

# *Council of Europe contribution for the 29<sup>th</sup> UPR session (Jan-Feb 2018) regarding Serbia*

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## **Prevention of torture (CPT)**

*The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.*

[Executive summary of the report on the CPT's visit to Serbia from 26 May to 5 June 2015](#)

[Report on the CPT's visit to Serbia from 26 May to 5 June 2015](#)

[Government Response](#)

## **Council of Europe Commissioner for Human Rights**

*The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.*

On 8 July 2015 the Commissioner published his [report](#) following his visit to Serbia from 16 to 20 March 2015, which focused on issues concerning transitional justice, action against discrimination, and media freedom. In his report the Commissioner welcomed the strengthening of regional co-operation in the prosecution of wartime crimes committed during the 1990s' wars. However, he remained concerned at the lack of accountability for certain serious violations of international human rights and humanitarian law in Serbia. Underlining that this longstanding issue adversely affects the ongoing efforts aimed at achieving justice and durable peace in the region, the Commissioner urged Serbia to take all necessary measures to end impunity, and effectively prosecute, try, and sanction wartime crimes in line with international and European standards. The need to strengthen and provide the War Crimes Prosecutor's Office ('WCPO') with all necessary resources and public support, to reinforce the witness protection system and to effectively investigate and prosecute all reported cases of threats and intimidation of witnesses was highlighted in this context. Commissioner Muižnieks also noted that additional efforts at national and regional level were necessary to resolve the pending cases of missing persons in Serbia and in the region, in line with the standards which have been developed notably through the Court's case-law.

The Commissioner urged Serbia to execute promptly, fully and effectively the judgments of the Court, in particular the pilot judgments concerning serious, structural human rights issues. Noting the need to strengthen the capacity of legal professionals in this context, the Commissioner encouraged Serbia to pursue and implement the plan to systematically second legal professionals to the Court's Registry and to the Department for the Execution of the Court's judgments. The Commissioner remained seriously concerned at the plight of about 88 000 forcibly displaced persons in Serbia, many of them Roma from Kosovo,\* who were still in need of durable solutions. He called on the authorities to address this issue with determination and in close co-operation with UNHCR in order to work towards finding durable solutions for this population. As approximately 3 800 Roma remain stateless or at risk of statelessness, despite the authorities' commendable efforts to address the lack of birth registration and personal documentation of Roma, the Commissioner urged Serbia

to accede to the Council of Europe treaties concerning nationality and statelessness and to strengthen its efforts to resolve these serious, longstanding issues.

The Commissioner called for more efficient implementation of the anti-discrimination legislation whose enhancement was welcomed. Praising an important role played by well-respected national human rights structures in this field, the Commissioner urged the authorities to provide them with all necessary resources and support, while fully respecting their independence. He also stressed the need to impose adequate, dissuasive sanctions for all hate crimes in order to prevent recurrence.

Commissioner Muižnieks expressed deep concern about the fact that many persons with intellectual and psycho-social disabilities, including children, remained in large institutions for social care despite the commitment of the authorities to moving towards deinstitutionalisation. He called on the authorities to draw up and implement, with the active involvement of persons with disabilities, a comprehensive and ambitious plan that should be based on a policy of zero admission to institutions and their replacement with community-based services. It was of serious concern to the Commissioner that persons with disabilities in Serbia may be fully deprived of legal capacity and consequently of their civil and political rights. He called on the authorities to fully and effectively align domestic law and practice with the standards of the UN Convention on the Rights of Persons with Disabilities and the relevant case-law of the Court in order to ensure that all these persons enjoy legal capacity on an equal basis with others in all aspects of life.

Welcoming the 2013 ratification by Serbia of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ('the Istanbul Convention'), Commissioner Muižnieks called on the authorities to give full effect to the domestic laws and policies aimed at advancing women's rights. The authorities were also called upon to ensure that all acts of violence against women, including domestic violence, are effectively investigated and prosecuted, and that dissuasive penalties are imposed on all perpetrators. While he acknowledged the progress made in advancing the rights of LGBTI persons, the Commissioner noted that homophobia and discrimination against LGBTI persons persisted, in particular in the workplace. He urged the authorities to continue taking strong public positions against discrimination in this field and to promote public awareness of the value of diversity and respect for all persons' sexual orientation and gender identity.

Lastly, while he noted with satisfaction the strengthening of the legislative framework concerning media freedoms, the Commissioner called for its effective implementation and remained committed to continuing to closely follow developments in this area. The Commissioner was seriously concerned that issues pertaining to media freedoms were discussed in a highly polarised and politicised environment, which seriously undermined the prospects for advancing in this field. He urged politicians to put an end to inflammatory remarks against journalists and other forms of pressure on the media that had led to self-censorship and discouraged journalists from performing their important tasks in a democratic society. He was worried at the fact that four journalists remained under 24-hour police protection, while acts of violence against journalists continued to affect their freedom of expression. The Serbian authorities were called on to live up to their positive obligation to initiate effective investigations in all cases of physical violence or verbal threats against journalists, and to bring all perpetrators to justice. The authorities were also urged to carry out effective investigations and conclude by bringing to justice all those responsible for the three assassinations of journalists that occurred between 1994 and 2001. The Commissioner underlined

the importance of ethical journalism, whose principles must be promoted and nurtured by all media professionals and associations, notably through systematic training and enhanced media self-regulation.

On 1 June 2015 the Commissioner published a [letter](#) sent on 18 May to the then Prime Minister of Serbia, Mr Aleksandar Vučić, in which he expressed his concern at reports concerning concerted efforts by certain politicians and some media in the country aimed at casting shadows over the Serbian Ombudsman's independence and moral stature.

The Commissioner recalled that he was mandated to "facilitate the activities of national ombudsmen or similar institutions in the field of human rights" and that over many years the work of these structures has proved to be of the utmost significance for the promotion and effective protection of human rights in Europe. He reiterated that Serbia had a well-respected Ombudsman whose work, along with that of the Equality Commissioner, has contributed immensely to Serbia's efforts to enhance and deepen democracy, human rights protection and the rule of law.

In his letter the Commissioner stressed his concern about public verbal attacks on the Ombudsman by some members of the government following the Ombudsman's call for the de-institutionalisation of persons with intellectual and psychosocial disabilities. He also noted with concern reports that the Ombudsman and his advisers were prevented by the Minister of Defence from completing an in situ inspection of the Military Security Service, which was being carried out within the framework of the Ombudsman's mandate.

Commissioner Muižnieks urged the Prime Minister and his government to take all necessary measures to fully safeguard the Serbian Ombudsman's integrity and that of his Office. He underlined that he would continue to monitor the developments closely and spare no effort, in accordance with his mandate, in order to facilitate the activities of the national ombudsman and to enhance his independence and effectiveness.

On 16 February 2016, the Commissioner published a [letter](#) addressed to Zorana Mihajlović, Deputy Prime Minister of Serbia, in which he expressed his concern at the continuing forced evictions of Roma from informal settlements and the authorities' failure to comply with legal safeguards during these operations. He noted that most of these evictions were carried out without prior consultation with the families concerned and often at very short notice, while adequate alternative accommodation was not always provided. In this context, the Commissioner welcomed the preparation by Serbia of the draft Housing Law, which included provisions concerning forced evictions. The Commissioner urged the authorities to ensure that any new legislation affecting access by Roma to adequate housing and regulating forced evictions is fully in line with the relevant European and international human rights standards, notably the European Convention on Human Rights and the European Social Charter. He also called on the authorities to take all necessary measures in order to ensure that no further evictions of Roma are carried out without provision of adequate alternative accommodation and to provide those already evicted with adequate housing immediately.

On 23 September 2016, the Commissioner published a [letter](#) addressed to Aleksandar Vulin, Minister for Labour, Employment, Veterans and Social Affairs of Serbia, in which he noted that a bill on the rights of veterans, disabled veterans, civilian disabled war victims and their family members

had significantly improved the legal status of veterans and military victims of war, but excluded certain categories of war victims (estimated at 15 000), such as families of missing persons, victims of wartime sexual violence and victims of action by Serbian armed forces. The Commissioner stressed that he had received reports indicating that the valuable expertise of civil society organisations that have been active in this field for many years had not been fully taken into account in this legislative process. The Commissioner requested information on the bill's progress and on the possibility of expanding its scope so that all victims of wartime crimes are provided with adequate and effective reparation, in line with internationally established standards.

### ***Fight against racism and intolerance (ECRI)***

*The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.*

ECRI adopted its [fifth report on Serbia](#) on 22 March 2017:

### ***Protection of minorities***

#### ***Framework Convention for the Protection of National Minorities***

*The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.*

[3<sup>e</sup> avis du Comité consultatif](#), 23 juin 2014

[Resolution CM/ResCMN\(2015\)8](#) on the implementation of the Framework Convention for the Protection of National Minorities by Serbia, 1 July 2015.

#### ***European Charter for Regional or Minority Languages***

*The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals*

Serbia submitted its 3<sup>rd</sup> periodical [report](#) in February 2015. The Committee of Experts adopted its [evaluation report](#) on Serbia in November 2015 and the corresponding Committee of Ministers' recommendations were adopted in April 2016.

The Committee of Experts commended Serbia for progress made during the last monitoring period, which is reflected by the fact that all languages are now present in primary education, and highlighted the fact that Serbia traditionally has a very high level of regional or minority language presence in radio and television broadcasting.

The Committee of Experts confirms its readiness to work together with Serbia to ensure the application of the Charter in all areas where there are sufficient numbers of speakers of regional or minority languages and appreciates the Serbian authorities' willingness to work on further developments in this field.

### **Action against trafficking in human beings (GRETA)**

*The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.*

*The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.*

*The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.*

*Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.*

*The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.*

**Serbia** <http://www.coe.int/en/web/anti-human-trafficking/serbia>

A 2<sup>nd</sup> round [evaluation visit to SRB](#) took place in March. GRETA's 2<sup>nd</sup> round evaluation report should be published in early 2018, with 2<sup>nd</sup> round CoP recommendations following shortly thereafter.

[GRETA's 1<sup>st</sup> round evaluation report and Government's comments](#)  
[Committee of the Parties' recommendations – 1<sup>st</sup> evaluation round](#)  
[Government's reply to Committee of the Parties' 1<sup>st</sup> round recommendations](#)

## Preventing and combating violence against women and domestic violence

The Council of Europe Convention on preventing and Combating violence against women and domestic violence ([Istanbul Convention](#), CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

Serbia ratified the Istanbul Convention on 21 November 2013 with a [reservation](#): in accordance with Article 78, paragraph 2, subparagraphs 1 and 2, of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Republic of Serbia reserves the right not to apply the provisions under Article 30, paragraph 2, and Article 44, paragraph 1.e, 3 and 4, of the Convention pending the alignment of its national criminal legislation with the said provisions of the Convention. According to GREVIO's provisional timetable, Serbia will be asked to submit its report in reply to GREVIO's questionnaire in the second half of 2018, and, following, *inter alia*, a state dialogue and a country visit, GREVIO is scheduled to finalise its report on Serbia towards the end of 2019.

## Fight against corruption (GRECO)

The 'Group of States against Corruption' ([GRECO](#)) monitors all its members through a "horizontal" evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

GRECO's Fourth Round Compliance Report on Serbia will be discussed by GRECO at its October 2017 Plenary meeting. The [Evaluation Report](#) was published in 2015.

## Execution of judgments and decisions of the European Court of Human Rights

### Statistical data

At 31 December 2016, there were 162 cases against Serbia pending before the Committee of Ministers for supervision of their execution (248 at 31.12.2015). 26 of these cases were "leading cases" (29 at 31.12.2015), i.e. raising a new structural / general problem and requiring the adoption of general measures, the other cases being "repetitive cases" (including a number of friendly settlements) concerning issues already raised before the European Court of Human Rights.

In 2016, the CM was seized by 24 new cases (60 in 2015) against Serbia of which 3 leading cases (1 in 2015) and the sums awarded in 2016 as just satisfaction amounted to 164 873 euro.

In 2016, 111 cases (5 in 2015) were closed by the adoption of a Final Resolution, of which 8 leading (5 in 2015).

### ***Main cases /groups of cases pending before the Committee of Ministers for supervision of execution under the enhanced and standard procedures***

Main cases pending execution before the Committee of Ministers under the enhanced procedure cover issues like actions of security forces ([Stanimirović](#)); protection against ill-treatment ([Milanović](#)); enforcement of domestic judicial decisions ([EVT company](#)); protection of private and family life ([Zorica Jovanović](#)); freedom of expression ([Youth Initiative for Human Rights](#)); protection of rights to property ([Ališić and Others](#)), etc.

#### ***Security forces – use of force and effective investigations***

[Stanimirović](#), application No. 26088/06, judgment final on 08/03/2012, enhanced supervision

***Ill-treatment or death in hands of the police and lack of an effective investigation in this respect; use of confessions made under torture as evidence during criminal proceedings conducted against the applicants.***

#### ***Protection against ill-treatment***

[Milanović](#), application No. 44614/07, judgment final on 20/06/2011, enhanced supervision

***Failure to protect a leading member of the Hare Krishna community from assaults likely motivated by religious hatred and lack of effective investigations in this respect.***

#### ***Enforcement of domestic judicial decisions***

[EVT company](#), application No. 3102/05, judgment final on 21/09/2007, enhanced supervision

***No or delayed enforcement of final court or administrative decisions, mainly concerning debts of socially-owned companies or municipal/local authorities; lack of effective remedy for the non-enforcement of final decisions.***

#### ***Protection of private and family life***

[Zorica Jovanović](#), application No. 21794/08, judgment final on 09/09/2013, enhanced supervision

***Failure to provide credible information to a mother as to the fate of her son, allegedly deceased in a maternity ward in 1983; his body was neither given to her, nor information about where he was buried. Lack of official record and investigation into the child's death.***

#### ***Freedom of expression – communication of information***

[Youth Initiative for Human Rights](#), application No. 48135/06, judgment final on 25/09/2013, standard supervision

***Obstinate reluctance of the Serbian Intelligence Agency to comply with a final and binding order of the Information Commissioner to provide information on how many people were subjected to electronic surveillance in 2005.***

## **Protection of rights to property**

**Grudić**, application No. 31925/08, judgment final on 24/09/2012, enhanced supervision

**Unlawful suspension of pension payments for more than a decade** based on the Government Opinion that the Serbian pensions system ceased to operate in Kosovo<sup>1</sup> on account that it was under international administration.

**Ališić and Others**, application No. 60642/08, judgment final on 16/07/2014, enhanced supervision

**Failure by the government, as successor State of the Socialist Federative Republic of Yugoslavia (SFRY), to repay “old” foreign-currency savings.** The repayment scheme in Serbia was subject to the “qualifying nationality” principle, thus excluding repayment for non-Serbian nationals.

## **Social and Economic Rights (ECSR)**

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

## **Venice Commission**

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe’s advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Since 2013 the Commission adopted several opinions on judiciary, including prosecutor’s office, as well as on the financing of political activities in **Serbia**.

### **Judiciary**

[CDL-AD\(2014\)028](#)

Opinion on the draft amendments to the Law on the High Judicial Council of Serbia

[CDL-AD\(2013\)005](#)

Opinion on draft amendments to laws on the judiciary of Serbia

### **Prosecution**

[CDL-AD\(2014\)029](#)

Opinion on the draft amendments to the Law on the State Prosecutorial Council of Serbia

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<sup>1</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

[CDL-AD\(2013\)006](#)

Opinion on the draft amendments to the Law on the Public Prosecution of Serbia

**Financing of political activities**

[CDL-AD\(2014\)034](#)

Joint Opinion on draft amendments to the Law on the financing of political activities of Serbia