Submission for Universal Periodic Review

Serbia

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The submission of the Belgrade Centre for Human Rights in Serbia was compiled in accordance with the *Universal Periodic Review: Information and Guidelines for Relevant Stakeholders' Written Submissions* document of 2012, Section III on the content of written submissions, items b 7, 8 and 9. We particularly had in mind item 9 which stresses that *the second and subsequent cycles of the review (2012 and onwards) should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review*. This submission has been compiled on the basis of BCHR's longstanding experience in the selected areas.

TORTURE

1.Definition, perpetrator, punishment and statute of limitation

Having in mind recommendation *133.3. Bring its definition of torture into line with that of CAT and accelerate judicial reforms so that acts of torture are not subject to negative prescriptions (Tunisia) and 133.4. Adjust its definition of torture to the definition of CAT and carry out legislative reforms to adjust the penalties to the seriousness of the crime of torture and in order not to apply the statute of limitations to torture (Costa Rica);* we can conclude that this recommendation haven't been implement in this reporting time.

A total of 172 trials of defendants accused of torture and ill-treatment and extortion of confession have been conducted before Serbian Basic Courts from 1 January 2010 to 31 December 2016. The courts have delivered final decisions in 36 cases finding police officers guilty:

- 29 conditional sentences – 39 police officers;
- 3 deferrals of criminal prosecution - 5 police officers;

- 2 prison sentences – 2 police officers (one sentenced to 8 months and the other to 4 months imprisonment);
- 1 home imprisonment;
- 1 community service sentence – 1 police officer;
- 18 cases were ended with the decision to discontinue criminal proceedings were rendered because of the expiry of the absolute statute of limitations.

A total of 258 (preliminary) criminal proceedings for the crime of ill-treatment and torture and extortion of confession have been conducted before Serbian Basic Public Prosecution Services from 1 October 2013 to 31 December 2016. Of these 240 proceedings, 165 ended with a final decision in the (preliminary) investigation stage or went to trial, while 93 are still pending. Of the 165 completed cases, 13 went to trial, i.e. the indictments were confirmed. Rulings dismissing the criminal reports were issued in 145 cases. The institute of deferral of criminal prosecution was applied in 7 cases and, after the defendants fulfilled the obligations laid down in the Criminal Procedure Code, rulings dismissing the criminal reports against them were issued.

Recommendation to the state:

1. *Serbia should harmonize torture definition in line with the obligations arising from UNCAT by undertaking the following legal steps: 1) the act of torture can only be perpetrated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity; 2) criminal offences torture and ill-treatment (Art. 137 of CC) and extortion of confession (Art. 136 of CC) should be unified in one single crime of torture; 3) torture should be punishable by appropriate penalties commensurate with their grave nature, in accordance with article 4 (2) of UNCAT; 4) statute of limitation should be abolished*.[1]

2. *Serbia should undertake necessary measures in order to address the problem of impunity for crimes of torture, inhumane and degrading treatment.*[2]

[1] CAT, "Concluding observations on the second periodic report of Serbia", CAT/C/SRB/CO/2, 3 June 2015, para. 8; CCPR, "Concluding observations on the third periodic report of Serbia", CCPR/C/SRB/CO/3, 10 April 2017, para. 26 – 27; The Belgrade Centre for Human Rights, "Human Rights in Serbia 2013" Belgrade 2014, p. 112 – 114, available at: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/04/Human-Rights-in-Serbia-2013.pdf ; The Belgrade Centre for Human Rights, "Human Rights in Serbia 2014" Belgrade 2015, p. 103 – 105, available at: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2015/03/Human-Rights-in-Serbia-2014.pdf; The Belgrade Centre for Human Rights, "Human Rights in Serbia 2015" Belgrade 2016, p. 96 – 98, available at: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf; The Belgrade Centre for Human Rights, "Human Rights in Serbia 2016" Belgrade 2017, p. 141 – 144; available at: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Human-Rights-in-Serbia-2016.pdf.

[2] Statistical data was collected through the requests for the information of public importance, but the impunity problem was also recognized by CAT, "Concluding observations on the second periodic report of Serbia", CAT/C/SRB/CO/2, 3 June 2015, para. 10; and CCPR, "Concluding observations on the third periodic report of Serbia", CCPR/C/SRB/CO/3, 10 April 2017, para. 26 – 27.

3. *Medical examinations of victims of torture should be conducted in a manner so the report should contain victims statement, description of sustained injuries and doctor's opinion on correlation between these two*.[3]

4. *The state should take necessary steps in order to secure active role of ex officio lawyers appointed to alleged victims of torture and inhumane and degrading treatment*.[4]

RIGHT TO ASYLUM

1. The right to asylum and respect of the non-refoulement principle

Having regard to the Recommendation 132.100. *Protect the rights of immigrants and take active measures to protect the rights of foreign workers, and promote harmony among all ethnic groups*, we can conclude that this recommendation has been partially fulfilled.

Although the Republic of Serbia Constitution (Article 57) and the Asylum Act (adopted in 2008) guarantee the right to asylum and implement the asylum procedure, a number of systemic shortcomings with regard to access to the asylum procedure, protection of the rights of asylum seekers and respect of the non-refoulement principle, which have already been established in their concluding observations by treaty bodies established by the UN (the Committee against Torture and the Human Rights Committee) still exist, which indicates that the Republic of Serbia has not made a sufficient effort to eliminate them nor acted on the recommendations of these bodies. In its 2012 document, the UNHCR also concluded that Serbia was not a safe asylum country. The recommendations highlighted in the UNHCR document have also not been fulfilled, that is, Serbia has not established a fair and efficient asylum procedure that complies with international standards.

From the entry into force of the Asylum Act (2008) until the end of May 2017 only 88 asylum requests were approved, that is, 90 positive decisions were issued (two of which were annulled). On the other hand, during the same period, 622,023 people expressed their intention to seek asylum in the Republic of Serbia, a very small percentage of whom applied for asylum. This trend is understandable if we take into account all the shortcomings that were established by the UN treaty bodies and the UNHCR or the fact that beneficiaries of international protection were not offered permanent solutions. On the other hand, since 2015, the Republic of Serbia has started to provide humanitarian accommodation to migrants, without adapting its regulations to the new practice, and without making efforts to establish the legal status of these people. Serbia directs its migration policy primarily towards remaining only a transit country.

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[3] CPT, „Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 May to 5 June 2015", CPT/Inf (2016) 21, para. 22.

[4] CPT, „Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 May to 5 June 2015", CPT/Inf (2016) 21, para. 23, 24 and 26.

Although the number of employees in the Asylum Office (the first instance body in the asylum procedure) which was established in 2015 has increased, the capacities of this body are inadequate for the timely implementation of procedural actions in all centres for asylum and receptions centres (where accommodation is provided to asylum seekers). An appeal to the Asylum Commission (the second instance body) and a lawsuit filed to the Administrative Court, cannot be considered to be efficient legal remedies because these instances have almost never listened to asylum seekers do they make decisions on the merits, but only discuss the appeal decisions procedural flaws.

2. Integration

The Republic of Serbia's legal framework guarantees numerous rights to users of international protection and obliges the competent authorities to provide programmes of inclusion in the social life for persons who have received international protection, but also for asylum seekers. However, in practice, there are many disadvantages and legal gaps which greatly hinder the process of integration into Serbian society and exercising the rights of beneficiaries of international protection.

The Ministry of Interior has not adopted a by-law on the basis of which the beneficiaries of international protection would be issued travel documents due to which their freedom of movement is unreasonably restricted because they cannot legally travel outside the country.

Inclusion in the labour market also remains a problem, including programmes of additional training, bearing in mind that refugees must get their diplomas acquired in the country of origin recognised, which is legally possible but in practice the recognition process takes a long time, they must cover the recognition fees themselves, and many of them are not able to obtain the original diploma because of the state of war in their country of origin. Also, programmes for verifying the knowledge and skills that would facilitate the evaluation of the acquired experience and the inclusion of refugees in active employment policies have not so far been established.

Serbian language learning, as one of the necessary conditions for inclusion in the society was also not provided in a systematic way until 2017, with only sporadic language courses provided in certain asylum centres.

The right to family reunification remains a refugee's legal right in principle, but so far in Serbia not a single family members' reunification procedure has been initiated.

In addition to the Commissariat for Refugees and Migration, which is in charge of implementation of integration policies and programmes, there was no serious involvement of other relevant institutions until the beginning of 2017, when the Ministry of Education, Science and Technological Development in collaboration with UNICEF began to work on the inclusion of children of asylum seekers in schools.

The recommendations to the state:

1. *Determine the status of every foreigner in the territory of the Republic of Serbia and take appropriate legal steps accordingly;*

2. *Do not return any of the migrants to the territory of the country in which they may face persecution and in which they would be exposed to persecution or other treatment that is contrary to the absolute prohibition on torture (the non-refoulement principle);*

3. *Ensure efficiency of the legal remedy in the asylum procedure.*

4. *Establish an efficient and coordinated system for integration of refugees into society and strengthen cooperation with other relevant ministries in order to create an institutional mechanism for social inclusion and integration of migrants into society.*

5. *Ensure issuing travel documents to beneficiaries of international protection.*

EXERCISING ECONOMIC AND SOCIAL RIGHTS

1. The impact of amendments to the Labour Act on the right to work

Having regard to the position of the Committee on Economic, Social and Cultural Rights as to what the right to work implies, there is an impression that the Republic of Serbia is moving away from the obligations undertaken by ratifying international documents, in particular because of the adoption of the amendments to the Labour Act (hereinafter referred to as LA) in July 2014, which were adopted without an appropriate public debate, excluding the social partners and in an urgent procedure. When adopting considerable modifications of an organic law like LA, this action of the state should not become practice.

Inadequate method of calculating employment rate

In the Republic of Serbia in 2012, unemployment stood at 22.4%, while in the same reporting quarter of 2016 unemployment stood at 13.8% (12.6% for men and 15.2% for women). The Republic Statistical Office applies the International Labour Organization methodology according to which an employee is any person who was engaged in any way one working hour during the observed week for which the survey is done. However, in this survey, unlike the ILO, the Republic Statistical Office does not take into account the fact of earning income, while taking into account anyone who works formally, informally, on a contract or without any legal basis, whether it is a person paid in cash or in kind. They also count as employees persons assisting in an agricultural holding, as well as those on holiday, sick leave, unpaid leave and persons who work illegally or those who have not received any salary for as long as several months. In addition to this, in developing its Labour Force Survey, the Republic Statistical Office takes a sample of 11,900 households, but it is debateable how it performs this selection as it does not specify the manner in which it selects a random sample of households. The stated percentages

show that the unemployment rate in the given period decreased by as much as 45 percent, which is not true. The aforementioned methodology considers as unemployed person any person with working ability who is actively seeking employment. "Actively" means that they are registered with the National Employment Service and that they report to the Employment Counsellor at certain intervals on a specific date in the month, otherwise they will be deleted from the records. The fact that the NES registered a decrease in unemployment of about 170,000 in the course of 2016 does not mean that the reason for this was that all the persons had found employment. It is important to mention the fact that the overall trends in employment/unemployment significantly deviate from other macroeconomic developments, because, according to the available data, the productivity of the Serbian economy fell by 15% in the past four years. Logically speaking, had there been an increase employment, there would have been an increase in economic growth. The perception of the labour market trends that the described methodology reflects is a lot better than the reality, and the analysis and statements by officials about declining unemployment on the basis of the given statistics can be interpreted as a misuse of statistics for political purposes.

3. Reduction of salaries and pensions

In late 2014, two laws that reduced earnings of public sector employees and pensions were adopted, which caused further impoverishment of the citizens of Serbia, especially given the large proportion of pensioners. The government justified taking such a decision by the need to ensure the stability of public finances. In contrast to the earnings that are calculated each month, pensions represent an acquired right. The European Court of Human Rights treats contributions related to the pension and disability insurance as a possession in terms of Article 1 of Protocol No. 1 to the EC. With this in mind, suspension of payment of pensions by the Republic Pension Fund represents interference in the peaceful enjoyment of possessions. However, pursuant to the initiatives for assessing the constitutionality of this law, the Constitutional Court of the Republic of Serbia found that the adoption of the Act had not violated the Constitution. The fact that the Republic of Serbia has ratified the Protocol No. 1 to the European Convention on Human Rights, and that these documents are considered an integral part of domestic law, suggests the merits of the petition to the European Court of Human Rights regarding violations of the right to peaceful enjoyment of possessions.

4. The legal framework that ensures respect of the right to strike

The current Act on Strikes was adopted more than two decades ago and has undergone very few amendments to this day. The legal definition of this area is not in line with current trends and situation in the Republic of Serbia, and several versions of the draft new Act on Strikes have been available over the last seven years, however, not one of them has entered the parliamentary procedure.

The recommendations to the state:

1. When amending the organic laws governing a set of citizens' rights relevant to their lives and livelihoods, as is in this case the Labour Act, it is essential to involve all social partners in all phases of amending the law as well as to provide an open public debate on these solutions rather than adopt the law in an urgent procedure.

2. *Adapt the methodology of calculating the employment rate to the economic situation in the country so that it reflects the actual situation on the labour market*.

3. *Repeal the Law on Temporary Regulation the Manner of Pension Payments, Off. Gazette of the RS 116/14, in order to avoid paying damage claims to the Republic of Serbia citizens who are affected by these legal provisions, having regard to the violation of the right to peaceful enjoyment of possessions.*

4 *Adopt the new Act on strikes as soon as possible, with the full participation of all social partners in its preparation.*

PERSONAL DATA PROTECTION

Taking into account recommendation 132.74 regarding right to privacy and protection of personal data we can conclude that the realization of the right to personal data protection was brought into question ever since the Personal Data Protection Act (PDPA)[5] was adopted in 2009, wherefore it may be concluded that the state is not interested in governing the field of personal data protection in a systemic manner that would provide the enjoyment of this right enshrined in the Constitution. Such conclusion is corroborated by the fact that the relevant authorities have not adopted an action plan for the implementation of the Personal Data Protection Strategy enacted in mid-2010, that numerous provisions of other laws adopted before the PDPA have not been aligned with it, that many of the personal data controllers and processors lack the knowledge they need to perform their duties adequately and by numerous violation of this right. The PDPA is a corollary act and has to cover all types of personal data processing. Major problems in personal data protection have arisen in practice due to lack of regulations on specific areas, such as video surveillance, direct marketing, security checks and processing of biometric data.[6]

<u>The recommendation to the state:</u>

1. *Serbia should enact new Personal Data Protection Act that will rely on the EU Regulation. It is also necessary that Serbia take all required measures to ensure the enjoyment and protection of this right.*

[5] Official Gazette RS, 97/08, 104/09, 68/12 – Constitutional Court Decision and 107/12

[6] Taking into account that Serbia is going through European Union accession process, new PDPA should be in line with the European Parliament Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data adopted in April 2016.