

Input into the EC monitoring report

Prepared by **Fund for an Open Society Serbia**

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SERBIA – EU relations: current state of affairs

I. General overview of state of play/progress made

In considering Serbia-EU relations **two types** of tendencies which have lately been genuinely influencing the process of Serbia's Europeanization and its prospects for faster formalization of its relations with the EU deserve political attention.

One type is seriously jeopardizing Serbia's European perspective and further consolidation of democracy and has been expressed through the variety of forms such as: open opposition to the (first) signing, and now ratification of the SAA; misuse of Constitution in interpreting the SAA with the aim to compromise the legal grounds for its ratification; repeated undiplomatic steps toward neighboring countries which harmfully influence regional stability and cooperation (an example being recent deterioration of relations with Croatia provoked by undiplomatic statements of both President of the State and Minister of foreign affairs); tolerant attitude of the state bodies toward the acts of mass violation of human rights (right to association, minority rights, etc.); violation of the human rights by the state (freedom of assembly); pushing off of the political agenda cooperation with the ICTY.

Often using Kosovo's promulgation of independence as an excuse, it in fact protects the political and economic monopolistic alliances whose interests would certainly not be best served with the accelerated European integration of Serbia.

The second type is characterized by intensification of advocacy for the speeding up of the process of European integration of Serbia. The signing of the SAA has provided a platform for further consolidation and unification of the political, civil society and business sector (particularly small and medium enterprises) who are the promoters of the pro-European development of Serbia.

The failure of numerous and orchestrated attempts to eliminate the EU from the public and political agenda after the Kosovo's promulgation of independence and the results of the last general elections clearly demonstrated that economic and democratic development as well as the EU integration process are the top priorities for the Serbian citizens. The decision of the European Council to sign the SAA with Serbia had a highly positive effect on these developments and has proven at this stage to be a sound political decision.

The confrontation between these two types of tendencies will remain one of the features of the political developments in the near future, and will require further close monitoring.

II. Overall Recommendations

The EU should:

- Clearly insist on **fulfilling of the short- and mid-term priorities** as defined in the European partnership and the Visa Liberalization Roadmap; further **development of institutional capacities** and effective exercise of powers entrusted to them; emphasize the need for **effective implementation** of the laws and policies that concern the process of bringing Serbia closer to the EU;
- Be sharply **precise in its assessments of the progress made** (as well as shortfalls) regarding the fulfillment of the obligations defined by the European partnership, particularly when the institutional capacities and implementation of the principle of the rule of law are concerned while the recommendations should be more specific and targeted.
- As much as possible **keep the monitoring and assessments of the progress made** documented in the Progress reports and other monitoring instruments **independent of political decisions**, and whenever possible be clear that certain decisions are political and not made on the basis of progress made by Serbia.
- **Intensify its dialogue with a wider range of institutions outside the government**, particularly with the so-called independent bodies: e.g. Commissioner for Free Access to Information, Commission for the Prevention of Conflict of Interest, Commission for Protection of Competition, Commission for Securities, etc. and judiciary, or suggest them being represented in the negotiating process when discussing matters fitting into their field of competence.
- **Establish the effective communication with a wider range of social actors (political actors, civil and business sector) outside the official state bodies** following the Commission's Communications (2005) 290 and (2000) 11 and recent Communication (2008) 127, Ljubljana declaration (April 2nd 2008) and Conclusion from the conference Civil Society development in South East European held in Brussels and accompanying Comm.288. This goal would be better served, *inter alia*, by opening the process of drafting the EC Annual Progress reports fully (economic criteria) for the civil society actors as it consists of variety of economic think-thanks, trade unions and CSOs dealing with economic issues, as well as for the business sector, particularly their associations (national and local chambers of commerce, associations of SME, etc)

III. Progress/Shortfall in Priority Action Areas

Democracy and the rule of law

Serious concerns regarding the solutions in the **Constitution and the Constitutional Law** remain, and have proven to be obstacle to the processes of Europeanization (see below).

PARLIAMENT

Major concerns:

Two rounds of parliamentary elections in two years adversely affected the **legislative activity**. In 2008 there was literally no laws adopted. In 2007 Parliament was also not effectively functioning for almost six months, which means that in the last two years National Parliament did not effectively work for more than a year. Such a low level of legislative activity may seriously impede the process of EU integration.

Institutional set-up and capacities:

- **MPs remain to be subservient to political parties** as they are expected, according to the last Constitution, to put their mandate at disposal of their parties; almost all

leaders of the political parties admitted that their MPs have signed and submitted blank resignations which can be effected at party's will; position of the MPs **jeopardize the institutional capacities** of the Parliament.

Legislator and controller of the executive

- **"Subordinated and submissive legislator":**

- **Lack of proper legislative policy** remains to be an issue resulting in unreasonably setting the *vacatio legis*; abundance of the conflicting norms and legal vacuums that prevent the coherent legal system to be established; laws passed without financial projections and analyses of effects causing poor implementation and the lack of effective supervision of their implementation;
- **Lack of practice of consultation** process with informed public and stakeholders remains to be an issue;

- **Abstaining from exerting its powers**

- **Absence of quality and informed discussions** on draft laws and proposed policies both in plenary sessions and at the parliamentary committees;
- **No use of instruments of control of executive branch** such as interpellation, MPs' questions, inquiries on particular issues, etc. to challenge and questioning the Government decisions and attitudes;
- **Poor use of monitoring mechanisms** - no practice of in-depth reviewing and discussing annual reports of the governmental and public administration bodies (State Intelligence Agency, National Bank, various ministries and regulatory bodies). It is interesting to note that for six years it did not receive nor require from the Government the annual report on the budget spending and execution;

- **Lack of personal and administrative capacities**

- **MPs**, including members of the Parliament's Commission for the European Integration, **have poor knowledge of the process of Europeanization**, content and dynamics envisaged by the European Partnership while the administrative staff is small and lacking capacities to serve the need of the Parliament's greater interference into the process.

Parliament's representativeness

- **Regional representativeness** is demonstrating negative trends. In the previous Parliament only 73 municipalities (out of 163) got represented, while the one before that had the MPs which came from 110 municipalities. This trend of extreme centralization of political party structure may lead to further deepening of the imbalance in regional development.
- **Representation of the minorities** in the National Parliaments needs further improvement. Even though Republic Electoral Commission, violated the law by passing a decree by which it reduced a number of signatures (to 3,000 instead of regular 10,000) in order to alleviate conditions for minority parties to run for the elections it was obvious that, despite the good intentions, the failure to observe the rule of law principle was not the way to solve the problem. The Constitutional Court annulled the decree one month before the elections, because it was not in conformity with the Law on Elections. Situation was critical because minorities had technical difficulties because of the short period which remained to collect remaining 7,000 signatures. Fortunately, all national minorities' parties managed to collect the needed number. However, there was a decrease in number of minorities represented from four in the previous Parliament (Hungarians, Bosniacs, Albanians and Roma) to three (Roma, due to the fact that they had three separate parties did not manage to meet the natural threshold).

Key Recommendations:

- Seriously **strengthen the capacities of the Parliament** to exercise its powers (political, personal and administrative capacities).
- **Strengthen the coordination between the Parliament and the Government** by introducing the practice of short-and mid-term planning and though the use of the other mechanisms facilitating the effective participation of the Parliament in the legislation and policy-making processes.
- **Change the election legislation** in order to improve the representativeness of the Parliament.

GOVERNMENT

Major concerns

Institutional set-up and capacities:

- **"Feudalization" of the government**, i.e. the principles of "one ministry – one political party" and of "non-interference" in each other's work has been implemented to the ultimate extreme thus jeopardizing the coordination and efficiency of the work and coherence of the policies. The Government acts more as a sum of individual ministries instead than as an coherent executive body. A number of important decisions (including the confirmation of the signing of the SAA was reached with dissenting ministers, strictly according to political party affiliation). Also, the work of the Government was in number of occasions illegally obstructed by the members of the Government themselves.

Exercise of the powers:

- The Government and the ministries alike are **slow and lack both commitment and capacities regarding direct implementation and supervision of the implementation of the legislation and by-laws, including those harmonized with the EU standards**. The same applies to other public bodies, services and agencies – various independent bodies, customs service, inspectorates, etc.
- It is a common practice for the **Government to interfere into/obstruct the work of the independent bodies** (Commission for the Protection of Competition, Commission on Securities, etc), neglect their decisions or refuse to implement them (Commission for the Prevention of Conflict of Interest, Commissioner for Free Access of Information), overstep its competences, make pressure upon independent bodies and judiciary, obstruct the work of prosecution.
- The practice of **altering the laws by decrees** despite not being legitimate is widespread and expanding. In addition, the tendency of ruling without taking any previous required legal actions, have been noted; the example of transferring the prerogatives of the Minister of interior to the State secretary.

Positive developments

- **Structures entrusted with administrative aspect of facilitation of the European Integration processes have been strengthened in the previous Government:** Cabinet of the Deputy Prime Minister, Serbian European Integration Office, Directorate of European Affairs within the Foreign Affairs Ministry, as well as administrative capacities of the civil servants dealing with EU related issues in respective ministries. The Council for European Integration which was established in 2003, as a political body to lead and coordinate the relations with the EU, is yet to

be effectively put in function after their priorities and objectives have been reformulated in June 2007.

- The **Serbian Integration Office** has significantly improved communication with stakeholders interested in Serbian EU integration process especially with CSOs. However, the Office did not manage to gain stronger political support due to the irreconcilable differences in political commitment to the pro-European developments between the parties in the Government's coalition.
- The Ministry of Finance has formed **regional offices for cross border cooperation** which are to facilitate access to the cross-border cooperation component of the IPA funds and ensure efficient use of the IPA funds.

Key recommendations:

- The Government should scrupulously observe the law and keep its actions within the limits of its competences;
- Ensure efficient and on-going implementation of legislation and policies.
- Put in function the European Integration Council within the new Government and insure that, alongside cabinet ministries, it includes the representatives of the second and third sectors, leading experts and distinguished figures advocating Serbia's accession to the EU;
- Strengthen the position of the Serbian Integration Office in their relation to ministries;
- Further increase capacities of the bodies dealing with the EU integration process particularly in connection with the management and spending of the IPA funds and instigate higher level of coordination between them, including the European directorates in all respective ministries.

INDEPENDENT (REGULATORY) BODIES

Major concerns

- The **Action plan for the annual programming process of the IPA 2008 which was adopted by the National IPA Coordinator** has left out all of the independent regulatory bodies from the programming process apart from National Bank. This means that institutions such as State Audit Institution, Commission for Protection of Competition, High Judicial Council, Commissioner for Free Access to Information, Constitutional Court, etc. have not been able neither to propose projects for their own institution nor to serve as invaluable resource for identification of the needs and possible in the area of their operation.
- The position of the number of regulatory bodies remains to be a serious concern. The Parliament is constantly **late in appointing independent bodies** and/or their members (Ombudsman – one year late formally, *de facto* two years; State Audit Institution – almost 2,5 years late formally, *de facto* still not fully operational), while the Government does not show due diligence to insure adequate working and financial conditions for their work, which was also expressed by 5 of the independent bodies in a joint public statement. The **Government's rather arrogant attempts** (usually successful) to interfere in their work, its negligence toward their decisions and rulings, and the Parliament's ignorance of their existence, work and competences have become notorious. Government constantly refuses to enforce decisions made by independent bodies thus seriously jeopardizing the rule of law principle.
- **Constitutional Court** has been only partially constituted. Only two thirds of the judges have been appointed, because the remaining five judges are supposed to be appointed by the Supreme Cassation Court and High Judicial Council which still have not been established. The newly and

only partially established Constitutional Court right at the start of its functioning has a backlog which is not to be neglected. It has around 1.074 pending cases which are the backlog from the 1991-2007 period, while the new cases, particularly the constitutional complaints are rapidly increasing.

- The most alarming situation is in regards to the **State Audit Institution (SAI)**. The Council of the institution has been appointed in September by the Parliament with the plan to appoint 6 Supreme Auditors and 89 state auditors within next six months. The SAI Council has in May appointed only 2 out of stipulated 6 Supreme Auditors, while the rest of appointments is still pending. SAI has not been provided with the sufficient premises and technical conditions to begin its operations. It does not have an official address yet nor any employees. This will certainly prevent SAI to carry out the revision of the 2007 state budget and revision of the budget for the 2008 general and provincial elections which is another delay in establishment of the efficient control over the public spending.
- The establishing of the **Ombudsman** office is still not completed since the four deputies are still not appointed, which is a breach of the legal deadline. Furthermore, the current premises allow for only one quarter of the envisaged staff to be able to carry out its duties.
- **The Commissioner for Free Access to Information** was illegally reelected to a mandate shorter than envisaged by the law, consequently jeopardizing institutions independence. It still functions with only one quarter of the number of staff which was planned by the document approved by the Parliament. This is a serious danger to the efficiency, since the office of the Commissioner receives literally thousands of appeals and has only 7 instead of planned 21 employees. This may soon result in a serious backlog of appeals.
- The position of the **Commission for Protection of (Bidders) Rights** still does not have the adequate independence. It is part of the Government Office for Public Procurement and it is not enjoying even minimal personal, financial or operational independence to carry out its duties.

Positive developments

- The Council of the **State Audit Institution** has been appointed by the National Parliament.
- The **Ombudsman** has been appointed by the National Parliament.
- **The majority of the independent bodies make efforts to independently** exercise their powers, although they do not always succeed as the Government is always ready to exert un-proportional pressure upon them, particularly in various processes of privatization; some rigorously fight for their independent position and the implementation of their decisions (Commissioner for Free Access to Information, the Republican Board for the Prevention of Conflict of Interest, Commission for the Protection of Competition, Commission for Securities);
- The respect for the decisions of the Commissioner for the Free Access to information has been improved.

Key recommendations

- Insist on the **scrupulous observance of the laws** by the independent bodies themselves, the Government and the Parliament so as to ensure the independency of regulatory bodies and efficient exercise of their powers.
- The **National Coordinator for IPA** should, when drafting the future Action for programming plans ensure that all of the independent regulatory bodies are included in the list of the institutions which are eligible to propose projects independently.

PUBLIC ADMINISTRATION/ Reform of the public administration

Major concerns

- The **implementation of the Strategy for the Public Administration Reform has been continuously very slow**, especially in terms of implementation of adopted legislation. The Action plan lacks functional links with other policies; deadlines are randomly set, thus often breached while poor or missing financial projections undermine the implementation of concrete measures. Modernization of the work of public administration inspectorates and founding of the administrative courts although envisaged hasn't started yet.
- The process of decentralization has not started; the tendency of "feudalizing" the Government and local authorities makes the process of **depoliticization** of PA and consequently its **professionalization** almost impossible;
- The **principle of rationalization** is still rather understood as the decrease of a number of civil servants than the matter of introducing new organizational and management schemes and efficient procedures.
- **Management of human resources is very poor**, while the Center for permanent education and training of civil servants is not even close to being established.
- Undergoing **regional initiatives for the improvement of the capacities of public administration** (such as E-Public Administration Academy in Slovenia) will have weak influence on the developments in Serbia if the Government fails to engage more actively in the implementation of the public administration reform.

Key recommendations:

- Due to the serious delay in acquisition, the **Action Plan for the Implementation of the Strategy of PA Reform needs to be critically reviewed and reprioritized** in accordance with the implementation delay. New timeframe for the achievement of the goals should be introduced and subsequently coherently linked with the implementation of the Multiyear Indicative Plan for the use of the IPA funds.
- The EU should insist on **depoliticization** of public administration, its **professionalization** and **rationalization**.

LOCAL SELF-GOVERNMENT

Major concerns

- There was **no public and experts debate held prior to the adoption of the new legislation** related to local self-government in December 2007;
- **European Charter on Local Self-Government** ratified in 2007 had limited positive impact since its stipulations have not been properly reflected in the new legislation;
- Decentralization still remains the most difficult part of the reform agenda, which is confirmed by the **Law on territorial organization of the Republic of Serbia** adopted on December 2007. This law only replicates existing territorial organization and doesn't bring any substantial changes in the field of territorial organization;
- The new **Law on Local Self-Government** didn't contribute to inception of decentralization process, especially fiscal decentralization;
- Even though the new Law on Local Self-Government envisaged the **possibility for local self-government units to possess its own property** and to manage it independently, it was not

accompanied with the law transferring back the property to municipalities which would enable them to exercise this right effectively;

- **Weak capacities of the majority of local governments** to plan, regulate and implement local (developmental) policies and no proper instruments to eliminate huge differences in regional development (1:27) remain;
- The **capacities of local governments** to follow the goals of the Multiyear Indicative Plan related **to use of the IPA Funds**, particularly in the area of cross-border cooperation as well as for the program budgeting are extremely weak. Transition to program budgeting is planned to be postponed until 2011;
- **Civic participation** in decision-making process at local level is rarely practiced mostly due to the unwillingness of local authorities to work in open and inclusive manner.

Positive developments

- **Set of legislation regarding local self-government** was adopted on December, 2007. (e.g. Law on Territorial Organization, Law on Local Elections, Law on Local Self-government and Law on Capital City);
- During the last 12 months the **Standing Conference of Towns and Municipalities (SCTM)** has confirmed its developmental and institutional capacity by offering trainings and serving needs of the local authorities. Training Centre of has successfully realized the first set of educational lectures designed for its members regarding the role of the local self-government in the Europeanization process that included the access to IPA funds and subsequently issued adequate guidebook. Board for European Integration has begun its work within SCTM.

Key recommendations:

- To **start planning the process of decentralization** which will be followed with appropriate set of financial instruments to facilitate local development, decent standard and quality of social services (pre-school and primary education, primary health care, social care, etc.) regulate the process of property restitution, Law on Cadastre, amending laws on taxation, concessions etc;
- Adoption of legislation on **regional development** and implementation of mechanisms (such as a fund for regional development or alike) that would insure even and more harmonious regional development and overcoming of the present enormous differences in regional development;
- Insist on fast transfer to program budgeting in order to improve planning of local budgets and institutional and civic control over budget spending;
- Give **support and assistance to the SCTM** to better serve the need of its members, particularly with respect to building administrative capacities of local authorities to develop and implement local policies, develop trans-border cooperation, exercise their role in the processes of Europeanization, to accede to the IPA funds and to apply program budget as facilitating instrument.

JUDICIAL SYSTEM

Major concerns

- All the **concerns raised in 2006 and 2007** by the Venice Commission and Serbian informed and general public when the last Constitution was passed, which are related to the **insufficiency of the constitutional guarantees for the independence of judiciary are still valid**.
 - Particularly unsuitable are provisions on the election of the High Judicial Council and State Council of Prosecutors and the competences of the latter.

- Although the Constitution rightly provides basis for the general re-election of judges, the fact remains that it is fully unclear which body will be responsible for conducting this process, what criteria will be applied and what procedure is to be followed.

- **The government has been violating the deadlines, set by the 2006 Constitutional Law, to adjust the set of judiciary laws to the provisions of the last Constitution.** Despite all “creative” interpretation when the deadline is to expire, now it is clear that the deadline did definitely expire on December 27, 2007.
- **Judiciary is continuously exposed to various kinds of political pressures and manipulation. The very safety of judges is endangered:** two judges were shot dead (one in the court building) during the past year. Technical and space capacities of courts (especially those in Belgrade) are inadequate.
- **Inefficiency of the courts remains to be one of the greatest problems, which often results in violation of the of the basic human rights - access to justice and the right to the due process, namely the “...process... within reasonable time” as stipulated in the article 6 of the ECHR.** Some simple civil proceedings cases are not solved even after ten years, while criminal proceedings may last up to 4-5 years. As a consequence the number of cases for the alleged violation of the article 6 from Serbia has been piling up before the Court in Strasbourg. Out of total of 17 judgments of European Court for Human Rights against Serbia, 14 were due to concerned violation of the "reasonable time" requirement.
- Both the work of the **Special Prosecution Office for War Crimes and for Organized Crime and the Special Courts** has slowed down in many cases for political reasons. Special Courts' decisions are often annulled or sent to retrial by the Supreme Court. This is threatening the efficient fight against impunity.
- **Prosecution is highly inefficient with a very small number of cases of human rights violations, organized crime and corruption investigated *ex officio* and even less indictments filed.** Although formally part of judiciary, provisions of the last Constitution in fact defined the prosecution as the part of the executive branch and made it even less independent, thus threatening to increase its inefficiency.
- **The entrance into force of the new Law on Criminal Proceedings** (which brings considerable change and introduce the leading role of the prosecutors in investigation) is once again postponed; this time until December 31, 2008.
- Although for several years in the focus of MoJ and the subject of drafting and public discussion, **the following (new) laws did not enter the Assembly procedure yet: the Law on Bar, the Law on Notaries, the Law on National Judicial Training Institute, the laws on mutual legal assistance in criminal and civil matters with other states, Law on Free Legal Aid.**

Positive developments

- **After launching the process in November 2007 the MoJ has prepared the package of drafts of 5 judiciary laws:** Law on High Court Council, Law on State Council of Prosecutors, Law on Prosecutors, Law on Judges and Law on Organization of Courts. The Government is about to send them to the Parliament. Representatives of Judges Associations of Serbia (JAS) and Prosecutors Association of Serbia (PAS) participated in the drafting of the first three laws.
- **The draft versions of the first three laws are, within the limitations of the present Constitution, more or less in compliance with CoE recommendations and JAS and PAS requests.** They maximized the potentials of the (limited) constitutional guarantees of independence of judiciary in the field of appointments of judges and HJC members. The Law on Judges brings some improvements, while there is no improvement in the Law on Organization of Courts. Anyway, the last time when they were presented in public (21.02.2008) it was reported by

the MoJ that all suggestions brought in public debate (by CoE experts, local experts, JAS representatives) will be taken into consideration.

- **Establishment and launching of the work of the appellate and administrative courts is still pending.** In the situation of the legal void, the panels within the Supreme Court perform respectively the function of an appellate and administrative court of the last instance. It is not yet certain whether the Law on Organization of Courts will be passed until the recently set deadline of January 1, 2009 for the beginning of the work of appellate and administrative courts.
- **Financial position of judges and prosecutors is significantly improved since November 2007.**

Key recommendations:

- The reform of judiciary should be the first and absolute priority on the agenda of the new Parliament and Government and the package of 5 judicial laws should be passed as soon as possible. .
- All the recommendation of CoE must, within the limitations of the present Constitution, find place in final versions of all 5 laws.
- The criteria and the procedure for the re-appointment of judges should be made public as soon as possible.
- Serbia should as soon as possible find way to improve at least the parts of its Constitution in order to strengthen guarantees for the full and effective independence of judiciary and greater independence of prosecution.
- Other laws important for the work of judiciary should be adopted following the same formula (CoE expertise + public debate) - the Law on Bar, the Law on Notaries, the Law on National Judicial Training Institute, Law on Free Legal aid. Especially is urgent the Law on Budgetary System which is already in the Assembly procedure. It provides legal basis for the financial independence of the judiciary.
- The Strategy for the Reform of Judiciary should be critically re-read and amended, while the Action plan for its implementation should be re-prioritized: improvements in the efficiency of the work and management of cases and courts and founding of the appellate and administrative courts are by far the first priorities in this endeavor.

ANTI-CORRUPTION POLICY

Major concerns

- The **National Anti-Corruption Strategy** is poorly implemented while **Action Plan** is outdated and therefore not serving its purpose. **The Ministry of Justice** did not take serious steps towards improvement of anti-corruption system (anti-corruption institutions and legislation) and has not been working towards better implementation of existing legislation;
- **Controlling and supervision mechanisms** for the implementation of the National Strategy and the Action Plan are **not established**;

Institutions

- **The Draft Law on Anti-corruption Agency** has been prepared by MoJ with the aim to establish an independent institution which would supervise implementation of the Strategy, deal with the prevention of conflict of interest and control the financing of the political parties. This Law brings substantial changes in the institutional set up in the field but does not provide effective nor improve present instruments for preventing and curbing corruption:

- The Anti Corruption Agency would take over the competences now belonging to the Republican Board for the Prevention of the Conflict of Interest, which would cease to exist. However, **it does not envisage transparency of the public officials' assets declarations, which is a basic precondition for prevention of political corruption** and the major obstacle for the effective work of the incumbent Board.
- The Agency will also take over the competences of the Republic Electoral Commission and Parliamentary Committee for Finances related to the control of funding of political parties. **Without amending the Law on Funding of Political Parties so as to secure accuracy in reporting and transparency of sources of finances, it is not possible to achieve genuine control.**

In both cases without improvement of legal provisions regarding transparency and accuracy any transfer of competencies is meaningless as the prerogatives are void.

- The Draft Law also does not provide guarantees for financial and operational independence of the Agency;

Having in mind that the corruption in Serbia is so widespread and institutional set up so weak such an overwhelming concentration of power in one body, namely in Anti Corruption Agency, would in case of its inefficiency or politicization threaten to lead to the collapse of the entire anti corruption system.

- New legislation which would enable establishment of **the Commission for the Protection of (Bidders) Rights** as an independent institution has not been passed yet;
- **The Commission for the Protection of Competition** is lacking both human capacities for undertaking its tasks and mechanisms for implementation of its decisions;
- **The State Audit Institution** still isn't operational. The Council of the SAI has no premises to work in and its rules of procedure are not approved by the National Assembly;
- **Finances Committee of the National Assembly and the Republic Electoral Commission** do not have any capacities for the control over funding of political parties and should be urgently replaced by an independent controlling institution;

Implementation of anti-corruption legislation

- **The anti-corruption bodies** (Commission for the Prevention of Conflict of Interest, Commission for the Protection of Rights, Commissioner for Free Access to Information, Commission for the Protection of Competition) **do not have appropriate instruments to implement their decisions nor to sanction their violations**, while the cooperative attitude and assistance of the executive branch is rather an exception than the rule;
- **Funding of political parties** is non-transparent, while the competent bodies decline their powers;
- **Serious concerns regarding the the Law on Public Procurement remain, namely:** the transparency of the entire procurement process, including the transparency of the contracts and later amendments to them; stipulation which allow for proliferation of the practice of direct contracting;
- **The Law on Classified Information** is still pending;
- The **“feudalization” of the executive branch led to the appropriation of the public enterprises** by political parties, facilitating corruption and misuse of public funds alongside with lowering of the quality of their services;
- Prosecutors seldom investigate and even more seldom file charges in the cases of alleged corruption.

Positive developments

- Serbia ratified the Council of Europe **Civil Law Convention Against Corruption** and the **Additional Protocol to the Criminal Law Convention against Corruption**;
- **A set of anti-corruption laws and recommendations** has been drafted mostly in cooperation with civil society or exclusively by CSOs: the Draft Law on Public Procurement, the Draft Law on Protection of Personal Data, the Draft Law on Classified Information, Amendments to the Law on Free Access to Information of Public Importance, amendments to the Law on Protection of Competition, recommendations for the improvement of the Law on Funding of Political Parties;
- **The Board for the Prevention of the Conflict of Interest** for the first time took actions in several cases with the aim to prevent or remedy the conflict of interest.
- **The Commission for the Protection of Competition** investigated several important cases and brought decisions showing readiness to practice its competences independently and to build the capacities in order to further improve its performance (e.g. Salford and C market cases). The Commission signed protocol on cooperation with National Bank of Serbia in preserving competition in financial sector. Commission signed contract with EC in order to receive 2 million EUR in the period 2008-2010 to improve its capacities and legislation and regulations in this area;
- **The Council of the State Audit Institution** has been appointed.

Key recommendations:

- **Action plan** for the implementation of the National Anti Corruption Strategy needs to be critically re-read, adjusted to suit the title and a concrete and realistic financial projection should be added to it. Action plan is to include clear and feasible prioritization and envisage effective control and supervision mechanisms over its implementation.
- The legislation in the field of the **conflict of interest** prevention should be amended so as to guarantee free access to officials assets declarations; the Board should not be abolished but its prerogatives strengthened in order to efficiently implement its decisions;
- The Law on Financing of political Parties should be amended in line with following recommendations: it is necessary to establish control over **funding of political parties** introducing free access to all documents (reports, lists of donors), independent controlling body, strict rules and sanctions (administrative and criminal). Separate independent body should be established to exercise the control over the financing of the political party.
- Separate independent body should be established to exercise the control over the financing of the political party.
- **the Anti-corruption Agency** should be entrusted solely with competences: (1) to oversee the implementation the Anti-corruption strategy; (2) to develop, continuously update and oversee the implementation of accompanying action plans. (3) provide the Parliament with opinions regarding the conformity of proposed legislation with the anti-corruption standards (4) deliberate the cases of citizens complaints;
- The Amendments to the **Law on Protection of Competition** entrusting the Commission for Protection of Competition with the authority to impose penalties should be adopted as soon as possible. Further building of the capacities of the Commission is required.
- Amendments to the **Law on Free Access to Information** submitted to the Parliament by the Commissioner and the Coalition of NGOs for free access to information guaranteeing the whistleblowers protection and strengthening the supervisory power of the Commissioner over the implementation of its decisions should be adopted.

- **The Law on Classified Information** envisaging clear rules for classification of information and securing whistleblowers protection should be passed, as proposed by the NGO coalition (coalition collected and submitted over 30,000 signatures to the Parliament in support of adoption of the law);
- **The State Audit Institution** should start exercising its powers promptly;

HUMAN RIGHTS

Political and civil rights

Major concerns

Constitutional guarantees:

- Concerns raised by the Venice Commission Opinion, CoE, FOS Serbia contribution to the 2007 EC Progress Report related to **constitutional guarantees** of human rights, namely **right to privacy freedom of information, freedom of association, freedom of religion and the right to marriage; to the stipulation providing grounds for the limitation** of the human and minority rights, as well as **the status of international human rights instruments** in the domestic law remain.

Legal framework and practice of implementing laws

- **The Law on Freedom of Association** have not yet been passed i.e. amended.
- Cases of mass **violations of human and minority rights were tolerated and even inspired by the state** after February 17, 2008¹; the state decline from their powers to prevent and protect human rights has been noticed as well.
- Cases of **unjust and/or excessive use of force** by the police in pre-trial proceedings (including cases of torture) which are not followed by the ex officio actions of the prosecutor offices have been recorded.
- **Concerns regarding the freedom of expression and media remain.** Competition for the allocation of the frequencies has been completed both on local and regional level.
- **Council of the Republic Broadcasting Agency** has not been able to enforce its decisions, particularly when it comes to closing down of the media outlets which did not receive the license. This demonstrates the ineffectiveness of the existing structures established to ensure reform and regulation of the media sphere. On the other side the Council of the Republic Broadcasting Agency did not begin to enforce regulations pertaining to the respect of intellectual property.
- **Ethical code of the journalist profession is not implemented, and there is no effective self regulation mechanism established.** This often facilitates manipulation of the public by through media by the political actors, including elements of hate speech and public threats.
- No progress in the **investigations of murders of journalists** is made while intimidation and attacks against journalists continued Pressure upon the journalists pertains particularly through proliferation of procedures on defamation.

¹ For more details see the YUCOM Early Warning Mechanism web site:
<http://yucom.org.yu/rest.php?idSek=18&idSubSek=61&tip=vestgalerija&status=prvi>

Institutional framework

- Both lack of coherent policy and capacities of the Government's **Agency for Human and Minority Rights** negatively affects the capacity of the state to deal with and to protect human and minority rights;
- Since the **Ombudsman office has still not been completely constituted, this body has no capacities to carry out its duties.**
- **The conditions in prisons** improve at an extremely low pace, the problem of overcrowding being the most serious. In 2002 around 5,000 inmates were serving their penalty within the penitentiary institutions. Today, it is around 9,500 inmates and only one new prison is expected to be built until 2009 (in Padinska Skela with capacity of 450 persons).

Judicial protection

- **Constitutional Court**, which is the court of final instance for protection of human rights unfortunately, **has not passed a single ruling** in this field since its establishment. The backlog is considerable and may cause inefficiency of the court and dangerously weaken the human rights protection system.
- The large part of the **judiciary is yet to develop sensitivity towards human rights.**
- Although Constitutional provisions regarding the **right to free legal aid** exceed European standards Serbia has not adopted the Law on Free Legal Aid. The Ministry of Justice presented their draft in June 2007, but since then the law did not enter the Assembly procedure.
- Citizens of Serbia brought 2,500 **applications against the state to ECHR**. Around half of them were rejected immediately. Not only do the courts fail to protect human rights, they are often the entities that are violating them. The blame for excessive delays does not only lie with judges and prosecutors (attorneys, police, forensic scientists etc.)- it is first and foremost the responsibility of legislative and executive powers who need to amend the laws in such a way to effectively prevent delays and make the system work more efficiently.
- **Duration of detention** is often too long and it is pronounced without sufficient use of alternative measures (e.g. bail, community work, etc.).

Positive developments

- **Law on Asylum was passed** on November, 2007;
- **The Law on Protection of Personal Data and the Law on Classified information** proposed by the NGO coalition entered legislative procedure after the public discussion;
- **NGOs actively work on improvement and monitoring of human rights** (e.g. YUCOM launched the Early Warning Weekly Newsletter in reaction to the increase of cases of human rights violations after February 17, 2008; Centre for the Development of the Civil Society from Zrenjanin started to work on necessary amendments to the Law on Churches and Religious Communities).

Economic and social rights

Major concerns

- The **Anti-Discrimination Law** has still not been adopted.
- The **Law on Gender Equality** is still pending. The number of women in the National Parliament is likely to increase. Women continue to be **discriminated in the labor market**, while the new practice in differences in salaries between women and man is rapidly wide spreading. **Domestic violence** is still a concern, but the number of the cases reported to the authorities and prosecuted

is steadily increasing. **Prosecution and judiciary are slow** in full implementation of legislation in force. The same applies to protection of **children's rights**.

- Concerns related to **institutional framework and judicial protection** mentioned in the field of civil and political rights is *mutis mutandis* applicable to economic and social rights.
- The results of the implementation of the **Law against the Discrimination of the people with disabilities** are extremely poor (e.g. around of 42% of municipal buildings do not have access for wheelchairs). The same applies to the measures developed by the Government for the employment of the people with disabilities.

Positive developments

- For the first time **the Trade unions and Association of Employers have signed without state mediation the Framework Agreement (Collective Treaty) as a result of the social dialogue within the Social and Economic Council**.
- Ministry of Labor and Social Policy launched the **National Strategy for the improvement of women's status and advancement of Gender Equality** (2008-2014) on January, 2008; Gender Equality Department has been established in the Ministry of Labor and Social Policy.
- Ombudsman supported a number of cases and especially protected **LGBT human rights** by announcing that different sexual orientation other than heterosexual are not the form of sickness;
- The National Education Council is about to adopt a strategy on **improvement of access to education for children with disabilities**.
- After the MDRI report was released in 2007 disclosing the situation in one of the institutions for **people with mental disabilities**, Government took measures to sanction the responsible persons for neglect and maltreatment, closed down some institutions which were cause of concerns, prohibited admittance of minors and took steps to stimulate accommodation of the children in the foster family system in accordance with its Strategy for **protection for socially vulnerable and persons with disabilities**.
- Government adopted the initiative to enable **IT access to the people with disabilities** in regards to public administration services on November, 2007;

Key recommendations

- **Imperfections in the Constitution** related to human rights and civil liberties should be remedied.
- **Full implementation of the adopted legislation** which is greatly in line with the European standards needs to be ensured, including harmonization of the (provisions of) secondary and other legislation at the national and local level; completion of the institutional framework and enabling the full fledged operation of the institutions (Ombudsman and Constitutional Court) and far more efficient judicial protection and effective **enforcement of the judgments and decisions brought by international bodies**.
- A number of **laws need to be adopted**, most urgently: the Law on Anti-Discrimination, the Law on Aliens², the Law on Gender Equality, the Law on Free Legal Aid, Law on Classification of Information, Law on Voluntary Work³, as well as laws on - political parties, citizens' associations, organizations of general public interest, trade union association, mobbing;.

² This will regulate comprehensively the area of the visa regime, temporary stay of aliens and permanent establishment of aliens in line with the EU standards in this field.

³ Important for freedom of association.

- In the allocation to the IPA funds to civil society **strengthening the culture of human rights** should be one of the priorities.

MINORITY RIGHTS AND PROTECTION OF MINORITIES

Major concerns

- **Poor institutional and administrative capacities and lack of political will** both on the central and local level **to fully implement the Law on Minorities**, e.g. out of three institutions whose founding was envisaged by the Law only one, the National Councils of National Minorities, has been established. Terms of office of the majority of the fourteen National Councils have expired, which brings up concerns regarding legitimacy and legality of their decisions. In Serbia Proper minority policies are less effective than in Vojvodina due to lack of capacities and funding.
- National minorities are under-represented in the National Assembly, e.g. none of the Roma parties managed to reach the election threshold.
- The privatization of **media in minority languages** raised a lot of concerns among representatives of the minorities who oppose the change in ownership (particularly in the field of capacity for and quality of information in minority languages). These concerns would not have happened had Serbia established the Fund for the Development of Minorities as envisaged in the 2002 Law and conducted the process of media transformation respecting the interests and needs of the minorities.

Key recommendations

- The Serbian institutions should start either to **fully implement the present Law on National Minorities (2002)** (by adopting the Law on National Councils; founding of the Fund for the Development of National Minorities, founding of the Republican Council for National Minorities) or adopt a completely new law that would create efficient institutional framework for the effective protection of national minorities' rights, development and implementation of the comprehensive policies on the central and local levels.
- One of the **deputy ombudsperson** at the national level should exclusively **deal with the protection of national minorities rights**.
- The **improvement of the capacities of the public administration** on national and local level to deal with minority issues within their respective competencies is a must.

ROMA

Major concerns

- **General public policies and national strategies** cover the Roma population at the lower proportion than that of the general population, due to the **lack of affirmative action mechanisms** and similar instruments in number of fields. In cases when such measures are they are carried out in the climate of permanent heavy negotiations between the state institutions, Roma National Council and under the pressure of the NGO sector;
- The majority of Roma-related policies envisage the measures to prevent **discrimination** against Roma, but all of them are poorly implemented;
- The state institutions and public administration on national and local level are still lacking **capacities** (knowledge, skills and funds) **to efficiently deal with Roma issues**;

- Two alarming problems are continuously present: **the right to residence** – as most Roma live in settlements which are not legalized they are lacking legal residences, which prevents them from enjoying many basic rights, such as: to education, health care, social care, etc; and **the right to quality education** – significant number of Roma children are enrolled in schools for children with special needs (mentally disabled children).

Positive developments

- The **institutional mechanisms** for improving the position of the Roma and achieving the goals of **the Decade of Roma Inclusion (2005-2015)** have been strengthened and the funds have been secured in the state budget for the implementation of the Roma Decade Action Plans. Two new bodies have been established: Council for Improvement of the Position of the Roma and Achieving the Goals of the Decade of Roma Inclusion headed by the Vice-Prime Minister and the Sub-board for the Improvement of the Position of the Roma of the Parliament of the Republic of Serbia. Representatives of NGOs are also involved in these bodies;
- All the **ministries responsible for the areas covered by the Decade of Roma are involved in the implementation of the Action Plans**, by far the best results have been achieved by the Ministry of Health;
- **The number local self-governments** developing and implementing local policies with the aim to improve the position of the Roma is steadily increasing, as well as number of Roma employed in local self-governments;
- **The League for the Roma Decade** (the alliance of 60 Roma and non Roma NGOs) has become a respected partner to the state and local institutions in the processes of inclusion of Roma.

Key recommendations

- **IPA funds** have to be used for building of the capacities of the Roma National Council and state institutions to efficiently implement the policies related to the Roma; also, the financial resources from IPA funds aimed at the support of civil society in Serbia should take into account issues concerning Roma;
- State and local institutions should take a more pro-active role in **preventing and sanctioning all forms of discrimination toward Roma**.
- Continuous improvement in policies and their implementation effective **access of Roma both to their individual and minority rights**. Urgent action is needed in the field of the right to residence and the right to quality education.

REGIONAL COOPERATION AND INTERNATIONAL OBLIGATIONS

Major concerns

- The **cooperation with the ICTY** has not been the priority of the last Government and no significant developments have been recorded.
- The efforts to prosecute the **war crimes** before the domestic courts have been less intensive
- There are indices that in 2008 Serbia has in number of cases violated the **UN Resolution 1244**, (the last example being organizing the local elections in Kosovo in May 2008)
- The active opposition of Serbia toward the Kosovo participation in **regional cooperation** is expected to adversely affect its dynamics and content.

- The late deterioration in **relations with neighboring countries** (e.g. Croatia) negatively affects the regional stability and cooperation.

EUROPEAN STANDARDS

Intellectual property rights

Major concern

- Despite being established a year ago the Special Prosecutor for High Tech crime filed no charges were filed in the field of **high-tech crime**
- The professional, institutional and administrative capacities of **inspectors and custom administration** are not yet up to the requirements which could ensure the efficient protections of the intellectual property rights

Key recommendations

- **Intellectual property rights institute** should intensify its advisory and educational functions in the coming period, particularly because of the latent problem of piracy and counterfeiting. It is even more important bearing in mind the lack of training in other public authorities and the low level of awareness of the general public about the significance of intellectual property rights for the economy of Serbia. Also it is important because the legislation concerning the protection of industrial property rights and other related rights has recently been updated and harmonized with the global and European standards and norms.
- Further **improvement in legislation** would be welcomed, such as creating space for the founding of the new institutions such as 'intellectual property agents or similar that would speed up the process of putting under protection the property rights and their defence.
- **The public administration bodies should** establish better mutual coordination of operations and thus multiply effects of the use of limited institutional and professional resources at their disposal.
- Strengthen **administrative options for the defence of intellectual property rights** and prevent and curb piracy in the field of copyright (for instance, by improving procedures that regulate collection of evidence and seizure of counterfeit and pirated goods).
- **Civil society should play more active role** in promotion of respect for intellectual property rights, particularly in the context of the development of the knowledge society, and, for that purpose, it could use forms such as the ICT forum and similar mechanisms;

Education and Research

Major concerns

- No sustained effort has been recorded in **implementation of the Bologna process** due to the lack of understanding between the education research and development.
- The reform of the **vocational training**, covering 50 schools supported by the EU still has the status of an experiment.
- No action was taken to define **integrated research policy** and connect high education and research.
- The **National Council for Education and National Council for Higher Education**, the bodies entrusted with the powers to develop, adopt and monitor education policies are highly inefficient in exercising their duties, (no deliberation on National Framework of Qualifications, quality control, accreditation, etc.) totally closed for communication with the stake holders, inadequately structured (no representatives of the business sector).
- There was **very little cooperation and coordination** between The Ministry for Telecommunications and Information Society, Ministry of Education, Ministry of Science and Ministry of Labor and Social. This negatively affects the Government policy in the field of education and research and prevent the formulation of policies by which education and research are seen as investment and prerequisite for economic development. CSOs are just now advocating for the structure of the Government in which the research and education would be competences of one single ministry. At the same time the advocacy encompass the requirement that the Ministry of Telecommunication and Information Society is granted all powers concerning electronic communications.

Key recommendations

- In regards to the **vocational training** fulfilling requirements by the Copenhagen process is necessary.
- the **National Education Council, the National Higher Education Council and the Ministry of Education** should take the responsibility for setting and implementing education policies and for defining of the education outcomes linked with the needs of the developmental policies. To this end it is necessary to restructure the above mentioned bodies, strengthen their capacities to carry out their duties and secure their intensive communication with all stakeholders (e.g. businesses, professional associations, universities, institutes, etc)
- more intensive involvement in the **European Research Area** and active participation in the EU framework research programs is necessary. It is necessary to speed up the process of defining of the integrated research policy. Scientific cooperation in the region, particularly within the boundaries set by the *eSEE+* initiative, increases chances for the Serbian research community to become a full member of the European Research Area.

Information society and media

Major concerns

- No action has been taken regarding the **adoption and harmonization of legal infrastructure for information society with the *Acquis Communautaire*** (benchmarking process, creation of conditions for the operation of certification bodies, preparation and

- sending the Bill on e-Commerce and Bill on Electronic Documents to the National Assembly, preparing and sending the Bill on Ratification of the already signed European Convention on Cybercrime to the National Assembly).
- the implementation of the Public Administration Reform Strategy and National Strategy for Information Society and introduction of the principles of **eGovernment** in the public administration and local self-government is slow.

Positive developments

- The new regional initiative eSEE+ Agenda has been signed

Key recommendations

- The work on **development of dynamic information infrastructure** should be intensified (further deregulation and de-monopolization of the Serbian telecommunications market, enforcement of anti monopoly legislation in the field of telecommunications updating and supplementing domestic policies and legislation with the e-Europe 2005 Initiative, etc.)
- **Creation of a stimulating environment for economic development** based on the application of IC technologies and knowledge (work on the development of national e-business infrastructure, to standardize electronic documents, to ensure a wide application of the PKI system, etc).

For further information please contact:

Srdjan Djurovic, Fund for an Open Society Serbia
Zmaj Jovina 34
11000, Belgrade
Serbia
Tel: + 381 11 302 5 800
sdjurovic@fosserbia.org