

# Serbia

Jelena Simić\*

## 1. Introduction<sup>1</sup>

The Serbian Constitution, adopted in 2006, includes a chapter with a number of human rights guarantees and enables an individual to lodge a constitutional complaint before the Constitutional Court in case they are breached. The Serbian Constitution also envisages that the generally accepted rules of international law and ratified international treaties shall be an integral part of the national legal system and shall be applied directly (Art. 16(2)). Moreover, Article 18 of the Constitution specifies that human and minority rights guaranteed by the generally accepted rules of international law and ratified international treaties shall be directly applicable in the Serbian internal legal system.<sup>2</sup> It should be emphasized that Serbia is a contracting state in all major universal and regional (European) human rights treaties.<sup>3</sup>

For the purpose of this report, one should keep in mind that the developments during the reporting period (2014-2016) need to be observed through the prism of the EU–Serbia accession negotiations, which were initiated on 21 January 2014.<sup>4</sup>

This report is an overview of the most significant developments regarding human rights protection in Serbia, in particular the right to life, the right to a fair trial, freedom of expression, prohibition of discrimination, freedom of assembly and association, and the right to peaceful enjoyment of possessions.

The report will show that the legal and institutional framework for the respect of fundamental rights is in place, but further sustained efforts are needed in order to raise the level of respect of basic human rights in Serbia.

\* Jelena Simić is assistant professor, Union University Law School (Belgrade).

1 This review covers the period 2014-2016.

2 Constitution of the Republic of Serbia, *Official gazette of the RS*, No. 98/06.

3 Serbia is a party to a large number of major international instruments. See official website of the Ministry of Foreign Affairs RS, available at: [www.mfa.gov.rs/en/foreign-policy/multilateral-issues/human-rights](http://www.mfa.gov.rs/en/foreign-policy/multilateral-issues/human-rights) (last accessed 15 March 2018).

4 See more on opening of accession negotiations at Ministry of Foreign Affairs RS website, available at: [www.mfa.gov.rs/sr/index.php/teme/proces-pristupanja-republike-srbije-eu?lang=lat](http://www.mfa.gov.rs/sr/index.php/teme/proces-pristupanja-republike-srbije-eu?lang=lat) (last accessed 15 March 2018).

Jelena Simić

## 2. Right to Life

### 2.1. *A Path to Legalization of Active Euthanasia?*

The Constitution provides the protection of the right to life in its Article 24.<sup>5</sup> Under the Constitution, physical and mental integrity is inviolable, and no one shall be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent (Art. 25).<sup>6</sup> Draft Civil Code, subject to a public debate from May 2015 to July 2017, has introduced important novelties regarding the right to life – namely, it envisages the legalization of active euthanasia. The right to euthanasia has been introduced in Article 92:

[t]he right to euthanasia, as the right of a natural person to a consensual and voluntary premature termination of life, may be granted provided that the humane, social and medical conditions prescribed by law are met. The requirements and procedure for the realization of the right to euthanasia shall be prescribed by law.<sup>7</sup>

One of the draft law provisions also states that the abuse of the right to euthanasia in order to obtain unjustified financial or other benefits shall provide a basis for criminal liability. However, as an alternative, the draft law

leaves the possibility to the public to decide during the debate to eliminate Article 92 from the final version of the Code - i.e. not to provide at all for the right to euthanasia.

However, there is still no clear indication of the conclusions of the public debate and when the Draft will enter parliamentary procedure.

### 2.2. Gender-based Violence

Domestic violence was on the rise during the whole reporting period. Estimates are that as many as 34 women were killed in domestic violence incidents in 2015, i.e. 26% more than in 2014.<sup>8</sup> The system of protection of women exposed to gender-based violence is characterized, among other things, by a lack of timely or efficient responses, information exchange, intersectoral cooperation and inade-

5 “Human life is inviolable. There shall be no death penalty in the Republic of Serbia. Cloning of human beings shall be prohibited” – Constitution of the Republic of Serbia, *Official gazette of the RS*, No. 98/06.

6 *Ibid.*

7 The Civil Code Draft is available in Serbian, available at: [www.paragraf.rs/nacrti\\_i\\_predlozi/260615-nacrt\\_gradjanskog\\_zakonika.html](http://www.paragraf.rs/nacrti_i_predlozi/260615-nacrt_gradjanskog_zakonika.html) (last accessed 15 March 2018).

8 *Ibid.*

quate training of the employees.<sup>9</sup> The Ombudsman established that in 12 out of 14 reported cases of murdered women, the relevant institutions failed to respond to reported violence against the women prior to the incident. According to the Autonomous Women's Centre, during 2015 around 1,200 women moved to safe houses throughout the country, while only 71 perpetrators were removed from their residences.<sup>10</sup>

In its reports on Serbia of 2014 and 2015, the European Commission expressed serious concern about the cases of women killed by their partners and called on the full implementation of the Istanbul Convention.<sup>11</sup> The Law on the Prevention of Domestic Violence was finally adopted in November 2016.<sup>12</sup> The Law governs the organization and activities of state authorities aimed at preventing domestic violence, introduces urgent measures, such as the removal of the offenders from the families, and 48-hour restraining orders, which may be extended for another 30 days, as well as disciplinary measures against public officials who fail to act in accordance with the law.<sup>13</sup>

### 3. Right to a Fair Trial

As a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Serbia is obliged to harmonize its legislation on the right to a fair trial with the standards included in these documents, as well as to implement them in practice. However, the judiciary in Serbia has proved to be ineffective – differences in workload, excessive length of proceedings, a significant backlog of cases, the absence of a free legal aid system, a lack of enforcement of final decisions and indemnity claims are major obstacles to an effective implementation of the right to a fair trial.<sup>14</sup>

A good illustration of this point is in the 27 judgments delivered by the European Court of Human Rights against Serbia in 2014 alone, which mostly referred either to the violation of the right to a fair trial due to the length of the procedure

9 Regular Annual Report of the Protector of Citizens for 2015, Ref. No.7873, 15 March 2016, pp. 14 and 104. Report available at: <http://ombudsman.rs/attachments/article/1431/Annual%20Report%202015.pdf> (last accessed 15 March 2018).

10 *Ibid.*

11 In October 2013, Serbia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the so-called Istanbul Convention, which is the first and only binding document governing violence against women at the European level. Violence against women is the most widespread form of violation of women's human rights. *Official gazette of the RS* (International Treaties), No. 12/13.

12 Law on the Prevention of Domestic Violence, *Official gazette of the RS*, No. 94/16.

13 V. Petrovic (Ed.), *Human Rights in Serbia 2016: Law, Practice and International Human Rights Standards*, 2016, p. 65. Report available at: [www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf](http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Human-Rights-in-Serbia-2015.pdf) (last accessed 15 March 2018).

14 European Commission, Serbia Progress Report, COM (2014)700 final of 8.10.2014, p. 42. Available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20140108-serbia-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf) (last accessed 15 March 2018).

Jelena Simić

or to the non-enforcement of domestic judgments.<sup>15</sup> The judiciary in Serbia, however, rarely considers international human rights guarantees as sources of law, although it has been observed in recent years that judges have increasingly begun to invoke ECHR provisions in the explanations of their judgments.<sup>16</sup> The lack of a proper execution of ECtHR judgments continues to be of great concern during the whole reporting period.

#### 4. Freedom of Expression

The Serbian Constitution guarantees the right to freedom of expression of opinion (Art. 46).<sup>17</sup> The Constitution guarantees freedom of the press – the publication of newspapers is possible without prior authorization and subject to registration, while television and radio stations shall be established in accordance with the law (Art. 50). The same article prohibits the censorship of the press and other media.

The ongoing media legislation reform represents an attempt to create favourable conditions for the media functioning in Serbia. A crucial document in this context is the Media Strategy, which was adopted in 2011 as one of the conditions for obtaining a candidate status in the EU accession process.<sup>18</sup> However, during the reporting period, the goals envisaged in the Media Strategy were not reached. Moreover, it can be said that the situation in the media is reminiscent of the period of Milosevic's regime.<sup>19</sup>

Practically, the degree of media freedom in Serbia significantly decreased in the 2014-2016 period. Critical reporting was labelled a 'subversive', dishonest anti-governmental activity that hampered reforms, delayed Serbia's progress and threatened the peace and welfare of its citizens.<sup>20</sup> Several important political TV

15 *Ibid.*, p. 45. The European Court of Human Rights delivered 29 judgments on 73 applications against Serbia in 2014.

16 See detailed analysis about Status of the Convention and the Role of the Constitutional Court in its Reception in V. Beširević & T. Marinković, 'Serbia in "a Europe of Rights": The Effects of the Constitutional Dialogue between the Serbian and European Judges', *European Review of Public Law*, Vol. 24, 2012, p. 211, at 213.

17 Constitution of the Republic of Serbia, *Official gazette of the RS*, No. 98/06.

18 The Strategy of Development of the Public Information System in the Republic of Serbia Until 2016 (Media strategy), available at: [www.osce.org/serbia/107562](http://www.osce.org/serbia/107562) (last accessed 17 March 2018).

19 More information about media status in that period: ANEM Legal Department and Media Monitoring Agency, 'The Media Situation in Serbia after October 5, 2000', 2000, available at: [www.b92.net/events/conference/situation2.html](http://www.b92.net/events/conference/situation2.html) (last accessed 20 March 2018).

20 *Ibid.*

shows were cancelled in 2014.<sup>21</sup> The OSCE representative on freedom of the media expressed “concern about a trend of online censorship in Serbia in 2014.”<sup>22</sup>

The year 2015 was marked by controversial media privatizations, which have strongly reflected on the freedom of expression.<sup>23</sup> The Independent Journalists’ Association of Serbia announced that during 2016 it recorded a total of 60 cases of physical and verbal attacks on journalists, including eight physical attacks, one threat to property, 25 verbal threats, and 26 instances of pressure targeting journalists.<sup>24</sup>

During the reporting period, there were a number of cases where prominent political figures publicly attacked the media for critical reporting. For example, in 2016 the weekly magazine NIN lost a lawsuit against the Serbian Minister of Internal Affairs, filed in regard to the media coverage of the case concerning the illegal demolition of a number of houses and industrial constructions in Savamala (a neighbourhood in Belgrade) and the lack of police response in this case.<sup>25</sup>

Contrary to the well-established ECtHR case law,<sup>26</sup> as well as the General Comment No. 34 of the Human Rights Committee, the Court found there had been a violation of the minister’s honour and reputation and ordered the weekly magazine NIN to pay 2,500 EUR for non-pecuniary damages.

At the same time, it can be said that the adoption of three new media laws represents a significant step forward in securing freedom of expression in Serbia. A set of new laws adopted in 2014, including the Public Information and Media

- 21 In May, the investigative website ‘Pescanik’ was disrupted repeatedly by distributed denial-of-service attacks after it posted articles accusing Minister of the Interior of plagiarizing his doctoral dissertation. The police opened an investigation but made no arrests. In September, a trio of long-running political talk shows was cancelled, prompting protests by journalists’ associations and accusations of political meddling in programming that at times has been critical of the government. Privately owned B92 placed the popular ‘Utišak Nedelje’ programme on indefinite hiatus when its production company refused a shift to a lesser-watched cable outlet. Host Olja Beckovic publicly accused the prime minister of applying political pressure on media, which he forcefully denied. Also in September, Studio B cancelled ‘Sarapin Problem’ and ‘U Centru’, saying the two political shows had low ratings.
- 22 Regular Annual Report of the Protector of Citizens for 2014, Ref. No. 7919, published 14 March 2015, pp. 10 and 11.
- 23 Petrovic, 2016, p. 170.
- 24 Regular Annual Report of the Protector of Citizens for 2016, Ref. No. 10092, 15 March 2017, p. 6. Report available at: [www.ombudsman.rs/attachments/article/5191/Introduction\\_2016%20Annual%20Report.pdf](http://www.ombudsman.rs/attachments/article/5191/Introduction_2016%20Annual%20Report.pdf) (last accessed 15 March 2017).
- 25 Country Reports on Human Rights Practices for 2016, United States Department of State, Bureau of Democracy, Human Rights and Labor, pp. 11 and 13. Available online at: <https://rs.usembassy.gov/wp-content/uploads/sites/235/2017/07/Serbia-2016-human-rights-report.pdf> (last accessed 15 March 2018).
- 26 See, for example, ECtHR case law regarding media freedom, issues of public importance, critique and scrutiny of public officials: *Prager & Oberschlick v. Austria*, Application no. 15974/90, judgment of 26 April 1995; *Tolstoy Miloslavsky v. the United Kingdom*, Application no. 18139/91, judgment of 13 July 1995; *De Haes & Gijssels v. Belgium*, Application no. 19983/92, judgment of 24 February, 1997.

Jelena Simić

Act,<sup>27</sup> the Electronic Media Act<sup>28</sup> and the Public Media Services Act,<sup>29</sup> to a significant extent regulates the media field in line with the EU standards and regulations.

## 5. Prohibition of Discrimination and Freedom of Assembly and Association

### 5.1. *The Status of the LGBT Community*

Although a relatively adequate legislative framework exists, the LGBTI and Roma communities remain some of the weakest, most marginalized and discriminated groups in the country, occasionally also exposed to violence. Tolerance of discrimination is above all reflected in the inefficient prosecution and punishment of the perpetrators. LGBTI activists claimed that the inadequate government response to violent acts against the LGBTI community encouraged perpetrators to target them for abuse.<sup>30</sup>

State bodies are prone to either minimizing the significance of the cases of discrimination, which the public hears about mostly thanks to the courage of individuals and reports by the media and NGOs, or denying that discriminatory motives lie at the root of violence and other forms of discrimination. Hate speech is widespread in Serbia, both in the media and in publishing.

Unfortunately, some members of the parliament had been active in promoting discrimination, but the judicial response was encouraging. In 2014, an important court decision was delivered. The NGO, Gay Straight Alliance (GSA), filed a lawsuit against Dragan Marković Palma, the Mayor of the City of Jagodina, the president of the parliamentary political party United Serbia (JS) and until recently a member of the Serbian Parliament, for a severe form of discrimination against the LGBT population.<sup>31</sup>

In his statement given to the media, he said that

[t]he position of United Serbia and my personal position is – that we are against every assembly where homosexuals demonstrate on the streets of Belgrade and wish to present something that is a disease as if it were normal.

The First Basic Court in Belgrade delivered a guilty verdict against Marković and found that Marković committed a severe form of discrimination on the basis of

27 Public Information and Media Law, *Official gazette of the RS*, No 83/14, 58/15, 12/16 – authentic interpretation.

28 Electronic Media Law, *Official gazette of the RS*, No 83/14, 6/16.

29 Public Media Services Law, *Official gazette of the RS*, No 83/14, 103/15 and 108/16.

30 See about physical attack on a trans person: 'Young Trans\* Man Assaulted', DA SE ZNA!, 13 October 2016, available in Serbian at: [https://dasezna.lgbt/case/DaSeZna\\_0029/Napad%20na%20trans\\*%20mladi%C4%87a%20.html](https://dasezna.lgbt/case/DaSeZna_0029/Napad%20na%20trans*%20mladi%C4%87a%20.html) (last accessed 15 March 2018). It is important to say that Serbia has no procedures for legal gender recognition in place, even in cases of gender reassignment.

31 See about this case on the Gay Straight Alliance Info centre website available at: <http://en.gsa.org.rs/2011/11/dragan-markovic-palma-found-guilty-of-severe-discrimination-of-lgbt-population/> (last accessed 15 March 2018).

sexual orientation, according to Articles 11, 12, 13 and 21 of the Law on the Prohibition of Discrimination.<sup>32</sup> Marković filed an appeal, but the Court of Appeal in Belgrade confirmed the lower court decision that Marković committed serious forms of discrimination against the LGBT population.<sup>33</sup>

Yet, there were some positive trends regarding the position of the LGBT community.<sup>34</sup> The first Pride Parade in Belgrade since 2010 was held on 28 September 2014. An estimated 1,000-1,500 participants marched in the event, including several high-level Serbian government officials.<sup>35</sup> The fact that the pride parade in Belgrade was held without major incidents marked a substantial step towards the effective protection of human rights in general and LGBTI rights in particular.

The Pride Parade was successfully organized in both 2015 and 2016 without any major incidents. In August 2015, Ana Brnabić, an openly LGBTI business woman, was appointed Minister of State Administration and Local Self-Government, making her the first openly LGBTI individual to serve as a government minister.<sup>36</sup>

### 5.2. *The Protection of the Roma Minority*

Discrimination against the Roma ethnic minority is widespread in Serbia and most notable in the areas of employment, education, health care and housing. UNHCR data from 2016 indicated that some 80,000 Roma living in around 600 informal settlements were yet to be legalized.<sup>37</sup> Thirty percent of these settlements did not have water supply, 33% were not connected to the public electricity grid and 40% were not connected to the sewage system.<sup>38</sup>

It should be emphasized that the new Strategy for Social Inclusion of Roma in the Republic of Serbia for the period of 2016-2025 was adopted at the beginning of 2016. In addition, 2015 and 2016 were marked by some positive trends in the protection of the Roma population in Serbia.<sup>39</sup> The municipal authorities of Zemun attempted to evict the informal Roma settlement of Grmeč, where over

32 Law on the prohibition of discrimination, *Official gazette of the RS*, No. 22/2009, available at: <http://ravnopravnost.gov.rs/en/legislation/republic-of-serbia-legislation/> (last accessed 28 March 2018).

33 Annual Report on the Status of Human Rights of LGBT persons in Serbia for 2014, Gay Straight Alliance, Report available online at: <http://en.gsa.org.rs/2015/03/gsa-annual-report-for-2014-presented-in-national-assembly/> (last accessed 15 March 2018).

34 An Action plan for the implementation of the Anti-discrimination strategy was adopted in October 2014. The documents are available at: [www.srbija.gov.rs/vesti/dokumenti\\_sekcija.php?id=45678](http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678) (last accessed 28 March 2018).

35 Petrovic, 2016, p. 212 (para. 10.3.1.).

36 See *Politika* online available at: [www.politika.rs/sr/clanak/361132/Ministarka-gej-i-lobista](http://www.politika.rs/sr/clanak/361132/Ministarka-gej-i-lobista) (last accessed 28 March 2018).

37 European Commission, Serbia 2016 Report, SWD (2016) 361 final, 09 November 2016, p. 65. Report available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf) (last accessed 28 March 2018).

38 *Ibid.*

39 The Strategy for Social Inclusion of Roma for the 2016-2025 Period, Official Gazette of RS issues no. 55/05, 71/05-correction. 101/07, 65/08, 16/11, 68/12 – decision adopted by the Constitutional Court, 72/12, 7/14 – decision adopted by the Constitutional Court, and no. 44/14.

Jelena Simić

50 Roma families, mostly from Kosovo, resided.<sup>40</sup> The Commissioner for the Protection of Equality issued a warning about the eviction, and the Lawyers' Committee for Human Rights filed an application with the European Court of Human Rights, asking it to issue an interim measure to halt the eviction.<sup>41</sup> The municipal authorities reacted and issued new rulings, in which they directly applied the International Covenant on Economic, Social and Cultural Rights and quashed the initial rulings, pending the provision of adequate alternative accommodation for the residents of this settlement. This was the first time an administrative authority in Serbia directly applied an international human rights treaty. The first Pride March of the Roma population was organized in September 2015, when around 1,000 participants marched down the streets of the capital.<sup>42</sup>

## 6. The Right to Peaceful Enjoyment of Possessions

The *Savamala* case is an illustration of both a grave violation of the right to peaceful enjoyment of possessions and the suspension of the rule of law. In the early morning of 25 April 2016 – the day after the parliamentary elections – a group of masked men, using bulldozers, demolished residential and commercial buildings in Belgrade's Savamala neighbourhood.<sup>43</sup> The incident occurred next to the construction site for the Belgrade Waterfront, a major multibillion dollar construction project, which has been causing much controversy.<sup>44</sup> Victims reported that the masked men harassed them, tied them up, interrogated them and took their personal belongings. Although the victims sought police assistance in response to these incidents, the police failed to respond. The Ombudsman publicly accused the Belgrade Police Department of an orchestrated operation to destroy the buildings in order to pave the way for the development of the Belgrade Waterfront project.<sup>45</sup>

The case testifies that the state authorities are prone to violating the right to property in pursuit of private interests, which are declared as public interests under the state laws. In response to the police failure to protect the citizens, there

40 Petrovic, 2016, p. 57.

41 The Commissioner's warning of 27 July 2015, available in Serbian at: [www.ravno-pravnost.gov.rs/sr/upozorenja/upozorenje-povodom-raseljavanja-roma](http://www.ravno-pravnost.gov.rs/sr/upozorenja/upozorenje-povodom-raseljavanja-roma) (last accessed 28 March 2018).

42 See more about Pride march of Roma at <http://mondo.rs/a833332/Info/Drustvo/Parada-ponosa-Roma-Otvoren-Festival-romske-kulture-i-aktivizma.html> (last accessed 28 March 2018).

43 Country Reports on Human Rights Practices for 2016, *supra* note 125, in Chapter 1, p. 11.

44 The National Assembly adopted the Act Establishing Public Interest and Special Expropriation and Building Licensing Procedures to Implement the Belgrade Waterfront Project (hereinafter: Belgrade Waterfront Act) on 8 April 2015. Under this law, the implementation of the Belgrade Waterfront Project is in the public interest, wherefore the necessary expropriations are formally and legally performed in public interest. In terms of the right to peaceful enjoyment of possessions, this law derogates the provisions of the Expropriation Act that precisely specifies in which cases public interest for expropriation may be determined. Such a practice undoubtedly jeopardizes the peaceful enjoyment of possessions because it facilitates limitless proliferation of cases in which property may be expropriated. See Petrovic, 2016, p. 260.

45 Regular Annual Report of the Protector of Citizens for 2016 (2017), *supra* note 124, in Chapter 1, p. 7.



were several mass protests involving tens of thousands of demonstrators. Although the Belgrade Prosecutor's Office conducted an investigation, no one has been charged with the offence.<sup>46</sup> Moreover, the Commissioner for Information of Public Importance and Personal Data Protection, and the Ombudsman received threats following their public call for investigation of the midnight destruction of the neighbourhood in the Belgrade district of Savamala.<sup>47</sup>

## 7. Conclusion

Bearing all this in mind, we can conclude that a legal framework which could provide respect for fundamental human rights does exist in Serbia, as well as the political will among decision-makers to enlarge the existing legal framework and harmonize it with the EU standards. However, touchy political areas such as the Eastern European countries, including Serbia, need more than this. They need a strictly controlled implementation of legal regulations, because the institutions within the system, as we could see, still do not possess sufficient strength to maintain the given standard in respecting their citizens' fundamental human rights on their own.

46 *Ibid.*

47 See more about Commissioner case at Commissioner official website available at: [www.poverenik.rs/en/press-releases-and-publications/2567-hronicna-qtajnovitostq-slucaja-qsavamalaq-krsenje-zakona-i-prava-javnosti.html](http://www.poverenik.rs/en/press-releases-and-publications/2567-hronicna-qtajnovitostq-slucaja-qsavamalaq-krsenje-zakona-i-prava-javnosti.html) (last accessed 28 March 2018).