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Human Rights in Serbia

Period covered: 2005 - 2008

1. Human Rights in Legislation: Constitutional Provisions

The year 2007 was the first year in which the new Constitution of Serbia, adopted on 30 September 2006 and endorsed at the 28 – 29 October 2006 referendum, was applied. The Constitution had been adopted in a rush, with no public debate or opportunity for the experts to analyse and comment its provisions. Public reaction was fierce. Although it is still too early to give comprehensive assessments of the reach of the constitutional provisions qualified as problematic both by international and domestic experts, there is no doubt that these deficiencies can largely be attributed to the fact that the Constitution had not been put to any public debate before adoption. Although the Constitution was passed in a manner unusual for democratic countries, it indisputably comprises a much better catalogue of human rights than the previous Constitution of Serbia.

Although the Constitution came into force, wherefore not even criticisms of it could undermine its legality, its weaknesses became increasingly clear in 2007. Apart from the Kosovo issue, these shortcomings were reflected in the incessant discussions on how the Constitution and the Constitutional Act on its implementation ought to be enforced. The most conspicuous deficiency came to the fore in the dispute over the dates of the presidential and local elections. The Democratic Party of Serbia and all those forces presenting themselves as patriotic were of the view that no elections ought to be held as long as Serbia's territorial integrity is in danger. As could have been expected, such a broad formulation allowed for various interpretations, one of which was that the elections would be postponed for an indefinite period of time, given the views that Serbia's territorial integrity may for a long time be endangered in various ways.

Various national institutions, especially the media under the control of the government or under the influence of the extreme right, also contributed to imposing Kosovo as the unique political issue. The years 2004-2008 saw a stronger campaign against all those advocating a more rational approach to the Kosovo issue that would take into account not only the territory of the province but the people inhabiting it, i.e. the Albanian majority living there, as well. This intolerant signal was taken as a cue by numerous right-wing movements, which feel that the time has come to deal with all of

Serbia's citizens whom they perceive as nationally unaware or even as "traitors". These organisations, some of which have openly been flirting with Fascism, succeeded in preventing public gatherings of those who do not think like they do and even used some local authorities to prohibit concerts of musicians whose critical views they dislike. There is growing apprehension, voiced by several NGOs, that Serbia is being enveloped in the atmosphere of the nineties given the similarities between the current propaganda and campaigns and the conduct of Milošević's regime.

2. The status of NGOs focusing on human rights

The status of NGOs focusing on human rights has been affected by all of the above-mentioned factors. The media continued campaigning strongly against non-governmental organisations advocating human rights and democracy, but not against ultra-nationalist and pro-Fascist organisations. The brand of traitor is stamped on the former, especially those advocating the rights of Albanians and other minorities. Apart from these political disqualifications, these NGOs have been falsely accused of receiving huge amounts of money from the West; its members are said to be guided by lucrative not idealistic motives. This may appear true given that Serbia as a poor country cannot financially back the civil sector, while the wealthiest people and companies still have not embraced the concept of social responsibility. Such attacks are all the more cynical given the foreign donors' conspicuous lack of interest in the civil sector since 2000, which has probably been a consequence of their belief that Serbia finally got a democratic government and that it was more important to help the latter than the NGOs.

The civil sector in Serbia has nevertheless continued to develop and, more importantly, to "demetropolise". More and more local and regional NGOs rallying an increasing number of people have been established in the interior of the country. Such form of activity, no longer concentrated in Belgrade and the other big cities, allows for greater social influence, although it often brings the members of these organisations into conflict with the local authorities.

3. Legal System and Laws Relevant to Human Rights

3.1. The state of human rights in Serbia and the state authorities' concern with their enjoyment and protection in 2007 were strongly influenced and frequently overshadowed by the turbulent political events. The National Assembly was inactive from October 2006 until mid-May 2007 and from December 2007 until June 2008 which led to delays in the adoption of laws – the Assembly adopted only 70 or so laws by the end of 2007. Only about 20 of them were totally new and nearly all of them were merely fulfilling the formal obligations laid down in the Constitutional Act on the Implementation of the Constitution. Moreover, nearly all the adopted laws had been submitted and adopted under an emergency procedure, wherefore there were hardly any opportunities for serious debates of the drafts and for making any essential improvements in them through amendments.

4. International Human Rights Bodies and Serbia

4.1. The UN Committee for Elimination of All Forms of Discrimination against Women in early 2007 reviewed Serbia's initial report for the 1992 – 2003 period. After a long delay, Serbia in 2007 submitted to the Committee on the Rights of the Child its initial report on the realisation of the Convention on the Rights of the Child in the Republic of Serbia in the 1992 – 2005 period.

4.2. In 2007, Serbia signed the UN Convention on Rights of Persons with Disabilities. Of the treaties adopted within the Council of Europe, it signed the European Convention on the International Validity of Criminal Judgements, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, the Revised European Convention on the Protection of Archeological Heritage, the European Convention on Landscape, the CoE Framework Convention on Value of Cultural Heritage for Society and the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

5. Enforcement of Decisions by International Bodies

5.1. The role of international bodies as a corrective factor and guide for national authorities must be adequately acknowledged in Serbia's main procedural laws. This concept has already been recognised by the Civil Procedure Act (CPA). The new CPC also allows for retrial a convicted person may benefit from if the ECtHR or another court established under an international treaty ratified by Serbia finds that human rights and fundamental freedoms had been violated during a criminal trial, that the sentence was based on such a violation and that the violation may be remedied by a retrial. In cases not requiring retrial, the new CPC allows for the filing of a request for the protection of legality. These provisions in the new CPC and CPA should serve as an example for the amending of Article 51 of the Administrative Disputes Act.

5.2. The non-implementation of decisions taken by some other international bodies (Committee against Torture, Human Rights Committee) corroborates the necessity of making amendments to a whole set of (not only procedural) laws in order to ensure the effective and full implementation of the decisions taken by international bodies. The challenges that the state authorities will face in implementing ECtHR decisions could well indicate which amendments the Serbian legislation is in need of.

6. Discrimination, Hate Speech and Neo-Nazism in Serbia

6.1. The widespread problem of hate speech cannot be viewed separately from the increasingly frequent discriminatory outbursts in Serbia. Like in the previous years, Serbia's media and publishers have continued publishing more and more content inciting or disseminating hatred. Most have gone unpunished. In 2007, hate speech was even heard in Serbian parliament. According to eminent Belgrade writer Filip David, over 150 anti-Semitic books are currently sold in Belgrade bookstores. Publishers specialising in such literature even sold them at stalls they rented at the Belgrade book fair in October.

6.2. The Belgrade NGO Labris, which advocates the human rights of lesbians, said in mid-September that its studies show that most media write about lesbians “in a very denigrating manner, using hate speech”. Labris submitted three complaints against hate speech to the Republican Broadcasting Agency (RBA) in 2007. Two of the applications concerned shows on RTV Pink and one a show aired on the public service broadcaster RTS. The RBA, however, failed to react.

6.3. The number of neo-Nazi movements in Serbia has grown, as has the number of incidents they provoked in 2007. One such organisation, National Formation, which has assumed responsibility for numerous attacks on citizens of Serbia belonging to minority groups, has received much media attention.

6.4. National Formation members had caused a number of incidents in the previous years as well.¹ This organisation is not officially registered and is on the Ministry of Internal Affairs list of organisations the activities of which are monitored.

6.5. Serbia has not adopted a general, systematic and comprehensive anti-discrimination law defining the main legal concepts, regulations and standards binding on the courts and specific mechanisms for the protection of victims of discrimination yet, notwithstanding extensive expert debates and repeated recommendations by international organisations that it do so for several years now. Several drafts of a corresponding act had been produced in the past few years, including the 2006 Government bill, but only one of them, submitted by the opposition Liberal Democratic Party (LDP), had formally been submitted to the Assembly for adoption by end 2007. The Serbian Government anti-discrimination bill drafted in 2006 has been withdrawn from the parliamentary procedure and submitted for CoE expertise. It still remains uncertain when Serbia will have systematic and comprehensive anti-discrimination legislation.

6.6. Tolerance of discrimination in practice is above all reflected in inefficient investigation, prosecution and punishment of its perpetrators and in the lack of systematic and comprehensive legislation. Discrimination against the Roma ethnic minority, frequently accompanied by physical violence, remained widespread. The courts, on the other hand, tended to convict the assailants on Roma to mild sentences. The election of minority deputies to the Assembly marked a major headway after their three-year absence from the parliament but the question of whether they were able to genuinely actively partake in the work of the Assembly remained open given that they were still unable to use their native languages despite the legal provisions affording them that right. Hate speech is still widespread in Serbia, both in media and in publishing. It was even heard in parliament. A large number of neo-Nazi movements, responsible for various incidents, have been active in Serbia. Although the Act on the Prevention of Discrimination against Persons with Disabilities was adopted in 2006, the national and local authorities have mostly failed to fulfill their obligations and the Act is not adequately applied. The Act on Churches and Religious Communities, passed in 2006, governs the field of religious freedoms and religious organising. Many of its provisions are, however, extremely

¹ The organisation caused an incident when it barged in on an anti-Fascist panel discussion in 2005 and its leader Goran Davidović was convicted to one-year imprisonment.

problematic from the viewpoint of the freedom of religion and the constitutional principle of equality of religious communities.

6.7. Some religious communities have been the target of attacks for years but the police have failed to identify the perpetrators. Discrimination against women still exists, especially at work, but information on such violations is rarely available. Perpetrators of discrimination are rarely criminally prosecuted; the criminal law provisions invoked in such cases are insufficient to ensure full protection of criminal law. The key problem in court still lies in the challenge of proving discrimination. This problem could be eliminated for the most part by the adoption of adequate legal provisions.

6.8. Refugees and internally displaced persons in Serbia still face a lot of problems in practice. Although domestic violence is a criminal offence under Serbian law, research indicates that the victims are not adequately protected and that much of domestic violence remains unreported mostly because the victims fear the reactions of their community and the offender and mistrust the legal system. The law does not sufficiently guarantee the urgency of the proceedings and most victims tend to abandon the proceedings they had initiated. Prosecutors, on the other hand, rarely take legal action against persons suspected of domestic violence. Jurisprudence indicates that courts hardly ever order the protection measures envisaged by the Family Act and that the sentences pronounced for violations of the Criminal Code are extremely lenient.

7. Access to Rights: National Human Rights Institutions in the Country

7.1. The institute of ombudsperson has to date been established at three levels in the Republic of Serbia: at the state level, at the level of the Autonomous Province of Vojvodina and at the local self-government level. Although the Act on the Protector of Citizens, passed in September 2005, envisaged the election of the ombudsman within six months from the day the Act comes into force, Serbia's first ombudsman was elected only in mid-2007.

7.2. The Government of Serbia on 14 December 2007 submitted to the Assembly the Draft Act on the Protector of the Rights of the Child, which is one of its commitments arising from the Council of Europe membership.

7.3. The Act on Access to Information of Public Importance of the Republic of Serbia was adopted on 5 November and came into force on 13 November 2004. It may be concluded that, notwithstanding some headway in the implementation of the Act on Free Access to Information of Public Importance, the enjoyment of the right to access of information still has not attained the satisfactory level in practice. To reach that level, the political culture needs to change radically and the full respect and implementation of the rule of law needs to govern everyday interaction between citizens and bodies exercising public powers on their behalf.