

POLICY AND LEGAL ASSESSMENT OF THE STATE RULE OF LAW

IN ALBANIA,
BOSNIA AND HERZEGOVINA,
KOSOVO
AND SERBIA



Prepared for :



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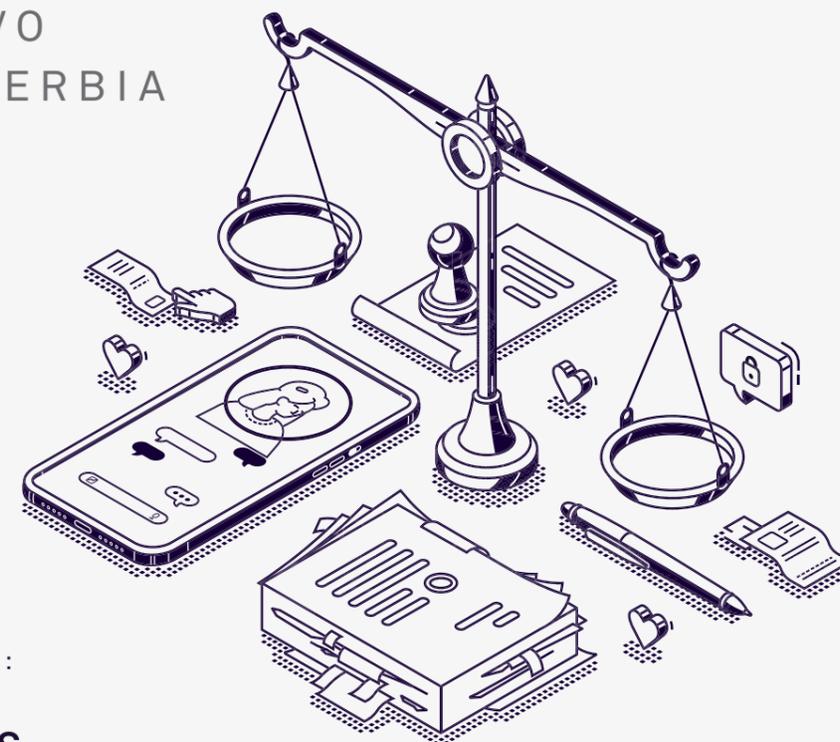
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This policy paper is prepared for Civil Right Defenders as part of the South East European Legal Days 2.0 (SEELD 2.0) project. It is carried out by local experts from Albania, Bosnia and Herzegovina, Kosovo and Serbia. The experts analysed the institutional setting, legal framework, processes and policies in the respective countries. The focus was on the assessment of four major aspects of the Rule of Law, namely the Judiciary, Corruption, Media and Freedom of Expression and Human Rights Protection.

All four policy papers are based on the joint methodology agreed upon by the experts. The findings are a result of the aggregation of recent governmental and non-governmental analysis, reports and experts' individual insights. In order to provide characterization of the current situation in each of the analysed area, experts introduced the Rule of Law Quality Assessment as a methodological unit. There are five (5) evaluation marks proposed to describe the conditions and trends of the institutional design related to the four assessed areas:

- Stable institutions (**class A**)
- Functional institutional framework with tendency to decline (**class B**)
- Problematic situation with a tendency to improvement (**class C**)
- Continuously problematic situation - stagnation (**class D**)
- Institutions are in dramatic situation with a tendency to regression (**class F**)

The main findings of the analysis are as follows.

	Albania	BiH	Kosovo	Serbia
Judiciary	C	F	C	C
Corruption	C	F	D	D
Media and Freedom of Expression	D	F	B	D
Human Rights Protection	C	D	C	C

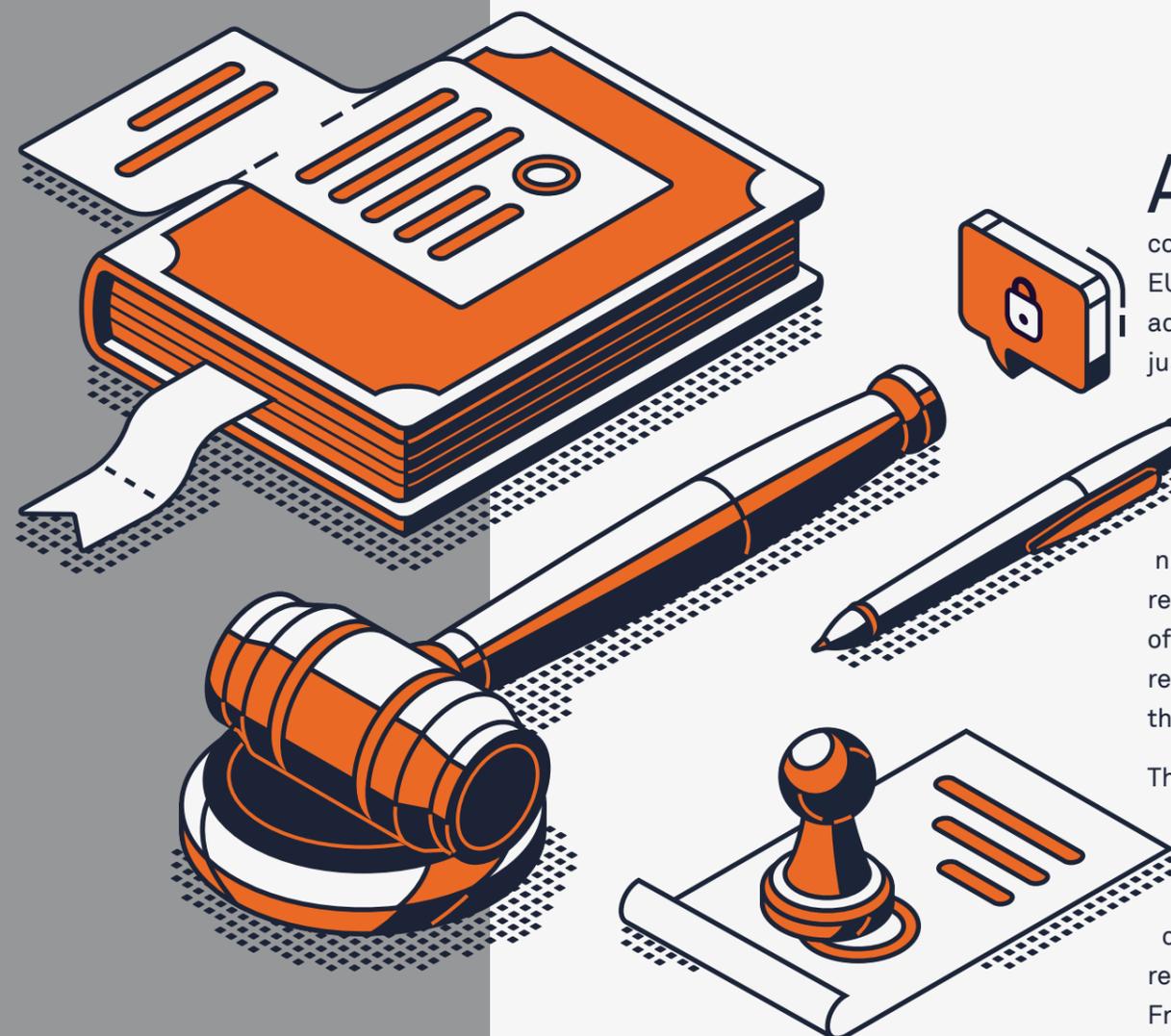
The rule of law situation in **Albania** appears problematic, however there is a tendency for improvement in the areas of judiciary, corruption and human rights, apart from media and freedom of expression which seems to be in stagnation. The judiciary has seen noteworthy developments, by way of strengthening the judicial independence and accountability, whereas judicial quality and efficiency face important challenges ahead. Corruption remains a serious problem, especially with regards to high-level corruption. Albania has a comprehensive legal and institutional framework to fight corruption, however there is a lack of concrete measures with high impact on corruption and an impunity culture at the higher levels of the state. Media and freedom of expression appears continuously problematic with no tendency for improvements. The hostile environment surrounding journalists, close ties of media owners with the government, the government's "anti-defamation package", the self-censorship of journalists, and the obstacles in accessing public information negatively affect the freedom of expression in Albania. Human rights protection requires adequate mechanisms as well as financial and human resources in the enforcement of international conventions and national legislation on human rights.

The rule of law in **Bosnia and Herzegovina** is heavily affected by the complex constitutional arrangement, political obstructions, and jurisdictional conflicts. The lack of accountability, efficacy and competency in judiciary goes in hand with widespread corruption, threats and violence towards media workers and excessive human rights violations. The findings in three areas demonstrate a dramatic situation with a tendency to regression, while in the area of human rights protection the institutional response is insufficient and stagnating. There is an obvious need for legislative reform that would improve transparency and anti-corruption mechanisms, while capacity building in judiciary is an imperative. Bosnia and Herzegovina should invest more efforts in implementing decisions of the European Court of Human Rights and uphold the European standards in human rights protection, particularly when vulnerable groups are involved.

In **Kosovo**, there is a context where the rule of law is weak and corruption is widespread, media are often subject to political influence and disinformation is increasing and threatening the integrity of democracy, human rights protection is not decent, violation of human rights thrives. There is a noticeable implementation gap in relation to the existing legislation. The need for political will as a basic precondition to undergo reforms regarding the rule of law in Kosovo is eminent. The design of a vetting process is a prominent necessity in order to address issues of the judiciary in its entity. The implementation of the Law on Prevention of Conflict of Interest is a must in the fight against corruption. The improvement of the coordination between state agencies in the fight against corruption has been a request not only from national but also international stakeholders. The improvement of the response of the responsible institutions to physical attacks against journalists, and other forms of pressure, must be a priority. According to the research, although Kosovo's legislation offers a satisfactory legal framework on protecting, promoting and advancing human rights for all citizens, in practice the situation is not satisfactory.

In **Serbia** the legal and political ambient is specific due to the contemporary political omnipotence of the ruling party at all levels of governance. One of the consequences is total negation of the separation of powers principle. Judiciary and media with national coverage are in self-censorship mode, high-level corruption is out of scope for the investigation and prosecution, while the human rights protection is secured as long as it does not interfere with the political interests. The legal framework is reasonably well structured and closely monitored by the Council of Europe and the European Commission. However, the gap between laws and its implementation in good faith is significant. Our recommendations aim at creation of the ambient in which the judges, prosecutors, journalists or whistleblowers would be able to act in defence of the rule of law, without having to fear from retribution from the system. Moreover, the goal of the recommendations is to provide better enjoyment of human rights by bringing the existing legislative and institutional framework in line with the implementation in practice.

01



ALBANIA

Assessment of the State of Rule of Law in Albania
 Author: Mr. Endri Mykaj, LL.M, MSc

1. INTRODUCTION

Albania has continued to adopt and implement reforms in the rule of law field and EU has been a major driving force for the reformation of the country, including the judiciary, fight against corruption, human rights protection, media pluralism and freedom of expression. Albania is an EU candidate country expecting to open the accession negotiations with the EU in 2021. The adoption of the constitutional amendments in July 2016 paved the way for a comprehensive justice reform, aiming at strengthening judicial independence, fighting corruption, guaranteeing better protection of human rights. In April 2018, The European Commission recommended to the Council of the European Union for the first time to open the accession negotiations with Albania. While progress was acknowledged by the Council, the accession negotiations are yet to be technically open, given that the Council has requested the fulfilment of a number of conditions prior to the first accession conference. The first set of conditions are related predominantly to the rule of law field, more specifically concerning the implementation of the justice reform, creation and functioning of anti-corruption bodies, establishing a track record in the fight against corruption, safeguarding the freedom of expression, and reforming the electoral law.¹

This report provides an assessment of the rule of law situation in Albania, particularly concerning the judiciary, corruption, media and freedom of expression and human rights protection. The assessment and findings are based on the international and European standards, legal and institutional framework and reports issued by public institutions, civil society organisations and international organisations. Particular focus was paid to government's reports, Ombudsperson reports, EU progress reports, Human Rights Watch World Report 2020, Freedom House reports, Transparency International Corruption Perception Index/Reports, and other relevant CSO's reports and analysis. The evaluation provided in this policy brief has been based on the aggregated findings of the available reports and studies prepared by respectable international and national organizations and scholars monitoring the work of institutions in Albania.

¹ Council of EU Conclusions on Albania and North Macedonia, March 2020: <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>

2. ASSESSMENT ANALYSIS

2.1 Judiciary

Albania has a three-tiered justice system, including courts of general and specialised jurisdiction. The High Judicial Council and High Prosecutorial Council are self-governing bodies, entrusted to guarantee the autonomy and independence of the judiciary and prosecution services. Albania is currently implementing a comprehensive justice reform which was adopted in July 2016 through constitutional amendments, followed by the approval of a set of organic laws. The reform was considered necessary given the perceived high levels of corruption among judges and prosecutors, the disproportional influence of politics over the judiciary, the absence of clear mechanisms of judicial accountability and control and issues related to the proficiency of the magistrates. The justice reform was adopted as a priority in the context of EU accession, through a broad consultation process involving national and international experts.

Judicial independence

Under the justice reform, the legal and institutional framework in place provides greater guarantees for judicial independence. The new justice institutions of the High Judicial Council, High Prosecutorial Council, Justice Appointment Council, High Justice Inspector are duly established and fully functional. The system for recruitment, appointment, transfer and dismissal of the judges and prosecutors has improved. The new Constitutional and legal provisions reduce political influence in the appointment process, guaranteeing a merit-based career system managed by the new self-governing institutions of the judiciary.² Prosecutors and judges cannot be transferred to another district without their consent other than in cases of disciplinary measures, necessary structural changes and temporary needs. The justice reform affords greater autonomy to the prosecutors, reducing the centralisation around the General Prosecutor.

The new High Judicial Council (HJC) affords greater independence from political influence and appears to be less prone to corporatism.³ The new governing body of the HJC has replaced the former High Council of Justice. The composition and operation of the former High Council of Justice were marked by high political influence and nepotism. The new HJC has eleven (11) full-time members, including 6 judges and 5 jurist members coming from academia, legal practice and civil society. The six judges were selected by their peers through a general meeting of judges. The operation of the HJC is fairly transparent, with its decisions and audio-recordings published on the institution's website. The new High Judicial Council is responsible for adoption and implementation of the strategic plan for the judicial system and must report before Albania's parliament.⁴ The HJC is responsible for adopting standards of judicial ethics, rules of conduct for judges and monitoring their compliance. The HJC appoints judges and is responsible for their career development and discipline. Also, the HJC ensures proper functioning of judicial administration services and human resources in the courts.

The new High Prosecutorial Council (HPC) provides greater independence from undue political influence and corporatism.⁵ The new HPC replaced the former Council of Prosecutors which was merely an advisory body to the General Prosecutor Office. The operation of the HPC is fairly transparent, with its decisions and audio-recordings published on the institution's website. The HPC has eleven (11) full-time members, including 6 prosecutors and 5 jurist members coming from academia, legal practice and civil society. The six prosecutors were selected by their peers through the general meeting of the prosecutors. The HPC has eliminated the extensive margins of discretion of the General Prosecutor in managing prosecutors' careers. The HPC has a responsibility to manage the prosecutors' careers and adjudicate disciplinary proceedings concerning prosecutors. Under the justice reform, there is an increased procedural independence

² Law on Governance Institutions of the Justice System: <https://euralius.eu/index.php/en/library/albanian-legislation/send/87-governance-institutions/107-law-on-governance-institutions-of-the-justice-system-en>

³ High Judicial Council: <http://klgj.al/>

⁴ Law on Governance Institutions of the Justice System: Ibid.

⁵ High Prosecutorial Council: <https://ktp.al/>

during investigation and prosecutors are entitled to challenge the instructions of the Prosecutor General if prosecutors find the instructions illegal or unfounded. Some key successes of HPC in 2020 were the appointment of the General Prosecutor and the establishment of the Special Prosecution Office, and the National Bureau of Investigation assigned to investigate corruption and organised crime.

The recruitment of the judges and prosecutors is done through the School of Magistrates and it is considered fairly transparent and meritocratic.⁶ The recruitment, as well as the initial and continuous training of magistrates, is performed by the Albanian School of Magistrates, which enjoys administrative, academic and financial autonomy under the law.⁷ The new judicial governing bodies of HJC and HPC assess the magistrate candidates' backgrounds and assets prior to their admission to the School of Magistrates.⁸

Despite the strengthened legal and institutional safeguards, the level of perceived judicial independence among the public remains low. The World Justice Project Rule of Law Index 2020 suggests that only 33% of the respondents believe that there is no influence by the government in Albania's civil and criminal justice system.⁹ In 2020, the Balkan Barometer shows that only 13% of the respondents from the general public tend to agree that the judicial system was fairly independent from political influence.¹⁰ The level of trust in courts and judiciary was also very low, with 79% of the public responding that they totally distrust or tend not to trust in the judiciary. European Commission also raises the issue of attempted interference with the judiciary, including by authorities within the judiciary.¹¹

Judicial accountability and vetting

Albania is currently vetting all the judges and prosecutors in the country, as a temporary and extraordinary measure.¹² Pursuant to the justice reform, judicial vetting was adopted as a temporary and extraordinary policy mechanism for the purpose of addressing the issues of judicial corruption, links to organized crime and proficiency concerns related to magistrates. The judicial vetting commenced its operation in late 2017 and it entails the re-evaluation of all the Albanian judges and prosecutors on assets, background and proficiency. The vetting process is being carried out with the close support and oversight of the International Monitoring Operation (IMO), which is an institution led by the European Commission.

Almost 2/3rd of the Albanian judges and prosecutors have been dismissed or resigned from office due to the judicial vetting.¹³ The judicial vetting has had a significant impact in the judiciary given the high rates of dismissals and resignations. The vetting of the Constitutional Court and High Court members, which were considered priority cases, showed that out of 26 magistrates, 12 were dismissed, 11 resigned and only 3 magistrates were confirmed in office. At the time of the publishing of the European Commission 2020 report, the first instance Independent Qualification Commission (IQC) had dismissed 117 magistrates, mostly because of problems with asset assessment, such as false or inaccurate disclosure of assets, lack of legitimate financial sources to justify assets and hiding of wealth.¹⁴ For 62 magistrates, IQC terminated the vetting process due to their resignation. IQC confirmed in duty 105 magistrates or only 36.7% of the vetted magistrates. Several IQC confirmation decisions have been overturned from the Appeal Chamber, thus increasing the total number of dismissed magistrates.¹⁵

⁶ Albanian School of Magistrates: <http://www.magjistratura.edu.al/index.php>

⁷ Law on the School of Magistrates: <https://euralius.eu/index.php/en/library/albanian-legislation/send/5-school-of-magistrates/16-law-on-the-school-of-magistrates-en>

⁸ Law on the Status of Judges and Prosecutors: <https://euralius.eu/index.php/en/library/albanian-legislation/send/86-status-of-judges-and-prosecutors/198-law-on-the-status-of-judges-and-prosecutors-en>

⁹ World Justice Project Rule of Law Index 2020: https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

¹⁰ Balkan Public Barometer 2020: <https://www.rcc.int/balkanbarometer/results/2/public>

¹¹ European Commission Albania 2020 Report: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

¹² Law on Transitional Re-evaluation of Judges and Prosecutors: <https://euralius.eu/index.php/en/library/albanian-legislation/send/98-vetting/1-law-on-transitional-re-evaluation-of-judges-and-prosecutors-en>

¹³ U4 Anti-Corruption Resource Centre, Judicial vetting: A key policy tool to fight corruption in Albania: <https://medium.com/u4-anti-corruption-resource-centre/judicial-vetting-a-key-policy-tool-to-fight-corruption-in-albania-d8779aa221aa>

¹⁴ European Commission Albania 2020 Report: Ibid.

¹⁵ Appeal Chamber, Constitutional Court: <http://kpa.al/>

The ordinary disciplinary proceedings are initiated and conducted by the new institution of the High Justice Inspector.¹⁶ The High Justice Inspector (HJI) is responsible for the verification of complaints, investigation of disciplinary misconducts and initiation of disciplinary proceedings against judges and prosecutors of all levels.¹⁷ For the purpose of disciplinary proceedings, the list of misconducts for the magistrates is regulated by law and is currently in force, following the initial repeal by the Constitutional Court. Disciplinary proceedings are no longer initiated by the Minister of Justice, instead the initiation of disciplinary proceedings is the exclusivity of the HJI.

There is a considerable accumulated evaluation backlog for judges and prosecutors dating several years back. The HJC and HPC have inherited a high evaluation backlog for judges and prosecutors from the former justice governing institutions.¹⁸ The HJC and HPC must implement a clear plan in order to reduce such evaluation backlog. The HJC and HPC have adopted rules and procedures for regular evaluation of the magistrates. The new evaluation forms are improved and adapted to the new standards.¹⁹

The Code of Ethics are now regulated by the law and mandatory for judges and prosecutors, rather than non-binding guidelines. The HJC and HPC are responsible for approving and monitoring rules of ethics and code of conduct. The HJC and HPC have established the respective permanent commissions for the ethical and professional evaluation of judges and prosecutors.

Judicial quality and efficiency

Albanian citizens had no access to the Constitutional Court for over two years due to a lack of quorum. For over two years, laws and government normative acts, including those related to Covid-19 restrictions and derogations from the ECHR, were not subject to constitutional review. The Constitutional Court of Albania lost its quorum to hear cases in 2018 because of the dismissal of its members from the judicial vetting and retirements. The appointing authorities of the Constitutional Court members are the Parliament, President and High Court. The Parliament and the President have each appointed three members in the Constitutional Court, which allowed the CC to regain its quorum to hear cases only in December 2020. The members foreseen to be appointed by the High Court are important in maintaining a balance in the Constitutional Court. In this regard, delays are expected, given that the High Court is not yet fully functional and lacks the quorum to appoint Constitutional Court members.

The number of judges in Albania is much lower than the European average. Albania had 329 judges and 299 prosecutors in 2019, respectively 12 judges per 100,000 inhabitants and 11 prosecutors per 100,000 inhabitants.²⁰ According to CEPEJ, the average in Europe is 21 judges and 11 prosecutors per 100,000 inhabitants.²¹ The high number of dismissals and resignations due to the judicial vetting process is expected to further reduce the number of judges and prosecutors and its impact is already being experienced in some appeal courts in the country.

The efficiency of Albania's justice system is negatively affected by lengthy proceedings, low clearance rates and the high backlog of cases.²² The backlog of cases remains particularly high at the Administrative Appeal Court, with over 12,000 pending cases and the High Court with over 34,000 pending cases in 2019.²³ The vacancies in the judicial system have further contributed to the increase of the backlog of cases. The implementation of measures to address the high backlog of cases have had limited impact thus far and a new judicial map is yet to be approved.

The use of electronic communication and electronic case management systems in courts remains limited.²⁴ The electronic case management system is still unable to produce reliable and coherent statistical information in line with the recommendations and methodology

¹⁶ High Justice Inspector: <https://ild.al/>

¹⁷ Law on Governance Institutions of the Justice System: Ibid.

¹⁸ European Commission Albania 2020 Report: Ibid.

¹⁹ European Commission Albania 2020 Report: Ibid.

²⁰ European Commission Albania 2020 Report: Ibid.

²¹ European Commission for the Efficiency of Justice: https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Countryprofilev1_0EN/CountryProfileA4part1

²² European Commission Albania 2020 Report: Ibid.

²³ High Judicial Council, Annual Report 2019: <http://klgj.al/wp-content/uploads/2020/09/RAPORTI-VJETOR-2019-pdf.pdf>

²⁴ European Commission Albania 2020 Report: Ibid.

of CEPEJ. The current budgetary and human resources allocated to the councils remain insufficient to maintain an adequate electronic case management system. Shortcomings in the electronic case-management system must be addressed to guarantee random allocation of cases.²⁵ The Covid-19 pandemic has exposed shortcomings of the judicial system concerning the use of information and communication technologies. The High Judicial Council suspended normal court activities for approximately 6 weeks during March-April 2020, except for urgent cases as evaluated by the judges. Civil society organisations report that access to justice during the Covid-19 pandemic was restricted significantly for Albanian citizens.²⁶

Evaluation and recommendations

Following the above analysis, the overall assessment of the Judiciary in Albania is Class C: Problematic situation with a tendency to improve.

It is recommended to:

- Fill the remaining vacancies at the Constitutional Court and High Court and continue the progress in the recruitment of new magistrates through the School of Magistrates.
- Adopt a comprehensive strategy and an action plan to address the high backlog of cases, low clearance rates and the lengthy court proceedings.
- Improve the use of information and communication technologies in courts, strengthen the effective use of the electronic case management system and guarantee random allocation of cases.
- Increase the financial and human resources to the new governing bodies, including the High Judicial Council, High Prosecutorial Council and High Justice Inspector, to enable such institutions to adequately perform their functions.
- Further advance the judicial vetting of the judges and prosecutors and ensure the completion of the process in a timely fashion.

2.2 Corruption

Albania has ratified a series of treaties and conventions concerning anti-corruption in the framework of commitments from the United Nations, Council of Europe, Organization for Security and Co-operation in Europe (OSCE) and Organization for Economic Cooperation and Development (OECD). Albania has developed a comprehensive legal and institutional framework to promote integrity and prevent corruption in the public sector. Albania has established a specialised prosecutor's office charged with prosecuting corruption and organised crime, the Special Prosecution Office (SPO).

In the 2019 Transparency International Corruption Perceptions Index, Albania has a score of 35/100 and ranks next to last in the Western Balkan region and 106th globally.²⁷ Albania features among the worst performing countries in the Western Balkan region, scoring worse than the other regional countries such as Montenegro, Serbia, Bosnia and Herzegovina, Kosovo, and equal to North Macedonia. Albania has dropped 7 places regarding the perceived corruption compared to the previous year in the TI corruption index. According to the 2020 Balkan Barometer, 73% of the public respondents perceive that the government does not effectively fight corruption.²⁸ Pursuant to the same barometer, 62% of the respondents believe that public officials and civil servants are affected by corruption. European Commission highlights that corruption remains widespread and poses a serious concern for Albania.²⁹

Albania has a comprehensive legal and institutional framework in place concerning corruption, however a solid track record is needed in fighting against high level corruption. Corruption and related crimes and contraventions are regulated in the Albanian Criminal Code.³⁰ Under the justice

²⁵ European Commission Albania 2020 Report: Ibid.

²⁶ Albanian Helsinki Committee: https://www.osfa.al/sites/default/files/raport-i-pjesshem-mbi-veprimtarine-e-gjyqesorit-dhe-organeve-te-reja--covid-19_0.pdf

²⁷ TI Corruption Index 2019: <https://www.transparency.org/en/cpi/2019/results>

²⁸ Balkan Public Barometer 2020: <https://www.rcc.int/balkanbarometer/results/2/public>

²⁹ European Commission Albania 2020 Report: Ibid.

³⁰ Albanian Criminal Code: <https://euralius.eu/index.php/en/library/albanian-legislation/send/10-criminal-code/11-criminal-code-en>

reform, in 2019 Albania established the Special Prosecution Office and the Anti-Corruption and Organized Crime Courts with a specific mandate to investigate and adjudicate corruption and organized crime. The director of judicial police of the National Bureau of Investigation (NBI) subordinated to the SPO was also appointed by the High Prosecutorial Council and commenced performing its duties in 2020. The establishment of the above-mentioned institutions is expected to substantially strengthen the overall capacity to investigate and prosecute corruption in the country. However, European Commission maintains that although the number of corruption related investigations is considerable, the final convictions of high-level officials remain very limited, fostering an impunity culture at the higher levels of the state.³¹

Albania has adopted a comprehensive inter-sectoral anti-corruption strategy and its accompanying action plan, however targeted measures with high impact on corruption are lacking. The Inter-Sectoral Anti-Corruption Strategy and its action plan initially covered the 2015-2020 period and it was later extended until 2023.³² The cross-sectoral strategy is based on three key approaches, namely the preventive, punitive and awareness approach. Regardless of the intensified focus from public institutions in tackling corruption in every sector, Albania is still one of the worst performing countries in fighting corruption in the Western Balkans. The U4 Anti-Corruption Resource Centre finds that the Albanian state's initiatives and mechanisms to tackle corruption are focused on a "systematic" approach, aiming to impose centralised anti-corruption measures at all sectors simultaneously.³³ According to U4 Anti-Corruption Resource Centre, rather than applying a general approach against corruption, Albania must prioritise and take measures with high impact, by way of targeting specific sectors where corruption is quite harmful, identifying areas favouring corruption and practices employed to carry out corruption and craft real and concrete measures that combat such corrupt practices.³⁴

While there is a good legal framework in place regulating whistle-blower protection, the results are poor in signalling corruption and prosecuting suspected corrupt acts. In 2016, Albania adopted the law regulating the protection of whistleblowers with the intention to prevent and reduce corruption, protect the individuals signalling corruption and promote the signalling of corruption.³⁵ The law provides for the internal and external signalling mechanisms. Any public institution with more than 80 employees must have an internal unit that will serve as an internal signalling mechanism to investigate the signalled case. The High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) is the external signalling mechanism entitled to investigate signalled corrupt acts. According to a monitoring report conducted by the Albanian Helsinki Committee, HIDAACI has received only 38 signalling cases and 5 requests for revenge protection for the period 2017-2019.³⁶ For the period January-August 2020, there have been only 2 cases of internal signalling and 8 cases of external signalling to HIDAACI.³⁷ Thus far, no signalling of a suspected corrupt act has led to the prosecution and subsequently sentencing of a public official.

Although rules are in place concerning assets declarations, intensified efforts are needed in the implementation and HIDAACI human and financial capacities must be increased. Public officials are required to declare assets, sources of income and financial obligations for themselves and their family members.³⁸ Public officials are required to submit assets declarations upon taking up office, annually and upon termination. HIDAACI is the public institution in charge of receiving and auditing the assets declarations of public officials. HIDAACI may commence investigation in cases where the sources of income do not justify assets or when the provided data are suspected to be inaccurate or false. It is envisaged that the assets declaration will be published electronically on the HIDAACI website from 2021. HIDAACI has increased its portfolio, where in addition to auditing

asset declarations, conflicts of interest, monitoring of whistle-blowing legislation, HIDAACI is also involved in the vetting of prosecutors, judges and police as a supporting institution. HIDAACI has limited human and financial resources in order to duly and effectively perform such a wide range of functions.

There are no rules to regulate contacts of individuals in top executive functions with lobbyists seeking to influence the government's decision-making process. While the Albania's Parliament regulates the accreditation of lobbyists, NGOs and other interest groups through its Code of Ethics, top government officials are not bound by any rules on contacts with private interests influencing government policies and draft-legislation. GRECO has stressed that in the business world, direct contacts often occur between private representatives and government executives in charge of regulating and monitoring specific sectors of the economy.³⁹ The lack of transparency and potential conflicts of interests by engaging with lobbyists and interest groups harms the trust in government and its decision-making.

Rules on the prevention of conflicts of interest are in place, however it needs attention regarding implementation. The legislation regulating the conflict of interest covers public officials who have direct or indirect private interests that affect, could affect or appear to affect the performance of the public duties and responsibilities.⁴⁰ Private interests are disclosed together with assets declaration upon entering office, annually and upon leaving office as well as on a case-by-case basis when a private interest exists. A private interest declaration must also be declared when the superior or a superior institution makes a request to the public official. HIDAACI is the public authority that monitors and examines the conflict of interest cases. The awareness and implementation of the conflict of interest rules appear to be problematic. GRECO found that from the time of adoption of the law in 2005, there have been no cases of abstentions or announced conflict of interests concerning the members of the Council of Ministers.⁴¹ GRECO finds such a situation highly improbable and raises doubts on the proper and effective application of the law.⁴²

Evaluation and recommendations

Following the above analysis, the overall assessment of Corruption in Albania is Class C: Problematic situation with a tendency for improvements.

It is recommended to:

- Establish a solid track record in fighting corruption and confiscating corruption proceeds, particularly with regards to the prosecution and sanctioning of high-level corruption.
- Focus on the high-impact anti-corruption measures, by identifying specific sectors, methods and practices used to carry out corruption and adopt measures accordingly.
- Guarantee the necessary financial and human resources for the newly established anti-corruption bodies of National Bureau of Investigation, Special Prosecutor's Office, and Anti-Corruption and Organised Crime courts.
- Increase the human and budgetary resources of HIDAACI to guarantee the effective performance of its wide-ranging functions, including auditing asset declarations and conflicts of interest and monitoring of whistle-blowers legislation.
- Prepare annual reports on the implementation of the whistle-blowers legislation, including the number of reported cases, measures taken, and identify obstacles in the investigations and the proper implementation of the legislation.
- Adopt legislation to regulate contacts of top executive public officials with lobbyists and interest groups seeking to influence the government's decision-making.
- Raise awareness and ensure effective application of the conflict of interest's requirements under the law.

³¹ European Commission Albania 2020 Report: Ibid.

³² Inter-Sectoral Anti-Corruption Strategy 2015-2020: https://www.drejtesia.gov.al/wp-content/uploads/2018/06/Inter-sectoral_Strategy_against_Corruption_2015-2020_4.pdf

³³ U4 Anti-Corruption Resource Centre, Identifying feasible, high-impact anti-corruption interventions: The case of Albania: <https://www.u4.no/publications/identifying-feasible-high-impact-anti-corruption-interventions>

³⁴ U4 Anti-Corruption Resource Centre: Ibid.

³⁵ Law on Whistleblowing and the Protection of Whistleblowers: <http://www.ildkpi.al/wp-content/uploads/2019/02/Law-60-2016.pdf>

³⁶ Albanian Helsinki Committee, Monitoring Report: https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-n%C3%AB-Shqip%C3%ABri_Sfidat-e-zbatimit-t%C3%AB-kuadrit-t%C3%AB-ri-ligjor.pdf

³⁷ Albanian Helsinki Committee, The Fight Against Corruption and Impunity:

³⁸ Law on the Declaration and Audit of Assets: <http://www.ildkpi.al/legjislacioni-en/?lang=en>

³⁹ GRECO Fifth Evaluation Round Albania, December 2020: <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a0923d>

⁴⁰ Law on the Prevention of Conflicts of Interest: <http://www.ildkpi.al/legjislacioni-section2-en/?lang=en>

⁴¹ GRECO Fifth Evaluation Round Albania, December 2020: Ibid.

⁴² Ibid.

2.3 Media and freedom of expression

The Albanian legal framework concerning media pluralism and freedom of expression is based on a set of constitutional safeguards and legislative provisions. The said legal framework has been developed over the years by several actors, including the government, civil society and international organisations such as the OSCE, Council of Europe and European Union. The media regulator Audio-visual Media Authority constitutes an independent authority under the law. Access to information is guaranteed by law. The protection of journalists is not explicitly addressed in legislation and the mechanisms available to all citizens apply.

The regulatory authority in the field of audio-visual media is the Audio-visual Media Authority (AMA), however it is not seen as fully independent. The mission, objectives and functions of AMA are set out in the Law on Audio and Audio-Visual Media Services.⁴³ According to the law, AMA is independent and under parliamentary oversight. AMA has seven board members appointed by the parliament for a five-year term, with the right of renewal only once. The AMA board is composed of the Chairman, Deputy Chairman and five members, where only the Chair and Deputy Chair are appointed full-time. AMA is currently operating with limited human resources since there are three vacant board member positions.⁴⁴ In 2019, two board members completed their five-year mandate, whereas one member was dismissed by the parliament due to conflict of interest. The decisions of the AMA are published and available on its website.⁴⁵ The Media Pluralism Monitor assesses the independence of AMA as problematic, given that the board of AMA is politically elected and the institution is not perceived as completely independent.⁴⁶ Also, pursuant to Media Ownership Monitor Albania, AMA is generally seen as politicized.⁴⁷

Media ownership can be indirectly traced through data publicly available from the business registry, although further legal improvements are needed in identifying the ultimate shareholder. The Albanian legislation does not oblige media organisations to disclose and make public their owners on the media's website. However, the public may find relevant data on the ownership structures and financial statements of media organisations in the public register of the National Business Centre.⁴⁸ However, there are no clear rules concerning the ultimate shareholder, to make sure that the public knows the natural person effectively owning or controlling the media organisation. Similar to other domestic companies, media organisations must submit their financial statements to the tax authorities and the business registry held by NBC. The financial statements can be accessed by the public through the NBC website. The ownership data concerning online media is harder to obtain given that online media are not required to register as a business with the local authorities, unless such online media voluntarily publishes their ownership structure in the media's website. This is problematic with regards to some Albanian online media outlets which have no data on their owners, thus posing a risk of political control.⁴⁹

There are limited rules regulating state advertising and the distribution of state advertising among media outlets is not transparent. There is no public information available on the actual recipients of state advertising.⁵⁰ According to Media Ownership Monitor Albania, state funds on advertisement are not fairly distributed considering there is no instrument to guarantee that state advertising is allocated based on audience share. The procurement rules for state advertising are rather simplistic and provide sufficient room for abuse.⁵¹ The European Commission stresses that Albania must adopt legislation to strengthen transparency in state advertising.⁵² There is no state institution mandated to monitor the procurement of state advertising.

43 Law on Audio and Audio-Visual Media Services: <http://ama.gov.al/wp-content/uploads/2016/06/LAW-NO-97-2013-ON-THE-AUDIOVISUAL-MEDIA-AUTHORITY.pdf>

44 European Commission Albania 2020 Report: Ibid.

45 Audio-visual Media Authority: <http://ama.gov.al/vendime/?lang=en>

46 The Centre for Media Pluralism and Media Freedom, Monitoring Media Pluralism in the Digital Era, July 2020: https://cadmus.eui.eu/bitstream/handle/1814/67816/albania_results_mpm_2020_cmpf.pdf?sequence=1&isAllowed=y

47 Media Ownership Monitor Albania, Indicators of Risks to Media Pluralism: <http://albania.mom-rsf.org/en/findings/findings/#!1b8d-4b8675e576d13f6353ba0afc8092>

48 National Business Centre: <https://qkb.gov.al/>

49 Media Ownership Monitor Albania, Indicators of Risks to Media Pluralism: Ibid.

50 Media Ownership Monitor Albania, Indicators of Risks to Media Pluralism: Ibid.

51 Media Ownership Monitor Albania, Indicators of Risks to Media Pluralism: Ibid.

52 European Commission Albania 2020 Report: Ibid.

Journalists face numerous threats, including hate speech, smear campaigns and threats of physical attacks. Albanian journalists and media organisations critical to the government have reported online harassment and smear campaigns and some critical shows were closed due to media pressure.⁵³ According to the Albanian Criminal Code, acts that impede of right of expression of journalists including intimidation constitute a contravention, whereas the use of physical violence against journalists is punishable with up to 3 years of imprisonment.⁵⁴ However, in practice there is a lack of timely reaction from authorities in investigating and sanctioning reported attacks against journalists.⁵⁵ Albanian journalists are often subject to lawsuits from politicians and business persons which have an intimidating effect over the journalists. Politicians often use denigrating language in order to delegitimize critical journalists.⁵⁶ The European Commission reported that on some occasions journalists were injured or beaten by the police and force was used during the arrest of a journalist while protesting against the demolition of the National Theatre.⁵⁷ Similarly, several journalists were arrested while covering demonstrations against the death of an Albanian citizen shot by police during Covid-19 curfew.⁵⁸

Albanian journalists practice self-censorship to avoid pressures from politicians and media owners who seek to advance their economic and political interests. Civil society reports have exposed a triangle between politics, media owners and business that harms journalistic quality and turns many journalists into victims of censorship or self-censorship.⁵⁹ Data indicates that audience and revenues are concentrated in a few family-owned groups that dominate the media market in Albania.⁶⁰ In 2015, the Albania's parliament removed any restriction on the ownership of television broadcasters that were awarded a national broadcasting license.⁶¹ Almost half of the Albanian journalists report that they have avoided one or more often covering specific news stories during their career.⁶² The self-censorship is more frequently practiced in regard to political news, organised crime and economic news.⁶³ The economic and political interests of the media owners is the main factor for practicing self-censorship.⁶⁴ Albanian journalists often lack regular work contracts, health and social insurance and often suffer from salary payment delays, which increases job insecurities and in turn the risk of censorship and self-censorship. The public institutions' measures are insufficient to make media owners duly comply with the Albanian Labour Code regarding journalists working conditions.⁶⁵

Although there is a comprehensive legal framework regulating access to information, the enforcement of such legal right on accessing information of public interest poses obstacles. The Albanian Law on the Right to Information provides that everyone is entitled to obtain information on official documents, upon request, without the need to explain the motives.⁶⁶ The law requires that each public institution must appoint a coordinator to handle information requests. A system for accepting online requests for information was established in 31 public institutions.⁶⁷ The Commissioner for Information and Data Protection is an independent institution monitoring and implementing the legislation on the right to information and data protection. In 2019, the Commissioner received 786 complaints and issued 18 decisions, while 820 complaints were received in 2018.⁶⁸ However, civil society and journalists report that replies from public institutions on requests for information are often incomplete and/or late and sometimes

53 European Commission Albania 2020 Report: Ibid.

54 Article 261 of the Criminal Code: <https://euralius.eu/index.php/en/library/albanian-legislation/send/10-criminal-code/11-criminal-code-en>

55 European Commission Albania 2020 Report: Ibid.

56 Media Ownership Monitor Albania, Media Under Fire: <http://albania.mom-rsf.org/en/findings/mediaunderfire/>

57 European Commission Albania 2020 Report: Ibid.

58 European Federation of Journalists: <https://europeanjournalists.org/blog/2020/12/16/albania-police-attack-and-arrest-journalists-covering-protests/#:~:text=Four%20journalists%20were%20arrested%20on,of%20Klodian%20Rasha%20in%20Tirana.&text=The%20protests%20erupted%20after%20Klodian, police%20officer%20on%208%20December.>

59 <https://birn.eu.com/wp-content/uploads/2017/05/Report-on-self-censorship-in-the-Albanian-media.pdf>

60 Media Ownership Monitor Albania: <http://albania.mom-rsf.org/en/findings/media-concentration/>

61 Media Ownership Monitor Albania: <https://albania.mom-rsf.org/en/findings/media-concentration/>

62 BIRN, Self-censorship in the Albanian Media: <https://birn.eu.com/wp-content/uploads/2017/05/Report-on-self-censorship-in-the-Albanian-media.pdf>

63 BIRN, Self-censorship in the Albanian Media: Ibid.

64 Media Ownership Monitor Albania, Self-censorship: <http://albania.mom-rsf.org/en/findings/self-censorship/>

65 Albanian Labour Code: <https://euralius.eu/index.php/en/library/albanian-legislation/send/116-labour-code/144-labour-code-en>

66 Law on the Right to Information: https://qkb.gov.al/media/1307/119_2014-anglisht.pdf

67 European Commission Albania 2020 Report: Ibid.

68 Commissioner for Information and Data Protection: <https://www.idp.al/annual-reports/?lang=en>

completely rejected.⁶⁹ Access to information is often realised through the appeal mechanisms and the direct engagement of the Commissionaire. The implementation of the recommendations of the Commissionaire from the public institutions remain poor.⁷⁰ The European Commission stresses that greater access must be provided regarding procurement contracts, audits and public officials remunerations and that the Commissionaire must have greater oversight powers.⁷¹

The Albanian parliament passed in December 2019 the “anti-defamation package” through amendments of media related legislation, giving the administrative body of AMA the capacity to control online media content and impose substantial fines against online media outlets. The said package was criticized by numerous actors, including civil society organisations, journalists, Council of Europe, European Commission, as falling short of meeting international standards on freedom of expression and media freedoms. The European Parliament raised the concern that in Albania powerful political interests have drafted anti-disinformation legislation so as to silence opponents as well as leaving loopholes for the government to utilise the extensive media resources in their favour.⁷² Civil society organisations expressed the concern that AMA, whose members are nominated by political parties, must not acquire prerogatives to review defamation, which is adjudicated by courts. The European Commission stated that self-regulation of online media is a better approach.⁷³ The package was not decreed by the President of Albania and the ruling majority subsequently requested an opinion from the Venice Commission. The Venice Commission gave right to Albania’s civil society and journalists’ concerns by “advising against extending the mandate of the AMA in the field of the online media without a corresponding strengthening of its independence and professionalism”.⁷⁴ The “anti-defamation package” is currently being revised by the ruling majority. However, the Electronic and Postal Communication Authority is now obliged by law to enforce AMA’s decisions on online media outlets.⁷⁵

Albanian media and journalists faced increased problems due to Covid-19.⁷⁶ The government-imposed restrictions coupled with the decline in advertising revenues due to budget cuts by private companies made the media environment harsher. Newspapers suspended printing for over a month and audio-visual media closed several broadcasts and worked with limited staff. Some media organisations reduced the salaries of the journalists. Field reporters were at high risk of being infected with the Covid-19 virus. During the pandemic, journalists were also targets of political verbal attacks and sanctioned with administrative fines for violating government restrictions.

Evaluation and recommendations

Following the above analysis, the overall assessment of media freedoms and the freedom of expression in Albania is Class D: Continuously problematic situation – stagnation.

It is recommended to:

- Duly address the hostile environment against journalists and media, including intimidation, threats, smear campaigns, denigrating language, physical attacks and censorship and self-censorship.
- Review the “anti-defamation package” in line with the opinion of the Venice Commission and international standards on freedom of expression and media freedoms.
- Strengthen the labour and social safeguards for the Albanian journalist and ensure proper application of the Labour Code.
- Guarantee greater access to information and ensure adequate enforcement of the rights

stipulated in the Law on the Right to Information.

- Align the domestic legislation with international standards to guarantee stricter criteria concerning media ownership and media financing.
- Align domestic legislation with international standards to strengthen transparency in state advertising based on audience share.
- Guarantee the self-regulation for online media based on international standards and best practices.
- Strengthen Audio-Visual Media Authority’s independence from political parties and further consolidate its professionalism.

2.4 Human rights protection

Albania has ratified various international conventions and has generally developed its national legislation in line with European and international standards on human rights.⁷⁷ Albania is subject to monitoring of United Nations human rights bodies, including the Human Rights Council and its Universal Periodic Review and the thematic special procedures. Also, Albania has ratified the European Convention on Human Rights and is subject to jurisdiction of the European Court of Human Rights. Overall, the implementation in practice of international conventions and national legislation on human rights protection needs to be strengthened. At the domestic level, the Ombudsperson Office is the chief independent institution for promoting and enforcing human rights. Under justice reform, a major step forward was the recognition of the individual’s right to lodge a complaint before the Constitutional Court against the acts of public institutions or judicial acts harming the fundamental human rights and freedoms guaranteed by the Constitution of Albania.⁷⁸

Enforcement of international conventions on human rights

Albania has made progress in ratifying UN conventions on human rights and aligning its legislative framework to the international standards.⁷⁹ However, national and international organisations report that the enforcement and recommendations follow-up on human rights protection remain weak and predominantly donor-driven.⁸⁰ The monitoring and enforcement mechanisms on human rights protections lack financial and human resources.⁸¹ There is a lack in national statistics, policy analysis and implementing strategies to enforce human rights foreseen in the ratified UN conventions.⁸² Civil society participation has improved in the preparation of UN national reports largely through donors’ support, whilst there is no significant improvement in the government’s approach.⁸³

The European Court of Human Rights (“ECtHR”) has found at least one violation of the European Convention on Human Rights (“Convention”) by the Albanian state in 80% of the adjudicated cases. Almost half of such violations concerned the right to a fair hearing as stipulated by Article 6 of the Convention, particularly regarding the unfairness of judicial proceedings and failure to enforce final decisions.⁸⁴ The right to an effective remedy and the right of property protection bear a significant number of violations found by the ECtHR against the Albanian state, with over 2/5th of total adjudicated cases.⁸⁵

69 BIRN, Freedom of Information and Journalists in the Western Balkans: https://balkaninsight.com/wp-content/uploads/2019/12/FOI_Report_En.pdf

70 European Commission Albania 2020 Report: Ibid.

71 European Commission Albania 2020 Report: Ibid.

72 European Parliament, Mapping Fake News and Disinformation in the Western Balkans and Identifying Ways to Effectively Counter Them, December 2020: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653621/EXPO_STU\(2020\)653621_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653621/EXPO_STU(2020)653621_EN.pdf)

73 European Commission Albania 2020 Report: Ibid.

74 Venice Commission Opinion on Albania’s Law on Audio-visual media Service, June 2020: <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>

75 Law on Electronic Communication: https://www.parlament.al/Files/ProjektLigje/20200121101908ligj%20nr%20%2092%20dt%20%2018%2012%202019.pdf?fbclid=IwAR2qls_VYioVfbJSGl67KrSiVWm8GKDJOjhLy36FRYnNx3ab4kzJzRbfVAw

76 European Commission Albania 2020 Report: Ibid.

77 UN Treaty Body Database: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=2&Lang=EN

Council of Europe Treaty List: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/ALB?p_auth=bCZeSDCB

78 Constitution of Albania, Article 131: <https://euralius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en>

79 UN Country Team, Universal Periodic Review for Albania, May 2019: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRALUNContributionsS33.aspx>

80 UN Country Team, Universal Periodic Review for Albania, May 2019: Ibid.

81 UN Country Team, Universal Periodic Review for Albania, May 2019: Ibid.

82 UN Country Team, Universal Periodic Review for Albania, May 2019: Ibid.

83 UN Country Team, Universal Periodic Review for Albania, May 2019: Ibid.

84 European Court of Human Rights: https://www.echr.coe.int/Documents/Facts_Figures_Albania_ENG.pdf

85 European Court of Human Rights: Ibid.

Legal aid

Legal aid in Albania is regulated by the Law on Granting State-Guaranteed Legal Aid⁸⁶ that was adopted in 2017, which represents a new system compared to the previous legislative framework. The main objective of the given law is to establish an effective system for the delivery of free legal aid in an equal manner for all the individuals in need, so as to guarantee access to justice.⁸⁷ The delivery of the legal aid must be based on the principles of equality, non-discrimination, professionalism, confidentiality, and protection of vulnerable persons.⁸⁸ The law provides for two types of legal aid, namely primary and secondary legal aid. Primary legal aid involves the provision of information, counselling, advising, assisting in preparing documents and representation before administrative bodies. The secondary legal aid involves the provision of legal services, counselling, and representation before courts. The interested persons must file a request for secondary legal aid with the competent court or proceeding body that has commenced the investigation. The courts are also entitled to grant exemption from payment of court fees and other court costs under the law.

The Directorate of Free Legal Aid was established within the Ministry of Justice. Six centres providing first legal aid were open across the country. The establishment of the Directorate and the adoption of bylaws were introduced several months beyond the legal deadline, therefore creating a vacuum in the provision of legal aid for an extended period of time.⁸⁹ The implementation of the legal aid rights according to the new law remain fragile and generally untested in practice. Awareness rising as well as monitoring and reporting progress made in implementing legal aid rights seek further efforts.⁹⁰ There are obstacles concerning access to justice and a lack of access to legal aid for vulnerable groups, including Roma, Egyptians, persons with disabilities, and persons with economic difficulties.⁹¹ A great number of cases concerning vulnerable groups are handled by civil society organisations through donor support.⁹²

Treatment of vulnerable groups

The Albanian legislative framework concerning **people with disabilities** is partially in line with the UN Convention on the Rights of Persons with Disabilities.⁹³ To further improve the national legal framework, Albania should ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities. In October 2019, the UN Committee on the Rights of Persons with Disabilities raised several concerns on the situation of the people with disabilities in Albania, including the lack of sufficient efforts to fully align the national legislation with the UN Convention on the Rights of Persons with Disabilities, lack of targeted disability services, absence of a harmonised notion of disability and the lack of consultation with organisations of persons with disabilities.⁹⁴ The European Commission stresses that further improvements are needed to tackle violence against persons with disabilities, encourage education and employment of people with disabilities and gather relevant data on the situation of the persons with disabilities in Albania.⁹⁵

Albania made a significant step forward in improving the legislative framework on the **rights of the child** through the adoption in 2018 of the Law on the Rights and Protection of the Child. In 2018, the National Council on the Rights and Protection of the Child was also established. Specific measures in order to implement child protection legislation were foreseen in the National Agenda on Child Rights 2017-2020; however, limited actions were taken to implement such measures.⁹⁶ The State Agency on Child Rights and Protection has limited financial and

human resources to fulfil its increased responsibilities.⁹⁷ There is increasing evidence of child exploitation and abuse via the internet.⁹⁸ The Ombudsperson proposed several recommendations to improve child rights, including creating new dedicated services for child needs, allocate the necessary budget, strengthen child rights monitoring and assessment system, and improve child protection policies at local level.⁹⁹

The implementation of **gender equality** legislation and strategies are hampered by a continuing funding gap. Overall, Albania reached 60.4 points in the Gender Equality Index in 2017, highlighting a considerable gender gap.¹⁰⁰ The largest gaps compared to the European listed countries remain in the areas of knowledge, money and time, whereas Albania's score is similar in the areas of work and health. One factor that contributed to a better ranking of Albania is the area of power, given the women's participation in the government or other leading and decision-making positions. The Ombudsperson institution considers the situation of the women rights in Albania as problematic, especially concerning the use of misogynistic language, gender-based violence, domestic violence, access to justice, employment and other social services provision.¹⁰¹ European Commission recommends that more efforts are required to ensure that all sectoral strategies at central and local level are gender mainstreamed and apply gender responsive budgeting.¹⁰²

Although the Albanian legislative framework prohibits discrimination against lesbian, gay, bisexual, transgender and intersex persons, the access of **LGBTI+ persons** to health care, justice, education, employment and housing remains problematic.¹⁰³ The recent legislative amendments of the Law on Protection from Discrimination adopted in October 2022 aimed at strengthening the protection from discrimination.¹⁰⁴ In 2019, the 8th Tirana Pride was supported and attended by many government officials, international organisations, CSOs and LGBTI+ supporters, whereas in 2020 the event was held online. The political will and the role of authorities must be strengthened regarding LGBTI+ persons rights. The government national action plan for LGBTI+ persons did not produce noticeable results, partially due to the lack of financial resources.¹⁰⁵ The shelter for LGBTI+ persons in Tirana provides care, support and advocacy to homeless LGBTI+ individuals. For the first time, the shelter received state funds in 2019; however, it remains heavily dependent on donors' support. Public awareness and acceptance of LGBTI+ persons remain low, particularly in rural areas. Hate speech and discriminatory language continue to be a problem in the media, especially online. Violence and discrimination against members of the trans community is a worrying phenomenon in the country. Same sex partners are denied the right to marry and have a family under the law. The right to self-determination in relation to bodily integrity for intersex people is not recognised by law.¹⁰⁶ However, Albania has adopted for the first time a medical protocol for the treatment of intersex children when medical intervention is necessary.¹⁰⁷

Albania continued to experience an increasing influx of **irregular migrants**, mainly entering from Greece and leaving Albania after a few days, heading towards EU countries. The number of irregular migrants continues to increase over the years. Despite the Covid-19 pandemic, approximately 30% more migrants entered Albania in the first five months of 2020, compared to the same period in 2019.¹⁰⁸ The nationalities represented most were Syrian, Iraqi, Afghan, Palestinian, and Moroccan. The increase in the influx of irregular migrants was accompanied by an increasing number of asylum applications in Albania.¹⁰⁹ Albania faces several problems with regards to migrants and asylum-seekers, including limited accommodating capacities,

86 Law on Granting State-Guaranteed Legal Aid: <https://euralius.eu/index.php/en/library/albanian-legislation/send/21-legal-aid/232-law-on-legal-aid-en>

87 Article 2 of the Law on Granting State-Guaranteed Legal Aid: Ibid.

88 Article 4 of the Law on Granting State-Guaranteed Legal Aid: Ibid.

89 People's Advocate Annual Report 2019: <https://www.avokatipopullit.gov.al/media/manager/website/reports/Annual%20Report%202019.pdf>

90 European Commission Albania 2020 Report: Ibid.

91 People's Advocate Annual Report 2019: Ibid.

92 European Commission Albania 2020 Report: Ibid.

93 UN Convention on the Rights of Persons with Disabilities and Protocols: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

94 Convention on the Rights of Persons with Disabilities, Concluding observations on initial report of Albania, 2019: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhspdJq2SN0FynLS%2BUiWUaqofjmf0rHJ5MLWvzpc5ePiublk65e0Kd%2FN-GE6rLwV%2B8UH2qHAW2phnAZHFFMFuZbruUZnlnmuu8vWWy5fRmtguz>

95 European Commission Albania 2020 Report: Ibid.

96 European Commission Albania 2020 Report: Ibid.

97 European Commission Albania 2020 Report: Ibid.

98 European Commission Albania 2020 Report: Ibid.

99 People's Advocate Annual Report 2019: Ibid.

100 Gender Equality Index for the Republic of Albania 2020, https://eurogender.eige.europa.eu/system/files/events-files/gender_equality_index_albania.pdf

101 People's Advocate Annual Report 2019: Ibid.

102 European Commission Albania 2020 Report: Ibid.

103 European Commission Albania 2020 Report: Ibid.

104 Council of Europe: <https://www.coe.int/en/web/tirana/-/legislative-amendments-enacted-to-strengthen-protection-from-discrimination-in-albania>

105 European Commission Albania 2020 Report: Ibid.

106 UN Country Team, Universal Periodic Review for Albania, May 2019: Ibid.

107 Tirana Legal Aid Society: https://www.tlas.org.al/sites/default/files/Protokoll%20Mjekësor%20për%20Vlerësimin%20e%20Fëmijëve%20Interseks_compressed.pdf

108 European Commission Albania 2020 Report: Ibid.

109 People's Advocate Annual Report 2019: Ibid.

worsening security situation, poor health and living conditions, and lack of separate facilities for unaccompanied minors.¹¹⁰ The Ombudsperson institution recommends that Albania must address the migrants needs for protection, assistance and services, with special regard for the most vulnerable groups, such as women and children, people with special needs or people with health conditions.¹¹¹ The European Commission raises the issue of migrants being returned on some occasions to Greece outside a legal and/or procedural framework, before pre-screening could be conducted.¹¹² The deportation of Turkish asylum seekers has also raised concerns on the respect for human rights.¹¹³

Freedom of assembly

The freedom of assembly is stipulated in the Albanian Constitution and regulated by the legislative framework in place, which is generally aligned with the international standards. The freedom of assembly is regulated by the Law on Assemblies¹¹⁴ and it is broadly in line with the OSCE/ODIHR Guidelines on Freedom of Peaceful Assemblies. However, the Law on Assemblies should address the right to spontaneous assembly and counter-assembly.¹¹⁵ The notification procedure must be easier and more straightforward to complete as well as more accessible for the citizens.¹¹⁶ The European Commission highlights that the law must clarify the cases when a simple notification is required for a peaceful assembly, rather than the permission from the public authorities.¹¹⁷ The Ombudsperson maintains that the right to peaceful assembly is not subject to police approval, but simply to notify the police authorities so that the later has sufficient time to take the necessary measures for the execution of such legal right.¹¹⁸ Violent actions resulting in serious injuries of demonstrators and police officers and damage to public buildings have been registered in a number of protests and political demonstrations.¹¹⁹

During the Covid-19 pandemic, the banning of assemblies, heavy fines, violence against protesters, the application of double standards and the legal ambiguities in interpreting the Law on Assemblies have discouraged and violated the right to assembly in Albania.¹²⁰ The Ombudsperson has recommended the cessation of the practice of the police authorities for not allowing gatherings and also the improvement of normative acts in force that regulate freedom of assembly in order to guarantee this constitutional right, respecting health protocols during Covid-19.¹²¹ The Commissioner for Protection from Discrimination has also highlighted that the right to assembly was not implemented uniformly and that there was a deficit in the reasoning for such a ban during Covid-19 pandemic.¹²²

Evaluation and recommendations

Following the above analysis, the overall assessment of the Human rights protection in Albania is Class C: Problematic situation with a tendency for improvements.

It is recommended to:

- Ensure proper follow-up on the recommendations from international organisations on human rights protection, by allocating adequate financial and human resources to guarantee enforcement.
- Improve the institutional mechanisms and guarantee dedicated services for protecting vulnerable groups, including persons with disabilities, children, women, victims of

domestic violence, LGBTI+ persons and irregular migrants and asylum seekers.

- Improve access to justice by fully implementing the legal aid rights foreseen in the law for persons in need and vulnerable groups.
- Guarantee adequate application of the right to assembly, by making the notification procedures easier, avoiding the use of force and regulating the right to spontaneous assembly and counter-assembly.

¹¹⁰ European Commission Albania 2020 Report: Ibid.

¹¹¹ People's Advocate Annual Report 2019: Ibid.

¹¹² European Commission Albania 2020 Report: Ibid.

¹¹³ People's Advocate Recommendation: https://www.theioi.org/downloads/5mmva/Recommendation_People%E2%80%99s%20Advocate%20of%20Albania.pdf

¹¹⁴ Law on Assemblies: <https://www.legislationline.org/documents/id/16298>

¹¹⁵ European Commission Albania 2020 Report: Ibid.

¹¹⁶ European Commission Albania 2020 Report: Ibid.

¹¹⁷ European Commission Albania 2020 Report: Ibid.

¹¹⁸ People's Advocate Annual Report 2019: Ibid.

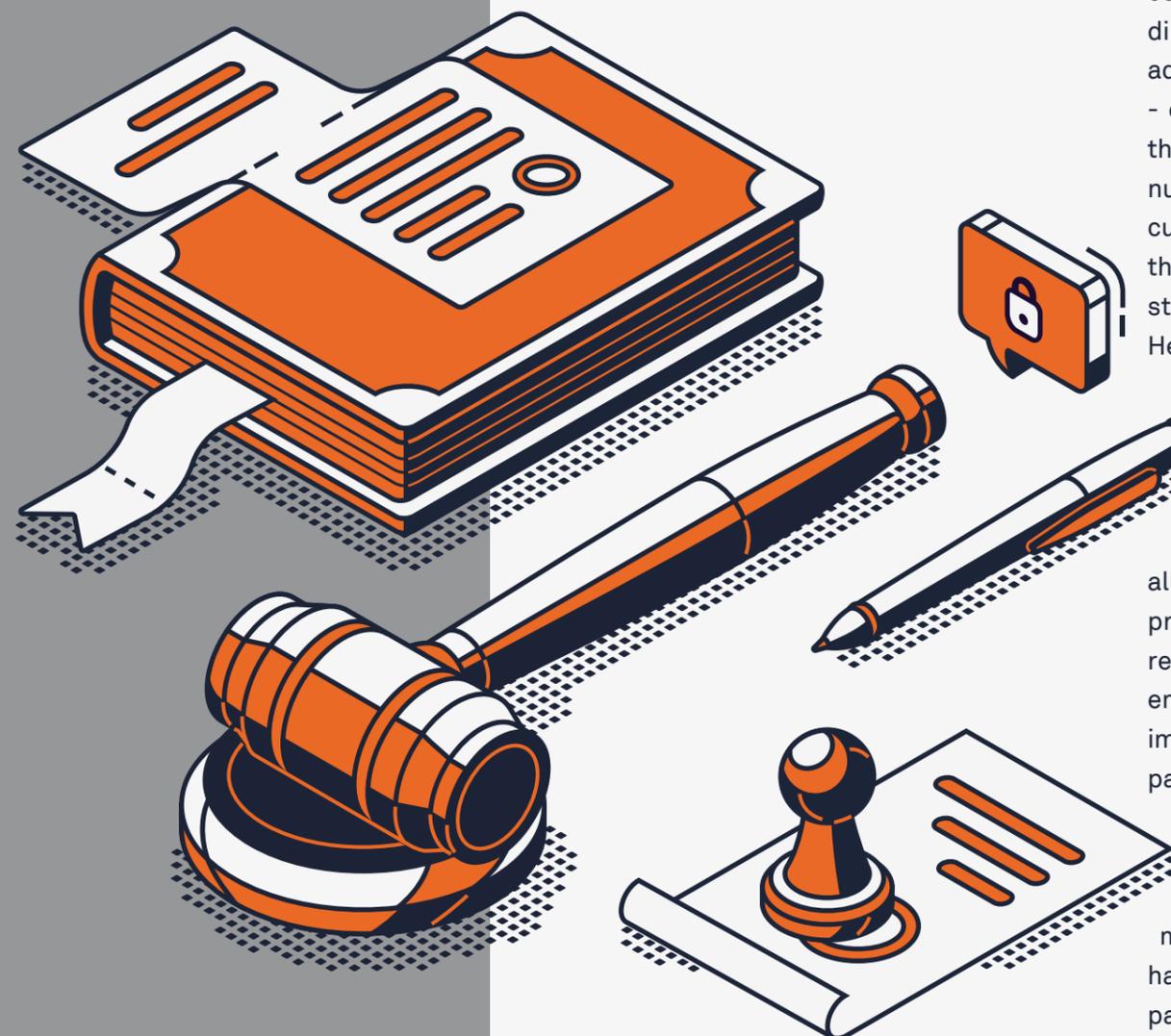
¹¹⁹ European Commission Albania 2020 Report: Ibid.

¹²⁰ Civil Rights Defenders and Tirana Legal Aid Society: Human Rights Under the Global Pandemic, Covid-19

¹²¹ People's Advocate Annual Report 2019: Ibid.

¹²² Commissioner for Protection from Discrimination: <https://www.reporter.al/e-drejta-e-tubimit-standardet-e-dyfishta-qe-fshihen-pas-luftes-ndaj-covid-19/>

02



BOSNIA & HERZEGOVINA

Assessment of the State of Rule of Law in Albania
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1. INTRODUCTION

It has been 25 years since Bosnia and Herzegovina changed its internal constitutional order, transforming it from a republican to a complex state of an asymmetric federal composition. The constitution of Bosnia and Herzegovina envisages its internal organization as a state composed of two entities, the highly decentralized Federation of Bosnia and Herzegovina and the centralized Republika Srpska, and the highly independent local government unit Brcko district, directly subjected to the sovereignty of the central government of Bosnia and Herzegovina.¹ In addition, the entity of the Federation of Bosnia and Herzegovina consists of ten (10) federal units - cantons, whose internal constitutional order is reflected in the existence of assemblies as the highest legislative bodies and the executive bodies, the governments, which implement a number of competencies (police, education, use of natural resources, spatial and housing policy, culture).² The explained constitutional composition of Bosnia and Herzegovina is the result of the General Framework Agreement for Peace in Bosnia and Herzegovina, whose Annex IV is the state constitution.³ The latter and the fact that the peace agreement also defined Bosnia and Herzegovina as a semi-protectorate, establishing the Office of the High Representative, an ad-hoc international institution still in force, has largely affected the expected future state's Euro-Atlantic integration, simultaneously putting it at stake.⁴ Given the fact that the state constitution by itself is discriminatory and that daily life of democracy in Bosnia and Herzegovina has been constantly under pressure from conflicting political interests, it was hard to expect that the state would be able to make significant progress in fulfilling all its international human rights obligations.⁵ The direct consequences of this are the below provided elaborated findings. Furthermore, all the complexity of governing the country has recently been tested in facing the Covid-19 pandemic. The uncoordinated declaring of a state of emergency by different levels of government, each for its own administrative-territorial units, implied a challenging response by the state as a whole to the emergency situation caused by the pandemic.^{6,7} By also deciding not to apply Article 15 of the European Convention on Human Rights and subject itself to the Convention procedure of a continuous review of the proportionality of the measures imposed during the pandemic and the aimed pursued, the state has to some extent unnecessarily undermined public confidence in the legality of all its imposed measures. This was also later indicated by the Constitutional Court's decision.⁸ Defined by the harmonized research methodological framework established by a team of experts, this research paper provides an overall assessment of the state of rule of law in Bosnia and Herzegovina.⁹

¹ Article I (Bosnia and Herzegovina) – 3. Composition, Constitution, accessed December 25 2020, <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/BH/BH%20CONSTITUTION%20.pdf>; "Arbitration decision for Brcko District", Advokat Prnjavorac, accessed December 26, 2020, https://advokat-prnjavorac.com/zakoni/Arbitrazna_Odluka_BD.pdf.

² 1 - Establishment of the Federation - Article 2. Constitution of the Federation of Bosnia and Herzegovina, accessed December 26, 2020, https://advokat-prnjavorac.com/legislation/constitution_fbih.pdf.

³ "The General Framework Agreement for Peace in Bosnia and Herzegovina", Office of the High Representative, accessed December 26, 2020, <http://www.ohr.int/dejtonski-mirovni-sporazum-2/>.

⁴ Ibid.

⁵ Human Rights Watch, "Bosnia and Herzegovina: Ethnic Discrimination a Key Barrier", Human Rights Watch, accessed December 26, 2020, <https://www.hrw.org/news/2019/12/12/bosnia-and-herzegovina-ethnic-discrimination-key-barrier>.

⁶ OSCE, Odgovor na krizu uzrokovanu pandemijom Covid-19 – Analiza iz perspektive ljudskih prava i rodne ravnopravnosti – Response to the Crisis Caused by the Covid-19 pandemic – Analysis from the Perspective of Human Rights and Gender Equality (OSCE: Sarajevo), p. 15. <https://www.osce.org/files/f/documents/7/a/470658.pdf>.

⁷ Council of Europe, "Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) - Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic", Council of Europe, accessed December 25, 2020, <https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354>.

⁸ Constitutional Court of Bosnia and Herzegovina, "Decision on Admissibility and Merit" (please consult paragraphs 36-38 of the Decision), Constitutional Court of Bosnia and Herzegovina, accessed 25 December, 2020, http://www.ustavnisud.ba/dokumenti/_bs/AP-1217-20-1234093.pdf.

⁹ Civil Rights Defenders, "Agenda of the Online Conference "South East European Legal Days 2.0 – Human Rights in Times of Crisis" – 9-11 November, 2020", Civil Rights Defenders, accessed December 26, 2020, <https://www.facebook.com/civilrightsdefenders/photos/a.166837690020765/3467239813313853>.

2. ASSESSMENT ANALYSIS

2.1 Judiciary

In terms of jurisdiction and internal organization, the **judiciary** in Bosnia and Herzegovina is organized in four highly independent systems (state level, two entities and the BiH Brcko district) often marred by the inability to resolve conflicts of jurisdiction between state and entities judicial institutions.¹⁰ Such a judicial organization is a consequence of the fact that neither of the precisely listed state competencies in the Constitution even indirectly implies the state prerogative over the regulation of judiciary or its any part.¹¹ The only state judicial body prescribed by the Constitution is the Constitutional Court of Bosnia and Herzegovina.¹² In 2004, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) was formed, a self-regulating body which has as its main aim to preserve the independence and impartiality of the judiciary as whole.¹³ By taking into account that one of the HJPC's mandates is only to make recommendations regarding the annual court budgets proposed by the entities' and the Brcko district government, it seems that power over the judicial administration management looks more like a clumsy compromise between the executive branch and the HJPC.¹⁴ Such a complex and disharmonized judicial system revealed most of its deficiencies during the course of Covid-19 pandemic. There are several examples of acts of the listed bodies proving this. The latest decision of the HJPC on the organization of the work of judicial institutions during the course of the pandemic prescribed the obligation of the Presidents of courts and Chief prosecutors to harmonize the work of judicial institutions with their autonomous assessment of current epidemiological situations and existing spatial potentials for maintaining the required physical distance. The way of prescribing much-needed emergency measures essentially transfers responsibility for crisis management to court Presidents and Chief prosecutors, demonstrating the Council's lack of capacity and efficiency to establish a coordinated and responsive judicial system in the pandemic.¹⁵ Moreover, the government of the Republika Srpska has issued two decrees on regulating time limits and acting in judicial and administrative proceedings jeopardizing the citizens' right to access to court.¹⁶ In particular, by prescribing the ongoing deadlines only in certain proceedings and obliging the parties to the proceedings to take some procedural actions under unforeseen circumstances defined by the situation, these decisions have significantly hampered the citizens' right of access to court. Both regulations also completely ignored the fact that at the time of their adoption a ban on leaving the place of residence was in force in many parts of the country, which also affected the right and/or obligation of attendance of the parties to the proceedings.

When estimating the general condition of independence and accountability of the whole judiciary, all relevant reports and analyses point out to a concerning trend, lacking any progress within the crucial field of strengthening integrity.¹⁷ Another concern indicated in the EU Bosnia

and Herzegovina 2020 Progress Report is that judicial reforms are obstructed by politicians as well as from within the judiciary.¹⁸ The main reason for this is that there is no firm mechanism for declaring and verifying assets.¹⁹ Even if we pass through the relevant provision of a newly proposed amendment to the Law on HJPC addressing the issue of declaration and verification of judicial office holders' asset, we will notice inconsistency with the principle of ensuring integrity of judicial office holders. Specifically, the relevant provisions of amendments on the Law on HJPC prescribes that only judges and prosecutors and their family members living "in the same household" are subject to mandatory declarations of asset and interests.²⁰ Transparency International's analysis of disciplinary liability of judicial office holders describes that citizens are prevented to perform public oversight over the judiciary because all decisions on disciplinary liability of judicial officeholders are not accessible to public.²¹ The same analysis states that "59 percent" of all disciplinary sanctions issued in 2018 are "written warnings" and "anonymized public reprimands", very often for serious violations of laws.²² Furthermore, two scandals in which the HJPC chairman was filmed as inappropriately interfering in a judicial proceeding and trying to frame the appointment of the sister of a HJPC member to a judicial position undermined the very foundations of the HJPC, also resulting in the resignation of the HJPC chairman from his position.²³ In terms of the state of ongoing judicial reforms, the Association "Vaša prava BiH"'s report on the implementation of Judicial Sector Reform Strategy cites that there is a complete absence of vertical and horizontal coordination between duty barriers – relevant government institutions, the result of which is that only 9 percent of all strategic programs were implemented within the course of the 2014-2020 Strategy, while the non-implementation of the programs in the last implementing period increased more than 27 percent.²⁴ One of the serious consequences of the poor state of the judiciary is that the length of court proceedings in 2019 is 418 days, while the backlog of cases is 2.1 million; both data presents an issue that urgently needs to be addressed by the relevant authorities.²⁵

Considering all the above-stated and the fact that in accordance with the survey conducted under umbrella of the European Union Delegation to Bosnia and Herzegovina, over two thirds, or 68 percent of interviewed citizens do not have any trust in the judiciary, we can clearly assess that the judiciary **"Institutions are in dramatic situation with a tendency to regression (class F)"**.²⁶

Recommendations:

- Criminal legislation regulating the processing of criminal cases and the operation of all judicial institutions in all jurisdictions in Bosnia and Herzegovina needs to be further harmonized.
- Implement reform measures for the adoption of the new Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.
- Legislation regulating the financing of all courts in Bosnia and Herzegovina should guarantee their institutional independence.
- Constantly strengthen horizontal and vertical institutional coordination in all processes related to the implementation of the Judicial Sector Reform Strategy.
- Accelerate the implementation of all measures for the reduction of the length of court proceedings and the backlog of cases.

¹⁰ OSCE Mission to Bosnia and Herzegovina, Assessing Needs of Judicial Responses to Corruption through Monitoring of Criminal Cases (OSCE Mission to Bosnia and Herzegovina, 2018), page 4.

¹¹ Article III (Responsibilities of and Relations between the Institutions of Bosnia and Herzegovina and the Entities), Constitution, accessed December 14 2020, <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/BH/BH%20CONSTITUTION%20.pdf>.

¹² Article VI (Constitutional Court), Constitution, accessed December 14 2020, <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/BH/BH%20CONSTITUTION%20.pdf>; "Decision on appointment of the Judges and establishment of the Court of Bosnia and Herzegovina", High Representative for Bosnia and Herzegovina, accessed December 14 2020, <http://www.fbihvlada.gov.ba/english/zakoni/2002/odluke%20vs%20registar%202002.htm>.

¹³ "Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina", High Judicial and Prosecutorial Council of Bosnia and Herzegovina, accessed December 14, https://www.pravosudje.ba/vstv/faces/vijesti.jspx?id=8236&vijesti_jezik=E.

¹⁴ Article 17 (Competences) paragraph 15, Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, accessed December 14 2020, https://www.pravosudje.ba/vstv/faces/vijesti.jspx?id=8236&vijesti_jezik=E.

¹⁵ "Decision on the organization of work in courts and prosecutor's offices in Bosnia and Herzegovina", High Judicial and Prosecutorial Council of Bosnia and Herzegovina, accessed December 14 2020, https://www.pravosudje.ba/vstv/faces/pdfservlet?p_id_doc=63678..

¹⁶ "Decree with Force of Law on Deadlines and Acting in Court Proceedings During the State of Emergency for the Territory of the Republika Srpska", Government of the Republika Srpska, accessed December 14 2020, <https://www.paragraf.ba/propisi/republika-srpska/uredba-sa-zakonskom-snagom-o-rokovima-i-postupanju-u-sudskim-postupcima-za-vrijeme-vanrednog-stanja-za-teritoriju-republike-srpske.html>; "Decree with Force of Law on Deadlines and Acting in Administrative Proceedings and Other Procedures Regulated by Special Substantive Law During the State of Emergency for the Territory of the Republika Srpska", Government of the Republika Srpska, accessed December 14 2020, <https://www.paragraf.ba/propisi/republika-srpska/uredba-sa-zakonskom-snagom-o-rokovima-i-postupanju-u-upravnim-postupcima-i-drugim-postupcima-uredjenim-posebnim-materijalnim-propisima.html>.

¹⁷ European Commission, Bosnia and Herzegovina 2020 Report. (Brussels: European Commission, 2020), p. 5.; Group of States Against Corruption, Second Compliance Report Bosnia and Herzegovina (Strasbourg: Group of States Against Corruption, 2020); European Commission, Expert Report on Rule of Law issues in Bosnia and Herzegovina (Brussels: European Commission, 2019).

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Article 86 (Declaration on Assets and Interests), Draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, accessed December 14 2020, <https://www.ekonsultacije.gov.ba/legislativeactivities/details/109480>.

²¹ Transparency International in BiH, Analysis of Disciplinary Liability of Judicial Officeholders in Bosnia and Herzegovina (Sarajevo: Transparency International in BiH, 2020), p. 3.

²² Transparency International in BiH, Analysis of Disciplinary Liability of Judicial Officeholders in Bosnia and Herzegovina (Sarajevo: Transparency International in BiH, 2020), p. 9.

²³ N1 tv station, "Horseshoe" affair: The magazine published a video of Tegeltija, Alešević and Pandža (Bosnia and Herzegovina: N1, 2019), video, <http://ba.n1info.com/Vijesti/a346167/Afera-Potkivanje-Zurnal-objavio-video-Tegeltija-Alesevic-i-Pandze.html>; Radio station radiosarajevo, Listen how Milan Tegeltija promises appointments in the judiciary (Bosnia and Herzegovina: radiosarajevo, 2019), video, <https://radiosarajevo.ba/multimedia/video/poslusajte-kako-milan-tegeltija-obecava-imenovanja-u-pravosudu/397827>.

²⁴ The Association "Vaša prava BiH", Konferencija o implementaciji Strategije i AP za reformu sektora pravde u BiH za 2019. i 2020. god - Conference on the implementation of the Strategy and AP for the reform of the justice sector in BiH for 2019 and 2020 (Sarajevo: The Association "Vaša prava BiH", Sarajevo, 2020), YouTube, <https://www.youtube.com/watch?v=LjwZQv1MxAw>.

²⁵ European Commission, Bosnia and Herzegovina 2020 Report. (Brussels: European Commission, 2020), p. 5.

²⁶ A. Dučić, "Sattler: Bit ću brutalno jasan, dvije trećine građana nema povjerenje u pravosuđe!" – "Sattler: I'll be brutally clear, two-thirds of citizens don't trust the judiciary!", focus, November 24, 2020, <https://www.fokus.ba/vijesti/sattler-bit-cu-brutalno-jasan-dvije-trecine-gradjana-nema-povjerenje-u-pravosudje/1930330/>.

2.2 Corruption

There is no branch of power in Bosnia and Herzegovina that is not affected by **corruption**. Sometimes it seems that corruption has not been perceived as something exclusively negative or positive, rather as a legitimate tool for acquiring public services and rights that are already guaranteed by laws in force. There is also a recognized lack of transparency in the acts of public institutions and officials as the main tools in the fight against corruption. Sarajevo, the capital of Bosnia and Herzegovina, falls in the group of the non-transparent capital cities in Europe due to, among other things, denying free access to information on the Mayor's and individual councilors' total annual pay.²⁷ The main issue that contributes to preventing the public from acquiring information of public interest is that a significant number of (judicial) institutions do not conduct a public interest test when deciding whether the legal basis for providing information is met, thus directing them further to a long-lasting proceedings before the courts.²⁸ In addition, the legislative framework for whistleblower protection is still incomplete in Bosnia and Herzegovina, and lacking the procedure for the protection of persons associated to whistleblowers or those wrongly recognized as such.²⁹

When further assessing the institution's commitment to the fight against corruption, the statement made by the Cantonal Minister of Justice, is very descriptive in "challenging" the entire well-established anti-corruption paradigm. His statement that "Corruption does not exist, but there are people and customs that rule in BiH. Corruption is something imaginary that they invented, and we have people who live as they live and customs that are normal in our country, although they do not exist anywhere in the world" tells us a lot about the intentions of those institutions perceived as the most relevant to fight corruption.³⁰ This person still performs the duty of the Ministers of Justice in Central Bosnian Canton government.³¹ The response of the judiciary to corruption is also not promising since the 2020 OSCE report shows that the conviction rate per defendant in mid-level corruption cases fell from 80 to 57 percent in the last three years.³²

On December 16, 2020, GRECO published its Second Compliance Report for Bosnia and Herzegovina stating that out of fifteen recommendations in total issued five years ago, mainly targeting prevention of corruption among members of parliament, judges and prosecutors, and incriminations and transparency of party funding, Bosnia and Herzegovina did not fulfill satisfactory any of them.³³ Precisely, eleven recommendations have been partly implemented while four of them have not been implemented at all.³⁴ Accordingly, the progress of Bosnia and Herzegovina in implementation of the recommendations is classified as "globally unsatisfactory".³⁵ The very content of the rule of law issues addressed by the unimplemented recommendations best describes the overall complexity of the challenges faced by Bosnia and Herzegovina on its path to full consolidation of its legal reform processes. More precisely, the content of the unimplemented recommendations mainly refer to the prevention of conflict of interest, protecting the holders of judicial and prosecutorial offices from undue influences, ensuring that the resources are efficiently used across the judicial systems and developing an effective system for reviewing annual financial statements of judicial office holders and their

27 Lukáš Zajac, Gabriel Šipoš, Michal Piško, Access to Information in European Capital Cities (Bratislava: Transparency International Slovakia), p.5.

28 The Institution of Human Rights Ombudsman/Ombudsmen of BiH, Special report on experiences in law enforcement of the Law on Free Access to Information, (Banja Luka: The Institution of Human Rights Ombudsman/Ombudsmen of BiH, 2019), https://www.ombudsmen.gov.ba/documents/obudsmen_doc2020020515415139bos.pdf.

29 Transparency International i BiH, "Međunarodni dan zviždača: Donijeti zakon u FBiH i pojačati pravnu zaštitu svih prijavitelja korupcije" – "International Whistleblower Day: Adopt a law in the FBiH and strengthen the legal protection of all whistleblowers", Transparency International in BiH, accessed 16 December 2020, <https://ti-bih.org/medjunarodni-dan-zvizdaca-donijeti-zakon-u-fbih-i-pojacati-pravnu-zastitu-svih-prijavitelja-korupcije/>.

30 "Ministar pravosuđa SBK: Korupcija ne postoji, to je nešto imaginarno što su izmislili" – "Minister of Justice SBK: Corruption does not exist, it is something imaginary that they invented", radiosarajve, February 13 2020, <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/ministar-pravosuđa-sbk-korupcija-ne-postoji-to-je-nes-to-imaginarno-sto-su-izmislili/367104>.

31 Government of Central Bosnian Canton, "Composition of government", accessed 16 December 2020, <https://sbk-ksb.gov.ba/hr/sastav-vlade.html>.

32 OSCE Mission to Bosnia and Herzegovina, Third Annual Report on Judicial Responses to Corruption: The Impunity Syndrome (Sarajevo: OSCE Mission to Bosnia and Herzegovina, 2020), p. 17.

33 Group of States Against Corruption, Second Compliance Report Bosnia and Herzegovina (Strasbourg: Group of States Against Corruption, 2020), p. 16.

34 Ibid.

35 Ibid.

family members.³⁶ Moreover, relevant state authorities do not take any affirmative actions in this regard as the state does not even have any action plan for dealing with such an important urgent issues.³⁷

By reducing the requirements to apply all legally prescribed public procurement procedures during the Covid-19 pandemic, the top of the country's corruption pyramid has become more visible. The most famous case of alleged high level of corruption that is still pending before the court is the procurement of 100 respirators from China worth approximately 5.5 million euros, which later turned out to be unusable, further causing the loss of hospital capacities in treating dying patients.³⁸ The procurement in question was implemented by a company registered for conserving fruits and vegetables.³⁹ The Prosecutor Office of Bosnia and Herzegovina raised an indictment against the Prime Ministers of the Federation of Bosnia and Herzegovina, the Minister of Finance, the Director of the Federal Civil Protection Administration, and the owner of the company conducted the procurement of respirators for numerous criminal offenses associated to the disputed public procurement.⁴⁰ While the process against the accused is ongoing, the Prime Minister and Minister of Finance preforms their duties in full capacities. The fact that a significant number of public procurements during the pandemic have been implemented by companies not registered for import of medical equipment raises a question about their transparency and purpose.⁴¹

Generally, the answer to why all institutions in Bosnia and Herzegovina provide a fertile ground for manipulations resulting in private gain can be found in the constitutionally legalized ethnic division of the state and its institutions, which further creates a democratic deficit or a kind of self-regulatory political system. The fact that best describes how far the manipulation of institutions goes in Bosnia and Herzegovina, simultaneously undermining the very essence of democracy rooted in division of powers, is that 61 public officeholders are in conflict of interest by performing two or more public duties at the same time while 8 of them in mutually opposed branch of powers (legislative and executive).⁴² Without participations of truly democratic political parties in political life in Bosnia and Herzegovina there will never be a democratic state. The inter-party presidential elections of three ruling parties, exclusive representatives of their ethnic groups, were defined as a single candidate electoral process, accordingly we surely speak about an oligarchic political system.⁴³ If we also take into consideration the curve showing the score of Bosnia and Herzegovina according the Corruption Perception Index over the last 7 years, then is obvious that public **"Institutions are in dramatic situation with a tendency to regression (class F)"**.⁴⁴

36 Group of States Against Corruption, Second Compliance Report Bosnia and Herzegovina (Strasbourg: Group of States Against Corruption, 2020).

37 European Commission, Bosnia and Herzegovina 2020 Report. (Brussels: European Commission, 2020), p. 7.

38 Nermin Kulogija i Azra Husarić, "Istrage o načinu nabavke i cijeni respiratora koje je moguće kupiti na internet trgovinama" – "Investigations into the method of procurement and price of respirators that can be purchased at online stores", Detektor, April 28, 2020, <https://detektor.ba/2020/04/28/istrage-o-nacinu-nabavke-i-cijeni-respiratora-koje-je-moguće-kupiti-na-internet-trgovinama/>.

39 Srebra Malina, Srebrna Malina, "Srebrna Malina", Fikret Hodžić, accessed December 18, 2020, <http://srebrenamalina.ba/>.

40 Radio Slobodna Evropa, "Optužnica protiv premijera Federacije BiH i ostalih u predmetu 'Respiratori' – "Indictment against the Prime Minister of the Federation of BiH and others in the 'Respirators case", Radio Slobodna Evropa, December 4, 2020, <https://www.slobodnaevropa.org/a/podignuta-optu%C5%BEEnica-u-predmetu-respiratori/30984061.html>.

41 Transparency International in BiH, Centri Civilnih Incijativa, Centar za razvoj medija, Javne nabavke u doba pandemije COVID-19 - Public procurement at the time of the pandemic COVID-19 (Sarajevo: Transparency International in BiH, 2020), p. 13.

42 Transparency International in BiH, "Transparentno.ba", Transparency International in BiH, accessed 16 December 2020, <https://transparentno.ba/2020/12/17/ti-bih-objavio-registar-nosilaca-javnih-funkcija-u-bih-61-funkcioner-obavlja-duple-funkcije/>.

43 Hina, "Dodik opet izabran za predsjednika SNSD-a: "Republika Srpska najbolji dio BiH" – "Dodik re-elected SNSD president: "Republika Srpska the best part of BiH", indexhr, June 15 2019, <http://rs.n1info.com/Region/a525733/Bakir-Izetbegovic-jednoglasno-ponovo-izabran-za-predsjednika-SDA.html>.

44 Transparency International, "Corruption Perception Index", Transparency International, accessed December 16 2020, <https://www.transparency.org/en/cpi/2019/results/bih>.

Recommendations:

- Strengthen the implementation of the laws on freedom of access to information in all institutions.
- Adopt a law on the protection of whistleblowers in the Federation of Bosnia and Herzegovina.
- Increase the capacity of the judiciary to deal with corruption cases of all ranks.
- Implement all recommendations issued by GRECO.
- Establish a single public procurement system (an internet portal) that would be used in all phases of procurement and adopt a list of goods, works and services that can be obtained by urgent procedure.
- Adopt the Law on Conflict of Interest in Bosnia and Herzegovina.

2.3 Media and Freedom of Expression

In general, the legislative framework governing the media and freedom of expression is only partially established and also lacks its full implementation and harmonization with international standards.⁴⁵ There is a complete absence of legislation regulating media ownership transparency and criteria on public advertising.⁴⁶ The main deficiency in the field of enforcement and protection of freedom of media and of expression was stated in key priority 12 of the Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, precisely referring to the need for "ensuring the appropriate judicial follow-up to cases of threats and violence against journalists and media workers, and ensuring the financial sustainability of the public broadcasting system".⁴⁷ Incidents of attacks and intimidation of journalists is an issue of great concern.

It arises from the BH Journalist analysis that in 2019, 56 cases of violation of journalists' rights were recorded, while there were 9 cases of physical assault, 21 threats out of which 8 death threats, and 10 cases of political pressure. In addition, 29 cases of violation of journalists' rights have been registered since the beginning of 2020.⁴⁸ Annual report on the results of the activities of the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina for 2019 confirmed lacking any progress in the field of reducing intimidation and attacks on journalists.⁴⁹ An extreme case of attacking journalists and damaging of equipment in public place reveals the existing mutual support between perpetrators and public officeholders with the ultimate aim of censoring media reporting.⁵⁰ It seems that in Bosnia and Herzegovina perpetrators and those who should not under any circumstance support illegal actions directed against journalists share the same level of responsibilities for the current state of play in the field of media freedoms. Namely, after the mentioned case of attack on journalists, the president of the ruling Party of Democratic Action (PDA), whose high-ranking member is the perpetrator, addressed the public regarding the case and completely excluded any possible liability of the perpetrator for the recorded act of violence, simultaneously equalizing it with the alleged responsibility of journalists for attacking the private lives of public office holders.⁵¹ Furthermore, The case of an attempted murder of a journalist raised great concerns of journalists for their safety due to their investigative reporting. The attacked journalist clearly marked the president of the Republika Srpska as the main creator of a hostile atmosphere in which the journalists are the target of violent attacks.⁵² Numerous national, international reports and media outlets indicate that such attacks on journalists have

increased since the Covid-19 pandemic.⁵³ The most recent cases of attacks on journalists proved that the perpetrators do not even try to hide their identities. Moreover, in addition to politicians and public officeholders, the perpetrators are very often civil servants. The latest case of a filmed attack on a journalist took place in the hall of the city government in Bijeljina, where a BN television journalist was forcibly removed by the head of the city government's public relations department from a crisis headquarters session that was open to the public.⁵⁴ Another civil servant, senior expert associate of the Sector for Refugees and Displaced Persons at the Ministry of Human Rights and Refugees of BiH, was also taped as threatening the Magazine Žurnal journalist, intimidating her not to further investigate the story she was working on.⁵⁵ In addition, there is a well-known issue of verbal violence by public officeholders expressed in forms of hate speech against journalists. The BiH Journalist Association recently sent a letter to the member of the Presidency of Bosnia and Herzegovina in which they inform him about his advisor's online verbal attacks on journalists, containing forms of defamatory and hate speech, also demanding to determine the advisor's accountability for the committed verbal attacks.⁵⁶ The general lack of an institutional response to attacks on journalists was also confirmed in this case, as the required response of the Presidency member to this and a previously recorded case of the advisor's attempt to censor a columnists' published comment were completely absent.⁵⁷ The issues of an increasing number of hate speech incidents, which affect not only the media community but also others such as individuals and groups affiliated to different ethnicity and religion, as well as LGBTI+ persons, was also determined in the EU Bosnia and Herzegovina 2020 Progress Report.⁵⁸ Proving that the existing legislative framework regulating hate speech is inadequate is data showing that out of 130 recorded hate incidents only one conviction was reached in 2019.⁵⁹ The BH Journalists Association have several times publicly warned authorities that incidents of attacks on journalists are a direct consequence of inadequate sanctioning of perpetrators.⁶⁰ The most serious institutional attempts of restriction of freedom of speech were the adoption of the Decision of the Government of the Republika Srpska on the prohibition of causing panic and disorder during an emergency situation on the territory of the Republika Srpska and the Brčko District BiH Crisis Staff Headcounter's Order on Prohibiting the Dissemination of False Information, both envisaging high fines for those spreading "fake news", and in the case of Brčko district BiH even criminal liability.⁶¹ The introduction of these measures in the Republika Srpska entity and in the BiH Brčko District have faced great concern from the OSCE Mission to Bosnia and Herzegovina and local media about the possibility of their use in suppressing media freedoms. It was indicative that one of the first fined citizen in Republika Srpska was a doctor, a member of the opposition party presidency, who publicly warned of alleged health system deficiencies discovered during the pandemic.⁶² The Republika Srpska government's Decision, under pressure from critics of domestic NGOs and the international community, was put out of force. The current legal force of the BiH Brčko District's order remains unclear, while the available data shows that several people were prosecuted for non-compliance with the order.⁶³ In addition, there is a lack of an appropriate response of the judiciary in terms of

45 European Commission Bosnia and Herzegovina 2020 Report.

46 Ibid.

47 European Commission, Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union (Brussels: European Commission, 2019), p. 15.

48 BH Novinari, Detailed analysis by BH Journalists: Investigations and processing of attacks on journalists and media workers in Bosnia and Herzegovina (Sarajevo: BH novinari, 2020).

49 Human Rights Watch, World Report 2020: Bosnia and Herzegovina, (Human Rights Watch: 2020).

50 N1 BiH, "Huso Česir napao kameru, nije dakle napao čovjeka" – "Huso Česir Attacked the Camera, so He Did not Attack the Man", N1BiH, March 30 2019, <http://ba.n1info.com/Vijesti/a325011/lzetbegovic-Huso-Cesir-napao-kameru-nije-dakle-napao-covjeka-VIDEO.html>.

51 Ibid.

52 bljesak info, "Dodik posjetio napadnutog novinara, novinar odbio slikanje" – "Dodik visits attacked journalist, the journalist refused to be photographed", bljesak.info, August 27, 2020, <https://www.bljesak.info/vijesti/politika/dodik-posjetio-napadnutog-novinar-a-novinar-odbio-slikanje/245810>

53 Council of Europe, Addendum to the Report: Press freedom suffers in Council of Europe member states under COVID-19 (Council of Europe:2020); Mersiha Drinjaković, "Za (šta) su sve krivi novinari", MEDIACENTAR_ONLINE, June 23,2020, <https://www.media.ba/bs/magazin-novinarstvo/za-sta-sve-su-krivi-novinari>. Radio Slobodna Evropa, Al: Napadi na novinare usporavaju usporavaju borbu protiv COVID-a (Radio Slobodna Evropa: May 1, 2020).

54 BN televizija, Javnost zgrožena nakon napada na novinarku BN TV (BN televizija: November 11, 2020), <https://www.rtvbn.com/3995020/javnost-zgrozena-zbog-napada-na-novinaruku-bn-tv>.

55 Žurnal/Fena, Poslušajte kako je Adnan Čakalović prijetio novinarki Zinaidi Poslušajte (Žurnal/Fena: January 8, 2021), <https://www.source.ba/clanak/Crnahronika/552753/Poslusajte-kako-je-Adnan-%C4%8Cakalovic-prijetio-novinariki-Zinaidi-%C4%90eli-lovic--Trazicu-te-po-Sarajevu-vjeruj-mi-bices-moja>.

56 BH Journalists, BH Journalists wrote to Komšić: Sanction Hebibovic for online violence against journalists (BH Journalists: January 7, 2021), <https://bhnovinari.ba/bs/2021/01/07/bh-novinari-pisali-komsicu-kaznite-hebibovica-radi-online-nasilja-nad-novinarima/>.

57 BH Journalists, BH Journalists: Public protest to Nihad Hebibovic over political pressure on columnist Dragan Bursac (BH Journalists: January 7, 2021), <https://bhnovinari.ba/bs/2021/01/07/bh-novinari-pisali-komsicu-kaznite-hebibovica-radi-online-nasilja-nad-novinarima/>.

58 European Commission Bosnia and Herzegovina 2020 Report.

59 Ibid.

60 BH Journalists, Detailed analysis by BH Journalists: Investigations and processing of attacks on journalists and media workers in Bosnia and Herzegovina (BH Journalists: November 1, 2020).

61 PARAGRAF, Odluka o zabrani izazivanja panike i nereda za vrijeme izazivanja za vrijeme vanredne situacije na teritoriji Republike Srpske, ("Official Gazette of RS", No. 26/2020); PARAGRAF, Naredba o širenju lažnih informacija, ("Official Gazette of the Brčko District of BiH", No. 15/2020).

62 Žurnal, Širenje istine ili panike: korona virus kao alibi za policijsku represiju (Žurnal: March 3, 2020), <https://zurnal.info/novost/22882/korona-virus-kao-alibi-za-policijsku-represiju>.

63 Radio Slobodna Evropa, U RS se ukida Uredba o izazivanju panike i nereda, a time i kažnjavanje (Radio Slobodna Evropa: April 16, 2020), <https://www.slobodnaevropa.org/a/30559175.html>; Otisak, Šef Policije Brčko distrikta o otvorenim istragama i prijavama vezanim za korona virus (Otisak: April 17, 2020), <https://www.otisak.ba/sef-policije-brcko-distrikta-o-otvorenim-istragama-i-prijavama-vezanim-za-korona-virus/>.

an increased number of defamation lawsuits against journalists, ultimately causing media self-censorship. The preliminary findings of an OSCE Mission to Bosnia and Herzegovina's analysis on the judgements reached within the period 2016-2019 shows that a greater majority of all plaintiffs in defamation court proceedings were public officials.⁶⁴ It is contrary to the European Court of Human Rights' well-established case law principle in accordance to which public officials knowingly lay themselves open to wider public scrutiny, by both journalists and the general public.⁶⁵ Accordingly, they must demonstrate a greater degree of tolerance towards the published criticism, including very often disturbing value judgements, as well as for journalists as their authors.⁶⁶ The analysis also showed that 30 percent of court proceedings initiated by defamation lawsuits lasted for more than five years, causing a long-term pressure on media freedoms and further empowering self-censorship.⁶⁷ The identified lack of a harmonized legal practice can further cause additional pressures on journalists, especially in terms of the non-pecuniary damages that can be imposed by national courts, eventually breaching the European Court of Human Rights' principle that high penalties can present "a form of censorship intended to discourage the press from expressing criticism".⁶⁸ Ultimately, the analysis also determined that a significant number of national courts' judgements lack augmented statements of reasons when making a necessary distinction between statements of facts and value judgements.⁶⁹ Comprehensive and reasonable judgments constitute a prerogative for the effective exercise of the right to a fair trial and the right to an effective remedy, and their absence can lead to a violation of the listed rights.⁷⁰

All of the above and the findings of the latest two European Commission progress reports on Bosnia and Herzegovina, clearly showing a lack of an institutional response to all identified permanent systemic dysfunctions, ultimately cause a state of securing free media and the full exercise of freedom of expression in which **"Institutions are in dramatic situation with a tendency to regression (class F)"**

Recommendations:

- Ensure the appropriate judicial follow-up to cases of threats and violence against journalists and media workers and the financial sustainability of the public broadcasting system.
- Ensure that the relevant courts implement all the principles of the European Convention on Human Rights in cases where journalists are parties to legal proceedings.

64 Emina Dizdarević i Lamijja Grebo, "Cenzura tužbama - rast postupaka protiv novinara ograničava slobodu medija"- "Censorship by lawsuits - the growth of proceedings against journalists restricts media freedom", Detektor, December 17, 2020, <https://detektor.ba/2020/12/17/cenzura-tuzbama-rast-postupaka-protiv-novinara-ogranicava-medijske-slobode/>.

65 Toby Mendel and Executive Director, A Guide to the Interpretation and Meaning of Article 10 of the European Convention on Human Rights, p.13.

66 Ibid.

67 Emina Dizdarević i Lamijja Grebo, "Cenzura tužbama - rast postupaka protiv novinara ograničava slobodu medija"- "Censorship by lawsuits - the growth of proceedings against journalists restricts media freedom", Detektor, December 17, 2020, <https://detektor.ba/2020/12/17/cenzura-tuzbama-rast-postupaka-protiv-novinara-ogranicava-medijske-slobode/>.

68 Guide on Article 10 of the European Convention on Human Rights (Freedom of expression) of the European Court of Human Rights, 2010, p. 22, available on https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf.

69 Emina Dizdarević i Lamijja Grebo, "Cenzura tužbama - rast postupaka protiv novinara ograničava slobodu medija"- "Censorship by lawsuits - the growth of proceedings against journalists restricts media freedom", Detektor, December 17, 2020, <https://detektor.ba/2020/12/17/cenzura-tuzbama-rast-postupaka-protiv-novinara-ogranicava-medijske-slobode/>.

70 Tadija Bubalo, Pravo optuženika na obrazloženu sudsku odluku - The right of the Accused to a Reasoned Court Decision, (Rijeka: Pravni fakultet Uiverziteta u Rijeci: 2014), p. 991.

2.4 Human rights protection

Although Bosnia and Herzegovina has acceded to all international human rights treaties, **a full comprehensive enforcement of the rules of established international protection mechanisms** is still lacking. Bosnia and Herzegovina is the only country in Europe whose citizens are not equal and are discriminated based on their ethnicity and place of residence.⁷¹ It has been more than ten years since the first judgment reached by the European Court of Human Rights finding a violation of these rights, and the authorities have so far failed to take the necessary steps to eliminate this violation of the Convention.⁷² Consequently, there is a group of cases formed based on the similar violation of the Convention's rights.⁷³ Ultimately, there are three groups of cases of a systematic nature currently placed under the standard and enhanced supervision of the Committee of Ministers of the Council of Europe, concerning the violation of above-mentioned electoral rights, the unlawful detentions of persons with mental illness and the breach of the right to property. Only in 2019 the European Court reached 21 judgements concerning the right to a fair trial, protection of property, right to liberty and security, freedom of expression and non-discrimination, while before the European Court 1,816 applications are pending.⁷⁴ The only affirmative step related to the implementation of the Convention's rights was recently made in the *Barallia* case, ultimately enabling, upon a reached political agreement, local elections to be held in Mostar after 12 years.⁷⁵ Furthermore, the Covid-19 pandemic once again revealed all the challenges at national level in the implementation of the Convention's requirements and established protection mechanisms. Immediately after the different levels of authorities in accordance with their constitutional rights declared a state of emergency throughout Bosnia and Herzegovina, posing various restrictions to citizens as well as foreigners, a local non-governmental organization "Vaša prava BiH" appealed to authorities to reconsider the imposed restrictions since they constitute violations of human rights guaranteed by the Convention.⁷⁶ The lack of alignment of the authorities' actions with the Convention's protection mechanism during the course of the pandemic resulted in the violation of citizens' rights determined by the BiH Constitutional Court in terms of the right to movement and private life prescribed by Article 2 of Protocol no. 4 and Article 8 of the Convention.⁷⁷ Despite appeals to authorities that failure to comply with Article 15, providing for possible derogations from the obligations under the Convention, the state risks being subject to higher level of liability for eventual human rights violations than required under the Convention itself, Bosnia and Herzegovina remained inactive in this regard.⁷⁸ This was also determined by the BiH Constitutional Court's decision.⁷⁹

71 Council of Europe, "Country Factsheet", Accessed December 25, 2020, <https://rm.coe.int/1680709741>.

72 Ibid.

73 Ibid.

74 European Commission, Bosnia and Herzegovina 2020 Report. (Brussels: European Commission, 2020), p. 26.

75 RadioFreeEurope, "Bosnia-Herzegovina's Mostar Holds First Local Elections In 12 Years", RadioFreeEurope, accessed 25 Decembre, 2020, <https://www.rferl.org/a/bosnia--mostar-first-local-elections-12-years/31009970.html>.

76 The Association "Vaša prava BiH", "Poziv vlastima da poštuju obaveze iz Evropske konvencije o ljudskim pravima i osnovnim slobodama" - "An Appeal to the authorities to respect their obligations under the European Convention on Human Rights and Fundamental Freedoms", The Association "Vaša prava BiH", accessed 25 Decembre, 2020, <https://vasaprava.org/?p=3106>; The Association "Vaša prava BiH", "Apel Vijeću ministara BiH za stavljanje Odluke o ograničenju kretanja i boravka stranaca u Bosni i Hercegovini od 16.04.2020. godine van snage" - "Appeal to the Council of Ministers of BiH for placing the Decision on restriction of movement and stay of foreigners in Bosnia and Herzegovina from 16.04.2020 out of force", the Association "Vaša prava BiH", accessed 25 Decembre, 2020, <https://vasaprava.org/?p=3124>.

77 Constitutional Court of Bosnia and Herzegovina, "Decision on Admissibility and Merit", Constitutional Court of Bosnia and Herzegovina accessed 25 Decembre, 2020, http://www.ustavnisud.ba/dokumenti/_bs/AP-1217-20-1234093.pdf; Constitutional Court of Bosnia and Herzegovina, "Decision on Admissibility and Merit", Constitutional Court of Bosnia and Herzegovina, accessed December 25, 2020, http://www.ustavnisud.ba/dokumenti/_bs/AP-3683-20-1262390.pdf.

78 Council of Europe, "Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) - Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic", Council of Europe, accessed December 25, 2020, <https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354>.

79 Constitutional Court of Bosnia and Herzegovina, "Decision on Admissibility and Merit", Constitutional Court of Bosnia and Herzegovina accessed 25 Decembre, 2020, http://www.ustavnisud.ba/dokumenti/_bs/AP-1217-20-1234093.pdf.

Furthermore, there is non-compliance with the BiH Law on Personal Data Protection and related well-established international standards regarding decisions of various levels of government to disclose personal data of persons positive with Covid-19 and those prescribed self-isolation measures.⁸⁰ In that regard, the BiH Personal Data Protection Agency determined that government authorities, by failing to establish a safeguard legal procedure for processing personal data, infringed citizens' rights protected under the BiH Personal Data Protection Law.⁸¹ These actions of the government authorities and the provided legal reasoning of the BiH Personal Data Protection Agency clearly point to a conclusion that there also was a violation of patients' rights to privacy protected by article 8 (Right to respect for private and family life), which further led to discriminatory treatment of persons positive with Covid-19 prohibited by Article 14 (Prohibition of discrimination) of the European Convention on Human Rights⁸²

Free legal aid is a major defining condition when considering whether the right of access to a court as an integral part of the right to a fair trial under Article 6 of the Convention is granted to all citizens, especially those in social need. The European Court of Human Rights in its judgement in the case of *Airey vs. Ireland* clearly stated that when necessary, free legal aid has to be provided to the citizens because otherwise the Convention rights would remain illusory.⁸³ Although the legislative framework defining the scope of application of free legal aid has been almost formally completed, there is a determined high level of fragmentation among the laws adopted so far, further leading towards inequality among citizens in access to free legal aid. There is currently lacking a law on free legal aid in the Central Bosnia Canton, as well as a harmonizing law at the level of the BiH Federation. Specifically, the level of rights under the access to free legal aid depends on the place of residence of citizens, thus putting them in an unequal position.⁸⁴ Furthermore, the legally defined socially vulnerable status of citizens as a condition for exercising the right to free legal aid is differently defined in different cantons (e.g. legal definitions of citizens in social need and / or unemployed citizens and / or citizens status in poor financial situation).⁸⁵ It is important to emphasize here that the BiH courts, even the judges in the same court, do not have harmonized reasoning of the relevant legislation when deciding on granting the right to access to courts to NGOs specialized in the field of free legal aid.⁸⁶ There are voices within this community which claim that this is done by purpose when avoiding deliberating in cases of great political importance. In favor of this was a case when the court did not grant *locus standi* to the Association "Vaša prava BiH".⁸⁷ In this particular case, the court did not even provide the Association as the party's legal representative with information on the denial of *locus standi* status. Instead, it sent the information directly to the (lay) party represented by the Association "Vaša prava BiH", eventually causing the appeal deadline to expire.

80 Personal data Protection Agency, "Saopštenje za javnost: o nezakonitosti generalnog i proaktivnog objavljivanja ličnih podataka lica koja ne postupaju u skladu sa mjerama zabrane u vezi pandemije virusa korona", accessed January 13, 2021, http://azlp.ba/saopstenja/Archive.aspx?langTag=bs-BA&template_id=149&pageIndex=1.

81 Ibid.

82 Platforma za progress, "Zašto smo protiv objavljivanja ličnih podataka tokom pandemije?", accessed January 13, 2021, <https://platformaprogres.ba/clanak/1585846686/zasto-smo-protiv-objavljivanja-licnih-podataka-tokom-pandemije>.

83 European Court of Human Rights, case of *Airey versus Ireland*, European Court of Human Rights, accessed December 25, 2020, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57420%22%7D>.

84 The Association "Vaša prava BiH", "Analiza propisa kojima se uređuje pristup pravu na besplatnu pravnu pomoć u BiH i položaj pojedinih kategorija stanovništva u ovom sistemu" - "Analysis of Regulations Governing Access to the Right to Free Legal Aid in BiH and the Position of Certain Categories of the Population in this System" (Sarajevo: The Association "Vaša prava BiH", 2020), p. 6.

85 The Association "Vaša prava BiH", "Analiza propisa kojima se uređuje pristup pravu na besplatnu pravnu pomoć u BiH i položaj pojedinih kategorija stanovništva u ovom sistemu" - "Analysis of Regulations Governing Access to the Right to Free Legal Aid in BiH and the Position of Certain Categories of the Population in this System" (Sarajevo: The Association "Vaša prava BiH", 2020), p. 8.

86 The Association "Vaša prava BiH", "Lawsuit for annulment of an administrative act of the Ministry of November 27. 2020. - plaintiff's representative: The Association "Vaša prava BiH", The Association "Vaša prava BiH", 2020.

87 The Cantonal Court in Zenica, "Letter on denial of locus standi status to the Association "Vaša prava BiH" dated 11 November 2020", The Cantonal Court in Zenica.

The treatment of the issue of gender equality as well as categories of vulnerable groups such as people with disabilities, migrants, asylum seekers, refugees, children and LGBTI+ people is very questionable in terms of available protection mechanisms as well as the responsiveness of state authorities in implementing international standards.⁸⁸

When assessing the quality of treatment of **people with disabilities**, there is a long-lasting recognized violation of human rights in particular of people with mental illness unlawfully detained in social care institutions.⁸⁹ In favor of this is the fact that execution of the European Court's judgement in the case of *Hadzimejlić and others vs. BiH* lasts more than five (5) years.⁹⁰ If we take into account the whole time period that passed from 2007 when the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment determined the lack of safeguards for the procedures of detention of people with mental illness, simultaneously recommending to Bosnia and Herzegovina to improve them, we see 13 years of inactivity of relevant state authorities concerning the systematic violation of human rights.⁹¹ There are also findings regarding the treatment of people with disabilities repeated in several European Commission country progress reports expressing a concern on the status-based defining (discriminatory) approach when determining the level of guaranteed support (e.g. war veterans and civilian victims of war are prioritized).⁹² In terms of the emergency situation caused by the Covid-19 pandemic, the first imposed restrictions on the freedom of movement of persons under the age of 18 and over 65 had a severe impact on persons and children with disabilities.⁹³ This is due to the fact that the mentioned restrictions did not provide for a special regime of freedom of movement for the mentioned vulnerable groups.

Bearing in mind that the increased inflow of **migrants** (most of them in irregular status), **asylum seekers and refugees** in Bosnia and Herzegovina in 2018 and 2019 caused human rights crises throughout the country, we can conclude that state authorities were and still work at under capacity levels, also pointing to a complete lack of a state driven responses to the migration crisis. Supporting this is the fact that all 12 open reception centers existing in 2018 were governed by international organizations.⁹⁴ Constitutional fragmentation of the country also disables any attempt of central government institutions to take serious steps in managing the migrant situation that is subjected to day-to-day changes. As a key example, the lack of resources of the Una-Sana Canton local authorities to deal with such a situation and the absence of significant support from the central government or other levels of self-governing administrative levels has been evident. It suggests an attempt to protect citizens' place of residence from an uncontrolled rush of numbers of migrants.⁹⁵ With regard to the protection of asylum seekers, the European Commission emphasized that the authorities must urgently address existing administrative barriers in the procedures for registering asylum applications, as well as restricting the movement of potential asylum seekers.⁹⁶ At the very beginning of the pandemic, migrants faced discriminatory bans on movement, which allegedly aimed to prevent the further spread

88 In order to establish a single research methodological framework, and also on the basis of a list defining the categories of vulnerable groups provided on the following Council of Europe website <https://www.coe.int/en/web/europarisks/vulnerable-groups> and the outcomes of the SEELD conference 2.0 (organized by civil rights defenders and held from 9 to 11 November 2020), a group of experts engaged in the development of four (4) policy papers (each for a specific country - Albania, Bosnia and Herzegovina, Kosovo* and Serbia) jointly decided to analyze the issue of gender equality along with the following exclusive categories of vulnerable groups: persons with disabilities, migrants, asylum seekers, refugees, children and LGBTIQIA + persons.

89 European Commission, Bosnia and Herzegovina 2020 Report. (Brussels: European Commission, 2020), p. 32.

90 Council of Europe, "Country Factsheet", Accessed December 25, 2020, <https://rm.coe.int/1680709741>.

91 European Court of Human Rights, "Case of Hadzimejlić and Others versus Bosnia and Herzegovina" (Strasbourg: European Court of Human Rights, 2016), p.7.

92 European Commission, Bosnia and Herzegovina 2020 Report. (Brussels: European Commission, 2020), p. 33.

93 Federal Hedqouter of Civil Protection, "Naredba, broj: 12-40-6-148-34/20 od 20.03.2020. godine", accessed January 13, 2021, <http://www.fucz.gov.ba/wp-content/uploads/2020/04/12-40-6-148-34-20.pdf>; Federal Hedqouter of Civil Protection, "Naredba, broj: 12-40-6-148-34-2/20 od 03.04.2020. godine", accessed January 13, 2021, <http://www.fucz.gov.ba/wp-content/uploads/2020/04/12-40-6-148-34-20.pdf>.

94 UNDP, "Azurirani meduagencijski operativni podaci - Situacija sa izbjeglicama i migrantima - Bosna i Hrecegovina" - "Updated interagency operational data - Situation with refugees and migrants - Bosnia and Herzegovina", accessed December 25 2020, UNDP, <https://www.google.com/search?q=A%C5%BDURIRANI+ME%C4%90UJAGENCIJSKI+OPERATIVNI+PODACI+%3E+Bosna+i+Hercegovina&oq=A%C5%BDURIRANI+ME%C4%90UJAGENCIJSKI+OPERATIVNI+PODACI+%3E+Bosna+i+Hercegovina&aqs=chrome.69i59.485j0j4&sourceid=chrome&ie=UTF-8>.

95 Radio Slobodna Evropa, "Ministar sigurnosti BiH ponovo pozvao vlasti USK da otvore migrantski kamp Bira" - "The BiH Minister of Security again called on the USC authorities to open the Bira migrant camp", Radio Slobodna Evropa, Accessed Decembre 25, 2020, <https://www.slobodnaevropa.org/a/31015131.html>.

96 European Commission, Bosnia and Herzegovina 2020 Report. (Brussels: European Commission, 2020), p. 34.

of Covid-19, forcing them not to leave reception centers.⁹⁷ Specifically, this BH government's decision completely lacked the legitimate aim pursued, further causing a violation of their rights under Article 5 and Article 14 of the Convention.⁹⁸ In addition, it has been observed that hate speech towards migrants became stronger with the pandemic.⁹⁹ Positive developments were recorded in the field of the right to education of asylum-seeking children and in regards to the significant role of local nongovernmental organizations in providing various services to those in need.¹⁰⁰

It seems that the number of competent institutions authorized in Bosnia and Herzegovina to deal with the protection of **the rights of a child** does not correspond to the expected level of achieved human rights protection standards, especially if we put all the constitutional complexity in perspective of the requirements for a harmonized response to the full securement of all rights for children. All relevant national and international reports assess the situation in this particular field of human rights protection rather as continuously challenging without significant steps being taken to improve the current state of the rights of a child. The determined shortcomings within the field of the protection of the rights of a child mainly reflects a lack of capacity of centers for social welfare and of multisectoral approach while poverty still remains the burning issue.¹⁰¹ Marginalized groups, such as Roma children face multiple discrimination in the form of inability to be register in the registry books, which makes them legally non-existent, and further prevents them from exercising their rights to compulsory education and healthcare.¹⁰² There is a recognized need for improvement of the system of categorization of children with special needs, which directly determines the proper exercising of their rights to education.¹⁰³ The problem of peer violence in schools continues, while institutional treatment of minors in conflict with the law urgently needs further improvements by adjusting to the needs of minors themselves.¹⁰⁴

When considering the situation in the field of **gender equality**, it derives that there is still a existing gap in favor of man, mainly related to political representation and wages.¹⁰⁵ Statistics on wages and the unemployment rate show that women earn up to 85% of a man's salary in the same job, while 13.6% of men and 18.8% of women are unemployed.¹⁰⁶ In addition, the enforcement of non-discrimination laws in practice remains low. A recorded positive development is that Bosnia and Herzegovina has adopted a 2018-2022 gender action plan.¹⁰⁷ Gender based violence is still an issue of permanent nature, requiring a synchronized adoption of amendments and laws in different fields directly related to the criminal legislation framework.¹⁰⁸ The 2019 BiH Progress Report on the Implementation of the Beijing Declaration and Platform for Action 2019 confirmed that the main challenges are reflected in the existence of economic gender inequalities, while in strategic terms, the lack of horizontal and vertical inter-institutional coordination hinders full implementation of the Istanbul Convention.¹⁰⁹ In addition, the pandemic had negative impacts on the ongoing processes within the gender equality discussion. This in the sense that the funds intended for the implementation of women's sexual and reproductive rights are redirected for other purposes and the fact that the government has stopped the process of harmonizing

97 The Association "Vaša prava BiH", "Apel Vijeću ministara BiH za stavljanje Odluke o ograničenju kretanja i boravka stranaca u Bosni i Hercegovini od 16.04.2020. godine van snage"- "Appeal to the Council of Ministers of BiH for adopting the Decision on restriction of movement and stay of foreigners in Bosnia and Herzegovina from 16.04.2020 out of force", the Association "Vaša prava BiH", accessed 25 Decembre, 2020, <https://vasaprava.org/?p=3124>

98 Ibid.

99 Media diversity Institute, "Vaša prava BiH", "Bosnian Media: Killing Migrant Solidarity with Hate Speech", accessed January 12, 2020, <https://www.media-diversity.org/bosnian-media-killing-migrant-solidarity-with-hate-speech/>.

100 Human Rights Council of the United Nations, "Visit to Bosnia and Herzegovina - Report of the Special Rapporteur on the human rights of migrants" (United Nations, 2019), p. 10.

101 UNICEF, "Action Plan for Children 2015.-2018. - Poverty remains the biggest problem", UNICEF, accessed December 25, 2020, <https://www.unicef.org/bih/en/stories/action-plan-children-2015-2018-poverty-remains-biggest-problem>.

102 Edita Avdićbegović, Bakir Mrkonja, Peda Đurasović, „Pravna analiza primjene instituta upisa u matične knjige rođenih u Bosni i Hercegovini“ – „Legal analysis of the application of the institute of registration in the registers of births in Bosnia and Herzegovina“ (Sarajevo: The Association "Vaša prava BiH", 2020).

103 Institution of Ombudsman for Human Rights of Bosnia and Herzegovina, "Annual report on the results of the activities Human rights ombudsman institutions Of Bosnia and Herzegovina for 2019"(Institution of Ombudsman for Human Rights of Bosnia and Herzegovina, 2017), p.92.

104 Institution of Ombudsman for Human Rights of Bosnia and Herzegovina, "Annual report on the results of the activities Human rights ombudsman institutions Of Bosnia and Herzegovina for 2019"(Institution of Ombudsman for Human Rights of Bosnia and Herzegovina, 2017), p.11.

105 European Commission, Bosnia and Herzegovina 2020 Report. (Brussels: European Commission, 2020), p. 8.

106 Ibid.

107 European Commission, Bosnia and Herzegovina 2020 Report, (Brussels: European Commission, 2020), p. 31.

108 European Commission, Bosnia and Herzegovina 2020 Report, (Brussels: European Commission, 2020), p. 32.

109 Gender Equality Agency of Bosnia and Herzegovina, "Progress report on the implementation of the Beijing Declaration and Platform for Action in BiH within the Beijing +25 process", (Gender Equality Agency of Bosnia and Herzegovina, 2019), p. 9.

gender equality laws with the latest EU gender directive.¹¹⁰ The local gender action plans were adopted only by a few local governments. Although the first pride parade was held in Sarajevo, Bosnia and Herzegovina has not made any further progress in terms of adopting an action plan for equality of **LGBTI+** (lesbian, gay, bisexual and transgender) persons. Bosnia and Herzegovina also lacks the legislative framework that enables same sex couples to exercise rights deriving from the European Convention on Human Rights.¹¹¹ The state legal system is missing the relevant regulations recognizing economic and social rights as well as the right to family life of same-sex couples.¹¹² The expected response of the judiciary to the prosecution of hate crimes committed against LGBTI + persons is still inadequate, while special attention of prosecutors should be paid to the legal qualification of committed crimes.¹¹³ Discriminatory practices based on sexual orientation are still very much present in various fields of everyday life and there are no judgments establishing this particular form of discrimination.¹¹⁴ The process of changing genders in official documents puts an excessive burden for transgender people in Bosnia and Herzegovina because it is conditioned by complete medical treatment of gender reassignment at their own expense.¹¹⁵ It seems that the above-mentioned Covid-19 restrictions exposed LGBTIQ+ to such surroundings in which they could not fully live with their identities and were exposed to further stigmatization even by their household members, ultimately causing them additional psychological difficulties.¹¹⁶

The right to Freedom of Assembly and Association¹¹⁷ is an indivisible and integral part of all other political rights and is guaranteed under Article 11 of the European Convention on Human Rights and Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and is essential for political diversity and pluralism in a democratic state. In this regard, the European Court of Human Right, in its judgement in the case of *Barankevich v. Russia* has stated that "the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of thought, conscience and religion, one of the foundations of such a society (...). The right to freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals participants of the assembly and by those organizing it (...). States must refrain from applying arbitrary measures capable of interfering with the right to assemble peacefully. (...)". When considering the legal framework in Bosnia and Hercegovina governing the freedom of assembly, it can be concluded that there is, although highly fragmented, an established legislation that provides the scope of practical application of that freedom.¹¹⁸ Specifically, there are 12 different laws regulating the right to freedom of assembly adopted at 12 different levels of self-governing units in Bosnia and Herzegovina (state level, two entity levels, but in terms of one, the entity of BiH Federation composed of 10 cantons that each passed their own laws and the BiH Brčko District), all with minor differences from the same pattern used to produce those laws.¹¹⁹ The main deficiencies and obstacles in full implementation of these laws were predominantly recognized in terms of existing practice in their application. There is a permanent issue of physical and verbal attacks on activists dealing with sensitive issues (e.g. women's and LGBT rights), very often of great political importance.¹²⁰ The following directs to a conclusion that Bosnia and Herzegovina did not make any progress when it comes to addressing key

110 Panelist Ms Vladana Vasić, Coordinator at NGO "Sarajevo Open Centre", SEELD 2.0 Conference, organized by Civil Rights Defender on 9-15 November.

111 European Commission, Bosnia and Herzegovina 2020 Report, (Brussels: European Commission, 2020), p. 33.

112 Ibid.

113 European Commission, Bosnia and Herzegovina 2020 Report, (Brussels: European Commission, 2020), p. 53; Sarajevo Open Centre, Pink Report 2020 Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina, accessed January 12, 2021, <https://soc.ba/site/wp-content/uploads/2020/07/Pink-report-2020-FINAL-web-1.pdf>.

114 Darko Pandurević, Delila Hasanbegović, Jozo Blažević, Nejra Agić, Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina (Sarajevo: Sarajevo Open Centre, 2020).

115 Ibid.

116 Panelist Ms Vladana Vasić, Coordinator at NGO "Sarajevo Open Centre", SEELD 2.0 Conference, organized by Civil Rights Defender on 9-15 November.

117 Experts engaged in the development of the policy papers (each for a specific country - Albania, Bosnia and Herzegovina, Kosovo* and Serbia) jointly decided that each of them analyses the issue (arising from this topic) relevant to his/her country. Below is a link to the United Nations document "Rights to Freedom of Peaceful Assembly and Association" clarifying which issues exclusively fall within the scope of freedom of assembly and association https://www.ohchr.org/Documents/Issues/FAAssociation/A_68_299_en.pdf.

118 European Court of Human Rights, "Case of Barenkevich v. Russia", European Court of Human Rights, accessed December 25, 2020, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Barankevich%20v.%20Russia%22%22%5D%22%5B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%5D%22%5B%22itemid%22:%5B%22001-81950%22%5D%22%5D%7D>.

119 European Commission, Bosnia and Herzegovina 2020 Report, (Brussels: European Commission, 2020), p. 30.

120 Ibid.

priority 11 on ensuring an enabling environment for civil society, notably by upholding European standards in this field.¹²¹ In this regard, the discriminatory behavior of authorities regarding the organization of the second Pride Parade as a form of peaceful assembly in Sarajevo is very indicative. Specifically, despite the fact that the organizing board of the BiH Pride Parade in a legally prescribed procedure submitted a request for issuing consent for temporary change of traffic regime on the route of the parade, the cantonal Ministry of Transport, by its decisions, refused to give the requested consent.¹²² The government of the Canton Sarajevo, as the appeal body, quashed the cantonal ministry's discriminatory decision, invoking the incompetence of the said ministry to decide in this legal matter.¹²³ This leads to the conclusion that the manipulation of the institutions' competences is still present with the aim of preventing human rights for all. The restriction of the right to freedom of assembly has also been recorded in the entity of the Republika Srpska by not enabling the movement "Pravda za Davida" to peacefully organize gatherings in Banja Luka with the aim of urging authorities to uncover all circumstances of the case of the disappearance and murder of David Dragičevića.¹²⁴ Even the competent Basic court in Banja Luka reached a decision in which it concluded that the defended, the entity of Republika Srpska, through the Ministry of Interior and members of the police force, violated the constitutional rights of plaintiffs as members of the movement "Pravda za Davida", also by harassing and humiliating them, ultimately violating their dignity.

Looking at all the above analyzed topics falling within the field of human rights protection, a few common points emerge in terms of assessing the current state of institutional responses. Although it derives that an institutional setting has been established, a clear conclusion is drawn that the human rights protection is captured in a **"continuously problematic situation - stagnation (class D)"**.

Recommendations:

- Implement all judgments of the European Court of Human Rights without further delay, especially those systematically affecting the rights of citizens.
- Adopt the missing law on free legal aid and harmonize all laws on free legal aid throughout Bosnia and Herzegovina to ensure equal rights of all citizens to access free legal aid.
- Harmonize the legal reasoning of courts regarding the interpretation of the rights of non-governmental organizations to provide free legal aid.
- Adopt and implement the legal safeguards imposed by *the European Court of Human Rights in Hadžimajlić and others v. Bosnia and Herzegovina* on the detention procedures of persons with mental illness without further delay and remove all discriminatory provisions when determining the level of guaranteed support for all groups of persons with disabilities.
- Harmonize all levels of government in Bosnia and Herzegovina aimed at providing a unified and comprehensive state-driven response to the migrant crisis.
- Increase the capacities of social welfare centers and provide a platform for a multisectoral approach to address the increased needs for the protection of children's rights; Ensure all the newly born children are registered, consequently providing them with the right to compulsory education and healthcare.

- Address the problem of existence of peer violence in schools and adjust the institutional treatment of minors in conflict with the needs of their age.
- Continue to apply all national and international standards with the aim of improving gender equality and the state of the rights of the LGBTI+ persons and also adequately address the issue of gender based and sexual orientation-based violence.
- Adopt a legislative framework that enables LGBTI+ persons to exercise rights deriving from the European Convention on Human Rights.
- Ensure a good environment for civil society, notably by upholding European standards in the field of implementing the right to Freedom of Assembly and Association.

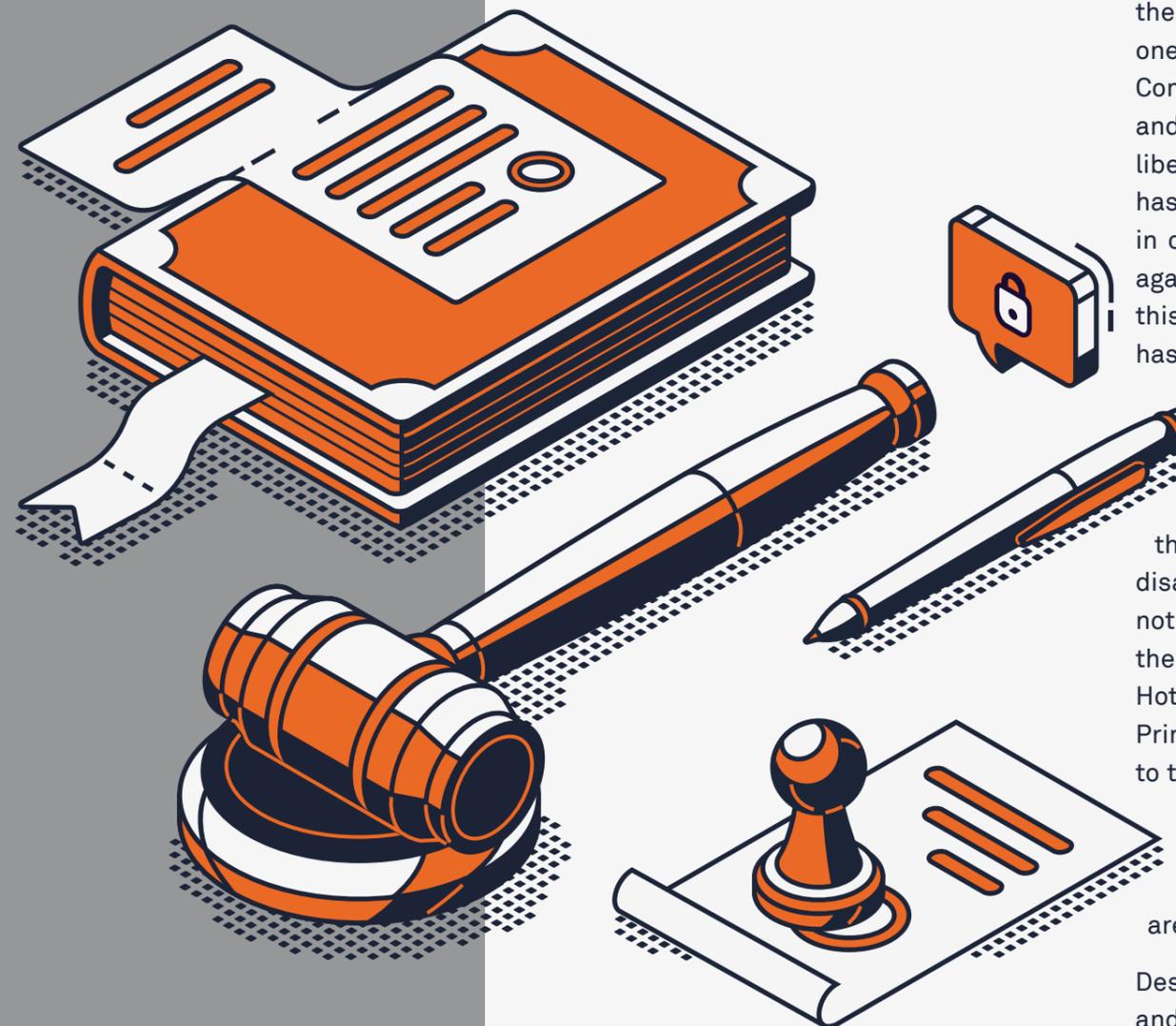
¹²¹ European Commission, Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, (Brussels: European Commission, 2019), p. 15.

¹²² BH Povorka Ponosa2020, "Uvažena žalba Bh. povorka ponosa: Ministarstvo saobraćaja nije smjelo zabraniti zaustavljanje saobraćaj", accessed January 13, 2021, <https://povorkaponosa.ba/2021/01/06/uvazena-zalba-bh-povorka-ponosa-ministarstvo-saobracaja-nije-smje-lo-zabraniti-zaustavljanje-saobracaja/>.

¹²³ Ibid.

¹²⁴ European Commission, Bosnia and Herzegovina 2020 Report, (Brussels: European Commission, 2020), p. 11.

03



KOSOVO

Assessment of the State of Rule of Law in Kosovo
 Author: Ms. Rreze Hoxha Zhuja, LL.M

1. INTRODUCTION

February 2021 will mark the 13th year of Kosovo's declaration of independence. Although Kosovo has more than 100 states recognizing its independence, some member states of the European Union have not. In April 2016, Kosovo signed the Kosovo Stabilization and Association Agreement (SAA) with the EU, an agreement which serves as a useful tool to guide the implementation of EU-related reforms in the SAA context. On the other hand, Kosovo is one of the countries which continues to have a visa ban to the Schengen Zone. Although, the Commission has confirmed that Kosovo has fulfilled all benchmarks endorsed by the Council, and the European Parliament confirmed its support for the Commission's proposal for visa liberalization, the proposal is pending in the Council. On the other hand, the Covid-19 pandemic has shocked Kosovo's health system, economy, and rule of law too. Measures were introduced in order to prevent the spread of the pandemic and emergency packages were adopted. Yet again, the pandemic has caused tremendous damages in all sectors in the country. To add to this aggravated situation, during 2020, two Governments have fallen and the political situation has never been worse. Following the resignation of the then Prime Minister Ramush Haradinaj in July 2019 due to an invitation from the Specialist Prosecutor's Office, early legislative elections took place in October 2019, with a higher turnout than the previous elections. After several discussions, the Assembly was constituted in December 2019 and a new government headed by Prime Minister Albin Kurti was formed on 3 February 2020. However, this government was dismissed after less than two months, by a no-confidence vote, following disagreements between the coalition partners. The vote of no-confidence led to a political crisis, notably over the constitutional procedures regarding the formation of a new government. After the Constitutional Court clarified the issue, a new government led by Prime Minister Avdullah Hoti took office on 3 June 2020 only to be declared unconstitutional on December 21st. Currently, Prime Minister Hoti and his government are an incumbent government until new elections are to take place on February 14, 2021. What's more, the President, Hashim Thaqi, was arrested by the Specialist Prosecutor's Office and charged under alleged allegations for war crimes. Currently, the Head of the Assembly Vjosa Osmani is the acting President of Kosovo. All of the above, have directly created the institutional dysfunction and instability that troubles all areas, especially the rule of law.

Despite the political instability, Kosovo's institutions shall guarantee fundamental freedoms and protection of human rights by all means, as enriched in the Constitution and domestic laws. Failure to ensure the protection of human rights represents a serious threat to the basic principles of democracy. This report provides an overview of the existing problems faced by Kosovars in access to justice, information, with special focus to vulnerable groups. The main findings of this analysis are that the current state of rule of law is still in a problematic situation with a tendency to improve. The judiciary performance remains unsatisfactory even though reforms are taken to address the main challenges. Corruption remains widespread and lack of coordination amongst institutions remains a serious problem. Media and freedom of expression lack financial self-sustainability and remain vulnerable towards political and business interests. Human rights protection is in a state of having a functional institutional framework but still lacking implementation of laws.

2. ASSESSMENT ANALYSIS

2.1 Judiciary

Standards

Kosovo is governed based on the principle of separation of powers and checks and balances whereas the Assembly exercises the legislative power, the government implements the laws and the courts exercise the judicial power.¹ Kosovo's legal framework broadly guarantees the protection of human and fundamental rights in line with European standards. Kosovo is not a member state of international human rights bodies and organizations, and is not directly supervised by them. Nevertheless, the Constitution of the Republic of Kosovo guarantees the direct applicability of international agreements and instruments, giving them priority over any provisions of laws and other acts of public institutions.² Chapter II of the Constitution of the Republic of Kosovo has enumerated the fundamental rights and freedoms of people of Kosovo. Amongst these principles are clear guidelines which must be followed from the judiciary regarding the rights of the accused, the right to legal remedies, the principle of legality and proportionality in criminal cases and the right to not be tried twice for the same criminal act.³ Article 31 of the Constitution of the Republic of Kosovo has included Article 6 of the European Convention on Human Rights and established as a constitutional principle the right to a fair and impartial trial.⁴ What's more, Chapter VII and VIII lists the general principles of the judiciary, its organization and jurisdiction, the processes of appointment and removal of judges, their mandate, incompatibility and immunity, including the regulation of the Kosovo Judicial Council, Kosovo Prosecutorial Council, State Prosecutor, Advocacy and the Constitutional Court; offering a constitutional regulation and clear guiding principles on how must the Judiciary function.⁵ The independence and impartiality of the judiciary and quality and efficiency of justice presents the constitutional ground rules of the functioning of the judiciary. Such regulation is diffused in the national laws as well. The law regulating the establishment and organization of the Kosovo Judicial Council⁶, the law on Kosovo Prosecutorial Council⁷, the law on Courts⁸, the law on State Prosecutor⁹ have all been drafted to respect and apply the constitutional principles of the judicial system. Transparency and accountability are essential to ensure trust in the system, and as such have been included in the legislative framework of the judiciary. Council's meetings and court hearings are open to the public, unless otherwise foreseen by law.¹⁰ What's more, Kosovo not only has a Law on Access to Public Documents¹¹ but access to documents related to the work of the judiciary is also regulated by law. The system's transparency is an obligation and not an option.

2.2 Assessment

Independence

Kosovo's legal framework has created different mechanisms and has provided clear safeguards for the independence and impartiality of the judiciary, but implementation lags in practice. Its implementation is often undermined by political interference, slow and inefficient administration, widespread judicial corruption, and a lack of qualified professionals which hinder the performance of the judiciary and the legal certainty.¹² The public perceives courts and prosecution as highly influenced by politics.¹³ Moreover, the rule of law sector has undergone so many reforms, yet, it has serious deficiencies regarding its quality, independence and impartiality from political actors and effectiveness in enforcing the law.¹⁴ Kosovo's civil society has been very vocal on arguing that the essence of the malfunctioning of the system is not laws, nor structure, nor procedure considering that the country has undergone many reforms resulting in legislative changes, creation of new mechanisms or their abolition, as well as the rearrangement of competences within several institutions.¹⁵ The essence is about the lack of ethics, professionalism, integrity, independence and impartiality of professionals engaged in the system without excluding the lack of courage to punish political elites to those reasons such as capturing from partisan interests. Hence, Kosovo's civil society has argued that rather than having reforms addressing subsidiary issues and ignoring essential ones, the rule of law sector must undergo a reform that puts into review the ethical integrity, professional standing and impartiality of the judiciary through a vetting process.¹⁶

Considering the ongoing debate on the necessity of having a vetting process, in 2020, the Kurti Government followed by the Hoti Government have undertaken concrete steps on designing a proposal with concrete scenarios on how a vetting reform should be manifested. It is still early to evaluate the result of such work due to it still being unfinished. Yet, one must recall that the role of the government on this aspect would be to create or empower such mechanisms which would effectively shield the judicial system from undue pressure and interference. But with the frequent change of Governments, such a process seems impossible to accomplish.

On the other hand, the Kosovo Judicial Council and the Kosovo Prosecutorial Council are the mechanisms with the mandate to react in cases of alleged political interference in the prosecution and the judiciary. On this note, protective measures to ensure the safety of judges and prosecutors are the responsibility of the two Councils. One prosecutor was granted protection at the beginning of 2020 and two prosecutors are under close protection granted earlier. The 2018 scandal provoked by the resignation of the Special Prosecutor, Elez Blakaj¹⁷, after complaining about helplessness against political pressure and involvement of high level officials in granting veteran status to more than 20,000 unqualified recipients, remains the main example to illustrate the political influence, and the lack of independence of the judiciary in Kosovo. Furthermore, both Councils have been accused of a lack of accountability, the Kosovo Judicial Council in the appointment process of judges for the Special Department¹⁸ and the Kosovo Prosecutorial Council for inside deals to appoint Chief Prosecutors to Basic Prosecution Offices in Kosovo and for refusing to acknowledge the applicability of the Law on Conflict of Interest on its institution.¹⁹

¹² Freedom House, 'Freedom in the World 2020', Kosovo, via: <https://freedomhouse.org/country/kosovo/freedom-world/2020>

¹³ Group for Legal and Political Studies, 'Rule of Law Performance Index in Kosovo', November 2020. Via: http://www.rolpik.org/wp-content/uploads/2020/12/RoLPIK6_EN.pdf

¹⁴ EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

¹⁵ Group for Legal and Political Studies, 'Rule of Law Performance Index in Kosovo', November 2020. Via: http://www.rolpik.org/wp-content/uploads/2020/12/RoLPIK6_EN.pdf

¹⁶ Arberesh Info. 'GLPS: Pezullimi i procesit te vettingut ne sistemin e drejtesise eshte tregues i degradimit qe vazhdon ti behet sundimit te ligjit ne Kosove/ GLPS: Suspension of the vetting process in the justice system is an indicator of the degradation that continuous to be done to the rule of law in Kosovo'. July 2020. Via: <https://www.arberesh.info/lajmet/glps-pezullimi-i-procesit-te-vetingut-ne-sistemin-e-drejtesise-eshte-tregues-i-degradimit-qe-vazhdon-ti-behet-sundimit-te-ligjit-ne-kosove/>

¹⁷ EU Office in Kosovo. 'EU office in Kosovo after prosecutor's resignation: Statements of some politicians and prosecutors undermine the key principles of the rule of law'. Press Release, August 2018. Via: <https://kossev.info/eu-office-in-kosovo-after-prosecutors-resignation-statements-of-some-politicians-and-prosecutors-undermine-the-key-principles-of-the-rule-of-law/>

¹⁸ Koha.net. 'GLPS and Justice Today sued KJC'. September 2018. Via: <https://www.koha.net/arberi/182516/glps-ja-dhe-drejtesia-sot-paraqes-in-padi-ndaj-kgjk-se/>

¹⁹ Justice Today. 'Two prosecutors are exercising the position of KPC member unconstitutionally and illegally'. December 2020. Via: <http://www.rolpik.org/dy-prokurore-po-e-ushtrojne-ne-menyre-kunderkushtetuese-dhe-te-kunderligjshme-poziten-e-anetarit-te-kpk-se/>

¹ Assembly of Kosovo. 'Constitution of the Republic of Kosovo', Article 4, via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

² Assembly of Kosovo. 'Constitution of the Republic of Kosovo', Article 22, via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

³ Ibid. Article 30, 32, 33, 34.

⁴ Ibid. Article 31.

⁵ Ibid. Chapter VII and VIII.

⁶ Assembly of Kosovo. 'Law No. 06/L-055 On Kosovo Judicial Council', via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18335>

⁷ Assembly of Kosovo. 'Law No. 06/L-056 On Kosovo Prosecutorial Council', via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2709>

⁸ Assembly of Kosovo. 'Law No. 06/L-054 On Courts', via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302>

⁹ Assembly of Kosovo. 'Law No.03/L-225 On State Prosecutor', via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2710>

¹⁰ Assembly of Kosovo. 'Law No. 06/L-056 On Kosovo Prosecutorial Council', Article 14. and 'Law No. 06/L-054 On Courts', Article 7. Via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2709> and <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302>

¹¹ Assembly of Kosovo. 'Law No.03/L-215 on Access to Public Documents'. Via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2724>

Such actions, call into question the Councils will to protect judges and prosecutors from outside influence. Moreover, in several cases, judges have been accused of official corruption.²⁰ The judiciary, although formally independent of political institutions, struggles to independently exercise its authority.

Transparency and Accountability

Kosovo has long struggled with communication challenges between its judiciary and its citizens. Both Councils, courts and prosecution offices lack on implementing such regulation. Judges have held closed court hearings without a justified decision and in high profile cases. These practices go against good judicial practices. The Covid-19 pandemic has worsened the situation even more and citizens, civil society and media did not have access to monitor cases and report on them. Both Councils are established based on constitutional provisions, hence they claim there should be no evaluation or real checks and balances regarding their work making it a challenge to evaluate their institutional performance regarding their institutions. A positive step was taken towards increasing transparency and accountability in 2020 when the Kosovo Judicial Council (KJC) launched the Judicial Performance Dashboard with the aim of increasing transparency in the judicial system.²¹ The Performance Dashboard provides public access to court and individual judge performance data, allowing citizens to monitor the work of the justice system without leaving their homes.

Regarding individual accountability of judges and prosecutors, the councils have a very formalistic approach towards measuring efficiency within the system. As of July 2019, disciplinary procedures are conducted in accordance with the new Law on Disciplinary Liability of Judges and Prosecutors, which provides for more robust and clear disciplinary mechanisms with set deadlines and a clear division of powers and responsibilities.²² Although it is early to evaluate its implementation, there are no cases of dismissal of any judges or prosecutors, just cases of suspension due to allegations of criminal activity.²³ Moreover, performance evaluation is formulaic and does not take into account the real output of each employee.²⁴ On this note, the Councils do not provide enough data to the public and other relevant interlocutors regarding the disciplinary measures imposed.²⁵

Quality and Efficiency of Justice

The performance of courts and the quality and efficiency of the judiciary has not improved during the past years. One must note that when assessing the quantitative aspect of the performance of the courts, it can certainly be declared that 2017 and 2018 had been better years than 2019 regarding the average of cases resolved.²⁶ The 2017 data show that the Basic Courts have resolved a higher percentage of cases, in total 1153 resolved cases, than the average of new cases, in total 794.²⁷ The same applies for 2018 where the average of resolved cases is 582 and the average of new cases received in the courts is 361.²⁸ The 2019 data show that the average of resolved cases stands to 360 and the average of new cases received stands at 283, which is higher regarding the efficiency of the courts to resolve more cases than the number they admit.²⁹ Nevertheless, if we compare the average of the cases resolved between the years, one can notice that the average, instead of increasing, is decreasing. On the other hand, when assessing the gravity of the cases or ways of solving them, it is safe to say that there is no landmark decision on corruption or

organized crime. Kosovo's court have not produced yet a final decision to punish a high profile figure involved in corruption or organized crime scandals. The fight against corruption and organized crime remains declarative and no concrete bold steps are taken towards it. Judges and prosecutors still lack specialization and managerial skills to manage court proceedings which are reflected on unreasonably protracted proceedings and ultimately low-quality decisions. Prosecutors lack crucial skills to file a professional indictment which would ensure solid judicial proceedings and fight corruption and organized crime. Judges have been continuously criticized for the failure to use all tools available to them, such as the possibility to impose punitive and disciplinary measures on parties absent at hearings.³⁰ Overall, such situation leads to long and never finishing processes. The delays in proceedings, in combination with a preference for detention over other restrictive measures, have led to cases of overly long detentions. In addition, the Basic Court in Pristina still struggles with a large backlog of administrative cases even though the backlog dropped from 1,511 cases in 2018 to 950 cases in 2019, but had by the end of June 2020 climbed back up to 1,415, likely due to the courts only dealing with urgent cases during the COVID-19 pandemic.³¹ To add to the deteriorating situation, the COVID-19 pandemic limited the holding of court hearings in Kosovo. Courts and prosecution offices have functioned with significantly reduced capacities since mid-March 2020.³² Although, both the Kosovo Judicial Council and the Kosovo Prosecutorial Council have developed emergency plans to address the risk of an increased backlog of cases and cases reaching their statutory limitations, the Criminal Procedure Code specifies that if no hearings are held for 3 months, the trial has to re-start.³³ This will directly affect the overall performance of the system and will go beyond by affecting a number of criminal trials which are directly connected with Kosovo's visa liberalization process and Kosovo's European path.

On another note, war crime trials represent a substantial part of the judiciary in Kosovo. War crimes were under the EULEX executive functions and only until they were terminated, the competence of prosecuting war crimes was delegated to the Kosovo judiciary. According to a 2019 report of the Humanitarian Law Center Kosovo, only three prosecutors were directly involved in the investigation and prosecution of war crimes, six judges of the newly established Special Department of the Basic Court of Pristina and three Judges of the Special Department of the Court of Appeals were tasked with adjudicating on war crimes charges.³⁴ One can easily declare that such numbers are discouraging considering the huge number of missing and killed people during 1998 to 1999. All in all, only fourteen war crimes cases were active.³⁵ What's more, the prosecutors, judges and related staff do not have the necessary training and expertise to deal with such cases. The pace of the judiciary in treating these cases is disappointing. On the other hand, in mid-2019, the Criminal Procedure Code was amended in regards to trials in absentia in relation to the criminal offences against international humanitarian law and international criminal law, committed between January 1990 and June 1999.³⁶ These amendments cover the war crimes committed in Kosovo during the armed conflict. Yet again, the draft of the new Criminal Procedure Code proposed the introduction of trials in absentia for other offences too.³⁷ The law was sent to the Venice Commission for an opinion and after receiving it, the draft is yet being amended. As such, the situation when a perpetrator can be subject to criminal proceedings in Kosovo, in absentia, is not available yet. Overall, one can conclude that Kosovo's authorities are at an early stage of adjudicating and punishing war crimes according to the law.

20 Justice Today. Via: <http://www.rolpik.org/justicetoday/>

21 "New Online Dashboard Advances Judicial Transparency", USAID.gov, 05 June 2020. Via: <https://www.usaid.gov/kosovo/news-information/news/new-online-dashboard-advances-judicial-transparency>

22 Assembly of Kosovo. 'Law No. 06/L-057 On Disciplinary Liability Of Judges And Prosecutors'. Via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18336>

23 Kosovo Judicial Council. 'KJC suspends Judge Leke Prenaj'. Press Release. October 2020. Via: <https://www.gjyqesori-rks.org/2020/10/31/kg-jk-pezuillon-nga-detyra-gjyqtarin-leke-prenaj/>

24 Balkans Policy Research Group. 'Judiciary in Kosovo: Administration in Disarray'. September 2019. Via: https://balkansgroup.org/wp-content/uploads/2020/01/Judiciary-in-Kosovo_Administration-in-Disarray.pdf

25 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

26 Group for Legal and Political Studies, 'Rule of Law Performance Index in Kosovo', November 2020. Via: http://www.rolpik.org/wp-content/uploads/2020/12/RoLPIK6_EN.pdf

27 Ibid.

28 Ibid.

29 Ibid.

30 Justice Today. 'Monitoring of the Judicial and Prosecutorial System of Kosovo for the period April – September 2020'. December 2020. Via: http://www.rolpik.org/wp-content/uploads/2020/12/Raporti-6-mujor_English-1.pdf

31 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

32 Kosovo Judicial Council. Decision No. 53/2020, March 2020. Via: https://www.gjyqesori-rks.org/wp-content/uploads/decisions/63168_Vendimi_KGJK-se_Nr.53_2020_per_Masat_parandalimit_infeksionit_nga_Corona_Virusi_SHQ.pdf

33 Assembly of Kosovo. 'Criminal Procedure Code No.04/L-123'. Via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

34 Humanitarian Law Center Kosovo. 'War Crimes Trials- Still at the beginning'. 2019. Via: <https://www.hlc-kosovo.org/storage/app/media/PUBLIKIMET%20D/Gjykimet%20per%20Krime%20Lufta%20-%20Ende%20ne%20fillim%202019%20ENG.pdf>

35 Ibid.

36 Assembly of Kosovo. Law No. 06/L-091 on Amendments to the Criminal Procedure Code of Kosovo.

37 Ibid.

Perception of Judiciary in Kosovo

Public perception as means to measure the citizens impression on the institutions established to ensure rule of law, presents a very important assessment of the authorities' performance. A very concerning fact is that in 2020, 68.5% of the citizens believe that people with political influence are less likely to be punished by law.³⁸ What's more, compared to 2019, the trend of citizens who believe that the justice system is influenced by the political position has increased by 3.3%.³⁹ On the other hand, only 2.83% of the citizens are satisfied with the work of the courts, and 2.78 with the work of the prosecution, a percentage which compared to last year has increased for 0.16%. Yet, despite the many reforms of the system, only 30.7% of the citizens believe that the justice system has improved in recent years.

Evaluation and Recommendation

All in all, it is safe to say that judiciary performance remains unsatisfactory even though reforms are taken to address the main challenges. As such, this area falls between Class C being evaluated as: a problematic situation with a tendency to improve. While there has been stagnation and a lot of resistance regarding a vetting process, all political parties are vowing to undertake such reforms. All this is due to the necessity of strengthening the judiciary in the country and enforce rule of law.

We recommend:

The Government should focus on creating a vetting mechanisms which would address the malfunctioning of the system which is human behavior. In order to do so,

- The vetting process should designate the following elements: 1) the ethical integrity of those subject to vetting, where integrity must include the compliance with rules relating to the moral figure and also the compliance with legislation governing the conduct of the judges, domestic laws, clauses on conflict of interest ect; 2) the professional standing of those subject to vetting, including the knowledge of the judge and prosecutors transmitted in their official documents while dealing with cases, and their skills on arguing and defending their stands; 3) the closeness to criminal or political circles of those subject to vetting.
- Kosovo Judicial Council and Kosovo Prosecutorial Council must work seriously in increasing the level of transparency and accountability of both Councils and serve as examples to courts and prosecution offices. The right to be informed is a fundamental right which is being denied to citizens. They must allow monitoring from civil society of all processes undertaken and should increase their collaboration in order to increase the citizens' trust and perception of the overall rule of law sector in Kosovo.
- Kosovo Judicial Council and Kosovo Prosecutorial Council should continue the implementation of the Law on Disciplinary Measures for Judges and Prosecutors in order to show their seriousness on increasing the efficiency of the overall system.
- Kosovo Judicial Council and Kosovo Prosecutorial Council must increase the number of judges, prosecutors and other staff who will exclusively deal with war crimes. In cooperation with the Academy of Justice, it must offer professional trainings and international expertise on how to deal with such cases.
- The Assembly must adopt the Criminal Procedure Code to allow for trials in absentia according to the international standards and safeguards and Venice Commission recommendations for war crimes.

³⁸ Group for Legal and Political Studies, 'Rule of Law Performance Index in Kosovo', November 2020. Via: http://www.rolpik.org/wp-content/uploads/2020/12/RoLPIK6_EN.pdf

³⁹ Ibid.

2.3 Corruption

Standards

Kosovo's criminal law provisions on corruption are generally in line with relevant European standards. Although not a party to international anti-corruption conventions such as the United Nations Convention against Corruption and the Council of Europe's Criminal Law Convention on Corruption, Kosovo has made substantial efforts to align its legislation with these instruments.⁴⁰ As such, Kosovo has strong anticorruption legislation, but authorities have not been successful in implementing it. The Criminal Code is drafted under the spirit of European best practices and introduced the mandatory removal from office of public officials convicted of corruption. What's more, substantial amendments to the Criminal Procedure Code, such as provisions on the suspension of public officials indicted for corruption, have been presented but they still remain to be adopted by the new legislature. In addition, Kosovo has adopted a Law on Extended Powers of Confiscation providing prosecutors and judges with more effective tools to sequester and confiscate illegally obtained assets. The Law on the Prevention of Money Laundering, the Law on the Prevention of Conflicts of Interest, the Law on Kosovo Anti-Corruption Agency, etc. present some of the core policies on fighting corruption. All in all, there are 19 different anti-corruption institutions in Kosovo.

Assessment

To sum up in one sentence, the Police fails to deliver properly all evidence to the prosecution; the prosecution fails to file proper indictments and the court fails to punish the accused due to weak indictments or the prosecution fails to initiate ex officio cases based on the reports prepared by the Anti-Corruption Agency in Kosovo, fails to rely in TAX Administration, etc. As such, the country fails to effectively fight corruption which is persistent and widespread.⁴¹ Despite modest institutional initiatives to combat it, there is lack of political will to effectively address corruption issues, as well as to robust criminal justice response to high-level corruption. Efforts to address such a situation have continuously been taken. One of the first efforts has been the approval of the document "Instruction on when an act of corruption will be considered as high level".⁴² Such a document was approved on 13 November 2013, and it determined the position and monetary value of acts of corruption which are considered as high-profile corruption. According to this Instruction, criminal offenses of corruption, which prosecutors must investigate, are those cases where the subject suspected of committing this offense is the central executive and municipal leaders, such as the President, the Speaker of the Assembly, the Prime Minister and the Cabinet, the mayors of municipalities and senior management civil servants, such as the Secretary General and staff in decision-making positions, such as the President of the Supreme Court and the Court of Appeals. Among other things, a criminal offense of high corruption is considered a violation that may have caused a damage in the monetary value of 500,000.00 Euros and above. In cases where the harm or benefit is considered to be higher than 1 million euros, that case is automatically defined as a case of high corruption.

Secondly, in 2019, in order to improve the efficiency of criminal justice, especially cases regarding corruption, organized crime, money laundering and other high-profile cases a Special Department was created within the Basic Court in Pristina and the Court of Appeals.⁴³ Yet, its performance is seriously damaged by shortcomings in criminal legislation. The current Criminal Procedure Code is under revision and remains to be adopted by the Assembly. The high profile cases although officially start, are usually stalled with little interest shown from the respective courts to advance the proceedings.⁴⁴ The judiciary's lack of commitment to prioritize cases

⁴⁰ EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

⁴¹ EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

⁴² Special Prosecution Office of the Republic of Kosovo. 'Udhezim kur nje veper e korrupsionit do te konsiderohet e nivelit te larte/ Instruction on when an act of corruption will be considered as high level'. Via: [https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/AkteNenLigjore/Udhezim_kur_nje_veper_e_korrupsionit_do_te_konsiderohet_si_e_nivelit_te_larte\(1\).pdf](https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/AkteNenLigjore/Udhezim_kur_nje_veper_e_korrupsionit_do_te_konsiderohet_si_e_nivelit_te_larte(1).pdf)

⁴³ Assembly of Kosovo. 'Law No. 06/L-054 On Courts', Article 7. via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302>

⁴⁴ Freedom House, 'Freedom in the World 2020', Kosovo, via: <https://freedomhouse.org/country/kosovo/freedom-world/2020>

against high-profile individuals is present and felt in all cases where high profile figures are involved.⁴⁵ According to the official data of the KJC Coordinator for targeted cases, in 2020, the total number of cases targeted under the Visa Liberalization⁴⁶ mark is 73, of which 54 cases are indicted while the rest enters the group of cases in which the investigation was suspended and those that are in the phase of investigations.⁴⁷ There have been cases where judges and employees of the court have been arrested and accused of corruption and of official position, subject to bribery.⁴⁸ Despite some corruption cases involving judges, police officers, former MPs, as well as former and current government officials, indictments on corruption are few and far between in Kosovo.⁴⁹ Convictions are even rarer showing the institutional reluctance to tackle and prosecute high-profile corruption.

On the other hand, the Government efforts to fight corruption are often considered odd. Once it took office, Prime Minister Hoti abolished the anti-corruption task force created 10 years ago. Such an undertaking was highly criticized by the few Embassy's in Kosovo and civil society as it was said that it raises concerns about political will to tackle corruption issues effectively.⁵⁰

Perception of corruption in Kosovo

According to the Corruption Perception Index for 2019 Kosovo is ranked 101 out of 180 monitored countries, scoring 36 of 100 points.⁵¹ The government and the international community in the country have for years been criticized for failure to fight corruption. Kosovo Police has for years been identified as the most effective institution in fighting corruption.⁵² Only in 2020, 29.6% of the citizens have ranked the police as the most effective institution. Whereas citizens have ranked the courts as the second most effective institution in fighting corruption with a total of 5.5% and the prosecution with the lowest rate of 4.5%.⁵³

Evaluation and Recommendation

To summarize, the current state of corruption and anti-corruption mechanisms in Kosovo fall under Class D of the Rule of Law Quality Assessment due to presenting a continuously problematic situation, which has shown stagnation for years now. There has been no substantial efforts from the competent authorities to investigate and prosecute the corruption affairs in a correct manner which translates to no final court decisions condemning corruption.

We recommend:

- The Assembly should give priority to the new Criminal Procedure Code and its adaptation in order to increase the fight against corruption and organized crime.
- The Anti-Corruption Agencies should improve coordination between themselves as for the exchange of institutional reports and information. The State Prosecutor must further improve its cooperation with the anti-corruption agencies and rely on their reports on initiating ex-officio cases.
- The Government must ensure that the Law on the Prevention of Conflicts of Interest is being implemented in all state levels and must increase the awareness for the existence of such a law.

45 Ibid.

46 Given that the fight against corruption and organized crime is one of the main criteria of the European Union (EU) for visa liberalization for Kosovo, the fight against these negative phenomena still remains a criterion of high priority, but not met.

47 Justice Today. 'Addressing visa liberalization cases during the pandemic'. December 2020. Via: <http://www.rolpik.org/trajtimi-i-rasteve-te-shenjestrura-per-liberalizim-te-vizave-gjate-kohe-se-pandemise/>

48 KOHA.net. 'Judge Sali Berisha is arrested on suspicion of corruption', 19 September 2019.

49 Freedom House, 'Freedom in the World 2020', Kosovo, via: <https://freedomhouse.org/country/kosovo/freedom-world/2020>

50 Balkan Insight. 'No 'Hybrid' Solutions in Kosovo's Anti-Corruption Fight, says Deputy PM'. December 2020. Via: <https://balkaninsight.com/2020/12/07/no-hybrid-solutions-in-kosovos-anti-corruption-fight-says-deputy-pm/>

51 Transparency International. 'Corruption Perception Index 2019'. Via: https://images.transparencycdn.org/images/2019_CPI_Report_EN.pdf

52 Group for Legal and Political Studies, 'Rule of Law Performance Index in Kosovo', November 2020. Via: http://www.rolpik.org/wp-content/uploads/2020/12/RoLPIK6_EN.pdf

53 Group for Legal and Political Studies, 'Rule of Law Performance Index in Kosovo', November 2020. Via: http://www.rolpik.org/wp-content/uploads/2020/12/RoLPIK6_EN.pdf

Media and Freedom of Expression

Standards

Kosovo's legal framework regarding media and freedom of expression is mostly in line with European standards.⁵⁴ The Constitution and legislation provide for media freedom and freedom of expression. In general, media laws are in line with standards of the Council of Europe and the case law of the European Court on Human Rights. Kosovo is known to have the highest standards of media protection in the region, as well as freedom of expression pursuant to the constitution.⁵⁵ Defamation and insults have for years been a civil offence,⁵⁶ and Kosovo has a very comprehensive whistle-blower legislation strengthening the protection of journalists' sources.⁵⁷ In addition, the Law on Access to Public Documents is a very sophisticated one.⁵⁸ Hence, the media environment in Kosovo is quite diverse, consisting of TV stations, radio station, media service providers, etc.

Assessment

Despite the comprehensive legal framework, obstacles emerge when it comes to implementing the legislative standards. The main challenges remain access to public information, the tendency of self-censorship due to libel and defamation charges, and the distrust on the rule of law institutions. Due to lack of financial self-sustainability, media remains vulnerable towards political and business interests while private media primarily rely on advertising revenue and NGO media rely on funds from international donors.⁵⁹ On the other side, the publicly operated and state-funded Radio Television Kosovo (RTK) with its budget determined annually by the Assembly, is under undue influence on editorial lines which undermines its independence, weakens its long-term sustainability and leaves it prone to political influence.⁶⁰ Only in 2019, on two separate occasions, whistleblowers publicly denounced political influence on RTK. What is more, journalists face serious pressure, and risk being attacked in connection with their reporting.⁶¹ Journalists report frequent harassment and intimidation. According to the Association of Journalists in Kosovo, there were 21 cases of verbal and physical attacks against journalists in 2019. In 2020, the number increased to 25 cases whereas in December 2020, a well-known journalist was attacked due to a Facebook status he wrote on his personal account.⁶² The Association of Journalists of Kosovo considered it as a direct attack on free speech and democracy in the country.⁶³ On the other hand, adjudication of cases remains slow. On another note, it must be mentioned the decision of the Independent Media Commission (IMC), taken in January 2021 against research conducted by BIRN related to the monopoly of selling solar energy.⁶⁴ BIRN though it's TV emission 'Life in Kosovo' published its research report 'Monopoly with Sunlight'.⁶⁵ The research reported that businessman Blerim Devolli had managed to obtain licenses - using a scheme to hide the ownership of the applicant companies - to produce more renewable energy than allowed by the Energy Regulatory Office (ERO). Two weeks later, 'Devolli Group' complained to the IMC, a state institution responsible for the implementation of ethical standards in television and radio, arguing that BIRN had incited hatred against the company.⁶⁶ The IMC found that the report is contrary to the Code of Ethics because it has incited hatred that could result in violent actions against businessman Devolli, that it has inaccuracies and that it

54 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

55 Freedom House, 'Freedom in the World 2020', Kosovo, via: <https://freedomhouse.org/country/kosovo/freedom-world/2020>

56 Assembly of Kosovo. 'Law No. 02/L-65 Civil Law Against Defamation And Insult'. Via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2503>

57 Assembly of Kosovo. 'Law No. 06/L-085 On Protection Of Whistleblowers'. Via: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18303>

58 Assembly of Kosovo. 'Law No.03/L-215 on Access to Public Documents'. Via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2724>

59 IREX. 'Media Sustainability Index 2018'. Via: <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-kosovo.pdf#:~:text=In%20general%2C%20the%20media%20environment%20across%20Kosovo%20is,news%20agencies%2C%20cable%20providers%2C%20and%20online%20news%20sites>

60 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

61 Freedom House, 'Freedom in the World 2020', Kosovo, via: <https://freedomhouse.org/country/kosovo/freedom-world/2020>

62 Voice of America. 'Kosovo: Journalist Valon Sylja is attacked'. December 2020. Via: <https://www.zeramerikes.com/a/kosovo-journalist/5708818.html>

63 Ibid.

64 Independent Media Commission. Decision Ref. 2011/836/KPM. 03 November 2020. Via: https://www.kpm-ks.org/assets/cms/uploads/files/2011_836%20RTK%201_VENDIM_KPM..pdf

65 Kallxo.com. 'Verejtja qe shkurajon gazetarine hulumtuese/ The remark that discourages investigative journalism'. 06 January 2021. Via: <https://kallxo.com/gjate/mendime/verejtja-qe-shkurajon-gazetarine-hulumtuese/>

66 Ibid.

contains unfair criticism and attack on him.⁶⁷ Such a decision has been considered as an attempt to censor and intimidate the media.⁶⁸ The mark that Freedom House gives Kosovo in the aspect of Media is 2 out of 4 due to the government and business interests exert undue influence on editorial lines, including at RTK.⁶⁹

What's more, disinformation in Kosovo is increasing and threatening the integrity of democracy. Public reliance on social media and the internet for news has arisen. Hence, Kosovars are all subject to disinformation. The National Democratic Institute Kosovo's findings exposed instances of disinformation used to sway the electorate during the election in October 2019.⁷⁰ According to their report, all political parties were subject of disinformation attacks during the election period. Low-quality journalism including limited fact-checking contributed to spread false or inaccurate information. Hence, disinformation is becoming an issue of high importance.

Evaluation and Recommendation

In conclusion, in order to evaluate the state of media and freedom of expression in the country, this field would fall under Class B considering that it has a functional institutional framework, yet again, has a tendency to decline. All this due to increase of disinformation and lack of financial stability. Moreover, the safety of journalist continues to remain an issue.

We recommend:

- 1. The Government should further improve the response of the responsible institutions to physical attacks against journalists, and other forms of pressure.
- 2. The Government should ensure sustainable funding for the public broadcaster in a manner which preserves its independence and moreover should undertake a more proactive approach in raising awareness on prevention and harm of fake news.
- 3. Kosovo authorities must show zero tolerance to further use of online portals as platforms for disinformation, hate speech, etc.

Human rights protection

Standards

As explained above, international human rights instruments are an integral part of Kosovo's legal framework and are directly applicable in the country. Although not directly supervised by international human right bodies, and with no obligation to report on the state of play, the Secretary General reports on the implementation of the United Nations Interim Administration Mission in Kosovo (UNMIK) in the Security Council, with special focus on the rule of law and promotion of human rights. Overall, there is legal bases for the fundamental rights in Kosovo.

Assessment

As for the implementation of human rights legislation and oversight and coordination of existing human rights mechanisms, such coordination remains a challenge. The task of protecting human rights in Kosovo is delegated to several mechanisms, the main being the judiciary, the police and the Ombudsman. The current state of play elaborated on the part of Judiciary explains the hurdles and challenges of Kosovar's in protecting their human rights. The Ombudsperson plays an important role in the promotion and protection of human rights but, the implementation of its recommendations by the Kosovo institutions remains a challenge.⁷¹ During the COVID-19 pandemic, restrictions of certain fundamental rights were taken as public health measures based on the Law on prevention of infectious diseases. The Assembly later on adopted a new law on preventing and combating the COVID-19 pandemic, providing a solid legal basis for public health related restrictions of fundamental rights considering that some of the measures were found unconstitutional from the Constitutional Court in Kosovo. The application of measures and restrictions of certain fundamental rights are still in force.

Legal aid

Kosovo's Constitution foresees that free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.⁷² Following the constitutional guidelines, in May 2016, Kosovo has institutionalized legal aid in the country by establishing the Agency for Free Legal Aid (AFLA) with 5 offices in 5 municipalities in Kosovo. The Agency is the first of its kind in South-Eastern Europe and offers and ensures equal access to justice for Kosovars. Free legal aid is provided to individuals who don't have any incomes, live from social assistance, are retired, their monthly incomes are less than the average in the country and have problems from family relations, pending unsettled property-legal matters, problems from the employment relation, etc. During the COVID-19 pandemic, international donors have offered personal protective equipment to the AFLA to enhance their services during the pandemic, showing their support to the AFLA's mission and substantial contribution in providing free legal aid for citizens in need, including marginalized groups.⁷³

We recommend:

- The Government should take a more proactive approach in raising awareness about the possibilities of free legal aid in Kosovo.
- The Government should increase the number of offices of AFLA in order to cover the entire territory of the country

⁶⁷ Independent Media Commission. Decision Ref. 2011/836/KPM. 03 November 2020. Via: https://www.kpm-ks.org/assets/cms/uploads/files/2011_836%20RTK%201_VENDIM_KPM..pdf

⁶⁸ Kallxo.com. 'Verejtja qe shkurajon gazetarine hulmtuese/ The remark that discourages investigative journalism'. 06 January 2021. Via: <https://kallxo.com/gjate/mendime/verejtja-qe-shkurajon-gazetarine-hulmtuese/>

⁶⁹ Freedom House, 'Freedom in the World 2020', Kosovo, via: <https://freedomhouse.org/country/kosovo/freedom-world/2020>

⁷⁰ National Democratic Institute Kosovo. 'DISICON: Disinformation Conference'. December 2019. Via: <https://www.ndi.org/sites/default/files/NDI%20Kosovo%20Disicon%202019%20-%20English.pdf>

⁷¹ EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

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⁷³ UNDP Kosovo*. 'Legal Aid in times of COVID-19'. Press Release. September 2020. Via: <https://www.ks.undp.org/content/kosovo/en/home/presscenter/articles/2020/09/10/legal-aid-in-times-covid-19.html>

Treatment of vulnerable groups

For the purposes of this paper, we will further elaborate human rights protection of vulnerable groups, as defined by the Council of Europe European and Mediterranean, including people with disabilities, migrants, asylum seekers and refugees, children.⁷⁴

Kosovo's legislation regarding marginalized groups reflects the most recent international standards, yet again their situation leaves much to be improved.⁷⁵ On the rights of persons with disabilities, a comprehensive new law has not yet been adopted. Overall, authorities are not effectively implementing existing legislation, including, the Law on Paraplegic and Tetraplegia Persons, the Law on Blind Persons and the Law on Employment.⁷⁶ The Law on Employment regulates the employment of people with disabilities in the public institutions at a certain level, yet people with disabilities do not enjoy fully their legal rights. All in all, they are subject to exclusion due to limited support and inadequate health and social services. Kosovo authorities have also failed to ensure that their physical access to public buildings and transport is guaranteed.⁷⁷ Hence, Kosovo is at an early stage on ensuring the fundamental rights to people with disabilities.

Migrants, asylum seekers and refugees

The legal framework regulating the status of migrants, asylum seekers and refugees is in line with the European Union (EU) Acquis Communautaire. The Department of Citizenship, Asylum and Migration in the Ministry of Internal Affairs is in charge of implementing migration policy. The Directorate for Migration and Foreigners in the border police deals with irregular migrants. The Ministry for Communities and Return does not have a strategy for communities and returns covering the upcoming period. And the Inter-Ministerial Commission for Return and Community Affairs, which facilitates return and inter-community relations does not convene regularly.⁷⁸ On the other hand, considering that Kosovo's independence is not recognized by all EU member states, and EU as an international body has not recognized Kosovo's independence either, Kosovo has not been able to sign a readmission agreement with the EU as a whole. Hence, Kosovo has signed readmission agreements with 24 countries, including 20 EU Member States and members of the Schengen area.

During 2020, the United National High Commissioner for Refugees registered 115 voluntary returns of members of ethnic minorities to Kosovo. The Kosovo Ministry of Internal Affairs registered 800 forced returns, among them 189 were children. On the other hand, due the Covid-19 pandemic, close to 200 irregular migrants and refugees remained in Kosovo when borders closed. During this time, Kosovo managed to introduce proper preventive measures to protect them from the pandemic, including restriction of movement and quarantine for incoming migrants. Despite limited capacities and the fact that Kosovo has had to deal with more asylum seekers present in the Asylum Centres, the situation was well managed with the help of international partners.⁷⁹

Children

On the rights of the child, Kosovo's legal framework is largely in line with EU and international standards, but implementation remains limited. On mid-2019, a new Law on Child Protection was adopted by the Assembly.⁸⁰ The law established a new integrated system of child protection, at both central and local levels. In addition, a strategy and action plan on children's rights 2019-2023 is in force.⁸¹ Kosovo has developed alternative care solutions for children deprived of parental

care. Foster care for children deprived of parental care is not possible in all municipalities and often does not meet internationally recognized requirements. In addition, Kosovo authorities have been inefficient in providing adequate care for street children and have failed to properly address the issue.⁸²

LGBTI+ persons

On the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI+) persons⁸³, Kosovo's Constitution protects against discrimination based on sexual orientation.⁸⁴ In April 2020, a new criminal code entered into force, strengthening the protection for members of the LGBTI+ community by adding to the definition of a "hate act" a crime committed against a person, group of persons, property or affinity with persons on grounds including sexual orientation and gender identity.⁸⁵ Yet, cases of hate crime against LGBTI+ persons are still not always properly investigated and brought to justice. 2019 was marked with two main events on this field. For the first time, the prosecution of Kosovo initiated a case ex officio against an official of the Ministry of Justice, on the grounds of hate speech against LGBTI+ persons. Second, the Courts in Kosovo ruled on two cases of legal gender recognition. Meanwhile, a Pride Parade takes place in Kosovo every year without incidents and includes high-level political and international donor participants.

Despite these positive developments, public awareness and general acceptance of the rights of LGBTI+ persons remain low. There have also been incidents of hate speech towards the LGBTI+ community, especially on social media. Cel Kosovo, an LGBTI+ organization, registered 18 cases of threats and discrimination against members of the LGBTI+ community, of which six were investigated by police at time of writing. Cel stated that LGBTI+ activists had received more than 150 online death threats during the year. All were reported to police, but no cases were prosecuted.⁸⁶

On the other hand, Kosovo's Constitution guarantees equality before the law⁸⁷ and the right to marriage and family⁸⁸. Yet, Law on Family defines marriage as being between a man and a woman denying the right to marriage to all lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Kosovo.⁸⁹ A civil code is in the process of being drafted but the political instability in the country has affected it directly. Furthermore, the current draft Civil Code fails to provide the legal recognition of the same sex marriage and deprives LGBT+ people of their basic and constitutional right to marry and create a family. It must be mentioned that the recommendation on inclusion of the gender-neutral provision under the section on marriage and inclusion of the provision that regulates the same-sex partnership civil union was not considered by the Ministry of Justice. Considering that the Civil Code is still a draft, it is to be seen if it will violate the Constitution or will it ensure human rights for all its citizens.

Roma, Ashkali and Egyptians

Kosovo's Constitution guarantees fundamental rights under Chapter II and provides for additional protection for the rights of the communities in Chapter III.⁹⁰ As mentioned above, fundamental rights and freedoms guaranteed through international instruments are also included in the constitution and directly applicable in the country. The domestic legislation contains legal packages that are generated from the guaranteed rights of the communities and their members in various fields, such as the Law on Religious Freedoms, the Law on Cultural Heritage, the Law on the use of Languages, the Law on Protection of Community Rights and their members in the Republic of Kosovo, the Law on Self-Governance, the Law on Education in Municipalities of the

74 The first three groups are in line with Council of Europe approach (see: <https://www.coe.int/en/web/europarisks/vulnerable-groups>), while the issue of gender and LGBT+ stemmed from the discussions and the conclusion of the SEELD 2.0 Conference.

75 For the purposes of this paper, 'vulnerable groups' have been defined as people with disabilities, migrants, asylum seekers and refugees, children, as defined by the Council of Europe European and Mediterranean Major Hazards Agreement.

76 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

77 Ibid.

78 Ibid.

79 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

80 Assembly of Kosovo. 'Law No. 06/L-084 on Child Protection'. Via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20844>

81 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

82 Ibid.

83 For the purpose of methodological unity and relying on the conclusion of the SEELD 2.0 Conference, the team of experts engaged in this project decided to join the issues of Gender and LGBT to the subtitle/subheading of "Treatment vulnerable groups".

84 Assembly of Kosovo. 'Constitution of the Republic of Kosovo', Article 24, via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

85 Human Rights Watch. 'World Report 2020'. Via: https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf

86 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

87 Assembly of Kosovo. 'Constitution of the Republic of Kosovo', Article 24, via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

88 Assembly of Kosovo. 'Constitution of the Republic of Kosovo', Article 37, via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

89 Assembly of Kosovo. 'Law No.2004/32 Family Law Of Kosovo'. Via: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2410>

90 Assembly of Kosovo. 'Constitution of the Republic of Kosovo', Chapter II and III, via: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

Republic of Kosovo. Moreover, in order to increase the commitment to promote and provide human rights from the perspective of prevention and elimination of both direct and indirect discrimination of several groups, part of the domestic legislation are the Law on Protection against Discrimination, the Law on Gender Equality, the Law on Ombudsperson. Considering the legislation in place, the Government has Regulation No. 02/2010 on Municipal Offices for Communities and Return.⁹¹ Such a regulation has established the Offices for Communities and Return in Kosovo municipalities. Hence, Kosovo has a sophisticated policy framework which is also supplemented by the Government Strategy for inclusion of Roma and Ashkali Communities in the Kosovo Society 2017-2022, with five priority sectors – education, employment, health, housing and social security.⁹² The Egyptians have been excluded from the strategy due to their own political representative's insistence.⁹³ Yet again, according to the EU Country Report 2020 for Kosovo, such a strategy has still not been systematically evaluated and its implementation remains limited.⁹⁴ Due to this situation, members of Roman and Ashkali communities are amongst the most marginalized communities in the country due to high unemployment rates, low education enrolment ratio and attainment rates and the deplorable living conditions of the majority.⁹⁵ They are still facing problems with documentation and personal identity documents which makes it difficult to assess their actual number residing in the country. Only few municipalities have allocated land and have recognized tenancy or possession rights to the community, such as Gjakova, Fushe Kosove, Prizren, Gračanica and Peja.⁹⁶ While you may only find a small percentage of population remaining in Prishtina, Gjiilan and Mitrovica due to their expulsion in the post-war period.⁹⁷ On another note, as a positive step regarding the inclusion of these communities in Kosovar society has been considered the increased number of students from the Kosovo Roma and Ashkali communities during the past years.⁹⁸

Freedom of Assembly and Association

Freedom of assembly and association is guaranteed by the Constitution and generally respected. There is no official report of direct violation of the right to freedom of assembly and association. NGOs function freely, though non-official religious groups present a problem in the country. Moreover, the courts can ban groups that encourage ethnic hatred. NGOs occasionally experience pressure to curtail criticism of the government, they are even accused on affecting citizen's perception with their criticism regarding the authorities.⁹⁹ Yet again, many NGOs continue to criticize the authorities, being one of the liveliest civil society in the region. In addition, the constitution ensures the right to establish and join trade unions. It is difficult to form a private-sector union due to the intimidation experienced by the employers.¹⁰⁰

During the pandemic restrictions as protective measures against the spread of COVID 19, in terms of the number of people that could gather changed frequently. Although, such restrictions are considered a limitation of human rights, they were undertaken for the public good.

Evaluation and Recommendations

In order to summarize the state of human rights protection in the country, one must consider the means developed to offer legal aid and the situation of the vulnerable groups. As such, it falls under Class C as it is evaluated to be a problematic situation with a tendency to improve, especially related to LGBTI rights and the adaptation of the relevant legislation guaranteeing non-discrimination and equality before the law.

We recommend:

- All relevant authorities must ensure the human rights protection overall, but with special focus on the vulnerable groups.
- The Government should increase the financial support to scale up community-based social and health services and increase efforts to effectively integrate people with disabilities into the educational system. Moreover, their physical access to all public institutions must be granted.
- The Government must create proper reception facilities to accommodate migrants at the borders, before they are transferred to asylum or other centers and should continue to support them while they are place in Kosovo's centers.
- The Assembly must ensure that the constitutional provisions are reflected in the Civil Code of Kosovo. It must not be allowed to have a Civil Code in violation of the basic principles of the right to marriage and equality of the law.
- The Assembly must make sure to adopt the new legal framework governing campaign and political party financing as per the comments of the Venice Commission.
- The Government must introduce measures and offer a solution to register births of Roma, Ashkali, and Egyptians community.
- The Government must implement its own strategy and ensure the education, employment, health, housing and social security rights to Roma, Ashkali, and Egyptians community.
- The Government must make additional efforts to facilitate the labor market of Roma, Ashkali, Egyptians and combat informal employment.

91 Regulation No. 02/2010 on Municipal Offices for Communities and Return. http://www.kryeministriks.net/repository/docs/Rregullore_per_Zyrat_komunale_per_Komunitete_dhe_Kthim.pdf

92 Office of Prime Minister. Via: http://kryeministri-ks.net/wp-content/uploads/docs/ANG-STRATEGJIA_P%C3%8BR_P%C3%8BRFSHIRJEN_E_KOMUNITETEVE_ROM_DHE_ASHKALI_N%C3%8B_SHOQ%C3%8BRIN%C3%8B_KOSOVARE_2017-2021.pdf

93 Civil Right Defenders. 'The wall of anti-gypsyism'. 2018. Via: <https://crd.org/wp-content/uploads/2018/02/The-Wall-of-Anti-Gypsyism-%E2%80%93Roma-in-Kosovo-Eng.pdf>

94 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

95 Civil Right Defenders. 'The wall of anti-gypsyism'. 2018. Via: <https://crd.org/wp-content/uploads/2018/02/The-Wall-of-Anti-Gypsyism-%E2%80%93Roma-in-Kosovo-Eng.pdf>

96 Civil Right Defenders. 'The wall of anti-gypsyism'. 2018. Via: <https://crd.org/wp-content/uploads/2018/02/The-Wall-of-Anti-Gypsyism-%E2%80%93Roma-in-Kosovo-Eng.pdf>

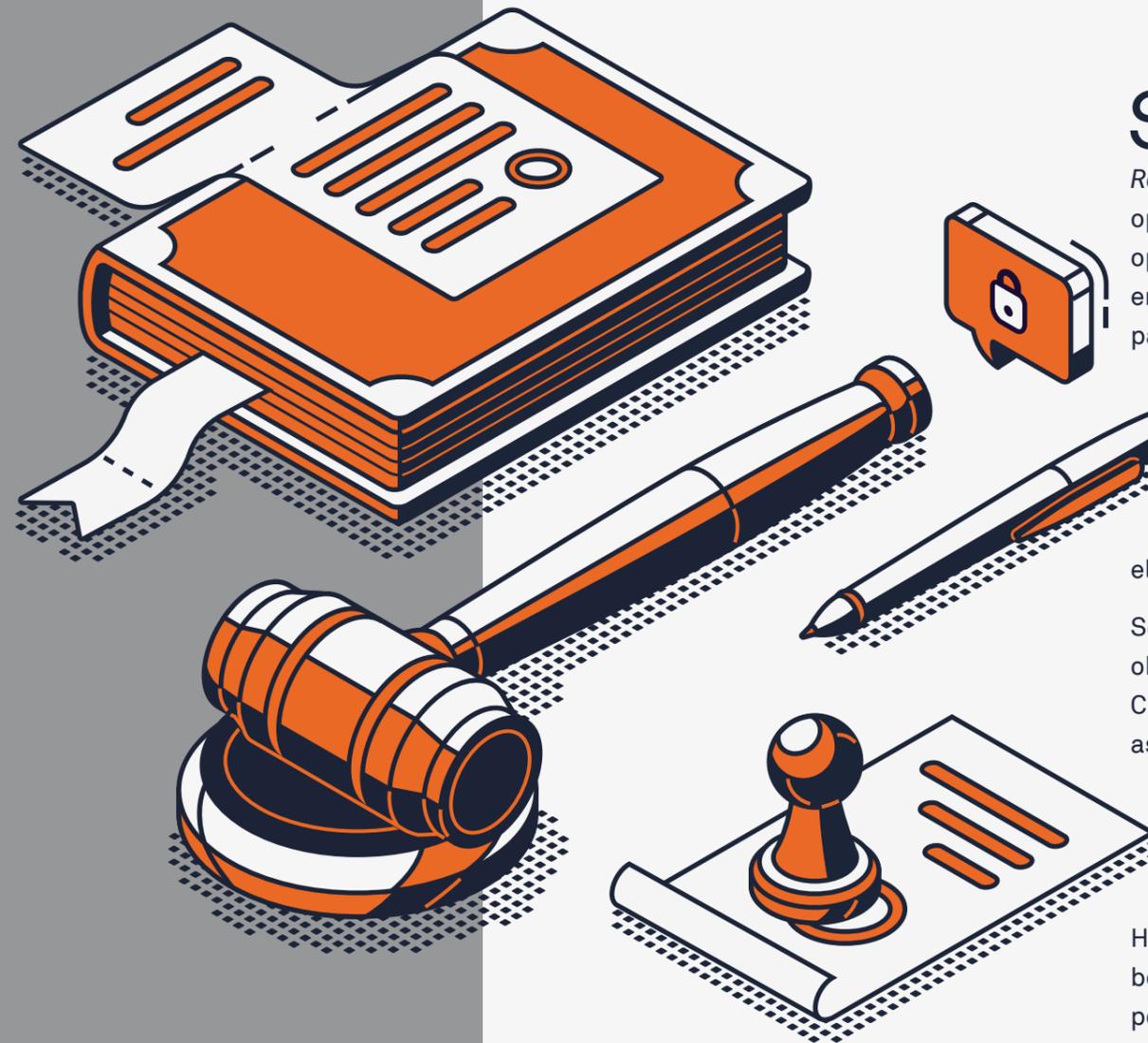
97 Ibid.

98 EC Country Report for Kosovo 2020, 06 October 2020. Via: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

99 Freedom House, 'Freedom in the World 2020', Kosovo, via: <https://freedomhouse.org/country/kosovo/freedom-world/2020>

100 Ibid.

04



SERBIA

Assessment of the State of Rule of Law in Serbia

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1. INTRODUCTION

Serbia enters 2021 as a nominal parliamentary democracy with the separation of powers almost not visible. With Democracy Percentage 49.40/100 in the Freedom House *Nations in Transit Report 2020* Serbia slipped into the category of Transitional/Hybrid regimes. The homogeneous, opposition-free Parliament exercises no oversight on the Government, while the Government openly follows the lead of the President of Serbia in almost all its actions. The Covid-19 crisis only emphasized the concentration of power that bypasses formal constitutional arrangements. The parliamentary and local elections (June 2020) took place in the environment of deeply divided society, pressed by the pandemics, unresolved border issues, controlled media outlets and problematic election rules. The ruling party SNS achieved an overwhelming victory, with part of the opposition boycotting, but new elections have already been announced for April 2022. Democratic life in Serbia is blurred by the permanent election campaign.

There were parliamentary elections in 2012, 2014, 2016 and 2020, while the last presidential elections held in 2017.

Serbia is still formally on the path of the European integration, but struggles with meeting the obligations from the process of negotiation with the EU, particularly those deriving from the key Chapters 22 and 23. For the first time in six years there were no new negotiation chapters open, as a message to the lack of substantive reforms in Serbia.¹

In terms of economic indicators, Covid-19 was less detrimental to Serbia than to its neighbours, due to some decisive governmental economic interventions and some structural reasons, such as modest reliance on tourism in the Serbian economy.

However, we can rationally expect that 2021 will bring some austerity measures and there will be more pressure on human rights, civil society organizations, independent journalists and the political opposition.



¹ <https://europeanwesternbalkans.rs/neotvaranje-poglavlja-jasna-poruka-da-eu-vise-ne-tolerise-nedostatak-demokratije-vladavine-prava/>

2. ASSESSMENT ANALYSIS

2.1 Independence of Judiciary

Standards

The good European and international standards are well known and derive from the Article 10 of the UDHR and Article 6 of the ECHR that entitle everyone to a fair and public hearing before an independent and impartial tribunal.² We are interested in securing judicial independence both in the objective and subjective sense. The objective independence relates to the institutional arrangements and practices, while the subjective independence relates to how judiciary is self-perceived and perceived by the others, including citizens.

These standards have been elaborated by competent bodies such as the Venice Commission, The Consultative Council of European Judges (CCJE) and The Consultative Council of European Prosecutors (CCPE).

- Appointment and professional career of ordinary judges should be merit-based and without influence of the legislative and executive power. The key role in appointment or dismissal of a judge should be reserved for the independent judicial council (The High Court Council in Republic of Serbia).
- Appointment of ordinary judges should be permanent. Probation periods are detrimental to the independence of a judge.
- Judicial integrity must go together with judicial independence. A judge has to be worthy of the profession and competent to fulfill the complex and responsible tasks in a reasonable time.
- Every judge should be protected both from external and internal undue influences during the decision-making process. Each judge, irrespective of the court he/she belongs to, exercise the same authority to adjudicate. The law should provide sanctions against persons seeking to pressure a judge. The judicial decisions should not be subject to any revision outside the appeal procedures.
- The working conditions and remuneration should be set in accordance with the dignity and responsibility of the judicial profession.
- The budget reserved for the judiciary should reflect the principle of independence, and judiciary should have opportunity to express its stance towards proposed budget.
- Conflict of interests and incompatibility rules should protect judges from improper pressures and influences.
- There should be balance between the necessity to protect the judicial process and the legitimate public interest to be informed about the proceedings. The Judiciary earns legitimacy and trust of citizens by excellent performance resulting in impartial and well-reasoned decisions.

Assessment

The independence of judiciary is guaranteed by the Constitution of Serbia (2006), but the system does not guarantee proper separation of powers. In thirty years of the state's aspirations towards effective parliamentary democracy the judiciary has been stagnating in spite of numerous consecutive judicial reforms and strong support by the Council of Europe, the European Commission, UNDP and others. One of the most detrimental reforms took place in 2009 when the general election of all judges and prosecutors took place. The High Judicial Council (HJC) reviewed the applications and elected 1528 judges from sitting judges and 886 judges that were elected for the first time. As a result, around 800 judges (one third of total number) were not re-elected and lost their tenure. The process was neither transparent, nor merit-based. There was no available legal remedy for non-elected. In July 2012 the Constitutional Court of Serbia nullified

² The independence of judiciary as a system and that of the individual judge represent crucial precondition for the rule of law. In order to be independent, the judiciary needs legal safeguards vested in the constitution, preferably. There is a necessity to shield judiciary from the undue influence of the political branches of government. Judges should be bound only by law.

the effects of this reform, but the negative effects on the notion of judicial independence will remain.

The WJP Rule of Law index ranked Serbia 73rd of 128 assessed countries in terms of Civil Justice and 77th in Criminal Justice. The relatively low ranking is a consequence of the low score on the indicator 'No improper governmental influence'.

According to the most recent EC's Progress Report on Serbia (2020) there was no progress in addressing previous recommendations. The main problem is political influence on judiciary, while the recommendation is that Serbia should thoroughly revise the system for judicial appointments and evaluation the work of judges and prosecutors in order to introduce merit-based judicial recruitment. There is a clear impression that the current government, like all its predecessors, insists on securing the "golden votes" in HJC and the State Prosecutorial Council (SPC). The official position of the Government of Serbia is that constitutional amendments are needed in order to remedy the problem. The constitutional changes have been regularly postponed since 2007. According to the Revised Action Plan for the Chapter 23 the constitutional changes should have been implemented in mid-2019, but there is a new deadline – the fourth quarter of 2021. The Ministry of Justice published the draft amendments related to the judiciary. The crucial one is amendment IX related to the composition of the HJC. It stipulates that the HJC consists of 10 members, 5 elected by judges and 5 *prominent lawyers* elected in Parliament. While this solution is improvement to existing one (Article 153 of the Constitution), where political branches were in full control, one can object that 'prominent lawyer' is rather vague criterion that would enable Parliament to cherry-pick half of the HJC. Furthermore, it is indicative that the number of HJC members is changed from 11 to 10, and the President of HJC cannot be one of the elected judges. In a scenario of divided voting 5:5, the President of HJC effectively has the so called 'golden vote'.

The intention of the proposed constitutional amendments is to secure that the most competent and professional candidates are elected for judges. In that respect, the Judicial Academy of Serbia (JAS) will serve as exclusive training center and sole gatekeeper to becoming a judge. The main concern remains whether JAS is independent institution protected from the undue influence; if JAS's steering committee preserves its integrity, it could be a reasonable solution. There are 9 members of the steering committee: 3 judges appointed by HJC, 2 prosecutors appointed by the Association of Prosecutors and 3 members appointed by the Government.

The proposed changes include the removal of a 3 years probationary period for candidates that are appointed as judges for the first time. This is an excellent development from the perspective of securing judicial independence. The Venice Commission has continuously insisted that independence of first-time judges was undermined during the probation time.

The President of Serbia regularly comments and critics work of the judiciary and some concrete proceedings, decisions and judges. There is one illustrative statement he made on *TV Prva* in January 2020, that he was fed judges and prosecutors and that he could not remove them because media and Europe would croak.³ At the same time the State Secretary at the Ministry of Justice, Radomir Ilic proposed that future constitutional changes should result in external control of the judiciary. In February 2020 MPs from the ruling party, including the Chairman of the Parliamentary Committee on the Judiciary, Public Administration and Local Self-Government, claimed during a parliamentary debate that High Judicial Council should be abolished, while the judges should be appointed by the Minister of Justice or the President. The old method of appointing them in the Parliament was also acceptable. This position was justified by the fact that some of the judges were foreign mercenaries, traitors and politically affiliated.

The HJC condemned on January 28th 2020 such statements from high officials of executive and legislative branches because they undermine the public trust in judiciary and violate separation of powers.⁴ The Anti-Corruption Council of the Republic of Serbia (ACC) in its Report on the Rule of Law as a Foundation to the Fight against Systemic Corruption critiqued the President's comments on ongoing judicial proceedings and his violation of the presumption of innocence, enlisting a number of examples.⁵

³ Belgrade Center for Human Rights, Human Rights in Serbia, January–Jun 2020, p. 29.

⁴ Statement is available at: <https://vss.sud.rs/саопштења/саопштење-високог-савета-судства-40>

⁵ Report is available at <http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028-3294/izvestaj-o-vladavini-prava-kao-osnov-borbe-pro-tiv-sistemske-korupcije>

The Freedom House Report on Serbia (FHR 2020) also points out that “individual judges and judicial organizations that dare to criticize proposed changes in the judicial sector face public harangues from members of the ruling party and allied tabloids”.

Perception of Judiciary in Serbia

It is not enough for the proper functioning of a democratic state to have independent and impartial judiciary, but it must be perceived as independent, efficient and accountable for its performance. No more than one quarter of citizens in Serbia trusts the judiciary, which is better only in comparison to their trust in political parties. The reasons for mistrust are: excessive length of judicial proceedings, corruption, political influence on judiciary and poor and non-transparent human resources policy. Citizens in Serbia believe that the most corrupted institutions are healthcare (83%), inspections (82%) and judiciary (80%).⁶ It is indicative that not even the surveyed legal practitioners (judges, prosecutors and advocates) are not satisfied with the state of affairs in judiciary.⁷

The representatives of judiciary blame media for such a negative public perception of the judiciary, holding that sensationalistic media coverage is often detrimental to integrity and independence of the judiciary. On the other hand, HJC is aware that judiciary should work on transparency of its work and communication with the public. The courts are passive, reactive, and lacking professional PR staff.

Evaluation and Recommendation

Our estimation is that the Independence of Judiciary Serbia should be characterized as Class C. While there has been stagnation in this area for decades, there is a strong promise given to the CoE and the EC on behalf of the Government and the President that the Constitution would be amended in line with the Venice Commission’s recommendations, in order to strengthen the autonomy of the HJC, abolish the probation period for the judges and prosecutors elected for the first time and to overall reduce the influence of the Parliament on the election of judges and presidents of courts.

We recommend:

- Strict monitoring of the implementation of these ‘constitutional promises’; the political branches of government should not have a golden vote in the HJC and the SPC, while the Parliament has to be excluded from the election process of judges.
- Overall, the Venice Commission’s recommendations should be implemented in good faith.
- The organization of the authentic public debates and hearings with national media coverage that would provide floor for the civil society organizations with expertise in judicial reform.
- The impact of the Judicial Academy should be closely monitored and periodically evaluated, particularly in terms of political influences, because of its specific position of the exclusive gatekeeper for potential judges.
- The representatives of HJC, the SPC, presidents of courts and RPP in particular, should make themselves regularly available for the media and try to explain and justify inaction, delays and outcomes of the proceedings, in accordance with the presumption of innocence principle.
- The utilization of specialized PR persons in judiciary is recommended as good practice in communicating with public and explaining the reasoning behind decisions of wider public interest.

⁶ USAID’s GAI project ‘Perceptions of Anticorruption Efforts in Serbia in 2020’

⁷ Danilo Vukovic, *Pravosude u post-eri: institucionalna skepsa kao norma*, u *Sudstvo koa vlast*, CEPRIS, 2020, str. 49.

2.2 Corruption

Standards

In order to effectively fight corruption a state has to take adequate measures for the prevention of corruption, promote ethical behavior and raise public awareness about the phenomenon. The agencies in charge of prevention, investigation, prosecution and adjudication of corruption acts must enjoy autonomy and be protected from improper influences and pressures. Furthermore, they have to be provided with the means for gathering evidence, protection of persons who assist them in combating corruption and the preservation of confidentiality of investigations. The system needs appropriate audit procedures, as well as transparent procedures for public procurement. For successful anti-corruption campaigns, society has to be persuaded that liability and accountability will be the consequence of corrupt behavior of public officials. Media have a special role in investigating corruption cases, educating the public and informing about developments in specific cases, while they may be limited only when it is necessary in a democratic society. Finally, corruption often has an international dimension, so it is necessary to build strong regional and global networks for combating corruption.

Assessment

There is a relatively solid legal framework for combating corruption, in line with recognized international standards. Various manifestations of corruptive acts are incriminated in the Criminal Code (2005), while the specific laws were added to complement existing provisions and facilitate prevention, investigation, discovery and prosecution of corruption. The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and Terrorism (2018), Law on Protection of Whistleblowers (2015), Law on Lobbying (2019), Law on Public Procurement (2019), Law on Examination of the Origin of Assets (February 2020) and the Law on Prevention of Corruption (entered into force in September 2020) create good foundation for the competent institutions to operate. There are delays in amending the Law on Access to Information of Public Importance and the Law on Financing of Political Activities, in line with the recommendations by OSCE Office for Democratic Institutions and Human Rights (ODIHR).

However, there is a large gap between the normative framework and implementation, resulting in a rather low number of corruption cases being investigated and, consequently, very few cases being finalized, particularly the so-called high-level corruption cases. The government has been accused for years for its ties to the organized crime. Some of the notable examples involve the Minister of Finance suspected for money laundry and the father of the Minister of Interior who was implicated in corruptive arms-trading schemes. The whistleblower who publicized the documents related to the Krusik scandal was arrested in 2019.⁸

There is also an illustrative example of a long-term struggle with systemic corruption transcending governments - 24 cases of suspicious privatizations that came also to the attention of the EU in 2010. After a decade of investigation and prosecution, 10 cases remain unresolved, in 12 cases prosecutors concluded there was no criminal act involved or the verdicts resulted in acquittals. The remaining two cases resulted in guilty verdicts, but one of them was reversed on appeal, while the other sentence is one year of house arrest.⁹ Transparency Serbia noted that the Anti-Corruption Agency (ACA) had not initiated the investigation of possible conflict of interest of Minister of Interior at the time, but issued the statement that minister’s father was not formally employed in the respective arms-trading company, so there was no conflict of interest.

The main reasons behind poor institutional track record in prosecuting corruption are: 1. competent institutions lack capacity to enforce rules; 2. competent institutions are under improper political influence. At the moment Serbia does not have a national anti-corruption strategy, because the last strategy expired in 2018. It seems there was no follow-up and evaluation of the strategic cycle 2013-2018, and the new strategy has not been announced.

⁸ FH Report (2020)

⁹ BICA Report on Serbia, p. 24.

One of the main actors in prevention and fighting corruption is the ACA, an independent governmental body responsible to the Parliament. It has numerous competences in overseeing the implementation of the NAS and the Law on Prevention of Corruption, resolving conflicts of interest, keeping register of public officials' assets and income, monitors political financial reports, etc., but it does not use all its prerogatives to enforce implementation.¹⁰ The work of the ACA is also undermined in part by the ambiguous division of responsibilities among other entities tasked with combating corruption. In 2019, the Technical Service of the Agency was populated with 80 employees, out of 163 envisaged, which is around 49% capacity. The new Law on Corruption Prevention entered force in September 2020, but there is no promise that it will substantially improve the legal ambient. The GRECO report was positive about the impact of the Law on Corruption Prevention in terms of independence, resources and competences of the ACA¹¹. However, the composition of the ACA will be under strong influence of the Government that has an overwhelming majority in Parliament, while the MPs may elect any candidate for ACA director and the ACA council who passes the exam and fulfills relatively vague selection criteria.

The State Audit Institution (SAI) is an independent governmental body exercising external audit since 2009. The SAI found irregularities in 9.6% of inspected procuring entities in 2019, marking a significant decrease from 12.1% in 2018, and a notable increase from 7.4% in 2017. The government's Anti-Corruption Council has noted that current framework of internal and external control over the expediency of public procurements in large public utility companies is both inadequate and prone to abuses.¹² The Fiscal Council of Serbia (FCS), an independent governmental body, published in 2019 a study on the reasons why Serbia's economic growth was underachieving. The growth was around 1 % lower due to weak rule of law and high corruption.¹³

There is still space for improvement of the legal framework for combating corruption. According to the EU Progress Report 2020 limited progress was made in this respect, and there is still general concern about the corruption.

In the recently published Fourth Round Evaluation Report GRECO (GR 2020) concluded that Serbia had implemented satisfactorily or dealt with in a satisfactory manner only 2 of the 13 recommendations. Ten recommendations had been partly implemented and one had not been implemented. The overall finding is that Serbia's compliance was "globally unsatisfactory", so the Head of delegation of Serbia is asked to provide a report on the progress made in implementing unanswered recommendations by 31 October 2021.

Here is the overview of the problems that Government has not fully remedied:

- As to corruption prevention in respect of the MPs, the main problem is that the urgent procedure for adopting legislation is still in use more than appropriate, while public hearings remain at the discretion of the parliamentary committees. The draft laws are not easily and in a timely manner accessible. Public debates on proposed legislations remain the exception, not the rule.¹⁴
- The Code of Conduct for MPs is still missing, while we shall have to wait for the positive effects of the recent Law on Lobbying (August 2019).
- In respect of corruption prevention related to judges the key issue remains the composition of the HJC and its shielding from improper political interference. Legislative and executive branches have to be excluded from the HJC member's election process. It remains to be seen whether the constitutional changes will take place and to what effect. There is announcement that Parliament will lose its role in election of judges and presidents of courts, but it is also part of the tentative constitutional reforms.¹⁵

- In respect of corruption related to prosecutors the problems are the same, *mutatis mutandis*, as in the case of the judiciary. The Parliament should not be involved in election of members of the SPC, in order to strengthen its self-governing character. The special role is envisaged for the Commissioner for Autonomy special body at the SPC, who in 2019 addressed 18 cases (much less than in previous years) recommending further protection of prosecutors from excessive criticism from the political sphere.¹⁶
- According to the announced constitutional reforms the Parliament would be excluded from the election process of the prosecutors and deputy public prosecutors, but there is high level of uncertainty about future developments.
- Effective codes of ethics, performance evaluation criteria and rules on conflict of interest are also important for independence and accountability of the judges and prosecutors. The Government of Serbia sought to remedy some of these issues via recent Law on Corruption Prevention, but GRECO could not conclude that their recommendations in this respect had been fully met.¹⁷

It is worth noting that the Ministry of Justice used to publish evaluation reports on the implementation of the Law on Whistleblower Protection until 2018. The reports were sponsored by USAID and the EU. There are no respective reports for the last two years. Furthermore, the manner in which the Government handled the case of the Krusik whistleblower will have discouraging effect on the future potential whistleblowers.

Perception of corruption in Serbia

According to the Corruption Perception Index for 2019 Serbia is ranked 91 of 180 monitored countries, scoring 39 of 100 points. Serbia has a relatively stable (under average) score since the governmental change in 2012.

World Justice Project evaluated Serbia in 2020 for absence of corruption 0.44, which is also a regional average. That was enough for 72nd place among 128 countries in the study. The corruption in Serbia is perceived as endemic. USAID's study (2018) shows 57% of citizens believe so. The main generators of corruption are: strong influence of politics on (nominally) independent judiciary and (nominally) autonomous prosecutors. There is a widespread notion of impunity for the corruption-related crimes, particularly in the cases involving high-level politicians.

Evaluation and Recommendation

Our estimation is that in terms of corruption Serbia should be characterized as Class D. There are no signs of readiness of the Government to combat high-level corruption. The strong axis of political domination and media monopoly, accompanied by the unwillingness of the competent authorities to investigate and prosecute the corruption cases generates very poor track record in adequate legal outcomes.

We recommend:

- The government should evaluate the shortcomings in the implementation of the previous national anti-corruption strategy and adopt a new and effective one.
- Judges and prosecutors should be better shielded from political influences, but also accountable for their own inaction, delays or abuses.
- The government should be pressured to fully implement GRECO recommendations in good faith.
- Whistleblowers should be provided with more support and protection both by the Government and society.

¹⁰ Ibid., p. 56.

¹¹ GRECO, para 78.

¹² EC Report (2020)

¹³ Freedom House Nations in Transit Report on Serbia (2019)

¹⁴ GRECO, para. 8-14.

¹⁵ Ibid., para. 29-30.

¹⁶ Ibid., para. 48-52.

¹⁷ Ibid., para. 70.

2.3 Media and Freedom of Expression

Assessment

International and national legal frameworks on freedom of expression are in place. Serbia is a state signatory to relevant international treaties that guarantee freedom of expression and its Constitution guarantees both freedom of thought and expression (Article 46) and freedom of media (Article 50).

Despite such normative framework, the state of affairs in Serbia regarding this issue is very concerning. The main problems come down to proper role of media (including TV, Radio, Press and Online Media). Main issues emerge consistent in all relevant reports, which point out to several roots of this problem. They can be subsumed under the following clusters: **Safety of Journalists**¹⁸, **Media Ownership and Funding and Independence of relevant Institutions** (most notably REM).¹⁹ Moreover, the issue that emerged after the opening of the new Parliament session is the **treatment of media in the Parliament**. The mark that Freedom House gives Serbia in the aspect of Media is 2 out of 4.²⁰ World Justice Project's Rule of Law Index 2020 marks Serbia with 0.48 on freedom of expression, which includes assessment on the independence of the media. Transparency Serbia in its BICA Report gives mark 25/100 in the assessment of the independence of media and states: "Serbian outlets are predominantly under state control or very strongly influenced by it at least, censorship and self-censorship are widespread, investigative journalism is constantly under attack from the government representatives, financing is not transparent, and pressure against local media has been on the rise."

The only positive move forward in this field, that is noted by the EC's Progress Report on Serbia (2020) as well as OSCE in Serbia is the adoption of the new *Media Strategy* in January 2020. EC Progress Report states that the Strategy "was drafted in a transparent and inclusive manner and identifies the main challenges related to media freedom in Serbia." However, the main problem that persist is the implementation of the legal framework, which EU recognizes, as well: "implementation of the new strategy has not yet started, and no progress was made yet on the ground to improve the overall environment for freedom of expression."

Recently, the state addressed the issue **safety of journalists** on several grounds. Based on a newly adopted Action plan for Media strategy *Government Working Group for the Safety and Protection of Journalists* was established. Its main task is to elevate efficiency of the reaction in cases of attacks against journalists. The work of Standing Working Group on the Safety of Journalists, which is established as the channel of communication with police and the office of the prosecutor is continued. In May 2020 the Ombudsman signed the agreement with seven media associations and all three journalists' trade unions for the establishment of the platform that will gather information about the pressures that journalists are exposed to. At the end of December 2020, the Republic Public Prosecutor adopted a general compulsory instruction in which it is stipulated that in cases in which reporters are victims of crimes, public prosecutors will act in urgent procedure.²¹

However, parallel to building this legislative and institutional framework for the protection of Journalist, in practice threats continue to take place. What is also concerning is that already pending cases before the courts regarding killing or threatening journalist are hindered by the general lack of judicial independence (see part on judiciary). The trial for the murder of Slavko Ćuruvija (1999) had started in 2015 and resulted in convictions, but was restarted in October 2020. Another concerning case is the postponing of the trial for burning of the house of Milan

¹⁸ EU is mostly concerned with the safety of Journalists – "Cases of threats and violence against journalists remain a concern". EC's Progress Report on Serbia (2020), Brussels, 6.10.2020, SWD (2020) 352 final.

¹⁹ "Transparency of media ownership and of allocation of budgetary funds, especially at local level, has yet to be established". EC's Progress Report on Serbia (2020), Brussels, 6.10.2020, SWD (2020) 352 final.

²⁰ Freedom House in this regard makes the following note: "Despite a constitution that guarantees freedom of the press and a penal code that does not treat libel as a criminal offense, media freedom is undermined by the threat of lawsuits or criminal charges against journalists for other offenses, lack of transparency in media ownership, editorial pressure from politicians and politically connected media owners, direct pressure and threats against journalists, and high rates of self-censorship. The Regulatory Body for Electronic Media (REM) has been criticized for a lack of independence."

²¹ <https://www.cenzolovka.rs/pritisci-i-napadi/dolovac-nalozila-hitno-postupanje-u-predmetima-u-kojima-su-ugrozeni-novinari/>; <https://www.cenzolovka.rs/drzava-i-mediji/nove-mere-tuzilastva-predstavljene-stalnoj-radnoj-grupi-za-bezbednost-novinara/>

Jovanović which is becoming more surreal, having in mind the reasons that are presented each time the trial is postponed.

As for the issue of **Media Ownership and Funding**, it is important to stress out that the privatization of media, that started in 2015 is still not completed. The state is still strongly present in the Media ownership structure, either directly or indirectly - through private persons and companies that are owners of media but have close ties to the state.

There is a huge number of media registered at Business Registers Agency (data vary from year to year, from 1600 to 2000), therefore it is not always easy to effectively trace all the misuses. Moreover, "on paper" concerns on the ownership are not always visible. However, having in mind that the market of advertising is worth only 170 million EUR per year, it is clear that most of the media rely on financial aid from the state. Moreover, while there is no precise data, it is strongly believed that the government is the largest advertiser. BICA report explicitly states that: the government controls most of the media, "not through direct ownership, but rather through "project financing" (public funding) or allocated budget (as mentioned above), and media advertising, in an "arbitrary and non-transparent manner, usually in favour of pro-government media outlets".

The EC Progress Report stresses that "several companies were purchased by Telekom Srbija, whose majority stakeholder is the state." This issue overlaps with the previously mentioned topic of corruption. Moreover, Transparency Serbia claims in its BICA study that most media outlets cannot function independently of the government and commercial advertisers, which prevents them from fulfilling their role completely in the fight against corruption in both public and private sector, it was concluded in the research results.

When the situation is analysed in more depth based on relevant indicators, several problems emerge. Media Ownership Monitor (MOM) applied 10 Indicators of Risks to Media Pluralism to the Media in Serbia and on most points it is marked by negative extremes or medium (Media Audience Concentration, Cross-Media Ownership Concentration, (Political) Control over Media Funding are marked as HIGH; Regulatory Safeguards both for Media Ownership Concentration and Cross-Media Ownership Concentration, Ownership Transparency and (Political) Control over Media Outlets and Distribution Networks and News Agencies are marked as MEDIUM; Regulatory Safeguards: Ownership transparency is marked as LOW and Media Market Concentration has NO DATA).

Especially concerning is the role of state in the editorial policy of the national public broadcast, RTS. EC Progress Report states: "Financial and staff concerns apply to public broadcasters as well, as these have a direct impact on their editorial independence. Although subscription to RTS increased by approximately 15% as of January 2020, it still does not allow for a stable financial model that would secure its independent and professional work." After the adoption of the State budget for 2021, the claims emerged that the state is using the budget to influence and control RTS and RTV (Vojvodina's public broadcast).

Another concerning issue that threatens media pluralism and independence is the **treatment of media in the Parliament**. The ruling party's MP's are very eager to harshly critique work of some media (concretely N1 and Nova S) describing them as "anti-serbian, domestic traitors and foreign mercenaries".

The work of **institution that should monitor electronic media (REM)** is also dubious. Another concern regarding the freedom of expression are media with national frequency and the role of REM in providing the relevant authorization. BICA report states that: "During the last couple of years, television stations with national frequency have been fully placed under the control of the government or people linked to it. Pro-government televisions Pink and Happy have vigorously been spreading government propaganda while the former independent TV outlets B92 and Prva, with new owners joined the state propaganda club." The fact is that television is the most popular media in Serbia (62,5%), while the biggest share belongs to four media groups (PSB, Pink, Antena and Happy).

It is necessary to shortly mention the position of media during electoral campaigns. The EU Progress Report quotes ODIHR report and states: “Position of media during electoral campaign which was biased towards the ruling party. ODIHR also found that most TV channels with national coverage and newspapers promoted the government policy and that the few media outlets which offered alternative views had limited outreach and provided no effective counterbalance, which compromised the diversity of political views available through traditional media, through which most voters receive information.” Another issue for concern is that this is not visible in the REM report on the matter.

Evaluation and Recommendations

The state of affairs of media in Serbia remains in the shadow of various assaults on Journalist and some Media; lack of transparency in Media Funding and Ownership; the tendency to actively hinder media pluralism and to directly or indirectly establish state monopolization of the media; and concerns on the independence of relevant institutions. Therefore, this issue remains in class D (continuously problematic situation – stagnation).

- It is necessary to establish better protection of journalists in practice. Therefore, it is necessary to truly implement the legislative framework and to coordinate the work of all the existing bodies for the safety of journalists, in order for their potential to be truly realized in practice.
- It is necessary to express more transparency in the field of media ownership and funding which will enable true media pluralism. Another important aspect is to better regulate media with national frequency so that the pluralism can actually be achieved in practice. The existing monopoly in ownership of media with national coverage is detrimental for democracy.
- Bodies established to monitor the work of media need to be more neutral and independent in their work. REM is particularly susceptible to the political interference. The selection of its members and decisions the REM makes/does not make should be scrutinized.

2.4 Human rights protection

Assessment

According to the EC Progress Report, the legislative framework in Serbia on human rights protection is satisfactory, but: “consistent and efficient implementation of legislation and policies still needs to be ensured.” Serbia is a signatory party in eight out of nine International Conventions in the field of Human Rights protection.²² While there are some problems with implementation, the positive development might be establishment of the Ministry for Human and Minority Rights and Social Dialogue.²³ One of the key institutions for the rule of law, the Constitutional Court (CC) tends to neglect normative control in favour of human rights protection via constitutional complaint procedure (97% of all proceedings). From the rule of law perspective, it is not recommendable to neglect normative control of constitutionality of laws and other legal acts. The curious positioning of the CC was particularly detrimental to the human rights protection during the state of emergency caused by the COVID 19 pandemic. In that period of time when the derogations of rights were the most frequent the CC was inactive for 67 days, instead of monitoring the proportionality of the applied measures.²⁴

For the purposes of this analysis several relevant topics are discerned in agreement with the stakeholders: enforcement of rules of the international mechanisms for the protection of human rights; legal aid; treatment of vulnerable groups and freedom of assembly association.

Enforcement of rules of the international mechanisms for the protection of human rights

Human rights are much more vulnerable during the state of emergency. In Serbia it was declared on March 15th 2020 by the President of Republic, Prime Minister and the Speaker of the Parliament, vesting all the power in the Executive. However, this should have been the decision of the Parliament, according to the Constitution, unless it was impossible for the Parliament to convene. Nobody has provided any explanation why the MPs could not assemble at the time, discuss and decide on the most adequate response to the crisis. At the time there were less than 100 cases of infection.

Serbia was obliged to the Council of Europe (Article 15 of the ECHR) and to the OUN (the Article 4 of the ICCPR) to notify Secretary General of the CoE/OUN about the declaration of the state of emergency and the derogation of certain rights. However, the notifications were inadequate. There was neither information which rights would be derogated nor justification for the derogatory measures and their proportionality.²⁵

There needs to be an assessment of the execution of judgments of the European Court of Human Rights in relation to Serbia.²⁶ Problematic issues emphasized in this report are the following: status of Representative (Government Agent) of Serbia in the process of execution, having in mind that a normative arrangement is not in accordance with its actual role; its internal procedures are inadequate; obligations of the Agent as well as the other relevant bodies are not clearly defined in law; and the role of Parliament in this process is completely lacking.

As for the compliance of Serbia with the recommendations of the treaty bodies of human rights treaties, the main information can be found via the Government Council for monitoring the implementation of UN Human Rights Mechanisms and the Platform of Organizations for Cooperation with UN Human Rights Mechanism (in 2018 the Platform gathered 18 CSO’s with previous experience in reporting to UN HR Mechanisms).

²² Serbia has yet to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

²³ In accordance with the Article 12 of the Law on Ministries (“Sl. glasnik RS”, br. 128/2020) its competences comprise, inter alia: “protection and promotion of human and minority rights; drafting of regulation on human and minority rights; monitoring of the compliance of national legislation with international treaties and other international legal acts on human and minority rights, as well as other work defined by the law. ... equality of sexes, and discriminatory policy, issues addressing gender equality, with the aim of promotion of gender equality in the Republic of Serbia, as well as other work defined by the law.”

²⁴ BCHR 2020, p. 13.

²⁵ BCHR Report 2020, p. 20.

²⁶ Available at: <https://rm.coe.int/needs-assessment-execution-of-ecthr-judgments-in-respect-to-serbia/1680a04f05>

The work of the Platform is aimed at monitoring 8 cluster groups of human rights, through the working groups. The Platform adopted very comprehensive and detailed recommendations with clear goals, results and activities to be undertaken and what is more important with useful indicators in order to assess the fulfilment of the goals.²⁷ In November 2020 the Platform issued a Report on UPR Mid-term 2020²⁸ in which it established that from 56 recommendations that were analysed only 3 are partially fulfilled, while 53 remain unrealized. Also, the Platform called upon the newly-formed Ministry for Human and Minority Rights and Social Dialogue to continue with the activities of Council for monitoring the implementation of UN Human Rights Mechanism.²⁹

Recommendations

- The Serbian Government should have fully and properly respected the obligation to notify CoE and the OUN about the declared state of emergency. This was an international obligation and also matter of the state's international reputation. Furthermore, the ratio of this obligation is to better secure respect of human rights in times of crisis.
- Harmonize normative framework with the actual situation in practice regarding the role of Government Agent and other relevant bodies in the execution of ECtHR judgments.
- The Government Council for monitoring the implementation of UN Human Rights Mechanisms should provide more substantial role on the issue, present more detailed information on the recommendation and be more proactive in the recommendations on the measures that need to be taken in order for the recommendations to be fulfilled as well as regarding opinions on the state of affairs of human rights, as is defined in its mandate.
- Indicators developed by the Platform of Organizations for Cooperation with UN Human Rights Mechanism should be used extensively.

Legal aid

Relevant information on free legal aid are to be found in the report of the Ministry of Justice on the implementation of the Law on free legal aid. From the report it is clear that the system of free legal aid at local level is not yet in place. This is supported by the finding presented by YUCOM in the report on the experience of the first six months of the implementation of the Law.³⁰ It is concluded that some of the problems stem from the following: the fact that many towns and municipalities still did not establish free legal aid; limited human and financial resources; marginalization of the role of associations and lack of knowledge of those in need of the existence of free legal aid, as the result of the lack of media campaign and not always clear and precise provision of the Law.³¹ Moreover, CSOs stated their concern regarding the fact that "NGOs without a lawyer registered in the bar are not, under this law, eligible legal aid providers, apart from a few exceptions. At the same time, the Bar Association of Belgrade warned that attorneys who act as statutory representatives for NGOs would be disbarred."³²

Recommendations

- To provide relevant resources (both financial, human and in terms of training) to municipalities and towns in order for the legal aid to be uniform in all parts of Serbia.
- To conduct promotion on the existence and the conditions of the use of free legal aid.

²⁷ The table is available here: <https://platforma.org.rs/wp-content/uploads/2020/01/Izabrane-preporuke-sa-indikatorima-final.pdf>

²⁸ <https://platforma.org.rs/wp-content/uploads/2020/11/Platform-UPR-Mid-term-2020-Serbia-3rd-cycle.pdf>

²⁹ "Serbia did insufficiently to enhance and protect human rights", 19.11.2020. Available at: <https://platforma.org.rs/srbija-nedovolj-no-ucinila-na-unapredenju-i-zastiti-ljudskih-prava/>

³⁰ Milan Filipović, ZAKON O BESPLATNOJ PRAVNOJ POMOĆI, Prvih šest meseci primene, Beograd, 2020. Available at: <https://www.yucom.org.rs/wp-content/uploads/2020/07/Primena-zakona-BPP-2.pdf>

³¹ Milan Filipović, ZAKON O BESPLATNOJ PRAVNOJ POMOĆI, Prvih šest meseci primene, Beograd, 2020.

³² Non-paper on the state of play regarding chapters 23 and 24 for Serbia, June 2020. Available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf

Treatment of vulnerable groups

For the purposes of this Policy paper analysis, vulnerable groups will encompass the following categories: people with disabilities, migrants, asylum seekers and refugees, children, gender and LGBTI+.³³ While these groups suffer the same consequences of Covid-19 as the rest of the population, having in mind their specific characteristics and needs, they were more vulnerable to the effects of the pandemic.³⁴ The circumstances of the pandemic only emphasised the already existing problems, therefore the recommendation will be relevant both for present times and for the future.

Main problems for **people with disabilities** were the accessibility of care during the state of emergency and the fact that visits in social centres were forbidden. Therefore, there were claims that their right to privacy and family life and personal freedom were breached. Moreover, after the abolishment of the state of emergency these problems persist and people with disabilities remain in hard position to ensure the usage of the help and services that they need (social centres and personal assistants). The Ombudsman states that there are systemic problems in the exercise of rights of people with disabilities.

While the number of **migrants and asylum seekers** did notably decrease (which is understandable having in mind strict restrictions regarding the entry into Serbia), transit centres are still overcrowded. Moreover, large numbers of migrants do not want to stay in the centres, fearing that new restriction measures will find them in lockdown.

As for the **children** that go to school the main and drastic change is the online learning system. As presented in the UNICEF longitudinal study on effects of Covid-19 on families with children, besides technical hindrances (caused by financial state in the family or lack of knowledge by the teachers), children experience effects on their mental state (regarding concentration, uneasiness and loneliness).

Another negative aspect of the Covid-19, that especially has effect on **women** is the domestic-based violence. UNDP recognized that Covid-19 increased this type of violence and this is a global problem that Serbia is not immune to. Numbers of women that turned to relevant help during the state of emergency clearly shows this - it was three times higher than usual, only in the first month of the state of emergency. This was also recognized by the Ombudsman. Several state organs have campaigns on this issue,³⁵ and the newest development is that working group on national strategy on the prevention and suppression of violence against women in family relations 2020 – 2025 started its work.³⁶ Finally, a very comprehensive and detailed study on the position of women in Covid-19 and all the repercussions on their status (social and economic) can be found in the OSCE supported study "Gender analysis of the response to Covid-19 in the Republic of Serbia".

The problem of domestic violence is typical for **LGBTI+** population as well. Their protection in Serbia for years is not adequate, and moreover pandemic resulted in the loss of jobs which meant that some of the members of this group needed to return to primary families, where they might feel discriminated and endangered. Another important problem is the availability of medicines and regular medical appointments which some members of this group are in constant need of. Legal recognition of the same-sex civil partnerships still does not exist.

³³ The first three groups are in line with Council of Europe approach (see: <https://www.coe.int/en/web/europarisks/vulnerable-groups>), while the issue of gender and LGBT+ stemmed from the discussions and the conclusion of the SEELD 2.0 Conference.

³⁴ General overview of the effect of the measures introduced by the state as the result of Covid-19 can be found in CSO's reports. See, e.g. YUCOM's Report on human right and COVID-19: <https://www.yucom.org.rs/wp-content/uploads/2020/04/LJUDSKA-PRAVA-I-COVID-19-Analiza-izmena-pravnog-okvira-tokom-vanrednog-stanja-i-uticaj-na-u%C5%BEivanje-ljudskih-prava-final.pdf>

³⁵ See portal <https://iskljucinasilje.rs/rs/> of the Ministry of Justice.

³⁶ <https://www.srbija.gov.rs/vest/509484/nulta-tolerancija-na-sve-oblike-nasilja-nad-zenama.php>

Recommendations

- Relevant state bodies need to provide a more proactive approach in the protection of human rights of vulnerable groups. Non-discrimination is just the minimum protection that has to be afforded.
- All rights derogations need to be proportionate and this assessment needs to take into consideration special characteristic of affected vulnerable groups.
- The Ombudsman, the Commissioner for the Protection of Equality, and the Commissioner for Information of Public importance and Personal data protection should be more present, more vocal in media and more prone to reacting to alleged human rights violations. Moreover, they could be more open to public and publish updated reports and studies on relevant issues.
- Also, it is advisable that state bodies establish durable and sincere cooperation with relevant CSO's, especially having in mind their expertise and the possibility to provide relevant feedback on the state of affairs of human rights.
- In terms of Covid-19, the State needs to take due care when adopting decisions on Covid-19 and a special evaluation need to be made as regards vulnerable groups. Every regulation on restrictions should have precisely defined and evaluated effect on this population, and if needed an exception in order for their rights to be safeguard. All measures need to take into account vulnerability of this population.
- The Government of Serbia should consider to adopt relevant legislation rights (Law on same sex civil partnership and Gender Identity Law) in order to ensure better LGBTI+ human rights' protection.

Freedom of Assembly and Association

The BCHR Report on Human Rights contain very detailed description of all the gatherings that took place in Belgrade and other towns on Serbia on various occasions.³⁷ This right was however restricted after the start of the epidemic. The specificity of situation is related to the elections that were to be held in June 2020 and the election rallies that were planned. During the epidemic restrictions in terms of the number of people that could gather in the open and closed space changed frequently. While this right can be restricted, it should always be done in the accordance with the relevant international standards, and citizens should have clear and timely information on the restriction. Furthermore, the principle of non-discrimination should be respected.

As for the right of association, problematic occurrence that transpired was the list of CSOs, media association and individual persons whose financial information were asked by the Administration for the prevention of money laundering.³⁸ The impression was that certain CSOs were targeted for their critical views on the Government.

Recommendations

- Freedom of Assembly and Association need to be guaranteed and respected. All the restrictions need to be clearly defined and in accordance with international standards. It is of special importance that relevant associations continue their work without improper interference or pressures of the state organs, either direct or indirect.

Evaluation

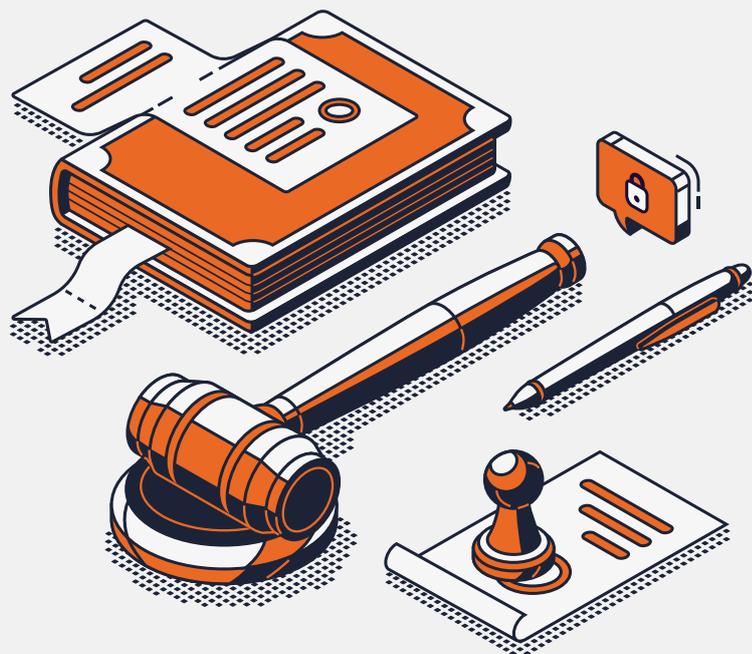
Our estimation is that in terms of the Human Rights Protection Serbia should be characterized as Class C. While there are many problems in the area of Human Rights Protection that persist and are even accentuated in the Covid-19 environment, the legislative framework is in place or is being improved, and there is an increasing number of governmental institutions which have potential to deal with the issue, if they are provided with more trust, resources and time to pierce through prejudices and populist traps.

³⁷ See BCHR's Report on Human Rights, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-l-VI-2020.pdf>

³⁸ <https://www.cenzolovka.rs/pritisci-i-napadi/sabic-vlast-mora-da-objasni-zasto-je-naredila-proveru-racuna-nvo-i-medija/>

POLICY AND LEGAL ASSESSMENT L THE STATE O RULE LAW

IN ALBANIA,
BOSNIA AND HERZEGOVINA,
KOSOVO
AND SERBIA



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