee for Human Rights – YUCOM conducted a survey which aimed at bringing together the available data and relevant information related to the needs of young people and members of minority ethnic communities in order to empower the National Councils of National Minorities with defined needs and problems encountered by young people. The analysis was prepared in the framework of the project Evaluation of *Integration of youth policies and inclusion of youth in the work of the National Councils of national minorities.*

National Councils often face the problem of limited financial and human resources, as well as the lack of information relevant for solving specific problems from the work scope delegated by the state. One of the recognized problems faced by the National Councils is the lack of knowledge on how to define policies and activities that aimed at addressing young people from minority communities, and then motivating young people and potentials to engage them in activities that contribute to the advancement of the community.

The collected and analysed information provided the basis for developing recommendations for the introduction of specific activities and model of work for the National Councils that would include the youth perspective in their programs. The proposed recommendations will be the starting point for the OSCE Mission to Serbia to provide additional support in strengthening the National Councils in order to improve youth-focused activities and programs.

Note: The analysis was prepared with the support of the OSCE Mission to Serbia. The views expressed in the analysis belong exclusively to the authors and do not necessarily represent the official position of the OSCE Mission to Serbia.

Guide to exemption from court fees: fees in civil proceedings and how to get rid of them

In cooperation with the Lawyers' Committee for Human Rights, the MDTF-JSS has prepared a *Guide for exemption from court fees: fees in civil proceedings and how to get rid of* them.

Guide for exemption from court fees is intended for the parties (plaintiff and defendant) in civil proceedings. The guide shows the basic fees of the litigation procedure in a simple manner, clarifies how they are determined, in what time they must be paid and what are the consequences of non-payment of fees. In this way, the party can look at the possible consequences of conducting the proceedings according to its own status and rationally make a decision on the conduct of the dispute.

The main goal of the Guide is to improve financial access to justice and to guide individuals who are in a disadvantaged situation to use the right to exemption from court fees. Multi donor Trust Fund for Justice Sector Support in Serbia, in the preparation of the *Functional Analysis of the Judiciary in Serbia* in 2014, notes that individuals with lower incomes do not turn to court because of the costs, so exemption from paying court fees may be

crucial to allow them to have access to justice. It should be emphasized that this is especially important for labour disputes, when it comes to unpaid salaries, and where exemption from paying court fees can establish whether or not a person will continue with hers claim. Nevertheless, the general public has fairly limited understanding of the option of court fees exemption, and therefore many potential beneficiaries give up the option of the court because they are not aware that they have this possibility.

The guide provides information and instructions on how a party can be exempted from paying court fees, bearing in mind that this type of exemption from court fees is applied in practice.

Study on implementation of the Law on the prohibition of discrimination in Serbia

Study on the implementation of the Law on the prohibition of discrimination in Serbia, published by the Lawyers' Committee for Human Rights, was made by Mario Reljanovic, professor at the Law Faculty of the Union University, with the support of the UN Human Rights Team.

Study on the implementation of the Law on the prohibition of discrimination in Serbia is the result of the analysis of 87 cases (out of 150) initiated before the Serbian courts for a period of 9 years from the date when the anti-discrimination Law was applied. The analysed cases were taken primarily from the Legal Service of the Commissioner for the protection of equality and the Lawyers' Committee for Human Rights.

The study analyses to what extent the courts in Serbia handle and correctly apply clear legal concepts and precise rules in which there is little or no room for deviation in case-law, with regard to anti-discrimination law. The study showed inconsistency in the application of legal definitions relating to discrimination, even within the same court, which is a result of the inexperience of judges in the field of anti-discrimination law.

Also, the publication raises the issue of the scope this area of law has, since to this day, the categories of persons most frequently identified in human rights reports in Serbia are particularly vulnerable in terms of discrimination, yet they do not benefit from the application of anti-discrimination laws, since these and other marginalized groups rarely appear in cases that reach the courts.

Processing hate crimes and hate speech in Serbia's law and European standards

The aim of this publication is, first of all, to provide insight into some of the existing solutions to the problem of hate crimes and hate speech in European Union law, as well as in the practice of the European Court of Human Rights. The numerous judgments of the ECHR fundamentally deal with these issues through the various legal systems of the states signatories to the Convention for the Protection of Human Rights and Fundamental Freedoms, which, in spite of historical and social specifics, had a similar problem to the one of Serbia today when it comes to prosecuting crimes against hatred.

Hate crimes, as a special type of crime whose motive of hatred is due to belonging to a particular minority group, is not only a problem for the minority group itself that represents the object of hatred and prejudice. The problem affects the whole community in which the victim can be anyone, even someone who is only friendly to a certain minority group, or someone who came under the influence of the perpetrator of the crime because of his supposed

membership to a particular minority group. In practice, victims were also persons who, due to their appearance, were characterized as members of a minority group, regardless of whether they really belonged to that group. Hate crimes particularly oppress minority groups, and, despite the guarantee of the prohibition of discrimination, torture, inhuman or degrading treatment and the proclaimed principle of equality of all people, such a crime is sending a message to the whole group that it is not welcome and will not be tolerated.

Hate speech has also taken a special place in this publication as a specific abuse of the right to freedom of speech which, in its most extreme form, can serve as an excuse or even an indirect call for a hate crime. Although there are two separate legal institutes, hate speech and hate crimes in a social context often appear together, as a cause and consequence.

Journalists and media in court

Publication Journalists and media in court 2015-2017 was created within the project Judicial relations towards media freedom. The objective of the project is to provide support to journalists, the media and the judiciary through monitoring and analysing media practices against journalists and the media, identifying the challenges that arise in the implementation of the law, and pointing out the need to harmonize domestic case-law and its harmonization with international standards in the area of freedom of expression and media freedom.

The Lawyers' Committee for Human Rights – YUCOM, during 2017, monitored court cases against journalists and the media. The selection of items monitored was based on the response to questionnaires sent to over 500 media and media associations. Special attention was paid to the possibility of monitoring cases outside of Belgrade regarding the freedom of the media, as well as cases in which prosecutors are public officials or close people.

Based on the answers from the questionnaire, besides Belgrade, Novi Sad, Nis and Kragujevac were selected as cities that were given special attention when collecting data for analysis. The analysis covers civil, criminal and misdemeanor procedures, procedures for economic offences, as well as proceedings before the Administrative and Constitutional Court, in which journalists and the media can appear as parties.

The judiciary and the media have a common control role that they should have in relation to state authority. In practice, however, through the influence on the choice of the holders of judicial functions and the control of media funding, state authority is the one that exercises a strong influence on them. In relation to the judiciary and the media, we can see how the state government uses control levers to build and maintain mutual distrust, with the intention of preventing these two institutions from achieving their full democratic potential through their mutual cooperation and assuming their own roles in the brakes and balance system.

06

Other activities, cooperation and contri-bution

Platform of Organizations for Cooperating with the UN's Human Rights Mechanisms

The Platform of Organizations for following the recommendations of the UN's Human Rights Bodies was created by civil society organisations with a significant experience based on reporting to UN's human rights mechanisms and following recommendations. They recognize the necessity and significance of a continuous and evidence-based reporting process, the tracking of the implementation of the recommendations issued to the Republic of Serbia by those mechanisms, as well as the interactions with government bodies to track the implementation of the UN's recommendations on human rights. The Platform's activities are driven by the recognition of a common interest among organizations for a systematic engagement and joint action with the UN's human rights mechanisms.

Following the presentation of the *Report for the Third Cycle of the Universal Periodic Review* in January 2018, Member States of the United Nations sent 190 recommendations to the Republic of Serbia for the purpose of promoting and protecting human rights. In June 2018, the UN Human Rights Council adopted a report of the Universal Periodic Review for the Republic of Serbia, which has officially accepted 175 of the issued recommendations, beginning a four-and-a-half year period during which the Republic of Serbia will have the obligation to implement the adopted recommendations. Civil society organizations have largely contributed to the Universal Periodic Review duringthe the third cycle as they have submitted many alternative reports to the Human Rights Council and provided valid and original information. Bearing in mind the scope of the work that is expected to be undertakenby the Republic of Serbia, and in light of the recommendations received from other human rights mechanisms within the UN, civil society organizations involved in the Platform consider that it is necessary to consider in a comprehensive manner the content of the recommendations received, their significance regardingthe current state of a certain field of human rights, and the ways in which they can and should influence the furthering of human rights and their more effective protection.

In addition to the Lawyers' Committee for Human Rights, the Platform was founded by and is comprised of the following organizations: Astra; Atina; A11 – Initiative for Economic and Social Rights; The Belgrade Center for Human Rights; The Center for Independent Living of Persons with Disabilities Serbia; Child Rights Center; FemPlatz; Group 484; Mental Disability Rights Initiative of Serbia (MDRI-Serbia); The International Aid Network IAN; The Network of Organizations for Children of Serbia – MODS; The National Organisation of Persons with Disablities of Serbia; The SOS Network of Vojvodina; The Standing Conference of Romani Citizens' Associations and Gayten – LGBT.

Prime Ministers of Norway and Serbia Visited the House of Human Rights and Democracy

During an official visit to the Republic of Serbia, Norwegian Prime Minister Erna Solberg, together with Serbian Prime Minister Ana Brnabic, visited the House of Human Rights and Democracy. During the visit, they spoke with representatives of the civil society. The agenda was focused on the protection of human rights, with an emphasis on socioeconomic perspectives and the right to work. The visit was an opportunity to exchange ideas about improving social and economic rights, and included a joint dialogue on past experiences and good practices, hoping to pursue the development in the field of human rights protection.

During exchanges with representatives of various organizations, the Norwegian Prime Minister stressed that Norway was interested in improving the mobility of workers and highlighted the importance of mobility for further economic development. Erna Solberg also underlined that Norway is not perfect, and that it also seeks to provide jobs for all sectors of society. Solberg stated that the two countries can learn from one another and that their common goal is to provide a decent life for all citizens.

During a joint visit with Prime Minister Solberg, Prime Minister Ana Brnabic said that Serbia should joint the EU in order to establish fundamental values in the field of human rights. She stressed that Serbia must advance in the direction of protection and promotion of human rights, and that this is not only Serbia's obligation to the EU and UN international bodies, but also the obligation of all its citizens.

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