

Non-paper on the state of play regarding chapters 23 and 24 for Serbia

June 2020

1. Introduction and summary

According to the negotiating framework for EU-accession negotiations with Serbia, the Commission will keep the Council duly informed and report to it twice yearly on the state of advancement of negotiations under the chapters "Judiciary and fundamental rights" and "Justice, freedom and security". This is the fifth non-paper on the rule of law for Serbia. The purpose of this non-paper is to provide an overview of Serbia's progress under chapters 23 and 24 mainly since the last non-paper presented in November 2019, and the relevant statistical data for 2019. It is based on Serbia's contribution to the enlargement package. In addition, a range of other sources were used including peer review missions, monitoring reports from international organisations and civil society, and Member States contributions.

During the reporting period, Serbia has made progress in a number of areas while facing serious delays in others. Serbia needs to accelerate reforms in the key areas of judicial independence, the fight against corruption, media freedom, the domestic handling of war crimes and the fight against organised crime. The COVID-19 pandemic created additional challenges in this area while also contributing to certain objective delays in Serbia's work on its rule of law agenda.

On Chapter 23, the constitutional reform process, which aims to strengthen the independence and accountability of the judiciary, is still on hold until after the 2020 parliamentary elections. The delay in the adoption of the constitutional amendments has repercussions on the drafting and adoption of the implementing legislation. The constitutional reform process needs to be continued in a transparent and inclusive manner as soon as possible, including by preparing the required implementing legislation. The backlog of old enforcement cases is further decreasing, and efforts to harmonise court practice have continued.

The entry into force of the new legislation adopted on the prevention of corruption, foreseen for September 2020, is being prepared through the strengthening of the Anti-Corruption Agency's resources and capacities. Council of Europe's Group of States against Corruption (GRECO) has yet to assess this legislation. The Law on the financing of political activities needs to be further amended to fully comply with all recommendations of the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR). The introduction of the special departments for combating corruption in the Higher Prosecutors' Offices is starting to yield results and the number of first instance convictions, following prosecution by the special departments, is increasing. However, an impact on high-level corruption cases is not yet tangible.

On fundamental rights, the government adopted, in January 2020, a new media strategy drafted in a transparent and inclusive manner. The renovation of prisons continued in line with the strategy for reducing overcrowding. However, the adoption of legislation on the Ombudsman, anti-discrimination, gender equality, and juvenile offenders is seriously delayed. Cases of threats and violence against journalists remain a concern and the overall environment for the exercise of freedom of expression without hindrance needs to be further strengthened, including in practice. As a step in that direction, the Ombudsman signed an Agreement with the representatives of seven media associations and all three journalists' trade unions on establishing a platform for registering the cases of pressures on journalists and other media actors and endangering of their safety on 22 May 2020. The agreement can contribute to the

protection of journalists' rights and their safety. Transparency of media ownership and of allocation of public funds, especially at local level, also needs to improve.

On Chapter 24, reform steps were taken in a number of areas, such as border management (including the signature of the status agreement with the EU, which, once ratified, will allow for the deployment of European Border and Coast Guard teams with executive powers along Serbia's borders with the EU), asylum procedures and the integration of successful asylum seekers. Steps were also taken in the fight against terrorism and money laundering with the adoption of new strategic documents, and concerning cooperation in the field of drugs and judicial cooperation. This has still to result in a better track record in the fight against organised crime as well as in a more pro-active approach in financial investigations, asset confiscations and seizures.

Serbia is implementing action plans which were adopted in July 2016, prior to the opening of the accession negotiations on chapters 23 and 24. Serbia is still in the process of revising its action plans with measures oriented towards meeting the interim benchmarks of the EU Common Positions on these two chapters.

2. Detailed overview

2.1. Chapter 23 – Judiciary and Fundamental Rights

Judiciary

The main **strategic documents** for the judiciary are still under revision: the Chapter 23 action plan, the follow-up strategy (the “judicial development strategy 2019-2024”) to the national judicial reform strategy that expired in 2018, and a comprehensive human resource strategy. The World Bank completed a functional review of the prosecution and is about to finalise a follow-up review to its functional review of the courts. These reviews could inform an impact assessment of the national judicial reform strategy and should be taken into account when preparing the follow-up strategy. The revised strategic documents should include clearly defined activities, budgetary commitments performance indicators and be in line with the Law on the planning system.

Following the **declaration of the state of emergency** on 15 March, the work of the courts was limited to processing urgent cases, mainly those related to violations of the emergency measures. Some of these cases were held via Skype hearings, based on an instruction by the Ministry of Justice but without this modality having a clear legal basis. In some instances, these proceedings resulted in sentences of several years of imprisonment. On 1 April 2020, the Government issued a decree providing that it was for the judge to decide whether to hold distance hearings. Case-related timelimits and the statute of limitation were suspended for the duration of the state of emergency. Following the lifting of the state of emergency in early May, the High Judicial Council instructed the Serbian courts to re-open as of 11 May – gradually where necessary and under detailed health safety instructions.

As regards the **organisation of the courts and prosecution offices**, responsibilities remain divided between the Ministry of Justice and the councils (the High Judicial Council (HJC) and the State Prosecutorial Council (SPC)). As regards the budget for the judiciary and the prosecution, divided responsibilities continue to adversely affect budgetary planning, resource allocation and execution. The revised strategic documents, notably the Action Plan for Chapter 23, should clearly determine the next steps in addressing this and decide upon the

Serbian authority responsible for the residual judiciary budget, which includes salaries of court and prosecution support staff.

Independence and impartiality

The **constitutional reform** which aims to strengthen the judiciary's independence and accountability has been put on hold until after the parliamentary elections in 2020. After the government had submitted to parliament an initiative to change the Constitution in November 2018, the first step of the parliamentary procedure took place in June 2019: the parliamentary committee approved the Government's initiative to change the constitution. However, the vote in the plenary to approve this initiative has yet to take place. Once approved, the parliamentary committee should start its technical work in drafting the text of the constitutional amendments, taking into account the draft text of the Ministry of Justice which took on board the Venice Commission recommendations. The latter also include a reference to 'creating a constructive and positive environment around the public consultations to be held when the National Assembly will examine the draft amendments'. Five working groups in order to revise the necessary implementing legislation have been set up. The delay in the adoption of the constitutional amendments has repercussions on the drafting and adoption of the implementing legislation as clarity on the constitutional basis is still lacking.

Pressure on the judiciary still remains high. Government officials, some at the highest level, as well as members of parliament, continue to **comment publicly** on a regular basis on **ongoing investigations or court proceedings**, or on individual judges and prosecutors. Articles in tabloid newspapers target and seek to discredit members of the judiciary. In some cases, judges have asked to be excused from adjudicating on cases involving local politicians, referring to pressure exercised on them and their families. The HJC and the SPC continued to monitor complaints by judges and prosecutors. In 2019, the HJC issued two public statements condemning public commenting. The Codes of conduct for members of the government and parliament prohibit such behaviour, but the respect of their provisions is not being monitored and no effective remedies are applied. The SPC processed 18 complaints in 2019, and recommended measures in three cases. In one case, it justified the concern over influence by means of public comments and media campaigns.

The HJC proposal for the **election of court presidents** was rejected by the relevant parliamentary committee in February 2020, and it was removed from the agenda of the plenary amid allegations that individual candidates had criminal connections and political party memberships. Some 74 courts in Serbia thus continue to have acting presidents.

Accountability

A revision of the **disciplinary rules and ethical codes** is ongoing for both councils. This revision is needed in order to, among other things, better define the offences, strengthen the capacity of the disciplinary bodies and clarify which provision in the codes should entail disciplinary liability for non-compliance. It needs to be ensured, in line with European standards, that only serious misconduct and not mere incompetence gives rise to disciplinary proceedings. The members of the ethical boards still need to be re-appointed since 2018.

In order to improve the transparency of the disciplinary bodies' work, the HJC posted 43 anonymised disciplinary decisions on its website. In 2019, the HJC disciplinary prosecutor received 491 complaints against judges, mostly from members of the public. In seven cases, it initiated a disciplinary procedure. The HJC's Disciplinary Commission dealt with 31 cases, 25 cases were solved. A dismissal procedure was initiated in one case, and sentences with public warnings and salary reductions were issued. The SPC disciplinary prosecutor rejected complaints in 113 cases as unfounded and forwarded 7 cases to the Disciplinary Commission,

the second instance. In three cases sanctions were issued including a public warning, prohibition of advancement in career and decrease in salary.

Efficiency and professionalism

In the context of the constitutional amendments which aim to strengthen the judiciary's independence and accountability, there is a need to revise the current system of recruitment, transfer and promotion of judges and prosecutors, in order to ensure that their careers are fully based on merit, with a clear link between **performance evaluation** and career advancement, and that final decisions are taken by the Councils and not by the Parliament. Participation in continuous training (but not the evaluation of such participation) should become a mandatory part of professional performance evaluation for judges. In addition, the professional evaluation of judges should be based on qualitative rather than quantitative criteria only. At present, Serbia still has two categories of eligible candidates for the judicial profession: graduates of the Judicial Academy, and judicial and prosecutorial assistants. Addressing the Venice Commission's advice to effectively 'protect the Academy from possible undue influence' remains a prerequisite for it becoming a sole nationwide entry point to the profession at basic courts' level.

The **Judicial Academy** is mandated to provide both initial training for qualified law graduates who aspire to work in the judicial profession and in-service training for judges, prosecutors and court staff. Further improvement of internal capacity and organisation of the Judicial Academy is still pending. In addition, its cooperation with the councils needs to be strengthened. While manuals and guidelines for evaluating the training provided have been developed, there is no regular and effective quality control mechanism applied consistently. Impact assessments of training provided should demonstrate that the skills acquired are effectively applied in practice. The development of a multiannual work programme based on a thorough needs assessment has been delayed. A systematic approach to the training of judiciary staff is still lacking. Continuous training activities, which also require coordination efforts in order to avoid overlapping, continue to be highly dependent on different donors. The Academy is an observer to the European Judicial Training Network (EJTN) but is not proactively benefiting from the expertise within the network.

In line with the 2018 agreement between four Serbian Appellate Courts and the plan of activities to harmonise court practice, the regular joint sessions and meetings with lower courts with the aim of **harmonising court practice** continued. Appellate court and misdemeanour court decisions continue to be uploaded onto the online database and are available to judges. Efforts need to continue to link the various existing databases, including the one on the judgments of the European Court of Human Rights, and to broaden their scope. Harmonising court practice in the present court system with over 20 courts where judgments become final remains difficult to achieve. There is a delay in analysing structural shortcomings in the context of a comprehensive assessment of the system's court and prosecution network. This assessment could also consider the role of the Supreme Court of Cassation in effectively orienting jurisprudence.

The Serbian justice system continues to rely on several different case management applications that are not interconnected. A comprehensive **countrywide system to process and interlink cases across courts and prosecutorial networks, with adequate technological support** has yet to be put in place. A comprehensive **information and communication technology strategy** with clear timelines and related financial commitments has also still to be elaborated. While the technical work for the roll-out of case management systems for the prosecution and for the prison administration started, further work is required on fulfilling the necessary preconditions such as legislative changes, adequate staffing and

budget as well as an upgraded communication infrastructure. Once in place, the case (and document) management system will ensure a more efficient processing of cases. It will also provide the necessary statistical data in line with the methodology of the Council of Europe's Commission for the efficiency of justice. It could also support an automatic case allocation system which should take into account the case weighting criteria for a more balanced distribution of workload.

In the area of **alternative dispute resolution**/mediation, the working group on the revision of the Law on mediation adopted an analysis on how to increase the use of mediation. This analysis and possible subsequent legal changes were discussed in four public debates among lawyers, judges, mediators, legal professionals, Non-Governmental Organisations (NGO) representatives and the media in July 2019 but further steps are yet to be taken.

There are 1,349 certified mediators, but only 124 declared themselves as active in mediation in 2019 (9%). Based on their reports, 569 mediations were conducted in 2019. This represents a slight drop compared to 638 mediations in 2018 and 619 in 2017. Out of 569 mediated cases in 2019, 403 were concluded with a settlement agreement. In 266 proceedings, cases were referred to mediation by the court. The number of mediations compared to the number of pending civil court proceedings remains below 1%. The revised Law on amendments and supplements to the Law on Court Fees applicable from January 2019 has further encouraged parties to resolve their disputes by amicable means, including mediation, negotiated settlement, and court settlement. Additional incentives for mediation, including legislative amendments to increase the scope of cases referable to mediation, should be considered.

The implementation of the **national backlog reduction programme** (for 2016–2020) continued under the supervision of the Supreme Court of Cassation. It continues to have a positive, although more reduced, impact on the courts' efficiency with the backlog of old enforcement cases shrinking. The definition of 'old' cases has also been altered and now only includes cases that are more than three years old, rather than those over two years old. In 2019 some 214,234 old cases were resolved (out of which 112,473 were enforcement cases), which is lower than in 2018 (311,018 out of which 140,452 were enforcement cases). There are also cases more than ten years old and their number remains high with 1,184 in second instance courts and 252,210 in basic courts, mostly dealing with civil matters. The number of cases alleging violations of the right to a trial within reasonable time was higher in 2019 (100,600) than it was in 2018 (68,720).

The overall high number of pending backlog cases continues to be a concern (685,456 cases more than two years old at the end of 2019 compared to 781,137 at the end of 2018). The highest number of pending backlog cases (86.6 % of the total) are in basic courts. While the overall clearance rate dropped from 139.87% to 106.04% between 2016 and 2017, it increased again in 2018 to 110.03% before dropping again in 2019 to 102.01%. In 2019, the average duration for cases to be resolved was 267 days, compared to 270 days in 2018. Thus, for the fourth year in a row, the Serbian judicial system was able to process more cases than it received. At the same time, the courts in 2019 received a higher number of cases in 2019 (2,224,102) than it did in 2018 (2,089,237) – a trend which continued from 2017 (2,202,692).

There are still significant differences in workload between the courts across the country. In the first half of 2019, a higher number of cases was registered in the Belgrade courts in particular, where judges already have the biggest workload in civil cases.

Domestic handling of war crime cases

Serbia needs to fully cooperate with the International Residual Mechanism for Criminal Tribunals (**IRMCT**), including by fully accepting and implementing its rulings and decisions.

As in previous years, Serbia has repeatedly and publicly challenged the judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY), including at the highest levels. Serbia's non-cooperation in relation to the arrest of people indicted for contempt of court had not been resolved by the time of the ICTY's closure, and the case was then transferred to the IRMCT. Serbia's state of non-cooperation in relation to the arrest of people indicted for contempt of court had not been resolved by the time the IRMCT assumed the jurisdiction, rights and obligations of the ICTY. In February 2020, the IRMCT's Appeals Chamber confirmed a first instance decision whereby the contempt of court case has to be heard by the IRMCT itself and is not to be referred to Serbia. This decision is final.

Regarding judicial cooperation issues, there are bilateral agreements between the Prosecutor's Office of Serbia and its counterparts in Bosnia and Herzegovina, Croatia and Montenegro on cooperation related to the investigation of war crimes, crimes against humanity and genocide. In 2019, the cooperation with Bosnia and Herzegovina has led to indictments being issued in Serbia. Cooperation with Croatia has not led to tangible results. Mutual legal cooperation continues to be extremely limited in war crimes cases. Serbia has not yet enforced the judgment of Bosnia and Herzegovina in the case of General Djukić. The latter resides in Serbia. Basic legal and procedural issues remain between the countries, which impede proper regional cooperation.

The implementation of the 2016 **national strategy** for the investigation and prosecution of war crimes has continued at a slow pace. Although this strategy expires at the end of 2020, no preparations are underway for a new strategy. A multi-institutional monitoring mechanism is in place. It has issued seven reports, which fail to include recommendations on how to address the challenges in implementing the strategy. The prompt release of information on the website of the Office of the War Crimes Prosecutor (OWCP) has deteriorated over the past three years.

The OWCP filed indictments against four individuals in 2019, of which three cases were transferred from Bosnia and Herzegovina. Two of them were dismissed as the two defendants were found permanently incapable of following the proceedings.

At the end of December 2019, there were 16 **cases ongoing** at first instance, and one case at appeal level against a total of 44 defendants, most of whom are low-ranking staff (three mid-ranked and 41 low-ranking members of the police, the military, and also of paramilitary groups). Several cases have been ongoing for over five years or more. Serbia continues to have more than 2,500 cases at the pre-investigation phase.

Seven **first-instance judgments** were handed down, whereby 15 defendants were convicted and sentenced to prison terms ranging from two to 15 years, while one defendant was acquitted. Two of the above-mentioned judgments involve war-related criminal acts of sexual violence. In one of the above-mentioned cases, the first instance court accepted a plea agreement and sentenced the defendant to a one and a half year imprisonment. At second instance, four final judgements were handed down, convicting seven defendants and sentencing them to prison terms from three to 12 years.

Serbian authorities continue to provide support and **public space to convicted war criminals**, and permit hate speech. Denial of the Srebrenica genocide by certain members of parliament continues without consequences. The parliament has still not taken any final decision regarding the termination of the mandate of one of its members who was convicted by the ICTY at final instance. Overall, meaningful regional cooperation and good neighbourly relations are needed to overcome the legacies of the past, and to constructively foster mutual trust, dialogue and tolerance in the region, avoiding actions and statements that go against this goal. This should also imply honouring the victims of the past.

In April 2020, a total of 10,027 people were still **missing** as a result of the conflicts in the region. Of these, 6,409 cases are related to the conflict in Bosnia and Herzegovina, 1,974 to the conflict in Croatia and 1,644 to the conflict in Kosovo*. 51 cases of missing persons related to the conflict in Croatia were resolved in 2019. The political stalemate between Belgrade and Pristina continues to affect the progress on the resolution of missing cases related to the Kosovo conflict. Only eight cases related to the conflict in Kosovo were resolved in 2019. One session of the Working Group on Missing Persons between Belgrade and Pristina was held in 2019, and one in 2020. No official meetings between the relevant Serbian and Croatian authorities have been held since May 2019. Serbia needs to increase its efforts in working with its neighbours in tracing and identifying the fate of missing persons or their remains, including through swift exchange of information. The families of missing persons also still need more comprehensive support than currently available and the capacity of the state mechanism for searching missing persons should be further strengthened. The drafting of a Law on missing persons was initiated in 2019.

Fight against corruption

Prevention of corruption

The **national anti-corruption strategy** (2013 – 2018) has expired, and the follow-up strategic framework and coordination mechanism has yet to be decided upon. Amendments to the Law on the Anti-Corruption Agency, the Law on the financing of political activities and the Law on public enterprises with a view to clarifying provisions on prohibiting the use of public resources for electoral campaigns to comply with ODIHR recommendations were adopted. The **Law on the financing of political activities** needs to be further amended to fully comply with all OSCE/ODIHR recommendations. There is a lack of legal provisions regulating the financing of election campaigns related to referenda and national minority councils.

The adoption of amendments to the **Law on free access to information of public importance** is seriously delayed.

With respect to **transparency and integrity within the public administration**, there has been no sizeable reduction in the excessive number of acting senior manager posts, and non-civil servants have continued to be appointed on an acting basis after the legal deadline of 1 July 2019, in breach of the Law on civil servants.

Serbia adopted a **Law on the origin of assets**, which provides for further legal options and human resources for the tax administration to check assets of natural persons, against declared income, and tax any assets that are in discrepancy based on a specific tariff. Its implementation needs to be non-discriminatory and not susceptible to corruption.

The gradual strengthening of the Agency's resources and capacity is ongoing in order to empower it to implement the **Law on the prevention of corruption** as from September 2020 (entry into force of the law). GRECO has yet to assess this law. The Ministry of Finance has approved the increase in the Agency's budget for 2020. A public competition is ongoing, and by the time it finishes the Agency aims to have 116 out of the 163 permanent positions filled (compared to 80 in 2018).

The situation in the **sectors particularly vulnerable to corruption** (i.e. sectors where there is substantial public expenditure involved, or alternatively sectors where there is direct contact with the public) remains largely unchanged. These include public procurement, infrastructure

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

projects, healthcare, education, construction and spatial planning, and public companies. A recently adopted special law allowing for the exemption from public procurement rules of projects of ‘strategic importance’, in particular, raises serious concerns regarding its potential for corruption. There were no tangible improvements in relation to anti-corruption efforts at the local level, and the impact of the local anti-corruption plans is yet to be assessed.

The **Anti-Corruption Council**, in its advisory role to the government, remained active in exposing and analysing cases of systemic corruption. It is still not working at full capacity: only seven out of 13 members are nominated. It issued informative reports in 2019 and 2020 on a number of different topics. The Government still does not systematically consult the Council on draft legislation. The required amendment to the Government’s rules of procedure for systematic consideration of the Council’s recommendations is seriously delayed.

A comprehensive and evidence-based assessment of **access to information** is not possible, as the majority of public authorities do not comply with the obligation to provide data to the Commissioner for Access to Information of Public Importance regarding citizens’ requests for information. The Commissioner established that 4,321 or 83% (2018: 3,444 or 87%) of citizens’ complaints – most of them concerning administrative silence – were well-founded, meaning that the information requested by citizens should have been provided by the authorities according to the Law on access to information of public importance. In 1,786 or 41% (2018: 1,889 or 55%) of these well-founded cases, the authorities reported that they acted upon the Commissioner’s request to provide the information to the complainants even before a decision was made on the appeal, which would indicate that there was no reason not to disclose the requested information in the first place. Administrative enforcement of the decisions taken by the Commissioner has yet to be ensured.

The public procurement rules continue to apply and provide for flexibility in case of extreme emergency situations, like the Covid-19 pandemic. However, the more flexible procedure still needs to adhere to the principle of transparency.

Repression of corruption

Serbia continued to implement the Law on the organisation and jurisdiction of government authorities in suppression of organised crime, terrorism and corruption. The special departments for combating corruption in the Higher Prosecutors’ Offices in Kraljevo, Niš, Novi Sad and Belgrade have a total of 46 deputy public prosecutors (44 in 2018). There are nine new workplaces for deputy prosecutors in the Special department in Belgrade, and five in the other three Special departments.

The changes brought by this law produced some results in terms of convictions for corruption in the special departments for suppression of corruption in the Higher Prosecutors’ offices and special court departments. In 2019, criminal complaints were filed against 3,577 individuals. Indictments were filed against 583 individuals. The Courts convicted 399 individuals at first instance based on indictments by these special departments (2018: 332), out of which there were court-accepted plea agreements for 304 defendants (2018: 294).

In relation to high level corruption, based on indictments from the Prosecutor’s Office for Organised Crime, the courts rendered first instance judgements against 30 individuals in 2019 (compared to 41 in 2018 and 50 in 2017). Of these, 10 were based on plea agreements (compared to 13 in 2018). Confiscation of assets was imposed in three of these cases (compared to two 2018). The Prosecutor’s Office for Organised Crime indicted 20 individuals (in comparison to 21 in 2018). Serbia still needs to show a convincing track record of confiscating assets in corruption cases.

In 2019, courts in Serbia received 152 new cases based on the law on whistle-blower protection (2018: 122) and out of the total caseload of 220 cases, 160 cases were finalised (2018: 124). The protection of whistle-blowers in high corruption cases needs to be ensured, including in order to strengthening trust in the institutions. Whistle-blower reports should be investigated in accordance with the law.

Fundamental rights

When declaring the state of emergency on 15 March 2020, the government adopted a decree restricting freedom of movement - including a quasi-permanent curfew for the elderly -, freedom of assembly, as well as the right to vote. On 6 April, the authorities notified the Council of Europe of a derogation in time of emergency under Article 15 of the European Convention on Human Rights, without, however, providing detail about the measures taken as required under that Article.

In February 2020, Serbia adopted a *lex specialis* setting up a mechanism providing individual redress to parents in cases similar to one of *Z. Jovanović v. Serbia* at the **European Court of Human Rights**. This case involved the failure by the Serbian authorities to provide the applicant with any information about the fate of her missing baby in a state-run hospital. The Court had found in 2013 a violation of Article 8 of the Convention ('right to respect for private and family life'). The implementation of this mechanism will need to be monitored.

Three new deputy **Ombudspersons** were appointed a year after the expiration of the previous mandates, and one deputy has yet to be appointed. There is a serious delay in filling posts in the Ombudsman's Office. Staff turnover is of concern for the Office's efficiency, which still lacks appropriate premises. There has been a serious delay in amending the law on the Ombudsman. The capacity of the Ombudsman in its role of National Preventive Mechanism against Torture has been questioned by several NGOs as far as ensuring cooperation with civil society – as provided for under Serbia legislation – is concerned. As a result, only three out of the initial 12 NGOs continued such cooperation.

In the field of **prevention of torture and ill-treatment**, the commission for implementing standards in police conduct related to investigating cases of torture continued its work, in light of the pending recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In May 2019, amendments to the criminal code introduced life imprisonment without the possibility of conditional release for a number of crimes. Over a year after the Council of Europe's Commissioner for Human Rights raised concerns on the compliance of these amendments with the European Convention of Human Rights, the authorities have yet to deliver an assessment on this matter. A law for the prevention of ill-treatment and abuse in social institutions has yet to be adopted.

Several **prisons** continued to be renovated and modernised in line with the national strategy for reducing overcrowding in penal institutions. The revision and improvement of treatment programmes in prisons and prison medical facilities is ongoing. Relevant secondary legislation was amended to provide more frequent and advanced training sessions to all prison staff. The decision of 2018 on reorganising the service for treatment programmes and alternative measures to detention has yet to be implemented in practice with adequate human and financial resources.

The new Law on **personal data protection** started to be applied in August 2019. It is mostly aligned with the EU General Data Protection Regulation. Serbia ratified the Council of Europe's Protocol of 2018 amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. In September 2019, the Ministry of the Interior submitted an assessment of the impact of processing personal data by using a video-

surveillance system to the Commissioner. In the opinion that he published in response, the Commissioner underlined that such an impact assessment, according to the Law on personal data protection, should have been submitted prior to the actual setting up of street video-surveillance. He noted that several elements were lacking in the impact assessment, preventing a proper risk analysis and mitigation as regards the fundamental rights of the individuals subject to video-surveillance. The authorities have yet to inform on follow-up measures taken in this regard. The government established a centralised information system in which health institutions with hospitalised persons suffering from COVID-19 and testing laboratories have been keeping personal data. Such data have been regularly transmitted to the Ministry of Health for statistical purposes and to the Ministry of the Interior for the supervision of isolation and self-isolation measures. [As part of COVID-19-related measures,] the authorities announced the tracking of mobile phones of the Serbian diaspora returning to the country. The Commissioner for Personal Data Protection stressed the importance of respecting lawful, limited and proportional processing of health and other sensitive personal data.

The government adopted a new **media strategy** in January 2020. The strategy was drafted in a transparent and inclusive manner by a working group composed of both media associations and public officials. It identifies the main challenges related to media freedom in Serbia and measures to address them. The drafting of the related action plan has started.

The Standing Working Group on the Safety of Journalists has helped increase the sharing of information between the police, the prosecution and media associations. In May 2020, the Ombusman signed an agreement with the representatives of seven media associations and all three journalists' trade unions on establishing a platform for registering cases of pressure on journalists. Following an analysis of the criminal code by the Working Group, the Republic Public Prosecutors' Office (RPPO) drafted a mandatory instruction on the conduct of public prosecutors in criminal cases of violence against journalists. Contact points, within prosecutors' offices, for criminal offences motivated by prejudice or hatred, attended training sessions related to the safety of journalists. However, cases of threats, intimidation and violence against journalists remain a source of concern, especially at local level. According to RPPO's information regarding those acts that qualify for criminal prosecution, by the end of December 2019, out of the 59 cases filed in 2019, 47 cases (an increase compared to the 34 cases in 2018) were considered by the RPPO while 12 cases were dismissed due to absence of legal grounds for criminal proceedings. Five cases were finalised with a conviction, while criminal proceedings continue for the 42 remaining cases (five cases before the court, 33 in pre-investigation and four without identified perpetrators). Regarding the 57 cases filed in 2018, by the end of December 2019, 34 cases were considered by the RPPO and 23 cases were dismissed due to absence of legal grounds for criminal proceedings. Altogether 10 cases – five convictions in court, two penalties imposed in accordance with the principle of deferred criminal prosecution, one acquittal and two cases where the prosecution's indictment was dismissed by the court - were finalised, while criminal proceedings continue for the 24 remaining cases (one case before the court, 17 in pre-investigation and six without identified perpetrators). Regarding the commission tasked with looking into three cases involving the murder of journalists from 1999 and 2001, an appeal procedure is ongoing on a sentence issued in April 2019, which had been the first ever in a case involving the murder of a journalist. Investigation is ongoing in the two other cases.

The government adopted on 28 March 2020 a decree to centralise all information on the COVID-19 pandemic through the government crisis team, which was then withdrawn on 2 April. Physical access to the daily press conferences on the pandemic was at some point forbidden and then allowed again. A journalist was arrested, and her equipment seized, after

having written an article claiming lack of protective equipment in a hospital. While the criminal charges for causing panic were dropped a month later, the journalist has since then been subject to verbal attacks, including by high-level officials, smear campaigns and threats.

The independence of the Regulatory Body for Electronic Media (REM) needs to be strengthened to enable it to efficiently safeguard media pluralism. As a result of the inter-party dialogue facilitated by the European Parliament, the three vacant positions in the REM Council were filled in December 2019, after a three-year delay. Two other members resigned in January 2020 and were replaced in February. REM adopted a rulebook on public media service's obligations during the election campaign, containing a provision on non-discriminatory representation based on the 'the importance of political parties or candidates' without further defining this concept. REM started issuing regular reports on the media coverage of the electoral campaign. A Supervisory Board at the National Assembly mandated to, *inter alia*, monitor electronic and print media during the electoral campaign, was established, as required by the Law on the Election of Representatives of 2000. The Press Council continued to record an increase of breaches of the journalistic code of professional conduct in print media. Hate speech and smear campaigns against journalists intensified during the period prior to the elections that were initially scheduled for April 2020. The frequent refusal by public bodies to disclose information following requests submitted under the Law on free access to information, continues to hinder the work of journalists, and so do recurrent statements by high-level officials on the daily and investigative work of journalists.

An unbalanced representation by public service broadcasters of the plurality of political views was observed during the reporting period. Despite the 10% increase of the subscription fee in January 2020, the temporary nature of the funding model – a combination of subscription fees, budget subsidies and commercial contributions – leaves public broadcasters vulnerable to undue influence. Political and economic influence over the media continues to be a source of concern. Serbia's new media strategy identified a lack of transparency in ownership structures and lack of fairness in financing from state resources such as media content co-financing and advertising funds from the state, state-owned companies and local government budgets. The strategy also highlighted the absence of suitable criteria and mechanisms to assess the existence of media pluralism in Serbia, and identified measures aiming at addressing these issues. Several companies were purchased by Telekom Srbija, whose majority stakeholder is the state. In one case, a lack of agreement on the renewal of a distribution contract with a cable television station led to a drop in access to diverse media for the public. The privatisation process of the media sector has yet to be completed. The COVID-19 pandemic resulted in the reduction of advertising revenues and the worsening of the economic situation of media in Serbia.

The **anti-discrimination** strategy expired in January 2018 and has yet to be renewed. Alignment of the Law on anti-discrimination with the EU *acquis* is seriously delayed. Four new judgments on hate crime were adopted, bringing to five the total of final convictions since the introduction of this concept in the Criminal Code in 2012.

The adoption of a new law on **gender equality** has been seriously delayed. The United Nations Committee on the Elimination of Discrimination against Women recommended to Serbia to take measures to combat the anti-gender discourse and its adverse impact on women's rights, and to strengthen the knowledge of the judiciary in this regard.

The adoption of a strategy on **violence against women and domestic violence** has been seriously delayed. The first report on Serbia's implementation of the Istanbul Convention by the Council of Europe's Group of Experts stressed the need for a more comprehensive response to all violence against women covered by the Convention, and not only domestic

violence. This should also include rape, stalking, sexual harassment and forced marriage. The very few support services for these cases of violence are predominantly run by NGOs. However, they operate on a limited budget. Police protocols do not include cooperation with specialist support services or the routine referral of victims, resulting in the under-utilisation of existing NGO expertise. An action plan, and adequate funding, for the national programme for safeguarding and improving sexual and reproductive health have yet to be approved.

A new strategy on child protection and preventing **violence against children** was adopted in May 2020. A new national action plan for the rights of the child has yet to be adopted. The adoption of amendments to the Law on juvenile offenders and protection of minors in criminal proceedings has been seriously delayed. Although a relatively small number of children are placed in institutional care, violations of children rights that happen in large-scale institutions remain a concern.

In March 2020, Serbia adopted a strategic framework regarding the **rights of persons with disabilities**. Serbia also adopted a mental healthcare strategy in November 2019; however, placement and treatment in social institutions of people with psychosocial and intellectual disabilities is still not regulated in accordance with the UN Convention on the Rights of Persons with Disabilities. A comprehensive strategy on deinstitutionalisation has yet to be adopted. Women with disabilities in residential institutions are particularly vulnerable to gender-specific forms of violence – forced contraception, forced sterilisation and forced abortion. During the first weeks of the curfew under the state of emergency, persons with disabilities were lacking home assistance services. Children with development disabilities and autism also particularly suffered from the curfew. These issues were eventually solved by the authorities following complaints of various NGOs and the Ombudsman's recommendations.

As regards the **rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons**, amendments to the law on birth registry, which now enable data on gender change to be entered into the registry, came into force in January 2020. LGBTI persons often face hate speech, threats and violence but centralised official data on hate crimes broken down by bias motivation is still lacking. A new rulebook on 'Closer Conditions, Criteria and Methods for Selection, Testing and Evaluation of Reproductive Cell Providers and Embryos' includes a provision banning donation of reproductive materials to people who had homosexual relations in the last five years.

A new law on **free legal aid** started being applied in October 2019. NGOs without a lawyer registered in the bar are not, under this law, eligible legal aid providers, apart from a few exceptions. At the same time, the Bar Association of Belgrade warned that attorneys who act as statutory representatives for NGOs would be disbarred. Several NGOs expressed concerns that, due to the new law, legal aid may no longer reach some of the most vulnerable individuals. Initial statistical data on the implementation of the law are expected by the end of the first half of 2020; only then will it be possible to assess the new law's impact. A national strategy on the rights of victims and witnesses of crime has yet to be adopted.

In its fourth opinion on the implementation of the Framework Convention on **National Minorities**, the Council of Europe's Advisory Committee found a notable discrepancy in the protection of minority rights between the Autonomous Province of Vojvodina and other regions of Serbia, recommending that the protection of national minorities' rights outside Vojvodina be improved. The Advisory Committee also stressed the need to set up a sustainable data collection framework, and to revitalise inter-ethnic relations, taking into account the need to involve the majority in Serbian society in integrating and including national minorities. The Fund for the National Minorities was further increased. A catalogue of the most common Albanian names and surnames was created, to enable such names to be

accurately entered in registry books. Local councils for inter-ethnic relations have been established in all 73 municipalities where such an obligation is provided for under the law; however, the full implementation of their mandate has yet to materialise as council members have not always been nominated or councils do not meet often. Despite the legal obligation to take into account the ethnic composition of the population, national minorities remain underrepresented in the public administration. The process of preparing and printing textbooks in minority languages continued and produced positive results. An additional nine textbooks in Albanian were provided but more work is needed to complete this task. New curricula for teaching Serbian as a non-mother tongue have been adopted. The publication of textbooks in minority languages for use in secondary schools remains limited. Access to religious worship in minority languages has yet to be enabled throughout Serbia. Public broadcasting in minority languages has still not been sufficiently extended outside of Vojvodina. Following the process of media privatisation, the broadcasting of programmes in minority languages remains limited.

Regarding **Roma inclusion**, the adoption of an action plan (2019-2020) under the strategy for the social inclusion of the Roma in Serbia has been seriously delayed. The coordination body for monitoring the strategy's implementation met three times, as compared to six times a year as previously agreed in the 2017 Roma Seminar conclusions. The Expert Group involving CSOs, mandated to support the coordination body, never met. There is a serious delay in establishing the legal basis for local Roma coordinators, pedagogical assistants, and health mediators. The solution planned by the Ministry of the Interior, the Ombudsman and UNHCR to enable the registration of individuals lacking an official address by means of registering at centres for social work led to more Roma people being registered. However, all births need to be registered immediately after all children are born, regardless of their parents' status; related implementing legislation has yet to be amended. There was an increase in the number of Roma students benefiting from scholarships, but school drop-out rates remain high, especially for Roma girls. Local mobile teams continued outreach activities, but the low level of education remains a key barrier to employment. Roma are still underrepresented in the public administration. The adoption of a national housing strategy is pending. Roma returnees under readmission agreements are in a particularly difficult situation in terms of social and economic inclusion. CSOs and the Ombudsman have warned about the vulnerable situation of Roma living in informal settlements during the COVID-19 pandemic.

2.2. Chapter 24 - Justice, Freedom and Security

Migration

The Western Balkan route for migrants appears to be firmly established and migrant smuggling networks remain very active as evidenced by reports of increased entries and exits as well as shorter stays of migrants in the reception centres. Most of the irregular migrants currently in Serbia do not have a legal status. During 2019, the number of migrants accommodated in Serbia fluctuated from over 4,000 in January, to 2,300 in the summer and reaching 4,500 by the end of 2019. The main countries of origin are Afghanistan, Syria, Pakistan, Iraq and Bangladesh. Large numbers have also been registered from Morocco, Algeria, Palestine and Iran. They are predominately young males, including a significant number of unaccompanied or separated children.

Following the declaration of the state of emergency, migrants, refugees and asylum seekers were prohibited from leaving the reception facilities in order to avoid uncontrolled movements within the country. The number of persons reached 9 000 in April 2020, and two new temporary facilities had to be opened while some facilities were at 325% of their capacity. The Serbian authorities reacted with a set of measures to prevent the spread of

COVID-19 in the reception facilities and used a proactive communication policy in order to contain and mitigate rising tensions due to prolonged confinement and overcrowded spaces.

In 2019, 4,990 individuals were intercepted at the border (compared to 3,648 in 2018). From January 2019 to November 2019, 134 criminal charges were filed against 171 individuals suspected of people smuggling. Some 67 individuals were convicted of illegal crossing of state borders and smuggling. Efforts to combat smuggling need to be strengthened.

Following the March 2020 declaration of the state of emergency, a Government decision was issued which confirmed the validity of legal stays of foreigners and their identity cards as well as those of asylum seekers for the duration of the state of emergency, while registration and taking of biometric data was suspended.

As regards the **accommodation** of migrants, the extension of the detention centre in Padinska Skela is still ongoing. It will provide an additional 100 places (increase to a capacity of 150 places). Mobile centres are being established for registration and very short-term accommodation purposes. While faced with increased mixed migratory movements and a large number of arrivals, Serbia continued to make substantial efforts to meet the essential needs of migrants passing through or remaining on its territory. Altogether, 19 governmental reception facilities (asylum centres, reception and transit centres) can provide long-term accommodation for up to 6,000 people and temporary shelter for around 1,000 people. Children receive education through their inclusion in the national schooling system. Serbia provides a considerable amount of health services to migrants through the public health system. An information management system for regular monitoring, planning and managing accommodation and reception facilities in accordance with European standards for reception conditions is in place within the Commissariat for Refugees and Migration. The Commissariat regularly reviews its contingency plan. The overall staffing situation in the area of migration depends on international funding.

The EU-Serbia **readmission agreement**, in force since January 2008, is facilitated by implementing protocols concluded with 21 EU Member States. Its implementation is satisfactory. Serbia continues to improve the implementation of the third country national provision. 8,375 persons were ordered to leave in 2019 and 7,295 in 2018. 5,270 were returned following an order to leave in 2019 (a return rate of 63%) and 5,895 in 2018 (80%).¹

Serbia has 11 bilateral readmission agreements, including with Bosnia and Herzegovina, North Macedonia and Montenegro. Negotiations to sign readmission agreements with Ukraine, Azerbaijan, Turkey, Georgia, Belarus and Argentina are ongoing. As initiatives to conclude readmission agreements with Afghanistan, Pakistan, Algeria, Morocco, Iran and Iraq that were launched in 2017 remained unanswered by the respective state authorities, they were relaunched in 2019.

In 2019, 288 migrants applied for assisted voluntary **return** and 193 were returned to their country of origin, among them 103 to Iran, 23 to Algeria, 15 to Iraq, and 15 to Pakistan. The Ministry of the Interior is in charge of forced return and it returned 46 migrants to their country of origin in 2019. The lack of enforceable bilateral readmission agreements with third countries is a serious obstacle for Serbia to manage returns effectively, notably with the main countries of origin.

Asylum

Serbia's normative, institutional and strategic framework to ensure the protection of persons is almost entirely in place, and being implemented effectively. Serbia needs to further adapt its

¹ Eurostat

legislation on asylum and temporary protection as regards effective ‘access to the procedure’ (Art. 36 of the Law on Asylum and Temporary Protection), ‘appeal bodies’ (Art. 21), ‘rights and obligations of applicants/persons under international protection’ (Art. 48-73), ‘free legal aid’ (Art. 56), and ‘safe third country procedure’ (Art. 45).

The Asylum Office, the authority that decides on asylum claims at first instance, has a sufficient number of staff to process all asylum requests (based on current numbers of asylum seekers). Its capacity to handle cases and assess the merits of applications continues to improve, including information regarding the country of origin. Also certain aspects of decision-making improved, such as recognising child specific claims, claims based on sexual orientation and gender-based persecution. Further standardised and sustainable training of the Asylum Office staff is needed. The Asylum Office tried to hire translators, but was unsuccessful due to limited offering on the labour market. In the medium term, the Ministry of the Interior will need to look into its procedures to enable outsourcing of translation.

In 2019, out of 12,930 individuals who expressed an intention to seek asylum (2018: 8,380), 174 lodged an application (2018: 341). In 2019, 219 decisions (2018: 199) were made for a total of 287 asylum seekers (2018: 272). Some 17 asylum seekers received refugee status (2018: 10), 17 received subsidiary protection (2018: 14) and 17 received a negative decision (2018: 25). In 130 cases (2018: 128) concerning 161 asylum seekers (2018: 178), the procedure was discontinued because the applicant absconded.

There is a single biometric database used by the police for identifying and registering asylum seekers. An electronic database with personal information of asylum seekers is managed by the Asylum Office. Plans have been made to improve the interconnection of these databases in order to speed up the process of verification of identities. Preparations for connecting to the EU asylum fingerprint database (Eurodac) are in their initial phase.

Overall, access to and provision of information regarding the asylum procedure needs to be improved. Notably at Belgrade International Airport, there is limited access to information and legal counselling for asylum seekers. Transit procedures, according to the Law on asylum, are not yet being implemented; adequate accommodation premises at the airport are lacking.

A total of 2,186 unaccompanied or separated children (UASC) were accommodated in Serbian centres in 2019, an increase of around 25% compared with 2018, while the duration of the stay declined. The majority (1,906) were accommodated in centres managed by the Serbian Commissariat for Refugees and Migration while another 198 were accommodated in the three social welfare institutions dedicated to hosting UASC. The accommodation capacity in government centres dedicated to hosting UASC within the social welfare system is limited, and more suitable accommodation for UASC with individualised care is needed.

The basic legal framework for **integration** exists. Programmes for social integration, access to accommodation, language learning and access to the labour market for people granted asylum or subsidiary protection are in place. All individuals who applied for assistance in 2019 received it (26 individuals for accommodation, 43 attended language classes). However, major obstacles to integration remain. Implementing legislation in different sectors needs to be harmonised with the Law on asylum and documents provided to people under international protection need to be improved in order to facilitate access to their socio-economic rights. No travel documents, provided for under the Law on asylum, have been issued so far.

Visa policy

The visa system is only partially in line with the EU list of third countries whose nationals are visa exempt or visa required. In 2019, Serbia further aligned with the EU positive list by granting visa free access to holders of ordinary passports from Georgia, St Kitts and Nevis and the Republic of Palau. However, Serbia moved further away from alignment with the EU negative list by granting visa free access to holders of ordinary passports from Armenia in October 2019. The following countries, blocked from visa free entry to the Schengen area, enjoy visa freedom in Serbia: Armenia, Azerbaijan, Bahrain, Belarus, Bolivia, Burundi, China, Cuba, Guinea Bissau, India, Indonesia, Jamaica, Kyrgyzstan, Kuwait, Kazakhstan, Mongolia, Oman, Qatar, Russia, Suriname, Tunisia and Turkey.

In order to ensure a well-managed migration and security environment, Serbia needs to refrain from further diverging from the EU common visa policy and take concrete steps to ensure full alignment with the EU visa policy, starting with those nationalities that are heavily prone to irregular migration to the EU.

Serbia's visa issuing system is partially in line with the EU Visa Code. It has completed the interconnection of the integrated Serbian Visa Information System with Serbia's diplomatic and consular missions and other relevant databases is operational in all 91 diplomatic/consular missions. The number of visas issued at borders remained low throughout 2019 and were available only in exceptional humanitarian circumstances.

Serbia continued to implement the relevant measures to prevent the abuse of the visa-free system it has with the EU under the post-visa-liberalisation process.

The number of the first time asylum applications in the EU and Schengen associated countries from the country was 4,060, which was a continuous decrease in comparison to the previous years (4,575 in 2018, 5,300 in 2017).

External borders and Schengen

The status agreement with the EU for the deployment of the European Border and Coast Guard (Frontex) teams with executive powers was signed in November 2019. The EU has finalised its ratification procedures. Once Serbia has finalised its procedures, the agreement can enter into force. Joint preparations for the operationalisation of this agreement are ongoing. International border cooperation was further strengthened and joint patrols are operating along the borders with Montenegro, Bulgaria, North Macedonia, Hungary, Bosnia and Herzegovina and Romania. The start of joint patrols with Croatia is still pending. There is regular cooperation and information exchange in joint contact centres. Joint controls were introduced at the border crossing point Preševo-Tabanovce at the border with North Macedonia. Equipment and infrastructure at border crossing points was improved in Bajmok, Gostun, Kotroman, Sot, Nakovo and Morava Airport. Video surveillance was improved at some border crossing points and traffic-monitoring cameras were installed, which provide citizens with real time information on the situation at border crossings.

Shortly following the declaration of the state of emergency, all border crossings were closed for international road, railway or waterway traffic (including border crossing at airports). Authorisation could be granted on an exceptional basis for humanitarian and national interest reasons.

An agreement on cooperation in the field of integrated border management and a protocol on the exchange of data and information between the services involved in integrated border management (IBM) were signed. Serbia still needs to create a single coordination centre for exchanging police information and start preparations for setting up a SIRENE (Supplementary

Information Request at the National Entries) office. In preparation of the Schengen action plan, relevant assessments and gap analyses were carried out.

Serbia has made further progress in implementing its IBM strategy and its related action plan. The government provided funding for additional 187 border police staff. An electronic information exchange platform to be used by all IBM agencies is being set up.

Amendments to the Law on foreigners and the Law on employment of foreigners were adopted; these facilitate issuing work permits for foreign nationals holding a long-stay visa on the basis of employment. The amendments will also allow speeding up the procedures for obtaining a temporary residence permit. Regulations on entry ban and control of foreigners moving through Serbia and on closer conditions for refusing a foreigner to enter Serbia were adopted as well as on issuing ID cards to foreigners.

Judicial cooperation in civil, commercial and criminal matters

A cooperation agreement between Eurojust and Serbia entered into force in December 2019. The agreement is a positive step towards more efficient cooperation in the fight against organised crime through sharing of information including personal data between Serbia and Eurojust. Based on the agreement, a Serbian liaison prosecutor took office on 10 March. Serbia is the most requested country in the region and, overall, the third most requested third state in Eurojust's network. Serbia was involved in 39 cases (compared with 34 in 2018 and 28 in 2017) related to swindling and fraud, drug trafficking, and money laundering.

An analysis for IT and statistical gaps and needs in the area of judicial cooperation in civil and criminal matters was finalised. No progress was made in the revision of a set of different laws on judicial cooperation, including on civil procedure and the existing law on judicial cooperation in criminal matters with EU countries. The internal ratification procedure in Serbia for the 2007 Hague Convention on Child Support was concluded in spring 2020.

During the second half of 2019, Serbia had 3,028 new incoming requests for judicial cooperation (both civil and criminal) and sent out a total of 1,653 requests. By comparison, during the first half of 2019, Serbia had a total of 2,654 new incoming requests, and sent a total of 1,637 requests. Serbia handled 2,970 incoming judicial cooperation requests (both civil and criminal) and 1,796 outgoing requests during the second half of 2019, compared to 3,077 incoming requests during the first half of 2019 and 1,104 outgoing requests. Among those that Serbia dealt with, it replied positively to 2,514 incoming requests and received positive response on 1,304 outgoing requests and refused 456 incoming requests and received negative response for 492 outgoing requests. At the end of December 2019, the pending cases (both incoming and outgoing requests) remained at 7,445 (compared to 7,168 at the end of June 2019). Serbia continued its regular workflow.

Police cooperation and organised crime

There are 40,119 police officers in Serbia in April 2020, equivalent to 435 per 100 000 inhabitants, compared with an EU average of 326 (Eurostat, 2017). The total number includes all employees of the Ministry of the Interior who have the status of police officers while being employed in the Emergency or the Internal Control Sector, among others. The Prosecutor's Office for Organised Crime is understaffed with only 21 prosecutors in charge of leading both the pre-investigation and investigation phase in the most complex crimes countrywide.

There is well-established **cooperation with Interpol and Europol**. The secure communication channel SIENA is operational, and its use continuously increased since its introduction and remained on a high level from 2018 onwards. Serbia has further intensified its participation in the EU Policy Cycle for serious and international organised

crime/EMPACT (European Multidisciplinary Platform Against Criminal Threats) for 2018–2021. In November 2019, Serbia adopted legislation on the ratification of agreements with Europol: on the deployment of a Europol liaison officer in Serbia, and on amendments to the operational and strategic cooperation with Europol. The accreditation of the liaison officer is pending. The level of cooperation through a working arrangement with the European Union Agency for Law Enforcement Training (CEPOL) is satisfactory. The participation of Serbian officers in CEPOL-organised training is increasing.

The establishment of a single centralised criminal intelligence system, the National Criminal Intelligence System, advanced further in terms of technical preparations - following the signature of the inter-institutional cooperation agreement in September 2019. This system will serve as a safe and unified platform for managing and exchanging data in the field of serious and organised crime between law enforcement and judicial authorities. The development of a new National Serious and Organised Crime Threat Assessment (**SOCTA**) is in its final stage. Once adopted, Serbia should use it to set operational priorities for fighting organised crime. The Fugitive Active Search Team attained important results both in terms of quality of information shared and of fugitives arrested.

The operational autonomy of the prosecution and police from the security services in criminal investigations is not ensured either in law or in practice, as interception equipment is located only at the Security Intelligence Agency. Serbia is further delayed in carrying out an analysis of the roles and practices of security services and the police in implementing special investigative measures, especially interception, in order to bring them in line with best practices.

As regards the **track record in organised crime**, the number of convictions in organised crime cases is slightly increasing: convictions (first instance) in 2019 were rendered against 167 individuals (out of which 42 were plea agreements approved by the courts) compared with 155 in 2018. New investigations into organised criminal groups were initiated in 2019 against 156 individuals (compared to 146 in 2018, and 191 in 2017). Indictments were filed against 65 individuals.

Following an intensive legislative activity throughout 2018, Serbia was removed, in June 2019, from the **Financial Action Task Force (FATF)** list of countries with strategic deficiencies in preventing money laundering and terrorism financing. Serbia is no longer under increased monitoring associated with the “grey list” but it remains subject to MONEYVAL’s enhanced follow-up procedure until the FATF plenary places the country back under regular follow up based on its assessment of continued progress. It was further upgraded for three recommendations in the December 2019 MONEYVAL report. Serbia’s legislation was further aligned with the recent international standards and EU *acquis*. A new strategy on anti-money laundering and countering financing of terrorism for the period 2020-2024 was adopted in February 2020. The capacities of the bodies that are obliged to report to the Administration for Prevention of Money Laundering (APML) on suspected cases of money laundering and financing of terrorism was strengthened. The APML staff increased from 33 to 37 employees.

The number of convictions for **money laundering** increased compared to 2018. In 2019, there were convictions (first instance) against 71 individuals, out of which three were for stand-alone cases of money laundering and 68 were for third-party money laundering. The understanding of stand-alone and third-party money laundering as well as of independence of the offence of money laundering from a predicate crime seems to have improved but needs to be increased further as results are not yet fully visible.

Serbia's **Asset Recovery Office** is still being set up in order to be fully operational and to cooperate effectively with the asset recovery offices in the EU Member States. Serbia is still working on having access to all relevant databases in Serbia. Agreements, in particular with the customs and tax administrations, have to be concluded in this regard.

The number of cases where **seizure and confiscation of assets** occurs are still limited, and the amounts continue to be low. Measures such as confiscating the equivalent value when the proceeds of crime cannot be found in the perpetrator's possession are rarely applied. Extended confiscation is not applied systematically, partially due to an inconsistency between the Criminal Procedure Code and the 2016 Law on seizure and confiscation of proceeds of crime.

Serbia needs to step up the application of the concept of **financial investigations**. These are not used often, preventing thus the development of a track record on confiscation of assets. Currently, financial investigations are mainly aimed at extended confiscation, while the key objective is to identify, document and disrupt money flows that feed activities of criminal networks.

Serbia is implementing the strategy for the prevention and suppression of **trafficking in human beings** for 2017-2022 which has a focus on the protection of women and children. The Centre for Protection of victims of human trafficking is operating with 16 out of 24 envisaged staff. Its capacities need to be increased. Although legally possible, compensation to victims is rarely granted, as there is no official scheme or fund for this. A significant fall in the numbers of formally identified victims was observed in 2019, though an official set of indicators to identify victims is still lacking. There were 12 individuals convicted (at first instance), for trafficking in human beings (with one of them convicted of having committed the offence within the context of organised crime).

There were 11 individuals convicted for **trafficking in weapons** at first instance. Among them, one was convicted for trafficking in weapons within the context of organised crime. The Serbian Criminal Code has only a single article on weapons-related offences. Hence, it is not possible to distinguish the number of convictions related to trafficking in weapons compared with the ones related to illegal possession and other less relevant conducts.

A total of 15,430 small arms and light weapons, and 54,111 pieces of ammunition were destroyed in December 2019 (no destructions in 2018). In line with the new strategy for the control of small arms and light weapons for 2018–2023, adopted in June 2019, a team for monitoring and exchanging all operational data regarding weapons was formed in December 2019.

On **cybercrime**, convictions were rendered against 49 individuals (first instance). The operational capacity of the prosecution, as well as the international cooperation among the law enforcement agencies through Eurojust in order to effectively address cybercrime, was further strengthened.

Legislative amendments to allow for an urgent **witness protection** procedure were adopted. The Ministry of the Interior's Witness Protection Unit, covering organised and war crimes cases, is operational. One psychologist and one social worker were recruited. The Criminal Procedure Code needs to be amended in order to further protect victims and witnesses.

Fight against terrorism and violent extremism

Serbia has a national strategy for prevention and fight against terrorism (2017 – 2020). While a national coordinator was re-appointed in June 2019, there is no monitoring mechanism and no regular reporting on the implementation of the strategy. Also, the strategy has yet to be extended in order to cover all forms of radicalisation and violent extremism (irrespective of

political, religious or ethno-nationalist root causes), in line with EU policy. There is a delay in setting up a single national database on terrorism-related information.

In November 2019, Serbia and the European Commission signed an arrangement to implement the joint action plan on counter-terrorism for the Western Balkans, covering 2019-2020. It outlines concrete actions to be taken. Serbia is implementing the arrangement. Serbia should step up its efforts in various areas and aspects of radicalisation and violent extremism addressed in the arrangement, including in football hooliganism. The National Strategy for Combating Violence and Misconduct at Sports Events 2013 – 2018 expired without having been replaced. Research on radicalisation and violent extremism in Serbia is still scarce and fragmented, and there is a need for baseline data in this area.

Co-operation in the field of drugs

The Serbian National Drug Observatory is now fully staffed, which is an important development towards a fully operational national drug observatory. Serbia is still aligning its data collection, analysis and reporting with the requirements and the methodology of the European Monitoring Centre for Drugs and Drug Abuse (EMCDDA). A working arrangement between the EMCDDA and the Office for Combatting Drugs, the Ministry of the Interior and the Ministry of Health was finalised for signature. The lack of secure storage for drugs and drug precursors prior to destruction remains a concern. Containers for storing seized narcotics are installed but not yet used. According to current legislation, it is not possible to keep only a small sample as material evidence for court proceedings, instead, the entire seized quantity is required. An appropriate process for destroying drugs and drug precursors has yet to be set up. Overall this policy area would benefit from a more proactive and comprehensive approach.

In 2019, 995 individuals were convicted (at first instance) of illegal possession and trafficking of narcotics, 69 of whom had committed the offence within the context of organised crime. During the second half of 2019, a total of 4.5 tons of various substances (including around 109 kg of heroin) were confiscated compared to 2.7 tons, including 59 kg of heroin during the first half of 2019. The discrepancy between the large quantity of drugs seized and the low numbers of convictions is noteworthy.