

No 1, December 2013

# YUCOM 2013

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## ANNUAL REPORT

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Free Legal Aid

Selected Cases

Adequate Housing and Socially Vulnerable

The Most Important Projects in 2013.

Contributions in Promotion and Protection of  
Human Rights

Publishing Activity

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Ambasada  
Savezne Republike Nemačke  
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CIVIL  
RIGHTS  
DEFENDERS



YUCOM

Lawyers' Committee for Human Rights

## YUCOM 2013 – Annual Report

### Publisher

Lawyers' Committee for Human Rights – YUCOM  
Svetogorska 17, 11000 Belgrade  
[www.yucom.org.rs](http://www.yucom.org.rs)

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### Print Run

500

ISBN 978-86-83209-50-7

The publication “YUCOM 2013-report on the work” was created within the project “Anti-discrimination mechanisms in practice” and “Strategic litigation in cases of violations of human rights and the protection of human rights defenders” that are realized by Lawyers Committee for Human Rights - YUCOM with the financial support of the Embassy of Federal Republic of Germany in Serbia and Civil Rights Defenders. The views expressed in this publication do not necessarily reflect the views of German Embassy in Serbia and Civil Rights Defenders.





## CONTENT

<b>1</b>	FOREWORD	5
<b>2</b>	FREE LEGAL AID: UNASSESSABLE VALUE OF HUMAN RIGHTS	8
<b>3</b>	SELECTED CASES OF ADVOCACY: SOCIALLY VULNERABLE AND HUMAN RIGHTS DEFENDERS IN THE PITFALLS OF INEFFICIENT JUDICIAL SYSTEM	12
<b>4</b>	ANTI-DISCRIMINATION MECHANISMS IN PRACTICE: THE WAY TO EQUAL OPPORTUNITIES FOR ADEQUATE HOUSING	32
<b>5</b>	LAWYERS' COMMITTEE FOR HUMAN RIGHTS – YUCOM: PROMOTION, PROTECTION AND IMPROVEMENT OF HUMAN RIGHTS IN 2013	54

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# FOREWORD

DECEMBER 2013, BELGRADE

Milan Antonijević

When you stand before the results of the work one of a year that is about to end, you can either be satisfied with the results or you can expect more. YUCOM always strives for more and we can hardly allow ourselves the time just to enjoy what we have achieved. This motivated us to approach the writing of this report, which is not only an overview of the activities that we conducted, but also of the highlights of many areas we dealt with in 2013. Through legal help, citizens' needs, trends in human rights violations and detection of errors of the judicial system, government, po-

liticians, and other institutions and individuals are reflected.

When you are defending citizens, representing them, trying to get an adequate response from the state, or a judgment, decision, or new legislation, it is expected that you see many more imperfections of the system, and errors, both accidental and intentional. It is not an indication that you want to cause damage, but to establish a new practice of human rights and to enable a wider range of people to enjoy their guaranteed rights. We also pointed out positive examples from practice, where we are pleased with the quality and speed of proceedings and the reactions of the authorities. All of this is necessary in order to obtain a balanced picture of the situation of human rights from the perspective of the organization that represents citizens and works on strategic, legal, and other documents.

YUCOM has identified a large number of individual cases of discrimination through years of work on the improvement and promotion of human rights, representation of citizens, analysis of regulations and policies, and monitoring of the work of public authorities and other activities. Also, we noted the presence of a more dangerous, systemic discrimination which is often indirect or hidden, making its detection and the legal protection of individuals subject to it much more difficult. Equality in the exercise of the rights is denied to the entire groups, sometimes because of the provisions and the most important regulations themselves, but more often due to selective enforcement of regulations by public authorities, to the detriment of the groups who already experience stigma, prejudice and segregation in society. *Through the analysis of legal and policy framework, monitoring of the implementation of policies of social housing and the provision of legal aid in this area in 2013, YUCOM sought to identify key obstacles in exercising the right to adequate housing of multiply socially endangered groups. The analysis focused on the definition and*

*implementation of affirmative measures to socially disadvantaged individuals so that they could enhance their social status, especially social housing as a basic mechanism for providing adequate housing to the most vulnerable citizens.*

*Let me remind you that affirmative actions are defined by the Constitution of Serbia and covered by other regulations, but there remains a lack of understanding and implementation.*

*Our cooperation with the government, the National Assembly, certain ministries, and local government bodies shows that it is recognized that human rights organizations have their place in improving the human rights protection system, public administration, as well as ameliorating the points of contact between citizens and the state, such as in court, in drafting legislation, and in many other situations.*

*We emphasize excellent cooperation with independent institutions such as the Ombudsman, the Ombudsman of Vojvodina, the Commissioner for Equality, the Commissioner for Information of Public Importance and Personal Data Protection, as well as local ombudsman and many others who have made our work more visible and more effective. In particular, we highlight the media that have recognized the issues we deal with, and the hundreds of interviews and articles that are testament to this.*

*And, at the end of this introduction, we thank the many organizations in Serbia and in the region and beyond with whom we have worked, with which we have agreed, and with which we have argued in the interest of promoting human rights.*

*We are especially pleased that during this year our team joined many young professionals, as well as future experts, currently students of law and other faculties, who helped in bringing new energy into the organization, but also helped us see how the human rights in Serbia will develop. Only with young people who have a sense of respect for human rights in this country can Serbia become an exemplary country which would be pleasant to live in.*

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AFREE LEGAL  
AID:  
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BLE VALUE  
OF HUMAN  
RIGHTS

Lawyers' Committee for Human Rights - YUCOM has been very active in providing free legal aid from its foundation in 1997 and it remains one of our core activities. Currently, legal aid is provided by our legal team of three lawyers and three jurists. Parties may contact the legal team through our online application form, as well as by mail and telephone. A free of charge telephone line (0700400700) has been activated in 2010 and every day a large number of citizens call from across the country; we also often receive calls from citizens of Serbia from abroad or foreign citizens living in Serbia.

Annually, our legal team provides legal aid services to over 800 parties. They turn to us with a wide variety of problems, which are sometimes difficult to legally categorize, while several

different legal areas overlap. However, for the year 2013 we can identify that the most common cases were those pertaining to labour law - unlawful termination of employment, injuries, mobbing, and other cases of violations of the rights of employees – and family law - domestic violence and violence against women, problems related to the exercise of parental rights, and problems with the collection of child support. There are frequent cases of violation of the right to a fair trial within a reasonable time, and we increasingly receive calls from victims of various forms of discrimination, hate speech, and hate crimes. Frequent cases in the previous years included those in the fields of access to justice, discrimination, police brutality and abuse of police powers.





*Adequate legal aid is provided to citizens regardless of their economic or other status on the basis of which they could be excluded from receiving adequate legal advice. Beneficiaries of our services are socially disadvantaged persons, Roma, LGBT people, defenders of human rights, as well as many others whose rights have been violated.*

When a request for free legal aid is received, the lawyer learns about the specific subject and issues that the party has. If necessary, we ask for copies of documents from the case, then, depending on the type and complexity of the case, in consultation with the legal team, we provide legal advice. This may consist of a referral to the appropriate regulation or authorized government body, interpretation of a law or assistance in preparing the brief. When necessary, we refer the parties to the appropriate state institution (such as the Ombudsman) or specialized NGOs. In certain cases YUCOM prepares submissions for the party, which is done in particularly complex and strategically important cases taken on in representation. The legal team takes on the representation of individual cases before national courts, but also before the European Court for Human Rights and the UN Human Rights Committee. *Representation and facilitating access to legal information and advice to a large number of individuals are the main activities of YUCOM's free legal aid program. Conducting strategic cases resulted in changes in regulations with the aim to achieve effective protection of citizens before the state authorities.*

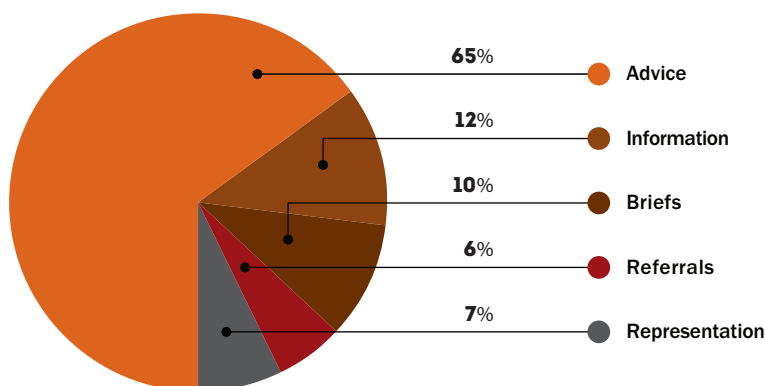
A new, improved legal aid application form in 2013 significantly simplified the process of addressing YUCOM for the parties, especially regarding the description of their legal problems, and directing them to the facts legally relevant to the solution of the problem. At the top of the application form there is a space for their personal information, then a concise description of the case which includes the type of violated right, actions taken before the autho-

rities, the length of the proceedings, whether the parties have legal representation (which is particularly important given that we are addressed by a large number of people who already have a lawyer, but for some reason they do not have enough trust in them or want to hear a second opinion), then invested remedies and ultimately the way they heard about YUCOM. The new application form is used to process the data in the second half of 2013. Below we present an overview and statistics of legal aid provided in September, October, and November 2013. In this period we also had a significantly increased

number of calls, and thus significantly increased number of provided legal aid services.

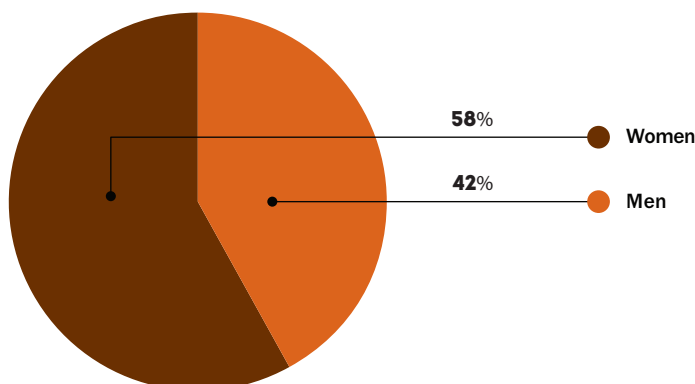
In September, October and November 2013 YUCOM provided **340 different services of free legal aid**, of which: 218 instances of legal advice (in 64% of total citizens' requests sent to YUCOM), written and sent 42 urgencies and briefs to the public authorities (12 %), legal information was provided in 35 cases (10 %), legal advocacy undertaken in 24 cases (7 %), and the party addressed, ie. the case referred to the competent authority in 20 cases, or 6 %.

## LEGAL AID



U **58% slučajeva** na tromesečnom uzorku povreda ili ugrožavanje prava je učinjeno **prem ženama**, prema muškarcima u 42% slučajeva.

## GENDER



In 58% of the quarterly sample of cases, violation of or threat to certain rights has been done to **women**, to men in 42% of cases.

*In most cases, the rights of individuals or natural persons are compromised, who in 55% of cases are from Belgrade.*

According to the age of the victims (or potential victims) of violation of the rights the most common age group is **45 -65 years (38%)**, followed by **26-45 years (35%)**.

The most commonly affected group to which citizens belong are **seekers of welfare in 39 or 11% of cases<sup>1</sup>**, people with disabilities in 14 (4%) and migrants / refugees / asylum seekers in 11 cases (3.5%), Roma and foreigners in 7, or 2% of the cases.

The most commonly reported compromised human rights are **the right to a fair trial - in 53 cases**, the right to work - 39 cases (9.3%), children's rights - 36 cases (8.5%) and the right to peaceful enjoyment of property 35 (8.3%). These are followed by the right to trial within a reasonable time, the right to a fair trial (27), the right to social security (26) and the right to privacy and family life.

<sup>1</sup> General public is the group to belong the vast majority of people that applied for free legal aid (69%)

#### STATISTICAL OVERVIEW OF AGE GROUPS OF APPLICANTS

AGE	NUMBER OF APPLICANTS	PERCENTAGE
unknown	39	11.47 %
up to 15	2	0.59 %
16-25	14	4.12 %
26-45	119	35.00 %
46-65	130	38.24 %
over 65	36	10.59 %

#### STATISTICAL OVERVIEW OF THE SOCIAL BACKGROUND

SOCIAL GROUP	NUMBER	PERCENTAGE
Migrants/refugees/asylum seekers	12	3.41 %
IDPs and returnees	4	1.14 %
Roma	7	1.99 %
People with disabilities	14	3.98 %
Welfare seekers	39	11.08 %
War veterans	4	1.14%
LGBT	3	0.85 %
Persons deprived of their liberty	5	1.42 %
Foreign nationals	7	1.99 %
Human rights defenders	3	0.85 %
Children	6	1.70 %
National/Religious/Ethnic Minority	2	0.57 %
Other	246	69.9 %





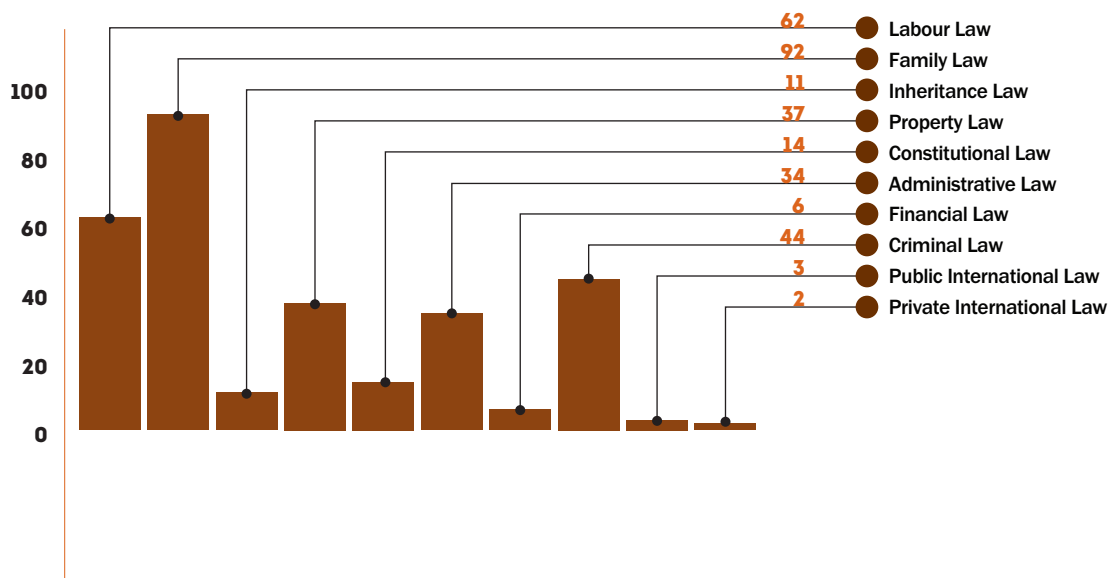


### STATISTICAL OVERVIEW OF HUMAN RIGHTS BEING VIOLATED

THREATENED HUMAN RIGHT	NUMBER	PERCENTAGE
Threatened human right	9	2.14 %
The right to life	14	3.33 %
The prohibition of torture and ill-treatment	6	1.43 %
The right to liberty and security of person	2	0.48 %
Prohibition of slavery and forced labour	53	12.62 %
The right to a fair trial	27	6.43 %
The right to trial within a reasonable time	5	1.19 %
The right to an effective remedy	7	1.67 %
The right to marriage and starting a family	22	5.24 %
Right to privacy and family life	5	1.19 %
Right to free access to information	1	0.24 %
Freedom of association	6	1.43 %
Prohibition of discrimination	35	8.33 %
The right to peaceful enjoyment of possessions	1	0.24 %
The right to education	39	9.29 %
The right to work	26	6.19 %
The right to social security	6	1.43 %
The right to health care	19	4.52 %
The right to housing	36	8.57 %
Rights of the Child	2	0.48 %
Minority rights	17	4.05 %
The right to good governance	82	19.52 %
Other rights		

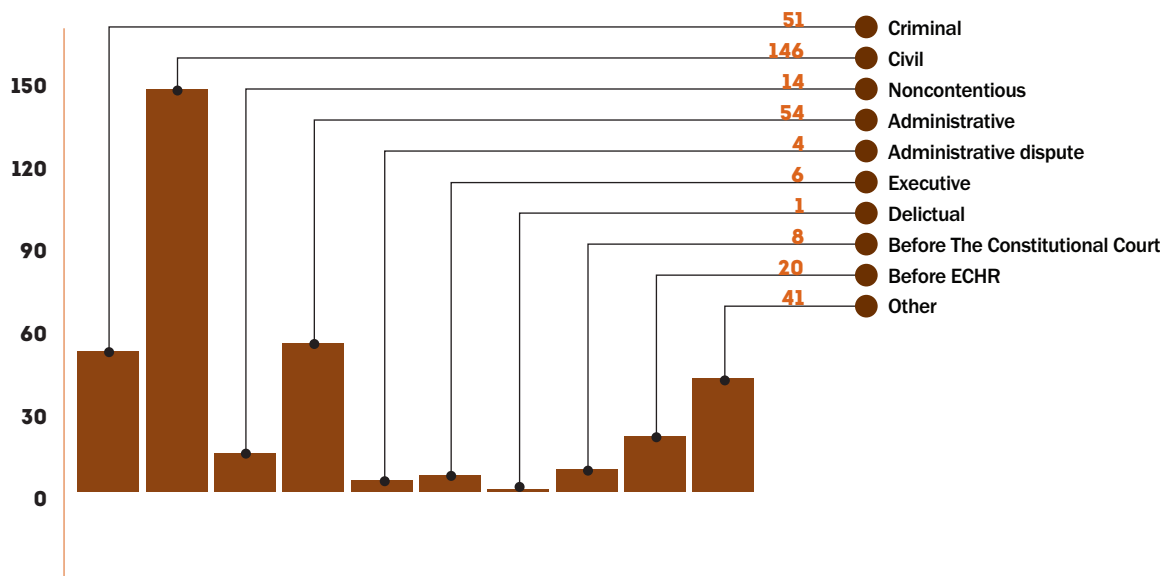
Legal aid is usually granted in cases related to family law - 92 cases. It is followed by labour law (62), criminal law (44), property law (37) and administrative law (34).

## BRANCHES OF LAW



The procedures in which legal aid was granted are in majority civil cases (146), followed by administrative (54) and criminal (51).

## TYPE OF PROCEDURE





Specific cases were a total of 86, mostly domestic violence and cases of not giving alimony (26 and 19).

#### **STATISTICAL OVERVIEW OF SPECIFIC CASES**

SPECIFIC CASE	NUMBER	PERCENTAGE
Hate crime	6	6.98 %
Hate speech	1	1.16 %
Mobbing	11	12.79 %
Domestic violence	26	30.23 %
Not giving alimony	19	22.09 %
Custody	8	9.30 %
Capacity to practice	6	6.98 %
Corruption	9	10.47 %
Total	86	

Out of twenty - **6 applications on discrimination were related to ethnicity**, 3 on sexual orientation and ethnic origin, and 2 each regarding political affiliation, genetic characteristics and marital status.

#### **STATISTICAL OVERVIEW OF THE GROUNDS OF DISCRIMINATION**

GROUND OF DISCRIMINATION	NUMBER	PERCENTAGE
Ancestors	1	5.00 %
Nationality	6	30.00 %
Ethnic background	3	15.00 %
Political affiliation	2	10.00 %
Sexual orientation	3	15.00 %
Genetic characteristics	2	10.00 %
Disability	1	5.00 %
Marital and family status	2	10.00 %

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SELECTED  
CASES OF  
ADVOCACY:  
**SOCIALLY  
VULNERA-  
BLE AND  
HUMAN  
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DEFENDERS  
IN THE  
PITFALLS  
OF INEF-  
FICIENT  
JUDICIAL  
SYSTEM**





# RIGHT TO A FAIR TRIAL WITHIN A REASONA- BLE TIME

## Violations of the rights confirmed by the decisions of the Constitutional Court and the compensation

The right to a fair trial within a reasonable time is one of the most frequent rights that Serbian citizens claim was denied them, whether during the proceedings before Serbian courts or during the proceedings before administrative bodies. According to some views, the right to redress for the violation of this right should be exercised before the Constitutional Court of Serbia. There are cases where this protection, along with compensation for violated rights, was demanded before the ordinary courts. However, the judges of the Supreme Court judged this practice to be improper, because it led to awarding different amounts on different grounds. A particular problem with the protection of the right to a trial within a reasonable

time (in addition to the fact that typically it takes two years for the determination of a violation of the right) is the satisfaction in the form of compensation that the parties are seeking in these proceedings. *The question is whether and in which cases compensation for pecuniary and non-pecuniary damage for the violation of human rights can be requested, having in mind that the Constitutional Court is, by rule, establishing a right to compensation for non-pecuniary damages (which can afterwards be achieved in civil proceedings), although provisions of the Law on the Constitutional Court authorize it to determine the obligation of compensation and order its execution. It is evident that the parties, in seeking compensation, claim that they have suffered significant damage due to remuneration paid to their agents, and representatives of the opposing party (when being a losing party in the dispute) for hearings that were not held.*

In its decisions on constitutional appeals the Constitutional Court did

not specify the amount of loss to be recovered until late 2011. The amount is dependent on the agreement achieved between the applicant of the constitutional appeal and the Commission for compensation, which was abolished by the amendments to the Law on the Constitutional Court. Thus, the exercise of the right to compensation had to be exercised in civil proceedings. Since the entry into force of the new Code of Civil Procedure in 2012, it was necessary to address the Public Prosecutor's Department for damages claimed by the state, in order to agree on the amount. Commonly, this mechanism does not work, because there is a two month dead-line for all bodies (courts and the Ministry of Justice) to give their suggestions on the amount. Therefore, the parties are, commonly, just waiting for the expiration of two months from the submission of the proposal to the Public Prosecutor's Department, to be eligible to file a lawsuit.

In the case of **V.P. vs. the Republic of Serbia**, the Lawyers' Committee for Human Rights - YUCOM represented the damaged party before the Constitutional Court. This case was litigated for 9 years before the courts in Belgrade. After the Constitutional Court found that the right to a trial within a reasonable time was violated and established a right to compensation for moral damage on January 22nd 2011 in the case no. UZ - 550/2009, the attorney of the Lawyers' Committee for Human Rights sent a proposal for a peaceful settlement

of the dispute for compensation to the Public Prosecutor's Department (PPD). As the PPD had not decided on the proposal since the lawsuit was filed on November 22nd 2012, a complaint for damages for violation of the right to trial within a reasonable time determined by the Constitutional Court was filed. A preliminary hearing was scheduled for March 14th 2013. YUCOM's attorney suggested that the process should be completed in a maximum of two sessions. The PPD had submitted a response to the lawsuit, but did not appear at

the hearing. As YUCOM's party sought compensation of both non-pecuniary and pecuniary damage, the Court ordered the claimant to specify the claim, by specifying costs that the court caused to the plaintiff. The amended complaint clarified all court actions that have contributed to unjustified costs which the plaintiff was exposed due to the inefficiency of the court. The next and final hearing was held on May 22nd 2013 when the verdict was issued. Deciding on the part of the claim related to the non-pecuniary damage, the

Court considered that it was partially founded, for the following reasons: “The basis for the claim for non-pecuniary damages is a violation of the right to a trial within a reasonable time guaranteed by the Constitution of the Republic of Serbia. A violation of the rights of plaintiff was indisputably established by the Constitutional Court, which is the sole authority to determine the existence of this injury. Likewise, the Constitutional Court in its decision established the right of plaintiff to compensation for non-pecuniary damage as a result of violation of the right to a trial within a reasonable time. As described above, legal basis for the claim for non-pecuniary damage is indisputably established by the Constitutional Court. Neither the defendant in the response to the complaint did not dispute the existence of decision of the Constitutional Court, nor did he challenge the basis of the plaintiff’s claims in requesting compensation for non-pecuniary damages, other than arbitrarily. In accordance with the above mentioned, the basis was established, since the civil court is not authorized to appreciate the existence of such a violation, or in any way question the earlier decision of the Constitutional Court, which determined the injury. Deciding on the amount of statement of the claim relating to the non-pecuniary damage, the Court considers that the fair amount of compensation which belongs to the plaintiff is RSD 100,000.00 (less than 1000 euros). In deciding on the amount of damage suffered by the plaintiff, the court took into account that it is a violation

of the individual right, particularly the right to a trial within a reasonable time, which is of special importance, since it is guaranteed by the Constitution of the Republic of Serbia. The Court also took into account the importance of injured good for the plaintiff and the purpose of compensation it awarded but also that it does not favor the aspirations incompatible with its nature and social purpose. Pursuant to the above, the court finds that the amount of RSD 100,000.00 represents fair compensation for non-pecuniary damage suffered by the plaintiff. Deciding on the part of the statement of claim related to pecuniary damage, the Court considers that it is unfounded as a whole, for the following reasons: “According to the claimant, the amount claimed in respect of pecuniary damage is the amount of litigation costs in case no. P 3355/ 00 before Third Municipal Court in Belgrade, which is not the fault of the plaintiff, but still is obliged to pay. For all sessions specifically listed in the complaint that were not held because of the court or the defendant, the court adjudged legal costs to the plaintiff, although the plaintiff duly approached each hearing and was represented by a lawyer. Therefore the plaintiff claimed that the court is responsible for compensation of any damage in the form of unjustified costs incurred and related to the lawyer’s presence at the hearing listed in the complaint.

According to the court, the plaintiff is in this case not entitled to such compensation. Within the civil proceedings in the case no. P 3355/ 00 before the Third Municipal Court in Belgrade, the

plaintiff as a party had the opportunity to claim that the costs that the opposing party made, should be covered by the opposing party, as well as the cost of delays that occurred and were caused by the defendant. The plaintiff in this proceeding did not file such a claim, or did not use the procedural rights set by the law. Bearing that in mind, the Court cannot be held responsible for the plaintiff not using legally recognized rights, and the described situation does not blame the court for costs covered by the plaintiff. Thus there is no fault of the damage that occurred, but the same shall be borne by the plaintiff precisely because of the passive behavior. The costs were awarded to the defendant only in seven hearings that were not held, while there were nine of them. Three hearings were postponed due to the illness of the judge, one because the litigants did not appear, two because the witness did not appear. Hearings that were held were also ended by disposal of evidence, in order to obtain records for the association and submit documentation on the proposal of litigants.”

After the verdict, the plaintiff did not appeal (especially since she was exhausted by the long struggle for her rights). Although the judgment was made on May 22nd 2013, the stamp of validity was not received before August. As the Republic of Serbia in the period of 15 days did not fulfill its obligation, the attorney of YUCOM launched an enforcement procedure. The enforcement order was issued on October 7th 2013, and payment is expected by the end of 2013.

In the case **E.N. vs. Serbia**, the Constitutional Court began defining the amounts in euros in its decisions by the end of 2011. These decisions, although enforceable according to the Constitution, in the part of the realization of compensation cannot be achieved without launching a new civil procedure. The question is whether the court is obliged by the amounts allocated

by the Constitutional Court or may grant amounts that are greater than the value prescribed. In cases E.N. and G.N. vs. Republic of Serbia, the Constitutional Court established compensations of 1,500 euros and 800 euros to the applicants of the constitutional complaints. It is interesting to compare this case with nearly identical case of J. vs. Serbia before the European Court of

Human Rights. The Lawyers’ Committee for Human Rights – YUCOM called upon this case in the constitutional complaint, so the Constitutional Court found identical violation as the European Court of Human Rights did in the case of J, using the same reasoning for its decision. The only difference in those cases is the amount of compensations for damages. The European Court





of Human Rights has awarded to the first applicant (the daughter) the amount of 5,000.00 euros for non-pecuniary damage, and 1,000 euros to the second applicant (the mother). There is an obvious discrepancy in these amounts, although the case of determination of paternity of E.N. took longer than paternity determination cases of underage I.J. The Lawyers' Committee for Human Rights addressed the Public Prosecutor's Department (PPD) for the enforcement of the decision of the Constitutional Court. Since the PPD did not react, in December 2013 YUCOM filed a lawsuit. Although the Constitutional Court, due to the nature of the case, reacted immediately, which resulted in the judgment becoming final in the process of determination of paternity, the procedure of compensation took a very long time.

*The Lawyers' Committee for Human Rights, shortly after the introduction of a constitutional appeal for violation of the right to a trial within a reasonable time, drew attention to the fact that it would be more appropriate if Croatian model was introduced, which directly authorizes higher courts for the protection of the right. In this regard, we advocated for the need to amend the Constitution, which places*

*the violation of this right within the jurisdiction of the Constitutional Court. The latest amendments to the Law on Courts (which is made according to the Croatian model) will be applied starting from January 1st 2014 and should contribute to faster resolution of violation of the right to a trial within a reasonable time and damages caused by the violation of this right. According to the latest amendments, the higher court, in relation to those before which a violation occurs, is directly responsible for the protection of the right to a trial within a reasonable time and the decision of non-pecuniary damage (according to the definition in Art. 8b Law on Courts, which speaks of "exemplary compensation" there is no place for pecuniary damages before the ordinary courts for violation of Art. § 32 . 1 of Constitution of the Republic of Serbia). It is precisely provided that the party files a claim based on which the payment is made within three months from the date of application, from the budgetary funds allocated for the work of the court. We assume that this request is submitted to the court that committed the violation.*

*However, although it is certain that the next higher court shall in short notice decide on the violation of rights in a non-contentious procedure, there is no*

*time limit for completion of the procedure. It also introduced a two-instance process, so that the decision on the violation and the amount of compensation may be appealed to the Supreme Court. For proceeding on the appeal there is also no time limit set. Also, there is the question of whether the party must be represented by a lawyer before the Supreme Court. Although it is a positive step in the relief of the Constitutional Court, it seems that there is the possibility of transferring the load from the Constitutional Court to the Supreme Court. The Law on Courts is not entirely clear, and the practice will show whether the remarks of the Lawyers' Committee for Human Rights were justified. In the end, the legislature should declare about achieving compensation for the violation of other human rights, which are to be determined within the jurisdiction of the Constitutional Court. If it means that the civil proceedings and enforcement proceedings should be led after the proceedings before the Constitutional Court, it is an inefficient solution and creates additional costs in terms of engagement of the courts and attorneys, as well as interest accruing to the detriment of the citizens of Serbia.*

### ***V.Ž. vs Serbia: exhausting path to the status of disabled veteran***

V. Ž. is a war veteran and refugee from the Republic of Croatia. He lives in Serbia since the war in former Yugoslavia. A request to be recognized as a disabled veteran (RVI) he filed in February 1999, when his battle against the system began, in order to exercise social protection rights, which are guaranteed by the state to the persons who participated in the war.

Ineffective actions of the authorities of Belgrade and the city municipality Zemun, as well as the courts of the Republic of Serbia in administrative proceedings, have led to the fact that the right to a trial within a reasonable time was violated in the case of V. Ž.

which made it impossible for him to exercise the right to social security. Since submission of the "request for a retrial" in September 2006 until the day of the submission of the constitutional complaint in December 2013, the first instance authority issued three decisions and the appellate body six, one of which is procedural decision. Three separate administrative proceedings took place in which five judgments were delivered. Currently the fourth administrative proceeding is being carried out. The procedure based on the request for a retrial is lasting seven years now, while the struggle to establish the status and exercise of the rights, fourteen years. V. Ž., to whom decisions in these procedures are of existential importance,

these actions denied the possibility to exercise rights to disability benefits and other guaranteed rights to social protection, that were already determined in his case, due to his disabled veteran status that was not yet confirmed, which is the basis for the exercise of these rights. The first request that V. Ž. submitted in 1999. was rejected by a ruling of the Belgrade municipality of Zemun, on the grounds that the established disease can not be associated with being on the battlefield, and that V. Ž. does not possess any medical document from that period. Administration for veteran and disabled protection of Belgrade, as an appellate body which acted upon V. Ž.'s appeal on the above mentioned ruling, sent him to the clinic of Military Me-



dical Academy for civilians, so it could, on the basis of clinical examination or medical records that V. Ž. owns, give an expert opinion. In findings of a specialist a suggestion was emphasized, in addition to the established disease, to have expertise conducted before the court, based on which the City Administration issued a decision rejecting the complaint and determine the existence of a military disability below 20 % due to the lack of medical records from the period of the war, and without conducting a medical expertise.

In following years V. Ž. managed to obtain documents dating from the period of the war, mainly finding, evaluation and review of medical institutions in Knin (Croatia), under which he was found unfit for military service. In September 2006 he applied for the retrial decision on his status, which was rejected as unfounded by the municipal authorities. V. Ž. timely responded to the appeal. Secretariat for Social Welfare and Children Protection - Department for Veterans of the City Administration, issued a decision which annulled conclusion of first instance authority, and returned to retrial in March 2007. V. Ž. filed his first claim for an administrative proceeding to the District Court in Belgrade in January 2008.

In March same year, the District Court in Belgrade delivered judgment which upheld the claim and annulled the decision of the city authority of second instance. Proceedings continued. The fourth complaint he filed before the Administrative Court in Febru-

ary 2013. On to this lawsuit has not yet been decided. In this period V. Ž. initiated several proceedings before various authorities. He initiated two inspection processes, in Februar 2009 and in April 2010, in order to influence faster acting of administrative bodies of local self-government. Inspections then found a violation of the Law on Administrative Disputes. V. Ž. filed a civil complaint to counsel of Belgrade in November 2009, and to Ombudsman of Republic of Serbia in September 2009, April 2010. and August 2011.

V. Ž. addressed Lawyers' Committee for Human Rights in November 2013. YUCOM's attorney established a clear elements of violation of the right to a trial within a reasonable time by the Republic of Serbia, and filed a constitutional appeal in early December 2013. A constitutional appeal requires finding of a violation of the right to a trial within a reasonable time, guaranteed by Article 32 Paragraph 1 of Constitution of the Republic of Serbia, the determination of rights to compensation for non-pecuniary damage and warrant to the Administrative Court of Serbia to take all necessary measures in order to complete administrative proceedings on lawsuit and administrative proceeding on the request for retrial from September 21st 2006, in the shortest possible time. The constitutional complaint emphasized that during the proceeding on the application for retrial, wrong and ineffective treatment of second-instance administrative body led to the unjustified and unreasonable len-

gth of the challenged procedure. This is confirmed by the fact that, in this case, the Court of Administrative Disputes (District Court in Belgrade and the Administrative Court of Serbia) three times overturned the decision of the second instance authority.

According to the view expressed by the European Court of Human Rights, the fact that many times repetition of consideration of one case before lower instance is required, can reveal serious deficiencies in the legal system of the state. Responsibility for the long duration of the proceedings shall be borne by the competent court, since the the Supreme Court of Cassation took a year and three months for the decision on the appeal against the judgment of the Administrative Court. The constitutional complaint pointed out that the fact that the process has been going on for seven years and two months, indicates that the process is not completed within a reasonable time, and no complex factual and legal issues were not present, since the authorities were required to determine whether the request for retrial was submitted in timely manner, and whether the circumstances underlying the proposal was probable. Also, administrative authorities were required to examine whether the circumstances and the evidences were such that they can lead to different solutions. Proceeding before the Constitutional Court is in progress.

### **Case E.N: a long way to achieving rights of a child**

Constitutional Court, on the occasion of the constitutional appeal filed by underaged E.N. and G.N., who were represented by the Lawyers' Committee for Human Rights, has within 3 months, in April 2013, made the decision which established that in determining paternity the rights of the child were violated: the right to know the origins,

and the right to a fair trial within a reasonable time. The first applicant of the constitutional complaint is the extramarital child born in 1997. She and her mother as the second applicant of the complaint, filed lawsuit on April 8th 2002 to the Second Municipal Court in Belgrade in matter of determining paternity, which have sought to establish that the M.S. from Belgrade, born on October 05th 1954 in the village

of Braljina near Jagodina is biological father of underaged E.N., born extramarital on December 10th 1997 in Belgrade and registered in the register of births of municipality Novi Beograd under current number XXXX for 1998, with G.N. from Belgrade being her mother. The procedure for establishing paternity lasted almost 11 years, mainly because the father avoided receiving summons and all other correspondence







from the court, and his family refused to testify. Although the court ordered the expert DNA analysis of blood twice, the father of the child did not show up in an institution for this particular expertise. The length of the proceedings has affected the child so it was in the state of prolonged uncertainty with regard to the personal identity, as well as deprived from any support from the biological father. Second Municipal Court in Belgrade, and after the reform of the judiciary Higher Court in Belgrade, by such conduct of the proceedings since 2002, has enabled the abuse of process of law by the defendant, through the avoidance of receipt of the complaint, failure to appear at the hearing, and despite the regular summons, it tolerated it, and did not use the legal possibility of sanctioning the abuse. Since the defendant was a judge of the Municipal Court in Belgrade and then the Supreme Court of Serbia during the trial, and that this fact was well known, the court ordered the appointment of a temporary representative for representation only after a year and three months from the filing of the complaint. The court influenced on the postponement of the proceedings by rescheduling and

postponing the hearings, violating the constitutional right to a fair trial within reasonable time. Also, the fact that the process of determining paternity, which by its nature should be priority, lasts for 10 year, is a violation of the right to a fair trial within a reasonable time.

Since a civil litigation is the only way the applicants of the constitutional appeal could determine whether the defendant was the child's biological father, according to the provisions of domestic law, there were no measures to bind the defendant to comply with the decision of the Municipal/Superior Court to conduct DNA analysis, nor there is a direct provision regulating the same contempt. The judicial authorities in Serbia, however, after the assessment of the submitted evidence, could have decided at their discretion and take into account the fact that a party in the proceedings obstructed determination of the relevant facts. Moreover, in ruling on the motion to determine paternity, the courts are asked to pay particular attention to the best interests of the child to which the request relates.

*The authorities failed to provide the "respect" of her private life to which she is entitled to the first applicant of the consti-*

*tutional appeal. Therefore, a violation of Article 8 of the European Convention on Human Rights was identified. This is just one of the cases which shows that the legal system in Serbia has no means to compel the alleged father to comply with a order of the court to conduct DNA analysis. According to the Constitutional Court, it is guaranteed to everyone not to be subjected to the medical research of any kind without the consent. In the situation described, as estimated by the court, it is necessary to have or to provide other mechanisms that can ensure the interests and rights of the person seeking paternity. With this decision, the Constitutional Court upheld the decision of the European Court of Human Rights that the rights of children in a number of cases have been violated because process solutions are lacking or even not being enforced in the paternity proceedings. Lawyers' Committee for Human Rights urged that these opinions should be taken into account in the adoption and application of laws in Serbia, because they will thus avoid the violation of the rights of the child to know its origin, but also the payment of compensation that goes at the expense of citizens in determining these injuries.*

## PROHIBITION OF DISCRIMINATION

*AP vs Jat Airways* is the first proceeding in protection against discrimination initiated after the entry into force of the Law Against Discrimination. AP, employed as a pilot in the Jat Airways (today AirSerbia), represented by a legal team including the attorney from YU-COM, submitted the claim for protection from discrimination and harassment at work on June 29th 2009, before the Fourth Municipal Court in Belgrade, which then had jurisdiction. After the judicial reform, this process was tran-

sferred to the jurisdiction of the Higher Court in Belgrade. Although all imperative regulations provide urgency for this type of procedure and the anti-discrimination lawsuits have to be validly completed within 6 months from the date of filing of the claim as the initial act, the trial proceedings before the Higher Court in Belgrade lasted for almost 4 years. Contrary to imperative provisions of the Labour Law, the Law on Prohibition of Discrimination and the Law on the Prevention of Workplace Harassment,

first-instance judgment was not reached until the fourth calendar year, after a large number of embedded urgencies, complaints to the courts, the reporting by the media, and two recommendations issued by the Commissioner for protection of Equality.

The first instance judgment of the Higher Court in Belgrade reached on January 5th 2012 determined that the defendant Jat Airways discriminatory treated AP in the longer period of time, and that he had committed serious form of

discrimination - extended discrimination under Article 13, paragraph 1, item 6 of the Law on Prohibition of Discrimination, as well as harassment at work, stating, among other things, humiliating and demeaning treatment of the plaintiff, unequal work conditions, illegal treatment and elements of harassment at work due to the fact that the plaintiff sought protection from discrimination in court, the plaintiff was put in a disadvantage position in relation to other employees pilots, with simultaneous violation of the plaintiff's right to work. Also, the Higher Court dismissed one part of the claim by the same judgment, for the period between 2000 and 2005, because, according to the opinion of the Higher Court, the matter of discrimination was for the first time regulated by the Constitution of the Republic of Serbia adopted in 2006, which, like the Law on Prohibition of Discrimination and the Law on the Prevention of Workplace Harassment, came after the event that the prosecutor stated in the lawsuit. In the explanation of this part of the judgment, the court stated that in the Republic of Serbia before 2006 there was no legal provision that could sanction any type of distinction among the citizens of the Republic of Serbia, by which the Court sends a clear message to the public that anyone who has been discriminated in Serbia prior to 2006 was not entitled to judicial protection. This opinion of the Higher Court in Belgrade shows that the court does not know to implement regulations related to discrimination, by forgetting a number of international documents such as the UN Charter, the Universal Declaration of Human Rights, and the conventions that Republic of Serbia has signed and ratified a long time ago and that present

an integral part of national legislation and are mandatory.

After the appeals, the case was twice before the Court of Appeal in Belgrade, for the full 9 months during 2012, so that the Court of Appeal finally remanded the case to the first instance court but only to correct formal defects eg. "obvious typos" and second time for almost six months, after which the Court of Appeal overturned the first instance decision and returned the case to the Higher Court for retrial on March 14th 2013. Upon receipt of the judgment of the Court of Appeal, the Higher Court in Belgrade has scheduled the first hearing for the trial by the repeated procedure after six months, contrary to the provisions of the Code of Civil Procedure, which imposes an obligation of first instance court that, after receiving the decision of the appellate court, the first hearing shall be scheduled and held within 30 days. The case is still in process before the Higher Court in Belgrade. There were two of the main hearings, and the court, pursuant to the provisions of the Code of Civil Procedure, determined a time frame of six months for the completion of the trial in this matter. Therefore this case entered the fifth calendar year, and by illegal and untimely work of the courts of Republic of Serbia, protection from discrimination and harassment at work become meaningless.

This case has attracted media attention. Lawyers' Committee for Human Rights in its statements pointed out unprofessional and inappropriate behavior of the attorneys representing national airline AirSerbia, which is to prolong duration of the procedure, as well as tolerance and nonsanctioning such behavior by the court. Media reports from the courtroom certainly contributed to the change in

practice and the use of legal mechanisms by judges to punish non-compliance with the court's decision. Thus, at a hearing in December 2013, the attorney of AirSerbia was fined with 10,000.00 RSD, while AirSerbia was fined with 100,000.00 RSD. A particular problem is the burden of proof on the defendant, in terms of the provisions of the Law on Prohibition of Discrimination, and the Law on the Prevention of Workplace Harassment, and in this case, the passive behavior of the defendant actually prevents the plaintiff A.P. to exercise the right of access to a court, and thus the access to the justice.

*The opinion of the European Court of Human Rights is clear: chronic overcrowding and delays in the cases are not a valid explanation for the excessive delays, and repeated examination of one case after remittal, may itself prove a serious flaw in the judicial system of a country. This case is an indication of the obvious flaws in the judicial system of the Republic of Serbia, as well as the inability of the courts to provide adequate protection to victims of discrimination and harassment at work, but also an indication of a state of consciousness – meaning the wrong approach to the concepts of discrimination, protection mechanisms, and consequences of failure to provide adequate and timely legal protection to discriminated and abused persons. Bearing in mind that only the first instance proceedings lasted nearly four years, the total duration of the proceedings in the anti-discriminatory lawsuit present an obvious violation of the right to a fair trial as guaranteed by the Constitution of the Republic of Serbia and the European Convention for the Protection of Human Rights and Fundamental Freedoms.*

### ***The case of NM: Representation of human rights defender***

Against N.M the civil procedure, for the protection against discrimination based on political affiliation, was initiated in May 2011. Upon receipt of lawsuit,

she approached YUCOM's legal team seeking expert care and advocacy in this process. After reviewing the lawsuit, attorneys of YUCOM have observed that the actions listed in the lawsuit as those through which discrimination

have been done may actually represent only the elements of harassment at work, but not discrimination. YUCOM's legal team, seeing the lack of elements of discrimination and with the belief in a professional and moral integrity of N.M.





as a longtime human rights defender, accepted the case.

Also, in this case indicative was the fact that the lawsuit alleged that the plaintiff suffered health problems due to the continuing discriminatory treatment by the defendant, and that she repeatedly sought immediate medical care. However, contrary to the Law on Prohibition of Discrimination, statement of claim did not require that the court order prevention of any further discrimination against her, nor prevention of the recurrence of acts by which discrimination was made. The court was asked to determine the discriminatory treatment against her, as well as compensation for damages, that were suggested in an unreasonably high amount. At the preliminary hearing, which was held in September same year, the court ordered plaintiff's attorney to rearrange the claim, by separating acts of discrimination from acts sanctioned by the Law on the Prevention of Workplace Harassment. Acting under this order, plaintiff's counsel made claim clearer, however, these actions were still not separated. Based on the fact that the claim lacked legal sufficiency, and that it has not been made probable that the defendant acted

discriminatory towards the plaintiff, we have requested the court to dismiss the action as improper. The Judge has, after the preliminary hearing, rejected the claim. However, the reasons for the decision are not clearly explained. Specifically, the court stated that the discriminatory treatment was not sufficiently defined, and the court can not perform evidences to determine the facts that are not clearly set in the lawsuit. In response to the plaintiff's appeal against this decision, YUCOM's attorneys referred to the reasons in accordance with the Law on Prohibition of Discrimination, which would substantiate such court decision. Again, it was emphasized that, although a formal claim on discrimination, acts of discrimination were not well defined, meaning the behavior of the defendant may still be interpreted as behavior sanctioned by the Law on Prevention of Harassment at work instead of the Law on Prohibition of Discrimination.

Decision of the Court of Appeal from March 2013, vacated the above mentioned decision and the case was returned to the first instance court for a retrial. After that, there were two hearings and the time limit of two years for completion

of the case was determined. The process is ongoing.

*It can be concluded that the protection against discrimination, even four years after the adoption of the Law on Prohibition of Discrimination, is still not sufficiently understandable, not only for the citizens as potential victims, but also for the attorneys and for the court. Specific procedural rules in these cases are incorrectly interpreted by all actors in the process, a number of mechanisms envisaged in the law are not used in practice, and the procedures are not being conducted in timely manner, although it is provided by law for both actions and decisions, in cases involving the violation of fundamental human rights. As always when it comes to the new institution in the legal system, it takes some time to come into force and to develop in order to achieve its purpose. Continuing education, of both judges and attorneys, gradually contributed to a better understanding of the phenomenon of discrimination and develop clear standards for determining the existence or non-existence of discriminatory treatment. Finally, for effective implementation of anti-discrimination legislation and measures necessary to identify cases of abuse of rights, was one of the reasons why YUCOM took over this case.*

## OTHER SELECTED CASES

### ***Violence motivated by homophobia : adequate protection of the inviolability of physical and mental integrity***

In the proceedings before the Higher Court in Novi Sad against S.S., on suspicion that he had committed the crime of violent conduct and attempted murder, the Lawyers' Committee for Human Rights - YUCOM represented the injured, two brothers, victims of physical assault, while one of them received serious injuries. In this case, the

trial was completed on November 12th 2013 with interrogation of the defendant, one of the victims and three witnesses as well as examining the expert of medical profession on circumstances regarding severity of body injuries and mental capacity of the defendant. On the next day, on November 13th, a judgement regarding S.S. was issued, and he was found guilty of committing criminal acts of bullying and attempted murder. The first instance court upheld

the requirements of the Higher Public Prosecutor's Office and the defendant was sentenced to imprisonment of seven years - six years for attempted murder and one for bullying.

The attack was carried out in June 2012 in the city bus in Novi Sad, when the defendant attacked the victims, first with fists and then with a knife, thinking that one of them 'was making a move towards him'. The injured young people who were in good spirits retur-

ning from the night out, were victims of hate - motivated attack that carries great social danger. On this occasion, one of the victims sustained serious injuries. The motive of this attack was certainly discriminatory. In the statement given to the police, the attacker himself pointed motive for the attack, which is based on homophobia. He resigned from this statement during his defense before the court, when he pointed out that at the time of the attack he was under the influence of opiates, visibly changing his statements given in the pre-trial proceedings. The above shows that it was a hate crime, which YUCOM's attorney pointed out during the trial. During sentencing, as an aggravating circumstance the court appreciated the fact that the attack was

carried out in the full city bus transport, as well as that victims did not trigger the execution of these attacks with their actions. Also, the court rejected the allegations of the defense that the defendant was in a state of mental incompetence due to abuse of alcohol and psychoactive substances, due to the fact that he fully reconstructed the event. The fact that the defendant committed the offense because of the perceived sexual orientation of the victims, the court did not appreciate as a special aggravating circumstance because the attack took place before the introduction of the institute of hate crimes in the criminal justice system protection.

*Initiative of GSA (Gay Straight Alliance) and YUCOM, institute of hate crime was, by the latest amendments to*

*the Criminal Code, introduced to the system of legal protection in Serbia as a special aggravating circumstance that judges must apply at sentencing, if proven discriminatory motive.*

This case has been admitted in court on January 15th 2013. Lawyers' Committee for Human Rights - YUCOM said, in a press release, that the reaction of the competent authority was in timely manner, as well as that the punishment was proportionate to the offense. The statement noted that *the effective response of the police and prosecution, as well as adequate response of the court, are required in all cases of attacks on the physical integrity of citizens, especially when it is motivated by hatred, chauvinism, homophobia and discrimination.*

### **Hate speech in the media**

Lawyers' Committee for Human Rights - YUCOM has filed a lawsuit against the daily newspaper Kurir, authors and chief editor of Kurir -info digital edition, for the violation of the prohibition of hate speech that was made by publishing an article "DISCRACE: Čedas director celebrated the Albanian Flag Day" at the end of 2012. Through unauthorized disclosure of private images, the author of the text presented the expression of affection of officials of Belgrade to Albanian national minority, while condemning it as illegal behavior. The clear message from the author of the text is that taking a photo with the Albanian flag is an act of betrayal, and suggests creating and fomenting hatred that is irrational and directed to the entire Albanian people, those living in Albania, and those living in Kosovo and elsewhere in Serbia.

Any person could, and still can, sent a comment to the specific text via Internet, which so far has been made by more than 250 people. Although, the Law on Public Information and the Law on Prohibition of Discrimination, prohibit hate speech, most of the comments contain the basest insults,

calling for the murder, the qualification of the criminal nature of the entire Albanian population, and proposing "to introduce public execution" and so on. The above mentioned text and readers' comments include the idea that the Albanian population itself is undesirable and criminogenic, so that it is justifiable to hate them and call for killing of those who express affection of this ethnic minority in Serbia. Those comments justify existing hatred of the Albanian national minority, strongly condemning and calling for a lynch, murder and persecution of those who do not cultivate a feeling of hatred towards the Albanian minority. The publication of this text and the above comments, encourage and spread hatred against a group of people on a national basis because the alleged supporters of the Albanian people, as well as the Albanian people, are seen as evil and as a group of people who feel a pathological hatred towards the inhabitants of Belgrade, while those who do not have negative attitude towards the Albanians, their national symbols and costumes, are declared traitors.

In a country like Serbia, which has recently emerged from a bloody conflict in Kosovo and other parts of the former

Yugoslavia, each inciting of national and religious hatred and intolerance must cause a reaction of the authorities in order to create possibilities for a peaceful life with the people who live in the region, but also with those in our country. The text itself and the comments of readers who personified hatred towards D. R. and towards the Albanian people and all Albanian national symbols, have resulted in an open lynching by citizens. In a controversial article and comments from readers, ideas that incite discrimination, hatred and violence against the Albanian population only because of their ethnicity, were published. Therefore, the above text of the defendants and published comments, represent hate speech, and is the basis on which the prosecutor seeks sanctioning by the court.

In response to the lawsuit, the attorneys pointed out that there is no responsibility of Kurir or editors, for comments posted by readers, and that the author of the article was reporting objectively, considering the fact that, by Kurir's findings, city officials violated the obligations of the Preamble of the Constitution of Republic of Serbia. Although, according to YUCOM's findings, hate speech was directed at the







Albanian minority and the people, defendants attorneys believed that the text is aimed at condemnation of D. R., and that YUCOM represent him and sought dismissal of the charge, due to the absence of written consent of the D.R., based on which YUCOM was authorized to file a lawsuit. The first ( preliminary ) hearing was held in

mid-November 2013, before the Higher Court in Belgrade, 11 months after filing of the complaint. The following hearing is scheduled for March 2014.

Hate speech is, by findings of Serbian courts, a common occurrence in the media in Serbia. This fact requires that courts have to be more severe in their condemnation of this pheno-

menon. This particular case presents a challenge because it is a hate speech under cover, which is often the characteristic of this phenomenon, and bearing in mind that the courts in Serbia hesitate to make a clear condemnation of hate speech, mistakenly referring to freedom of opinion and expression, which has its limits.

### ***Freedom of assembly and pressure on human rights defenders***

M.U. from the organization Women in Black addressed YUCOM seeking support in November 2013. Ministry of Interior initiated the proceedings against him, before the Misdemeanor Court in Belgrade, for the violation of the Law on Road Traffic Safety, during the gathering in motion on March 8th 2013. Women in Black organization had reported the gathering on the International Womens' Day, on March 8th, named "Gathering in motion", in accordance with the Law on Public Assembly. As it had already organized number of similar meetings for years, this organization generally has good cooperation with police stations in Belgrade, to which gatherings in the center of Belgrade have to be reported. It also respects police instructions on obtaining additional permits from other organs, depending on the nature of the meeting. When this gathering was reported, Ministry of Interior did not instruct Women in Black to obtain a special permit. However, in the report of the Ministry of Interior, Belgrade's Police Department for processing and inspecting traffic violations in Belgrade, it was stated that M.U., along with other unknown persons, occupied the driveway and did not allow the movement of traffic, despite warnings given from the traffic police, that the organization needed a decision on the use of road and divert of traffic from the City Administration, Secretariat for Transport.

Women in Black repeatedly applied to Secretariat of Transport for the issuance of the aforementioned decision, but it was never received. Until this case, appa-

rent non-functioning of this body to which the Belgrade police also stopped referring, had not constituted an obstacle to the gathering. An additional problem is the fact that the Law on Public Assembly in no way indicates the necessity of obtaining this decision in order to organize a gathering in motion. Obstruction of traffic, according to the law, which is a *lex specialis*, is the basis for an optional ban prior to the gathering, as well as the basis for an optional ban on further carrying out the gathering. Featured collision of Law on Public Assembly and the Law on Road Traffic Safety, is another proof that the Law on Assembly has to be changed and legal certainty in achieving one of the most important human rights has to be established.

Namely, in March 2012 the Constitutional Court of Serbia has made the decision on the constitutional appeal, which was submitted by YUCOM on behalf of the Women in Black. It was stated that numerous human rights of this organization have been violated - the right to freedom of assembly, the right to a fair trial, the right to a trial within a reasonable time and the right to an effective remedy. These violations were identified through the prohibition of the gathering "Hundred years of struggle" on March 8th 2008. This gathering was prohibited without an explanation, and in the procedure followed before the authorities and the courts, the Police Directorate stated that it was not allowed because on "the relevant day in the city of Belgrade a number of sports, cultural and other events of high risk were held, where could reasonably be expected gathering of

informal groups and extremist fan groups, which would result in endangering the safety and property." To remind, on the same day, on March 8th, many organizations celebrated that day at the Republic Square.

The decision to prohibit the gathering in motion to human rights defenders represented an arbitrary and politically motivated decision. However, the proceeding, which the Lawyers' Committee for Human Rights led to the highest instance, showed most of disadvantages of the regulation of freedom of assembly, primarily the lack of effective remedies for their protection. "The Constitutional Court made this decision, having in mind the views of the European Court of Human Rights set in the above case *Baczkowski and others v. Poland*. This court pointed out that for the effective exercise of freedom of assembly it is important that the law prescribes time limits within which the competent authorities shall deliver their decision. In contrast, if there is no obligation to reach final decision before the scheduled date of the event, one can not conclude that the remedies that plaintiff may use - with respect to their post hoc nature, provide adequate protection from limiting freedom of assembly."

*A series of decisions of the Constitutional Court regarding the violation of freedom of assembly, as well as the case that we have presented, show that the current Law on Public Assembly must urgently be change and thereby enable the realization and protection of freedom of assembly in accordance with the democratic standards.*

### *The case of Borka Pavićević: freedom of expression and protection of human rights defenders*

Borka Pavićević, director of the Centre for Cultural Decontamination, has been one of the guests in the show "State of the Nation" on TV B92 in October 2009. On that occasion, she pointed out her views on the current political situation in the country, stating that during the discussions organized at the Faculty for Mechanical Engineering, ideas contrary to her's were shared, and which, according to her opinion, are harmful for the society as a whole. Following this statement, a lawsuit against her for the crime of "Insult" has been filed by the NGO "Dveri". As the lawsuit did not contain any proof of the alleged crime - not even a transcript or recording of the show, the claim was returned to the private plaintiff in order to be rearranged. Since, clearly the plaintiff did not acted according to the orders of the court, the lawsuit was dismissed. After the appeal submitted by the "Dveri" organization against the dismissal of the lawsuit, the proceedings was continued.

At the retrial, the criminal lawsuit filed by "Dveri" was rejected for the lack of evidence. The prosecutor filed an appeal against this decision too, after which the procedure was returned to the First Basic Court in Belgrade for retrial. The same scenario occurred in the repeated procedure. Before a decision was made, according to which the claim was rejected, the defendant and a plaintiff counsel were subjected to a hearing - first in the investigation process and then in the trial. YUCOM's attorney insisted that there is no evidence that this crime was committed, as well as that the defendant during the show has never mentioned „Dveri“. We also insisted on the fact that her statement was a critical part of the expression of her opinion, which is the essence of freedom of expression. YUCOM's attorney quoted the judgment of the European Court of Human Rights in *Dalban vs. Romania*, where the Court held that it is unacceptable to prohibit the expression of value judgments, unless those can be proven truthful.

In April 2013 the Court of Appeal in Belgrade revoked the decision of the First Basic Court and ordered the pro-

ceedings to be continued, after which the pre-trial chamber of the First Basic Court, in December 2013, decided on the final termination of the proceedings, as a result of absolute limitation of criminal prosecution.

Through a series of decisions, both procedural and merits, the court held the opinion that in this case there is no place to prosecution. On the other hand, the number of complaints of the plaintiff for a period of three years, are primarily a form of pressure on human rights defenders. The pressure on the court itself is also significant, given that, by insisting on further proceedings, actually indirectly an interference of public authorities with the freedom of expression of critical opinion, was sought. So, the freedom of expression, which is the foundation of a democratic society and an important requirement for achieving the rule of law, was denied. The right to raise a question of public interest, which essence represents the right to freedom of political speech, is a prerequisite for ensuring accountability of public officials and representatives of public authorities of highest rank.

### *Social protection of refugees: twenty-year struggle of D.V.'s family*

Party to the administrative proceeding D.V. from Belgrade, a refugee from Croatia, has been trying since 1992 to qualify for family disability compensation exercise the right to family disability for his fallen fighter. Last claim on which an unlawful final decision was reached by the Sector for veteran and disabled protection of the City of Belgrade, had been filed on November 1st 2007.

Secretariat for Social Security - Sector for veteran and disabled protection of the City of Belgrade, in the revision of the first instance decision, three times refused requests of a party in an administrative proceeding, twice thus opposing the position of the Administrative Court. The Administrative Court of the Republic of Serbia, in the opinion of the judgement 3U 14351/10 of June 16th 2010

and 19U 30275/10 of November 17th 2011, stated twice the violation of law in this case. In making the second judgment in the same matter, the Administrative Court stated: "In this particular case, the first instance decision of September 14th 2010 was adopted in the execution of the second instance decision of July 22nd 2010, which annulled the first instance decision of October 10th 2008, acting upon the judgment of the Administrative Court 3U 14351/10 (2009) of June 16th 2010 (which the plaintiff's complaint upheld on appeal and annulled decision of December 2nd 2008), so that the challenged decision is being revised, enacted the same legal matter referred to in this judgment. In this judgment as well it was stated that the wrong conclusion of the defendant, and the first instance authority, that the plaintiff does not meet the provisions of Art. 13 Paragraph 3 of

the Law on Basic Rights of Veterans, Disabled Veterans and Families of fallen soldiers ("Official Gazette of Federal Republic of Yugoslavia", no. 24/98 .... 25/ 00) for the realization of the right to family disability on the fallen fighter, so this court also finds that the defendant authority has not complied with the objections in renewed proceedings and the legal opinion of the court in the above mentioned judgment, which is the obligation set forth under Art. 69 of the Law on Administrative Disputes ("Official Gazette of Republic of Serbia", no. 11/ 09) and under the provision of Article 61 of the Law on Administrative Disputes ("Official Gazette", No. 46/ 96) , invoked by the Court in the mentioned judgment. Secretariat for Social Welfare of City Administration of Belgrade - Department for veteran and disabled protection did not respect repeated objections and legal





opinion of the Administrative Court on the wrong application of the law, and it rejected the D.V.'s request once again on January 10th 2012, stating that it took into account the objections and legal opinion of the Administrative Court in reaching this decision... However, it found that in this case, it had the obligation to apply the legal position identically taken by, both the Supreme Court of Serbia and the Supreme Court of Cassation.

*The proceeding before the Ombudsman:* Ombudsman of Republic of Serbia, after the procedure of controlling the legality and regularity of the work, found that the Secretariat for Social Welfare of City Administration of Belgrade - Department for veteran and disabled protection, made the omission in the work as it had not acted upon by the final decision of the Administrative Court of Serbia, despite being constitutionally and legally obliged to act upon court decisions. It also stated that it was necessary that the Secretariat of Social Welfare determine responsibility of acting officer, or officials regarding this failure, which is a rarity in the practice of the Ombudsman.

*Proceedings before the Ministry of Labour, Employment and Social Affairs:* Lawyers' Committee for Human Rights YUCOM addressed the Ministry of Labour and Social Affairs in 2013 demanding to urgently respond in accordance with the powers and revoke the decision of Secretariat for Social Security - Sector for veteran and disabled protection of the City of Belgrade, on the basis of official oversight for apparent violation of the law. YUCOM considered that the response of the Ministry of Labour and Social Affairs was necessary because, despite the reactions of the Ombudsman, Department of Social Welfare of City Administration of Belgrade - Department for veteran and disabled protection, does not respect the judgment of the Administrative Court, but in response to the Ombudsman stated that the opinion of the Administrative Court was not acceptable. Moreover, as an explanation for the rejection of the opinion of the co-

urt that is required pursuant to Art. 69 of the Law on Administrative Disputes, it stated certain decisions of the Supreme Court of Cassation and the Supreme Court of Serbia, which was reportedly taken legal opinion on the matter. These decisions were not published in the Bulletin of the jurisprudence of the Supreme Court, which indicates that they were not general legal opinions, as this authority in its reasoning for contempt of court decisions of the Administrative Court stated. YUCOM called on the Ministry of Labour and Social Affairs in order to end the illegal decision based on the apparent violation of the substantive law on which the Administrative Court of the Republic of Serbia twice reached the decisions in the final and enforceable judgment and the same view was taken by the Ombudsman in the procedure of controlling the work of the administration. State Secretary at the Ministry of Labour and Social Affairs called YUCOM's lawyer in order to inform her that the Ministry had reviewed the case, but could not respond because of the ongoing preparation of the decision of the Administrative Court, and that it would react if necessary after the third administrative dispute in this case ends. It was noted at this meeting that the Ministry has taken measures in order to sanction the persons responsible for the unlawful conduct in this case, in accordance to the law.

*The judgment of the Administrative Court of the RS (dispute of full jurisdiction):* On the occasion of the third administrative litigation in which the Lawyers' Committee for Human Rights provided expert support to D.V., the Administrative Court in the dispute of full jurisdiction, which is a rarity in our judicial practice, decided on the claim of D.V. and found her right to family disability, so the court gave approval to the decision of the Department of Social Services, information and local governance of the city municipality of Novi Beograd no. 580-91/10 of September 14th 2010, as the only solution on the basis of which the right to family disability was granted to the party.

*The procedure for execution of the decision of the Administrative Court:* Lawyers' Committee for Human Rights has provided support to the parties in the implementation of the execution of this decision before the organs of local self-government in Novi Beograd because it was observed that the decision upon which the Administrative Court of the Republic of Serbia gave its approval, also in dictum, contrary to the law, held that civil wife of the fallen soldier, R.V. who has also died, the right to family disability by a fallen soldier, the monthly amount of 10 % of the base was recognized. YUCOM in administrative proceedings filed a motion to correct errors in the decision under Art. 209 of the Administrative Procedure Code, so that instead 10 %, 60 % would be stated in the disposition decision, which would have legal effect from the date from which the decision being correct is to produce its legal effect. Lawyers' Committee for Human Rights stated that the basis for the proposed correction provision of Article 33 Paragraph 2 of the Law on Basic Rights of Veterans, Disabled Veterans and Families of fallen soldiers, which provides that family disability for the beneficiary who has the right to it, as a member of the family of the fallen soldier ( ... ), is 60 % of the base.

Department of Social Services, information and local self-governance of city municipality Savski venac, acted at the request of YUCOM, followed by D.V. being paid family residual disability in legal terms, that is still realized today.

4



ANTI-DIS-  
CRIMINA-  
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HANISMS IN  
PRACTICE:  
**THE WAY  
TO EQUAL  
OPPORTU-  
NITIES FOR  
ADEQUATE  
HOUSING**







## CURRENT SITUATION AND CONTEXT

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For many years the right to adequate housing is facing the risk of systemic discrimination in Serbia. Marginalized, vulnerable groups do need more government support in ensuring decent housing conditions of each individual. By implementing the laws and the Constitution, or by issuing general and individual decisions and through acts of public officials, exercising this right is often denied to socially vulnerable citizens, or even entire groups. This right belongs to the corpus of basic social and economic rights, and is an important segment of the right to an adequate standard of living. **Roma, refugees, internally displaced persons and returnees under the readmission agreement**<sup>2</sup> are in greatest need for programs such as social housing and social housing under protected conditions (SSZU). Roma are the most discriminated group in Serbian society, and a large part of the Roma population lives in informal (“unhygienic”) settlements that are systematically being displaced, often without provided adequate housing.<sup>3</sup> On the other hand, due to the post-war heritage in Serbia there is still the largest number of refugees and internally displaced persons (IDPs) in Europe, which also are in need for adequate housing. This would enable them to continue to live normally in these new circumstances. Although Serbia is considered to be safe and secure country, it is still at the top of the list of countries from which originate asylum seekers in Western Europe. For this reason it is

also necessary to provide adequate living conditions for returnees under the readmission agreement. Providing the right to social housing is a must for vulnerable individuals, since they are in need of this kind of help, giving the fact that housing is the highest financial outlay. Among the above categories there are also often individuals who are being segregated on many grounds (e.g. Roma, who are also internally displaced persons or returnees under the readmission agreement, and socially disadvantaged).

After the collapse of socialism and the disintegration of Yugoslavia, there was a rapid liberalization of housing policy, which in some cases led to the fact that this sector is less regulated than in some Western European countries. According to the *Guidelines on Social Housing by United Nations Economic Commission for Europe (UNECE)*, the most important changes in housing policy were: general deregulation (mostly of prices) and the reduction of state intervention; privatization of the housing sector; privatization of housing and support to the homeownership; reducing government subsidies, especially for the construction of residential buildings. Given that the most of these changes were implemented without institutionalization and adequate legal and institutional framework, there had been a weakening of the social housing sector in the post-socialist countries of Eastern Europe. Rapid privatization has left too little buildings available for social housing or housing

2 EU-Serbia Agreement on readmission was signed along with the Agreement on visa liberalization on September 18th 2007, which was the first step in enabling no-visa regime. The aim of this agreement is to establish fast and effective procedure of identification and safe return of persons that do not fulfill (or do not fulfill anymore) the requirements to entry, stay or settle in territory of any EU member state or Serbia. This agreement came into force on January 1st 2008. Source: Government of Republic of Serbia, Office for European integration <http://www.seio.gov.rs>

3 <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1312896/Amnesti+osu%C4%91uje+iseljavanje+Roma.html>

with a rental fee that is acceptable for vulnerable groups, as well as an inadequate legal framework for social housing. The main actors in the field of housing construction have become private actors that construction according to the market price, which has reinforced demands for greater state role in the regulation of social housing. According to UNHCR estimations from 2011, due to the violent conflicts in this territory during the nineties, in Serbia there were 70.550 refugees from the former Yugoslavia and 981 returnees. According to same estimations, there were also 210,000 internally displaced persons from Kosovo, 80,000 members of the Roma, Ashkali and Egyptians. 80 % of the approximately 97,000 IDPs expressed the need to find more permanent accommodation options. Most of them are living in collective centers and inadequate private accommodation. In order to integrate in the local population, it is necessary to find permanent and appropriate solution to their housing problems.

*Roma*, one of the largest ethnic minorities, live in far worse conditions than the rest of the population - mostly in overcrowded settlements of poor quality, isolated areas without running water or electricity.<sup>4</sup> Despite poor housing conditions, force eviction remains a persistent problem that affects the Roma community in Serbia. Almost every eviction was accompanied by human rights violations due to failure in ensuring adequate or alternative accommodation. It is a fact that Roma are particularly at risk of inadequate housing, and since the conditions in which they live are below the minimum criteria for adequate housing, it is necessary to take serious action regarding the care of vulnerable members of the group. Housing of Roma is rarely being considered separately from their social marginalization, poverty, exclusion and deprivation. Roma usually live without access to basic services and commodities, while the extremely small number of buildings where they live is being legalized or in the process of legalization. According to the Platform for the realization

of the right to adequate housing, in the 2009 – 2011 period 15 evictions of over 330 Roma families and more than 1,500 Roma men and women were documented. Most of the evictions were carried out in the short term, without consultation with the persecuted population, without the protection of their personal property, provision of adequate alternative accommodation and without an adequate remedy.<sup>5</sup>

Roma IDPs face additional difficulties in exercising the right to adequate housing. According to the Commissariat for Refugees and Migration of the Republic of Serbia, nearly 22,500 Roma IDPs were registered in the database of the Commissariat, while only 1,200 live in collective centers.<sup>6</sup> This shows that a very high percentage of internally displaced Roma have no support of the system after displacement. Another problem that the members of this population are facing is the existence of “invisibles” - persons who have no identity documents. On the other hand, to prove that they fulfill the criteria for eligibility for social housing, it is essential to have identification documents in order to collect the required documentation. Roma organizations are trying to provide identity documents to at least one member of every Roma family in order to facilitate the resolution of family housing.

According to the Commissariat for Refugees and Migration of the Republic of Serbia, at the moment there are 29 collective centers where 2,438 people live.<sup>7</sup> A significant number of vulnerable refugee families fail to fulfill the criteria and requirements for using social housing to live in, so they are condemned to live in uncertain, unresolved and difficult situation (usually in collective or private accommodation). Refugees, internally displaced persons and returnees under the readmission agreement, often cannot meet the criteria of the competition because they have no permanent residence (in last five years) in the municipality which announces a competition. Refugees do not have citizenship of the Republic of Serbia, while returnees who

4 Analysis on main obstacles and problems in access to the right of adequate housing for Roma, Praxis, Belgrade, 2013, p. 8 – 9

5 <http://www.crnps.org.rs/wp-content/uploads/Platforma-za-ostvarivanje-prava-na-adekvatno-stanovanje.pdf>

6 National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons in the 2011-2014 period, Official Gazette no. 17/2011

7 [www.kirs.gov.rs](http://www.kirs.gov.rs)





are citizens of Serbia have difficulties in proving that. The largest part of the realized projects of construction of housing units, was designed to address housing issues for persons living in collective centers and in function of their shutting down. On the other hand, the returnees upon readmission agreement usually face much more severe conditions than those they have enjoyed in a foreign

country in which they were previously settled. Usually these are one-room or two-room housing units for multigenerational families exposed to poor hygienic conditions. According to the latest data, in Serbia there are 2,128 returnees under the Agreement on readmission, and accommodation is not secured for 114 of them.<sup>8</sup>

8 [http://www.kirs.gov.rs/docs/read/lzvestaj\\_2013.pdf](http://www.kirs.gov.rs/docs/read/lzvestaj_2013.pdf)

## LEGAL AND STRATEGIC FRAMEWORK

### INTERNATIONAL FRAMEWORK

The right to adequate housing is guaranteed by numerous international documents and defined in different ways. However, the principles contained in these legal instruments are the same, and they are the following: *the right to human dignity, the principle of non-discrimination, the right to decent living conditions, the right to choose one's residence, the right to freedom of association and expression, the right to security of the individual, the right of access to information, the right to justice and non-interference in personal privacy, family life, inviolability of the home or correspondence.*

Article 25, Paragraph 1 of the *Universal Declaration of Human Rights* from 1948 emphasize that everyone has the right to a standard of living adequate to the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control, and is clearly a need for every individual to, among other things, have adequate housing.<sup>9</sup>

On the other hand, the *International Covenant on Economic, Social and Cultural Rights* from 1966, Article 11 emphasizes that states parties recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and that States shall take appropriate measures to ensure the realization of this rights and to this aim they recognize essential importance of international co-operation.<sup>10</sup> *International Convention on the Elimination of All Forms of Racial Discrimination* obliges member states to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law, without distinction as to race, color, or national or ethnic origin, notably in the enjoyment of certain rights, including the right to housing.<sup>11</sup> Similar provisions are contained in the *UN Convention on the Elimination of All Forms of Discrimination against Women*, Article 14, which obliges the state to provide adequate living conditions, particularly in relation to housing.<sup>12</sup>

9 Universal Declaration of Human Rights, Art. 25, Official Gazette no. 0/48

10 *International Covenant on Economic, Social and Cultural Rights*, Art 11, Official Gazette – International agreements no. 7/1971

11 *International Convention on the Elimination of All Forms of Racial Discrimination*, Art. 5, Official Gazette – International agreements no. 6/67

12 *The Law on ratification of UN Convention on the Elimination of All Forms of Discrimination against Women*, Official Gazette – International agreements no. 11/81, *UN Convention on the Elimination of All Forms of Discrimination against Women*, with the *Law on ratification*, Official Gazette – International agreements no. 13/02

The 1951 UNHCR Refugee Convention regulates the issue of residence so that the States Parties will, under Article 21, if the issue falls under the impact of laws and regulations or is a subject to control by the public authorities, apply it to refugees lawfully staying in their territory, which can be advantageous procedure in any case, and which can not be less favorable than that which, under the same circumstances, is applicable to foreigners generally. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states that migrant workers enjoy equal treatment with nationals of the State of employment in relation to the right to housing, including privileged programs, housing and protection from the abuses of the rent.<sup>13</sup> In addition to these, similar provisions are contained in the *International Convention on the Rights of the Child* (Article 27), as well as the conventions of the International Labour Organization concerning the right to adequate housing and living standards (Convention No. 82, 110, 117, 161, 169).

In contrast to the above mentioned conventions that are legally binding, there are several documents that relate to this area that are politically binding. Article 10 of the 1969 *Declaration of social development and progress* states the need to improve the conditions of life for all members of society, so as to enable everyone, especially people with low incomes and families with more members, adequate housing and social welfare. *Revised European Social Charter* guarantees social and economic human rights. Article 31 of the Charter states: "In order to ensure the effective exercise of the right to housing, the Parties undertake measures aimed at improving access to housing of an adequate standard, to prevent or reduce homelessness with a view to its gradual elimination, to make the price of housing accessible to those without adequate resources."<sup>14</sup> *Charter of Fundamental rights of the European Union*, Article 34, guarantees the right to social assistance and housing assistance,

in order to provide a decent livelihood to all those who lack in sufficient resources.<sup>15</sup> However, despite the broad legal framework within the European Union, there is no standardized model of housing policies among member countries. In April 2006 the European Parliament adopted the *European Housing Charter*, and in May 2007 the *Decision of the European Parliament on housing and regional policy*, which gives great political significance to the necessary improvement of living conditions in the EU. Also, the second UN Conference on Human Settlements, held in 1996 in Istanbul, where, apart from the state, some non-governmental organizations participated, adopted the *Istanbul Declaration*, which commits itself to achieving the objectives of providing housing for all residents and establishing a sustainable development of human settlements in the context of progressive urbanization in the world. In this process not only governments, but also other government partners, such as civil society organizations, should participate in order to ensure protection from discrimination and equal access to adequate housing for all people and their families. At the same conference the Habitat Agenda was adopted, which, in Article 11, stresses that „everyone has the right to an adequate standard of living for himself and his family, including ( ... ) adequate housing ( ... ) and the continuous improvement of living conditions“.

According to *UN - Habitat* the right to housing is considered to be progressive legal obligation, which means that states are obliged to constantly strive to strengthen economic, social and cultural rights, including the right to adequate housing. The idea of progressive realization requires the state to endeavor faster, more efficient and full exercise of the right to housing. One way to achieve this is to adopt legislation concerning housing. UN Habitat emphasized that all countries, regardless of their level of economic development and available resources, have a minimum, basic obligation to meet the minimal level of basic rights

<sup>13</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Art. 43

<sup>14</sup> *Revised European Social Charter*, Art. 31, Official Gazette – International agreements no. 42/09

<sup>15</sup> *Charter of Fundamental rights of the European Union*, Art. 34





16 International Instruments On Housing Rights of Un-Habitat, consultancy report compiled by the Centre on Housing Rights and Evictions (COHRE), 2003, p. 31. UN Habitat,

17 Subcommittee Special Rapporteur for the promotion and implementation of the right to adequate housing, the Regulations on the right to housing *Overview of international and national legal instruments*, the source: [http://www.unhabitat.org/downloads/docs/3667\\_74890\\_HS-638.pdf](http://www.unhabitat.org/downloads/docs/3667_74890_HS-638.pdf).

promised in the International Covenant on Economic, Social and Cultural Rights. Thus, a state where a significant number of people do not have basic shelter and adequate housing, *prima facie* is not fulfilling its obligations under the Covenant.<sup>16</sup> UN Habitat also recalls that

the right to housing can sometimes be in conflict with private property rights, but that the international legal consensus states that the right to property must undoubtedly give way to the larger social good of the community.<sup>17</sup>

## NATIONAL FRAMEWORK

The Constitution of the Republic of Serbia from 2006, Article 21, prohibits discrimination and points out that the prohibition of any discrimination, direct or indirect, on any grounds, particularly on race, sex, nationality, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability.<sup>18</sup> Article 48 is also to be mentioned, which regulates the promotion of respect for difference as follows: “With measures in education, culture and public information, the Republic of Serbia shall promote understanding, appreciation and respect for differences arising from specific ethnic, cultural, linguistic or religious identity of its citizens.” In the Constitution there is no clear provision on the right to adequate housing, but paragraph 1 of Article 69, which refers to social security states as follows: “Citizens and families in need of social assistance in order to overcome social and existential difficulties and create the conditions for satisfying basic needs, have the right social protection, the provision of which is based on the principles of social justice, humanism and respect for human dignity,” so that it can be concluded that these categories of people are entitled to social housing. *The basis of the concept of legal regulation of social housing concept is located in Art. 97, which states that: “The Republic of Serbia shall organize and provide social security, sustainable development, basic objectives and directions of regional and*

*social development policies and measures to guide and encourage the development, ownership and obligations, and other relationships that are of interest to the Republic of Serbia”.*

*The Law On The Prohibition Of Discrimination* adopted in 2009 defines discrimination as any unjustified differentiation or unequal treatment on the basis of presumed or actual personal characteristics, including nationality and ethnic origin. In the law, there is a special part that is closer related to the discrimination of national minorities and prohibits discrimination against ethnic minorities and their members on the basis of nationality, ethnic origin, religious belief and language.

Art. 2 of the Housing Act<sup>19</sup> prescribes that states should take measures to create favorable conditions for housing construction and provide the conditions for meeting the housing needs of vulnerable people in accordance with the law. On the other hand, Article 5 regulates the conditions under which one may (or may not) be forced to move, as follows: “If a person moves into an apartment or common areas of the building without a legal basis, or to an apartment without a signed contract or the legal basis on which the contract is concluded is nullified, the landlord, that is, a person who has a legal interest may before the municipal authority responsible for housing require his eviction.”

**Social Housing Act**, Article 2, defines social housing as *housing of an*

18 Constitution of the Republic of Serbia, Official Gazette no. 98/2006

20 Housing Act, Official Gazette no. 99/2011



*adequate standard to be ensured through the support of the state, in line with the strategy of social housing and programs for the implementation of the strategy, to households that for the social, economic and other reasons can not obtain housing at market conditions.<sup>20</sup> Paragraph 3 of Article 10 of this law gives priority to the provision of social housing to persons belonging to vulnerable social groups, such as young people, orphans, single parents, families with many children, single households, persons over 65 years of age, persons with disabilities, personal veterans, family veterans, civilian war invalids, refugees and internally displaced persons, Roma and other socially vulnerable groups. This law states the necessity of the adoption of the National Strategy on Social Housing, in furtherance of established national housing policy and measures for its implementation.*

*The strategy of prevention and protection from discrimination emphasizes that all special measures (affirmative actions), introduced to achieve full equality, protection and advancement of persons or groups of persons who are in an unequal position, shall not be considered discrimination. These are the measures that are state intervention and which are regulated by law, and which is the essence of achieving full equality for specific groups of people.<sup>21</sup> Measures are temporary because by the achievement of equality the need for their existence is exhausted. Section 4.1 of the Strategy emphasizes the “vulnerable social groups are particularly exposed to discrimination and discriminatory treatment in certain areas. ( ... ) It is evident that discrimination and discriminatory treatment of exposed persons and groups on the following grounds: on the basis of belonging to national minorities, ( ... ) refugees, inter-*

*nally displaced persons and other vulnerable migrant groups, ( ... )”.*

*The strategy clearly indicates the manner in which these social groups will be further protected, how will be ensured principle of equality, equal rights and equal treatment, in which areas are the most common cases of discrimination towards vulnerable groups in the society, how to improve the situation in certain areas, in which direction to “act” in order to further legislative reforms and the adoption of by-laws as well as to improve their protection and others. The goal is the full integration of national minorities into the social life, along with preserving and developing their national and cultural peculiarities. Among the measures for achieving these goals active participation of Roma in planning their housing needs and respecting their right to participate in decision making is proposed. All this with regard to all matters that concern them, especially in local government, including relocation and method of social integration and provision of conditions for social housing, in accordance with international standards and guidelines for the resettlement of people living in informal settlements. It also states that, the status of refugees and internally displaced persons has been promoted by numerous measures of the Republic of Serbia, but it is necessary to implement other measures to ensure that their position will be further enhanced. As for social housing, in the “Housing” section, it stands out that, except for social housing in a supportive environment, and other forms of housing for refugees and internally displaced persons (social housing rental or ownership) will be encouraged, in order to achieve a higher degree of access to the right to adequate housing of these vulnerable groups.*

20 Social Housing Act, Official Gazette 72/2009

21 Strategy of prevention and protection from discrimination, Official Gazette no. 60/13

22 Strategy for improvement social position of Roma, Official Gazette no. 27/09

**Strategy for improvement of social position of Roma** in several places emphasizes the need for adequate housing and specifies the international and national legal framework that allows adequate housing to the Roma population.<sup>22</sup> The strategy states that solving

the housing problems of socially vulnerable groups in Serbia responsibility of local governments and their respective departments. There is a separate part of the Strategy, which describes the current situation. It is pointed out that the majority of Roma live in very poor hou-





sing conditions, that the village in which they live are usually illegal, overcrowded, with a small number of residential units and the distance from the basic social facilities and services. Most Roma do not possess the proper documentation of ownership of their homes or land, which further complicates the problems of Roma housing. The most difficult housing situation of Roma is with persons displaced from Kosovo and returnees (which is a double reason for the provision of social housing in protected conditions) mainly from the EU, because it is burdened by unregulated issue of residence or acceptance, as well as legal problems of reintegration. It is especially important to note that in the case of eviction of tenants from an apartment or property, the current legislation does not provide any protection or security to persons who have illegally settled on the land or in the building, and in most cases these people are left to themselves. Under international human rights law, individuals have the right to protection against forced eviction, including security of ownership and legal protection against forced eviction. The strategy then lists several examples of good practice and existing initiatives for the development and improvement of Roma settlements. They are being carried out through four key channels - through the activities of the Government of the Republic of Serbia and the ministry, thro-

ugh the actions of local governments, in cooperation with international organizations and the associations of citizens. The most important part are the recommendations for further action to define the long-term activities that must be continuously implemented and improved, in line with the key principles that should be kept in mind when planning and managing the process, and defining measures to improve the situation of Roma settlements and housing situation of Roma (one of these measure is the full participation of Roma in the process of improving the living conditions - in the formulation of housing policy and defining programs and projects for the improvement of settlements and housing). The main objective of improving housing conditions "should be to ensure the legal use of housing and property in all aspects, enabling healthy life of families and individuals, the relief for women and children, providing adequate conditions for a lifestyle that is acceptable to Roma, as well as fostering the culture of living in what is accepted by the whole of society." Among the recommendations in relation to housing conditions, as a very important may be singled out: "Returnees should be included in the programs of housing, social housing and alternative forms of housing (purchase of abandoned household living together with elderly, etc.)"

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**Action plan for the implementation of the Strategy for Improvement of Roma in the Republic of Serbia for the period until January 1st 2015** provides several affirmative measures relating to the exercise of the right to social housing. Measure 2.6. refers to the resolution of housing for about 500 Roma families from the program and resettlement of returnees under the readmission agreement through social housing programs. As part of this measure the following is provided: acquisition and granting rental housing in public ownership, acquisition and granting village households, as well as the allocation of

*aid to improve housing conditions external to the improvement of Roma settlements. Measure 4.6. is applicable to solving housing problems of internally displaced Roma persons. This measure provides housing support programs for Roma - IDPs living in formal and informal collective centers, equal participation of Roma - IDPs in programs for addressing informal settlements, the provision of funds from international donors and from IPA funds and care for Roma residing in collective centers to providing housing solutions. Finally, measure 5.5. governs the resolution of housing and accommodation of returnees in detention*

centers, and proposes maintaining the accommodation capacity of existing centers and financing for services of accommodation and food at the reception centers, the inclusion of returnees under the readmission in local action plan (LAP) for the

resolution of problems of the refugees and IDPs, as well as the inclusion of returnees in programs of housing, social housing and alternative forms of housing. All these measures should be implemented by the end of 2014.

**National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons in the period from 2011 to 2014** is expression of the political will to offer help and concrete solutions to all refugees and internally displaced persons, in order to be able to independently make decisions about their future.<sup>23</sup> In section 5, which refers to social protection, it is emphasized that to the refugees belong part of the rights in the field of social protection, which include a one-time financial aid, as well as the right to housing in the building for social housing in protected conditions, in accordance with the decisions of governments of the extended rights.

In section 6, which relates to housing, it was pointed out that, except for social housing in protected conditions as an additional form of social protection, more than half of persons accommodated in collective centers have opted for social housing with

the possibility of buying an apartment. In order to improve the system of solving housing problems of refugees, especially the most vulnerable groups, which would be based on clearly defined needs, criteria, priorities and coordinated cooperation of national, local and international subjects, as well as the launch of its application, some of the measures relating to social housing that were proposed are: providing housing solutions for users of collective centers that are being closed (help in materials for construction, purchasing households with a garden, prefabricated houses, social housing, stimulating construction of cheap housing and facilitating the purchase under favorable conditions), the application of the provisions of the Law on refugees related to the meeting the housing needs of refugees, as well as the Law on social housing for all refugees - social housing beneficiaries.

23 National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons in the period from 2011 to 2014, Official Gazette no. 17/11

**Strategy for Reintegration of Returnees under the Readmission Agreement**, in part related to housing policy, emphasizes that the information available on the structure of returnees it can be concluded that a large number of them belong to the Roma national minority, which is facing major existential problems in the Republic of Serbia<sup>24</sup>. Meeting the housing needs of the Roma has been identified as a priority issue, and the main objective of integration of Roma settlements emphasizes the provision of basic living conditions, such as access to basic services and infrastructure. One of the planned activities is to create conditions and provide support to strengthen the capacity of local governments for housing of returnees, which includes assistance in providing resources and living conditions

of returnees through social housing programs and regulating the legal status of unhygienic settlements and the construction of basic infrastructure, which will also contribute to solving the housing problem.

As one of the most important reasons for the adoption of the **National Strategy for social housing**, the government points out the huge gap between the needs and capabilities of a large number of households in Serbia to independently solve housing needs, as well as the almost complete absence of the system of housing support to such households.<sup>25</sup> The state must provide more support to the weakest in the area of social housing, and improve standards of living, for which private housing funds and investors have no interest. The application of quasi-market mechanisms are recommended, such as the promotion of

24 Strategy for Reintegration of Returnees under the Readmission Agreement Official Gazette no. 15/09

25 National Strategy for social housing, Official Gazette no. 13/12







competition, the opening of social housing to socially sensitive actors from the private and nonprofit sectors, encouraging various forms of public-private partnerships, the introduction of standards of quality of services and so on. ***The strategy well recognizes that the Constitution of the Republic of Serbia does not directly regulate the right to housing, nor does it define the public interest in this area. Also, housing poverty is not included in the social security system, nor the measures for the vulnerability of those who do not have sufficient funds to meet minimum housing needs are established. It also states that more precise data on the housing needs of vulnerable, disabled, elderly and others aimed at institutional accommodation, should be collected by the Centers for Social Work in coordination with other agencies, and that this obligation is not prescribed by the law and that there is no unique methodology for monitoring. Therefore, social welfare centers, local housing agencies, and other authorities and institutions of city and municipal governments will be in charge of exploring the social housing needs. The strategy clearly separates the jurisdiction of the central and local governments, which are determined by the Law on Social Housing, and appeals to the good cooperation between stakeholders. Since a large burden is being shifted from the central to the local level, it is necessary to target the real needs which can only be recorded at the local level. This task should be performed by local housing agencies, and if they are not established, the relevant local government body. In the beginning, we need to focus on the assessment of housing needs in local housing strategies, based on the criteria of the Strategy, and later on more precise information on the actual needs, based on the results of the implemented program of social housing. The establishment of a system for continuous monitoring of social housing needs is also suggested, what for it is necessary to strengthen the technical and professional capacity of local housing agencies and conduct ongoing training of professional staff.***

Part of the strategy relating to the provision of apartments for housing in social protection programs, as well as to the beneficiaries of the program (which are in a special need for housing support) includes refugees and internally displaced persons, returnees under readmission agreements and households living in informal settlements. As a form of good existing practices an example of the “Social Housing in Supportive Environment” is provided, which is aimed primarily at the closing of collective centers for refugees and internally displaced persons. Part of the strategy relating to the construction of housing for purchase under the non-profit terms emphasizes that “if there is a special public interest in case of certain social groups, in the collection and allocation of funds for the housing needs through this type of housing assistance, the competent institution, ie . ministries (of defense, education, interior, health) and the Commissariat for Refugees, in the case of refugees and IDPs , formulate, with the assistance of the State housing agency, special programs, that should be afterwards approved by the Government. Approved programs are implemented by the State housing agency, and in the case of refugees and IDPs, these programs are implemented by the Commissariat for Refugees.” **Subjective subsidy, housing allowance in the payment of the rent is another form of housing assistance.** It is intended for all users of social housing, as an additional measure of the aforementioned housing programs. The primary purpose of these measures is to cover the real costs that a beneficiary can not pay because of low income, as well as an increase in the price availability of these programs to individual households. In addition, the Strategy provides **tax incentives for housing** that are also kind of housing support. These represent type of subsidies without direct payment and can be directed at persons who are entitled to resolve housing issues on the basis of the Law on Social Housing (beneficiaries of social housing) and/or natural or legal

persons who are obtaining, renting or selling the flat under non-profit conditions for beneficiaries of social housing, and if this program is provided by the Government. Although the law on social housing provides only funding from the budget of the Republic of Serbia, due to high financial difficulty of housing and lack of funds in state and local budgets, the Strategy states that it is necessary to combine funds from the

state and local level, as much as possible, when obtaining housing units. It is proposed that an additional source of funding are donations that come from international funding institutions and are aimed at the most vulnerable and specific groups (refugees, IDPs, Roma residents of collective centers), but also that these donations are not a source of funding for long-term programs.

## THE IMPLEMENTATION OF REGULATIONS AND BARRIERS TO EXERCISING RIGHTS

### EXAMPLES OF GOOD PRACTICE

**Social housing in a supportive environment (SHSE)** is a program of housing and social care for the most vulnerable people - refugees, internally displaced persons, Roma, people with disabilities, people with chronic illnesses and those living on the street. This concept was launched in Serbia by the international NGO Housing Center in 2003, which has enabled it to be implemented and financial support from international institutions through the Ministry of Labour and Social Policy of the Republic of Serbia and the Commissariat for Refugees and Migration.<sup>26</sup> SHSE is not a legal obligation, but it is part of the multi-year project, and is regulated in a number of local action plans.<sup>27</sup> Following the adoption of the Law on Social Protection in 2011, which does not recognize the concept as a special kind of service, a number of local governments adopted general acts - decisions on the rights (and obligations) of

social protection that establish social welfare services provided by local governments and the manner of exercising established rights. This concept was created in order to adequately address the housing problems of refugees and displaced persons, many of whom still live in the so-called collective centers. Criteria for SHSE not uniformly defined in the general acts of local governments, which may lead to legal uncertainty and unequal treatment in the exercise of the rights of citizens. In fact, SHSE includes the right for accommodation in a separate building of social housing for vulnerable families and individuals who are beneficiaries of financial social assistance, refugees and internally displaced persons who are in need for housing and do not possess an apartment or single family residential house in the territory of the Republic of Serbia, either owned or co-owned by them, who also do not use social or public

26 <http://www.housingcenter.org.rs/index.php/socijalno-stanova-nje-u-zasticenim-uslovima>

27 Housing Center is engaged in the construction of housing units and the creation of a supportive environment for beneficiaries, which is also provided by the centers for social work. According to their statistics, 931 residential units in 42 municipalities in Serbia were built, where about 2800 people were settled. Source: <http://www.housingcenter.org.rs/index.php/socijalno-stanova-nje-u-zasticenim-uslovima>





*housing under a lease and are not able to solve the housing problem in another way and that are not eligible for placement in a social care or other family. The right to use these services is granted by the local social welfare institutions - the Centre for Social Work, which is, upon the consent of the local authority body, responsible for social protection. It names, among users of social housing, a so called host of the object for social housing. He signs the contract and gets paid monthly from the city (municipality)*

*to take care of the living conditions in the house as follows: respect for the house rules, maintenance of common areas, the preservation of property in the facility as well as to provide assistance and support to beneficiaries in relation to the rights and obligations in relation to housing. SHSE beneficiaries are generally partially exempt from payment of for utilities in these apartments. The full effects of SHSE are expected in the future.*

28 Regional Housing Programme:  
<http://www.regionalhousingprogramme.org/28/about-rhp-overview.html>

29 Among the activities of the Commissariat for Refugees and Migration in the Republic of Serbia in 2013 we can note the following: 15 more vulnerable refugee and internally displaced families will move in rural households in the beginning of 2014. About 12 million RSD, the value of all homes, was collected through the action of selling "Key" stamps that were charged for postal deliveries in domestic traffic from 30 January to 14 February this year. Contracts for the purchase of rural houses for refugees and internally displaced persons have been signed with 12 local governments (Sečanj, Kragujevac, Grocka, Lučani, Bačka Topola, Bačka Palanka, Kuršumljija, Svrlijig, Kučevo Paraćin, Vladimirci, Sremska Mitrovica). In Kragujevac, Lučani and Grocka planned it was planned to be settle two families, and in other places one. Source: the Commissariat for Refugees, and Migration of Serbia:  
<http://www.kirs.gov.rs/articles/navigate.php?type1=3&lang=SER&id=1986&date=0>

**Regional Housing Program (RHP)** is a joint regional initiative of Bosnia and Herzegovina, Croatia, Montenegro and Serbia, which is part of the Sarajevo Process on Refugees and Displaced Persons. This process is initiated in 2005 and reactivated in April 2010 at the Belgrade Conference through the adoption of the Belgrade Declaration (in November 2011).<sup>28</sup> The aim of this initiative is to contribute to solving the long-term displacement and inadequate housing of refugees and displaced persons in former Yugoslavia, through, among other instruments, providing a permanent and adequate housing solutions. This initiative has the support of the international community, including the European Union, the United States, the Council of European Development Bank (CEB), the UN High Commissioner for Refugees (UNHCR) and the Organization for Security and Cooperation in Europe (OSCE). The

main state institutions for the implementation of RHP is the Commissariat for Refugees and Migration. Housing solutions in RHP are conducted in three ways: by returning to the place of origin (return), in place of the original displacement (local integration) and through granting placement in a social care institution. Donors Assembly of Regional Housing Program approved on the third wave of project proposals on December 6th 2013 at the third meeting of the Board of RHP. These are two new projects that will be financed from the RHP 's Fund.<sup>29</sup> The amount of 11 million euros is intended to ensure permanent housing solutions in the areas of local integration for 715 refugee families in Serbia, through four different models of housing. In Serbia for these purposes there are 235 apartments, 80 prefabricated houses, 350 packages of construction materials and 50 houses in the village available.

## DATA ON SOCIAL WELFARE SERVICES RELATED TO HOUSING

Through sending requests for access to public information (Freedom of Information Request – FoI Request) to centers for social work in several cities, we wanted to determine the implementation of social protection measures and benefits to citizens that are related to housing. We requested public information on the number of active users, of permanent and one-time financial assistance for the first ten months of 2013, and whether there are additional funds allocated for socially vulnerable groups that cover uti-

lities costs or the rent, and the number of users of these services. We have found out that there is a significant number of social assistance beneficiaries, but only a few cities in Serbia allocates additional funds to socially vulnerable persons in order to enable their exercise of the right to adequate housing. On the other hand, cities set aside additional funds, which cover a portion of fees for municipal ser-

vices, electricity, rent and share, and the full amount of the market price of the rent. *Requests were sent to social welfare centers in Belgrade and ten other towns in Serbia. Major cities were included, as well as those in which there is the most complex problems in realizing the rights of Roma, refugees, IDPs and returnees under the readmission agreement, where we took care of the geographic distribution.*

Social welfare institution	Number of families / individuals who have exercised the right to one-time financial assistance	Number of families / individuals who have exercised the right to permanent financial assistance	Number of users of discounts - subsidies on the basis of expenditures for municipal services and rent
CSW 'Solidarnost', Pančevo	2672	1297	2000
CSW 'Solidarnost', Kragujevac	3607	3187	nema podataka
CSW Kraljevo	5676	1807	nije regulisano
CSW Valjevo	1450	750	73
CSW Vranje	68	1629	nije regulisano
CSW Ruma	1047	1286	80
CSW Zrenjanin	1883	2316	nije regulisano
CSW "Sveti Sava" Niš	1436	3410	nema podataka
CSW Novi Sad	2504	4404	762

*Data obtained from the Centers for Social Work (CSW) for the period from January 1st 2013 to October 31th 2013*

In some cities, to the users of social housing in protected conditions, subsidies for utilities were provided on the basis of local decisions on social welfare, which are made after the adoption of the Law on Social Protection in 2011. In other cities, these incentives were not provided. **Belgrade** has established the following type of service - subsidies on the basis of expenditures for municipal services and rent the on the basis of the Decision of the City on emergency measures to protect the most vulnerable citizens dating from 1995. Last published revision of this decision in 2010, the public utility companies - Belgrade water supply and sanitation, Belgrade Power plants, Sanitation and Public Enterprise for Housing Servi-

ces are obliged to provide a discount or subsidy for municipal services and the rent paid through integrated billing Infostan for households in need. Beneficiaries of these services are: beneficiaries of the financial benefit (or cash benefits), persons with disabilities, foster homes that are hosting children without parental care. According to the decision of the city in 2010, the right to a discount on municipal services, as determined by this conclusion have tenants too, but only if they reside in Belgrade, which in practice excludes a large number of Roma, IDPs and returnees under the readmission agreement that actually live in the city, but mainly in informal settlements. According to the *Decision on the rights and obliga-*





tions of the social welfare of the City of Belgrade<sup>30</sup> from December 2011, housing costs (electricity, telephone, water supply, heating and other utilities and fees), as well as repairs and maintenance costs are borne by beneficiaries of housing. As an exception from the general rule of paragraph 1 of this Article, the City of Belgrade, depending on the total income of the household service user, shall bear the costs referred to in paragraph 1 of this article in whole or partially in accordance with the norms and standards of the costs to be determined by a special act by the organizational unit of City government in charge for social protection. Social housing in protected conditions in Belgrade can achieve socially disadvantaged and residentially unsecured persons referred to in Article 2, paragraphs 1 and 3 of this Decision: Serbian nationals and displaced persons from Kosovo residing in the territory of Belgrade. Rights and social services established by this decision can not obtain foreign nationals with permanent residence in the territory of Belgrade. Notwithstanding in paragraph 1 of this Article, the service of social housing in a supportive environment and a subsidy on the basis of expenditures for utility products, services and rent can realize refugees residing in the territory of Belgrade.<sup>31</sup> *CSW Belgrade has not provided data on the number of beneficiaries of subsidies for utilities and rent, even after repeated requests.*

In Novi Sad there is the *Decision on establishing the criteria for the release from part of the liability to pay utility products and services* in 1995, according to which the right to release of partial payment obligations for municipal services has an individual or a family, who, on the basis of the final decision of the competent authority, get the right to a financial support (now financial social assistance) and the allowance for care and assistance of another person and to the utility products and services (50 % of the stipulated price for each municipal services): heating, domestic

hot water supply, waste water disposal through sewerage and removal, transportation and disposal of garbage. The number of families that are eligible to receive subsidies for municipal services on the basis that they are social welfare beneficiaries, changes during the year (the number of beneficiaries of social assistance changes). The highest number of the families during 2013 was recorded in August - 762 families. In Niš, all users of social housing in protected conditions are entitled to a partial exemption from the payment of municipal services for consumed water and other municipal services, according to the criteria and standards provided in this decision. All users shall bear the cost of electricity used in residential units in which they are placed. Costs for common electricity bills and telephone are borne by all users jointly. The funds required for the purchase of fuel for heating facilities shall be paid from the budget of the city of Niš. **The decision on Social Protection of the City of Kragujevac** regulates the right to be granted with subsidy for municipal services (utilities) for users of social housing in a supportive environment, and to the members whose income is at or below the amount of financial benefits. Costs are provided from the budget of the city: for the consumption of electricity up to 300 kW per household, for water consumption up to 3m3 per member of the household. Also, in response to CSR in Kragujevac, the right to the social discount for beneficiaries of cash benefits on the basis of the Regulation on energy-protected, ie, potentially vulnerable customer, was stated. Information on the number of users of these services we have not received. In accordance to the Decision on Social Protection of city of Valjevo dating from 2012 and to the Amendment of the decisions from 2013, the right to a discount - subsidies and the cost of rent and public utility services was established. The first subvention was used by 39 families and the second by 34 families in 2013.

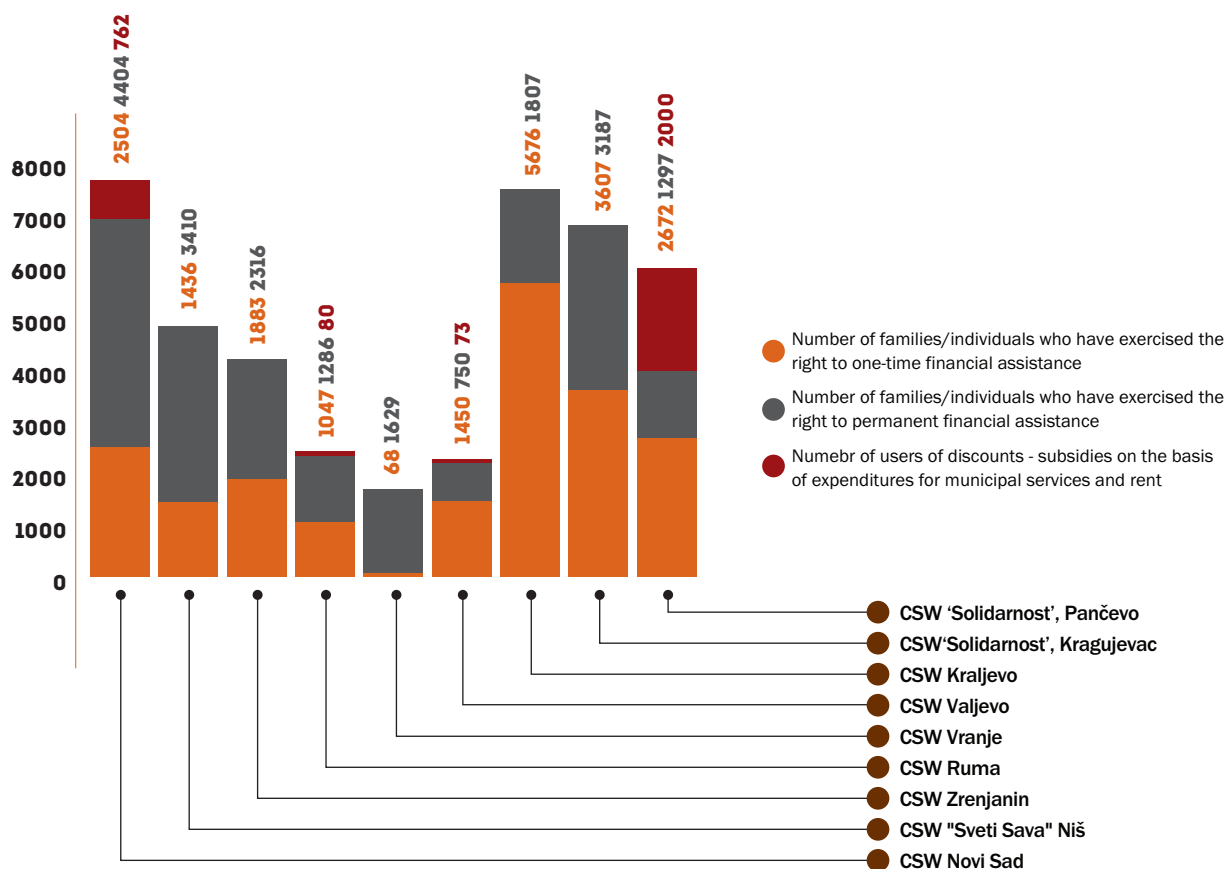
30 Official Gazette of the City of Belgrade, no. 55/2011

31 An additional requirement is that these persons are accommodated in collective centers in Belgrade or are using another form of accommodation, provided that household income does not exceed the basis for determining financial social assistance for individuals. Also, the condition is that individuals and families meet one of the following conditions: they are over 65 years old and able to live independently, that one member of the family has established physical damage from 80% to 100% according to regulations on the pension and disability insurance; that a member of the family is a child with disabilities and the recipient of the assistance and care of another person for any reason, a parent exercise parental rights individually, the person against whom it domestic violence has been committed.



All cities, with the exception of Belgrade and Subotica, provided the answer to the question concerning the number of users of measures of one-time social assistance, both families and individuals. The most users in 2013 were reported in Kragujevac, 8116 users from 3607 families. In Kraljevo 5676 families who have used one-time financial assistance were registe-

red. Right to receive permanent financial assistance was used by 4404 families in Novi Sad. As part of the annual social welfare services, in addition to one-time assistance, in-kind assistance and other forms of assistance from social services were stated.



Data obtained from the Centers for Social Work (CSW) for the period from January 1st 2013 to October 31st 2013

## INDEPENDENT STATE REGULATORY BODY BEST PRACTICE

On the fourth of November 2013 Ombudsman issued an opinion holding that the National Housing Agency, in cooperation with the Ministry of Construction and Urban Planning and Local Government, should take all measures to establish and develop other social housing programs and thus provide conditions for housing in a supportive environment for the most vulnerable citizens in Serbia. Opinion was based on five complaints the users of social housing services in Kamendin (Ze-

32 Opinion of the Ombudsman, "Competent authorities to develop other social housing programs for the most vulnerable citizens of Serbia", November 4th 2013





mun), because they canceled the lease agreement by issuing the notice which informed them that they have to leave the apartment and hand over the keys to the Secretariat for Social Protection of Belgrade within 30 days. Complainants indicated that the cost of social housing are high and often exceed the price that can't be considered as reasonable for people who have no income or whose financial welfare is their only source of income. In addition, the complainants pointed at unfair treatment of employees of the Secretariat for Social Protection of Belgrade during the premature termination of the lease agreement. On the other hand, in the time when the lease agreements were signed, it could be assumed that some of the families won't be able to repay the cost of utilities at preferential prices, regarding the fact that their only income were disability pensions and social benefits. The Secretariat informed the Ombudsman in its response, that the families who have complained to the Ombudsman had discussions with the Secretariat representatives, and were advised to accept the rescheduling of debts. Finally, when they refuse to do so, they were offered a temporary accommodation in container settlements in Belgrade.

Ombudsman indicates that the families, with whom the lease agreement for social apartments, are in the great social risk of homelessness, and the General comment No. 7 by the United Nations Committee on Economic, Social and Cultural Rights in its Article 16 stated that "evictions should not result in individuals being rendered homeless or vulnerable to the violation of other

human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available." Recognizing that "the human right to adequate housing, which is derived from the right to an adequate standard is of great importance for the exercising economic, social and cultural rights", Ombudsman specifically points to the obligations of the state and its agencies to secure, protect and prevent violations of human rights of citizens who are forced to move out, and their obligation to develop programs of care of the most vulnerable citizens.

Ombudsman's opinion states that this opinion shouldn't be considered for this case only but in a broader context and in order to preclude problems in the future social housing programs and the establishment of standards that will allow legal security and exercising the rights of citizens. Ombudsman also proposes implementation of the measures that do not relate only to problems of social housing in Kamendin in Belgrade, but in order to prevent problems with social housing in the future and establish standards that provide legal certainty and exercising rights of citizens. He believes that adequate measures have not been implemented, and if they have, besides social housing in privileged conditions (in rented apartments), there should be other forms of housing should available for socially and economically vulnerable persons.

**Commissioner for Protection of Equality** issued a public warning on the 7th of November 2013 which condemns racist incidents in Zemun Polje, in the aforementioned Kamendin. Two days before the incident, an NGO Regional Center for Minorities (RCM) has publicly urged the relevant authorities to timely respond to the announced

anti-Roma protest and prevented any gathering, which may lead to further persecution of the Roma population in Zemun Polje. Taking into account the multi-day incidents and daily calls for lynching of this ethnic group, RCM expressed in its press release a special concern about the actions of the competent authorities, especially the police,

who were present during the protest. The protest was calling for racial and ethnic hatred and intolerance and the police, regarding the fact that it was informed of it, did nothing to stop the gathering. At the same time, according to residents, city official who visited them on their invitation advised them to isolate themselves in the house and to “pay attention to their hygiene.”

In 2003 the City of Belgrade issued an open call for citizens to apply for the social housing for a limited period of five years in Kamendin (Zemun Polje). According to the needs of vulnerable people - refugees, war veterans, single parents, but generally for Roma families, the city has so far built more than 18,000 m<sup>2</sup>, providing a settlement for more than 600 families. The settlement of socially vulnerable categories of the population in 626 apartments in this neighborhood (among whom was 91 displaced families from informal settlements in Belgrade), began under certain conditions imposed by the city commission. The problem escalated when allegedly, most of the children in primary school got lice and scabies, and children's parents blamed unhygienic lifestyle of Roma families for this problem. On the 3rd of November, after the incident reached the media, residents of Kamendin took to the streets and caused a racially motivated riot, which got the Roma residents in continuous and constant fear. The assemblies and protest of residents continued, and they were filled with insults and threats fueled by hatred and racism. They wanted the eviction of Roma from the two blocks reserved for social housing in which they were settled.<sup>33</sup> Roma were insulted on ethnic grounds, and many were forced

to leave their homes and tend to stay in their friends and relatives houses.<sup>34</sup>

In the warning issued by Commissioner for Protection of Equality, she strongly condemned the incidents in Zemun Polje and asked the authorities to respond urgently. She warned that the situation could escalate and recalled on previous similar cases that involved violence, calls for lynching, expressing hatred and intolerance towards the Roma population and ended with serious consequences.<sup>35</sup> Besides the highly discriminatory behavior of the inhabitants, behavior of city authorities of this village it is very disturbing. Secretary of Social Welfare announced the tightening of already strict criteria for remaining in social housing, but that would only prevent a large number of families to get only possible way of accommodation that they can afford.<sup>36</sup> These kind of incidents are sending a message to vulnerable groups (in this case Roma) that society does not accept their attempts to socialize and establish at least the minimum requirements of life, and encourage even greater segregation of these groups. Regional Center for Minorities believes that the escalation of racist rampage is in direct connection with the sensational newspaper article published in “*Vecernje Novosti*” on the 30th of October titled “Zemun Polje: Scabies among elementary school students”. RCM emphasizes that this was another example of irresponsible journalism in a two-week period, which is directly connected with this racist violence, and that professional journalists' associations, political parties nor the general public did not react to any of this problems.<sup>37</sup>

33 <http://www.slobodnaevropa.org/content/beograd-romi-u-zemun-polju-u-strahu-zbog-napada/25161548.html>, pristup: December 9<sup>th</sup> 2013.

34 Press Release “Racist riots in Zemun Polje require immediate response of the state”, Regional Centre for Minorities, Belgrade, November 5th 2013

35 “Warning to the public regarding the incidents in Zemun Polje”, Commissioner for Equality, Belgrade, November 7th 2013

36 <http://www.novosti.rs/vesti/beograd.74.html:462677-Zemun-Polje-Romski-geto-trn-u-okukom-sija>, December 9th 2013

37 Press Release “Racist riots in Zemun Polje require immediate response of the state”, Regional Centre for Minorities, Belgrade, November 5th 2013







# PROBLEMS SPOTTED “IN THE FIELD” AS A PART OF THE PRO- GRAM OF FREE LEGAL AID

YUCOM followed the implementation of the regulations relating to adequate housing by organizing three focus groups with representatives of the Roma, refugees and IDPs, as well as representatives of local public authorities and NGOs relevant to this area, in Pancevo, Smederevo and Ruma. The lack of understanding the concept and framework of social housing are more common among employees who are required to implement the regulatory and policy framework. Due to insufficient or incorrect information, the users of social housing in Pancevo (mainly refugees and IDPs) created the expectation that after a certain period of time they may repurchase apartments they are renting. Because of failed expectations they have refused to settle obligations under the lease for a longer period, which created the resentment of the local population and deepened segregation. On the other hand, members of the Roma population face difficulties even in the competition for social housing, due to the many technical obstacles (they are not registered at birth, do not have identity documents, they do not have proof of the amount of monthly income nor a certain level of education, etc.). Also, taking into account the usual way of living of the Roma, the majority felt that the facilities that are available

for social housing should be houses with a yard ( at the cost of the settlements outside the city ) instead of flats.

There has been a problem in providing opportunities for vulnerable groups to purchase an apartment. In fact, after a while they usually sell it again, which makes another problem related to housing, because that apartment is no longer available for social housing. A possible solution would be a possibility for repurchase, but with a clause that it can not be alienated within a specified period (5 to 10 years). Municipality of Ruma, in accordance with their Local action Plan, is actively trying to help vulnerable groups of people. They provided help to legally invisible persons in order to resolve their status by paying taxes for issuing needed documentation. Citizens were required only to report their status (as legally invisible persons). Then the municipality continued to work on gathering the required documents and the problem was solved for about legally invisible 600 people. Examples of good practice were also noticed in the field, and are considered as necessary in democratic society as a part of implementing the principle of good governance. According to legal obligation, the local governments provided various measures of social support (child support, scholarships for high school

students and Roma students, schools for adults attended by Roma persons, within the “second chance” program). The conditions were facilitated for applying for call for social housing in Ruma (they can apply only copies not originals, document older than 6 months are accepted, the officials of municipality search conditions on the Republic Geodetic Authority website). New measures for solving housing needs of this vulnerable groups are being discussed, such as to repurchasing houses of local population. It is estimated that it will cost 180,000 to 200,000 euros, for the whole area to be displaced and provided new housing conditions. It is assumed that sale of acquired dwellings can be a problem, as well as their maintenance (or lack of maintenance) by the users.

As part of the free legal aid program, in consultations with other non-governmental organizations which also provide support to vulnerable social groups, YUCOM took several cases in this area for representation. One of them is a case of M. O. who was supported in his struggle for exercising his right to social housing. As a socially vulnerable person, in March 2008 M. O. signed a lease agreement with the Secretariat for Social Welfare under the program of social housing for a five year period of years with the possibility of renewal. His request for renewal of the lease agreement was rejected by the decision of the Commission for Housing Issues in May 2013, and at the same time he was ordered to move out within 90 days and hand the keys to the Secretariat of Social Welfare. The explanation of this decision stated that Mr. M. O. have lost the status of socially vulnerable person, considering that the total income of his family exceeded the prescribed amount, and he does not longer fulfills the requirements of Art. 17 of the lease agreement. His family has no other way to solve its housing problem and has very low financial incomes. His wife is the beneficiary of a disability pension, and his daughter is unemployed.

YUCOM’s legal team found that the facts were wrongly determined in

forementioned decision. The six-month average which were requested for applying for renewal of the contract, included the overtime and vacation pay. This resulted wrong calculation that the total income of his family (which included all the extraordinary income) are higher than 80 % of average earnings in the last six months in the Republic of Serbia. M. O. lost the status of socially vulnerable person, although this increase of incomes was slight and temporary, which has not permanently improved the social status of his family. In Ministry of Construction and Urban Planning response signed by the relevant Minister (M. O. previously have addressed to this Ministry), it is well noted that “the earnings which were defined as a fixed proportion of the monthly income in City of Belgrade, were not set methodologically correct, because has not taken into account the size of the household - according to the number of members, which put households with more members in disadvantage.”

In addition to deficiencies related to the conditions and criteria for the allocation of social housing for rent, this controversial decisions of the city of Belgrade, that was the basis on which the lease agreement was concluded with M. O., denied the right to judicial protection in illegitimate way. In early December 2013, on behalf M. O. YUCOM sent a letter to the Secretariat for Social Welfare Belgrade in form of appeal for a solution to his housing problem. In addition, YUCOM initiated proceedings to review the constitutionality of Article 25, paragraph 4, and Article 28, paragraph 3, of the Decision on conditions and methods of disposal of flats designed by building project of 1.100 apartments in Belgrade.<sup>38</sup> These articles are in violation of Article 198, paragraph 2 of the Constitution of RS,<sup>39</sup> as they deny citizens the right to obtain judicial protection, meaning to challenge the legality of the administrative act by initiating an administrative dispute.<sup>40</sup>

38 Official Gazette of the City of Belgrade no. 20/2003, 9/2004, 11/2005, 4/2007, 29/2007, 6/2010, 16/2010, 37/2010, 17/2012, 8/2013

39 “The legality of final individual acts deciding on the rights, duties or lawful interests shall be argued before the court in an administrative dispute, unless in a particular case, the law prescribes a different judicial protection.”.

40 Article 25 of the contested decision, namely, stipulates that against the final rankings for the allotment of flats to rent “legal protection can not be achieved”, although the proposal of rankings issued by the Housing Commission may be objected to the mayor of Belgrade, through the Commission, and within 15 days from the date of publication. After mayor decision on the complaints, the Commission must announce the ranking final and publish it. Similarly, under the Article 28 of the Decision, the Commission’s decision on the sale of an apartment based on the final rankings may be objected to the Mayor of the City of Belgrade, but the decision of the Mayor is final objection and “legal protection can not be achieved” against it. Considering that Article 48 of the Decision provides that “the process of calling the competition, compiling rankings, advertising final rankings, making individual decisions, their submission, publication of individual decisions pursuant to applicable provisions hereof governing the manner of sale of flats”, this provision of the inability to obtain legal protection applies to the decision rejecting the request of M.O. to extend the lease agreement and on the decision according to which he was ordered to vacate within 90 days, as well as the decision in the second instance, in which the mayor confirmed the decision of the Commission of Housing.





41 Applicants of the initiative also consider that it is necessary that the Constitutional Court cited arguable provisions declare unconstitutional, because they regulate the procedure in which the rights and interests of persons in the state of social emergency, who are deprived from the right to legal aid, and bearing in mind that in the Republic of Serbia, there is still no law on legal aid which embodies a constitutional right to legal assistance guaranteed by Article 67 of the Constitution. Therefore, especially for persons in social need, which typically do not have the funds for professional legal advice, it is necessary that the regulations explicitly stipulate the right to judicial protection. Prescribing the right to judicial protection that is certainly guaranteed by the Constitution, it will be apparent obligation for second instance authority to highlight the instruction on legal remedy in its decision, which is necessary for the exercise and protection of rights. Also, there is still no uniform jurisprudence of the Administrative Court to unconditionally offer legal protection by applying directly Art. 198 Para. 2 of the Constitution and to proceed with an administrative dispute on the basis on the filed lawsuits, when a complaint at the disputes arising from the factual situation to which the Decision on the conditions and method of disposal of flats built under a project to build 1,100 apartments in Belgrade applies, is filed.

*YUCOM's lawyers demanded that the Constitutional Court takes the initiative and makes a decision for initiation of the procedure for the assessment of the legality of the challenged provisions of Article 25 paragraph 4 and article 28, paragraph 3, and orders the City of Belgrade to suspend the execution of individual acts and actions taken on the basis of impugned Decision on conditions and manner of disposal of apartments built according to project of 1,100 apartments in Belgrade and issues the decision stating that the challenged provisions are not in accordance with the Constitution. YUCOM points out that it is particularly alarming that the purpose of the adoption of such regulation (Decision) is to provide help for socially vulnerable citizens, and it is necessary to enable them lawful procedure for exercising these rights, which includes the right to judicial protection.*

*Judicial protection in similar legal situations, would allow elimination of po-*

*ssible harmful effects produced by eviction decision, which can in extreme cases lead to the homelessness of aggrieved party. In such legal situations regarding the violation of the right to judicial protection right to social security, which is guaranteed by Article 69 of the Constitution of RS,<sup>41</sup> is indirectly being violated. Arbitrary abolition of the right to judicial protection, not only undermines confidence in possibility of exercising and protection of rights, but purpose of application of these incentive measures is undermined. In order to achieve the principles of legal security and the rule of law, as well as reaching the standards of a democratic society, it is necessary to enable the efficient and complete procedure for the exercise and protection of rights, which includes a constitutional right to judicial protection.*

Response by the City Secretariat for Social Welfare and the Constitutional Court decision are expected in a short time.

# RECOMMENDATIONS

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Based on the analysis of regulations and review the situation in Serbia when it comes to the right to adequate housing of vulnerable groups, it can be seen that there are significant inconsistencies in the implementation of the legal and strategic framework, as well as space for Improving regulations and amending regulations.

- *For easier monitoring and planning policies it is necessary to uniformly regulate the concept of social housing in protected conditions (SHPC) at the state level, while retaining the provisions of the Law on Social Protection so the local government in the providing of social services may set higher standards and better conditions.*
- *It is necessary to agree on the unconstitutional provisions in the general laws of local authorities in relation to the requirements for eligibility for social housing, and the right to legal protection in the process of realization of housing rights and ensure equal enjoyment of rights from social housing to all citizens living in Serbia.*
- *It is necessary to strengthen the capacity of organizations representing the interests of Roma, refugees, internally displaced persons and returnees under the readmission agreement in the field of housing and social protection, for better informing the vulnerable citizens about their rights and responsibilities and for more committed and more professional representation of their interests before public authorities.*
- *It is necessary to strengthen the platform (to form a coalition) of organizations that monitor the situation in the field of realization of the right to adequate housing and social protection rights in relation to these rights and coordinated support to marginalized groups in this area.*





- *It is necessary to ensure greater transparency in the implementation of regulations in relation to social housing and social housing in protected conditions, and clearly precise and defer these concepts, their purpose and target groups, in order to adequately monitor the achievements of these services and the application of established policies .*
- *It is essential that public authorities act and implement the regulations in accordance with the Constitution and international human rights standards which stipulate the obligation of protection against discrimination in all areas, and not only to refrain from any form of direct and indirect discrimination in the implementation of regulations in the field of housing but to respond to all acts of discrimination noticed in their work*
- *The Government should, as soon as possible, adopt a bylaw on the criteria and standards for the use of social housing, in order to provide a unique methodology and create conditions for the allocation of social housing for the whole country, in order to ensure equality of citizens in rights in this area*
- *In creating conditions and criteria for the allocation of apartments for renting or use of Social Housing in Protected Conditions it is necessary to avoid to set criteria that may exclude entire categories of citizens. It is necessary to also provide a simplified obtaining status of possible user of social housing, bearing in mind the problems with obtaining personal documents, which are a prerequisite for obtaining the status of the user. In this way, equal enforcement would be ensured and indirect, systemic discrimination against marginalized groups would be prevented*

5



LAWYERS  
COMMITTEE  
FOR HUMAN  
RIGHTS YU-  
COM:

**PROMOTI-  
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HUMAN RI-  
GHTS IN  
THE YEAR  
2013.**







## THE MOST IMPORTANT PROJECTS IN 2013.

### The right to adequate housing for vulnerable

In order to improve the situation of Roma, refugees, internally displaced persons and returnees under the readmission agreements, and other people who are in need, YUCOM has conducted research on exercise of their right to adequate housing. The focus of this research is the implementation of affirmative measures that have been introduced to achieve full equality in

the exercise of the right to adequate housing.

Through the Legal Aid Program, YUCOM assumed representation of several cases of violations of the right to adequate housing. We found that certain by-laws were found unconstitutional and that the concept of social housing was unevenly implemented. In addition to the analysis of regulations and requesting public information on the offering of social security services aimed at raising the standard of living of vulnerable groups, YUCOM obtained additional information through several focus groups. Through open discussion with members of the most socially vulnerable groups, representatives of the relevant local authorities, relevant

non-governmental organizations, and the local media, YUCOM tried to determine the situation regarding the exercise of the right to adequate housing and the right to social protection, which are closely connected through the law. The survey results are a special topic of this report.

**Name of Project:**

Anti-discrimination mechanisms in practice to the equal enjoyment of the right to adequate housing

**Duration:**

October 2013. - December 2013.

**Donor:**

Embassy of the Federal Republic of Germany



## Strategic advocacy and protection of human rights defenders

Continuous provision of free legal aid to vulnerable groups, as well as human rights defenders, YUCOM has for many years been contributing to greater efficiency mechanisms that guarantee the realization of human rights, easier access to justice, and the realization of the rule of law. Advocating and facilitating access to legal information and advices to a large number of individuals are the main activities YUCOM's program of free legal aid. In this way, citizens are provided with adequate legal assistance, regardless of their economic or other status on the basis of which they could be denied adequate legal advice.

The problems in the legal system of Serbia detected through conducting strategic cases will be summarized in the final conference, as well as statistics regarding the free legal assistance provided and a review of strategic cases, which are a special part of this report.

YUCOM organized the conference "Challenges strategic advocacy and reporting on human rights" # MEDIA # NGO on which challenges are faced by

the media and non-governmental organizations in reporting on human rights and opportunities for better understanding and cooperation. There was discussion regarding legal aid and some of the strategic cases that YUCOM led and provided representation for, which have the capacity to achieve far-reaching effects in correcting the system of protection of human rights and freedoms.

### **Name of Project:**

Strategic litigation in cases of violations of human rights and the protection of human rights defenders

### **Duration:**

April 2013. - December 2013.

### **Donor:**

Civil Rights Defenders





## Changing the constitution online and offline

Inspired by the idea that citizens should be brought closer to issues concerning the constitution, and the very possibility of constitutional reform, YUCOM implemented a project called *Changing the Constitution online and offline* between February and December 2013. The growing importance of new technologies as instruments of democratization has been used to encourage broad public debate given that the lack of public debate during the adoption of the current Constitution is considered the main reason for its lack of legitimacy. Public forums that brought together representatives from academia, civil society, the judiciary, and the media were held in Belgrade, Novi Sad, and Leskovac. The portal [mojustav.rs](http://mojustav.rs) compiles reports of the debates held, expert commentary on constitutional provisions, decisions of the Constitutional Court, media articles, authored articles and publications, as well as all previous Constitutions of the Republic of Serbia, which allows the public to access all of these documents in one place. In a series of consultations with civil society representatives, we collaboratively defined the priorities in amending the

Constitution and confirmed the readiness of these efforts and that they enjoy strong support.

This project is a continuation of YUCOM's engagement in the analysis of the highest legal and political acts in Serbia and efforts to overcome all deficiencies, in order to create the preconditions for a permanent, legitimate, and legal constitutional foundation. During the project a *Platform and the five priorities of the civil society to change the Constitution* was created, which made statements that include expert analysis of the shortcomings of the existing constitutional framework and proposals for reform.

**Name of Project:**

Changing the Constitution online and offline

**Duration:**

February 2013. - December 2013.

**Donor:**

National Endowment for Democracy (NED)



HAPI / KORAK / STEP



## Koalicija za ravnopravnost KORAK Koalicioni për Barazi HAPI Coalition for Equality STEP

KORAK-HAPI- STEP is a coalition formed to improve the human rights situation in Serbia, Montenegro, and Kosovo in the following areas: LGBT rights, strengthening the role of women in political and public life, and judicial monitoring of discrimination. It also aims to involve and network as many regional NGOs and activists who share the values of the Coalition as possible.

The goal of STEP is to provide support to civil society organizations in resolving common challenges in the field of human rights. Special attention was paid to the rights of LGBT people, women's participation in political life and trial monitoring for discrimination. Discrimination against the mentioned groups is common in the Western Balkans, so regional cooperation is suitable for dealing with these challenges. Civil society organizations, human rights defenders, representatives of marginalized groups, representatives of the judiciary and government, and the media are invited to support our ideas and to become associate members of STEP.

The Coalition Step has, to date, held presentations in 22 cities (12 in Serbia, 5 in Montenegro, and 5 in Kosovo), where local non-governmental organizations were familiarized with the work and ideas of STEP and invited to cooperate. In addition, the Coalition has organized a series of two-day seminars with the topic *Equality - regulation and reality* in Serbia in 6 cities in Serbia and three each in Montenegro and Kosovo. The aim of the seminar was to promote tolerance, equality and combating discrimination, and is intended for activists and human rights defenders. *Judicial monitoring* is an aspect of the work in which partner organizations from Serbia, Montenegro, and Kosovo monitored 45 court proceedings for discrimination, after which it published analyses of all the monitored cases and comparative analysis of practices, and using this developed a strategic document. A regional "Judicial Monitoring Network" was formed in September 2013 in Belgrade with the strategic document guiding its actions. Three call centres were established, so that citizens of Serbia, Montenegro, and Kosovo can report discrimination, whether they themselves are victims or have witnessed any discriminatory treatment, and will be provided with legal assistance or given specific instructions on further action.

The Coalition published a brochure called *Equality - regulations and reality*, which provides all interested parties with easier access to the very notion of discrimination, the state of LGBT rights in Serbia, women's participation in political life, and judicial monitoring of discrimination trials. The brochure was published in Serbian, Albanian, and Montenegrin, and all three versions have also been translated into English and published.

More information about the activities of the Coalition STEP can be accessed on the website [www.korak-hapi-step.eu](http://www.korak-hapi-step.eu).







**Name of Project:**

Networking of civil society in the protection of threatened human rights in Serbia, Montenegro and Kosovo.

**Duration:**

October 2012. - October of 2014.

Project manager: the Lawyers Committee for Human Rights - YUCOM

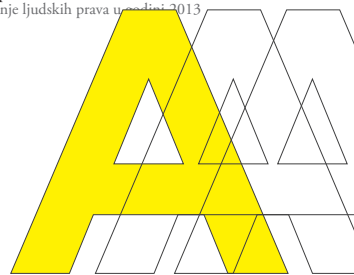
**Partners:**

Belgrade Centre for Human Rights, the Network of Committees for Human Rights CHRIS and Gay Straight Alliance in Serbia, Center for Civic Education and LGBT Forum Progress in Montenegro, Humanitarian Law Center Kosovo and Youth Initiative for Human Rights Kosovo

**Donor:**

European Union Delegation to the Republic of Serbia.

## Triple A for citizens - information, advice, active assistance



Nine organizations from the EU and the Western Balkan countries joined together, tasked with expanding the concept of providing people in the Western Balkans and Turkey with counselling. Counselling citizens is important for several reasons: to provide direct assistance to the individual in the form of information, advice, and active assistance, as well as being an important source of knowledge about the real needs and problems of society, so that these services can be used to influence government policy.

Our initial task was to establish how Serbia, Kosovo, Croatia, Bosnia and Herzegovina, and Turkey are doing today in regards to counselling people: whether are there any conditions for their establishment, what types of counselling are offered, where, and which kinds exist. In Serbia, these questions were answered through an analysis of the existing regulations, while the real situation was evaluated on the basis of questionnaires and consultations with all local governments in Serbia, more than 50 NGOs, relevant ministries, law clinics, unions and others. YUCOM published the National Report for Serbia on the basis of which a working group of the Ministry of Justice and Public Administration was established, which put forth proposals for the creation of an efficient system of legal aid.

This report, along with examples of good practice from the UK and Belgium, were presented at a two-day national conference at HotelMoscow on 12th and 13th September 2013.

Thanks to the clear indicators of the state of legal aid in Serbia, which is shown in this report, non-governmental organizations, as the de facto providers of legal aid in the past 20 years, are recognized as such in the draft Law

on Free Legal Aid. YUCOM is involved in monitoring the work of the working group for drafting the Law, and provides technical support daily.

Also assigned to the subgrant were two Serbian organizations: the Network of Committees for Human Rights and UG Together. Through a study visit to Romania, the UK, and Ireland, and twinning arrangements with an organization from England, these two organizations and YUCOM will have the opportunity to gain insight into the experiences of the oldest organizations in providing legal aid in England and to incorporate them in their counselling.

**Name of Project:**

Triple A for Citizens - information, advice, active assistance (Triple A for Citizens: Access to Information, Advice & Help Active)

**Duration:**

January 2012. - December of 2014.

**Donor:**

European Commission

Partners: European Citizen Action Service (ECAS) - Belgium, the National Foundation for Civil Society Development - Croatia, Association for Democratic Initiatives – Bosnia and Herzegovina, Kosovo Civil Rights Program, Law Centres Federation (LCF) - United Kingdom, the National Association of Citizens Advice Bureaux - Romania, National Association of Citizens Information Services - Ireland, Association of Civil Society Development Centre - Turkey, YUCOM – Serbia.



## Hate crime

At the end of December 2012, on the initiative of YUCOM and the Gay Straight Alliance - GSA, the National Assembly of the Republic of Serbia adopted the Law on Modification and Additions to the Criminal Code of the Republic of Serbia, which introduced Article 54a, which consolidates hate crimes based on race, religion, national or ethnic origin, gender, sexual orientation and gender identity as an aggravating circumstance during sentencing. . After that, YUCOM and the GSA launched the project *Hate crime in criminal legislation – an efficient way for the prevention and reduction of violence*, which is aimed at introducing citizens and experts with what constitutes a hate crime, and how to achieve the most effective application of Article 54a of the Criminal Code. Presentations and debates about hate crimes were organized in Subotica, Novi Pazar, and Krusevac, which were attended by representatives of the judiciary and civil society organizations. A brochure for citizens was issued about the concept of hate crimes and practices of neighboring countries and EU member states. During the final conference held in Belgrade, those present included Gordana Stamenić, State Secretary at the Ministry of Justice and Public Administration, David McFarlan, deputy British Ambassador in Belgrade, Aleksandar Vasiljević, a representative of the Ministry of Internal Affairs, Milan Antonijević, director

of YUCOM, and Mirjana Bogdanovic, executive director of the GSA. The conference was attended by representatives of government institutions, representatives of national minority councils, organizations dealing with the rights of minority groups, as well as representatives of international organizations. These activities were carried out in order to strengthen the capacity of all actors that are relevant in the application of the law on hate crimes.

### **Name of Project:**

Hate crime in criminal legislation – an efficient way for the prevention and reduction of violence

### **Duration:**

January 2013. - April 2013.

### **Donor:**

Ministry of Foreign Affairs of the United Kingdom of Great Britain and Northern Ireland.

### **Partners:**

YUCOM and the Gay Straight Alliance – GSA







## From breaking to making the law

Three organizations from Serbia gathered in a joint project called *From breaking to making the law in the correctional system of Serbia* which combines their professional knowledge and skills to provide analysis of the law, promoting and lobbying for the realization of human rights, and the so-called Theatre of the Oppressed. This is a project whose mission is to enable prisoners in jails in Serbia to influence the improvement of the conditions of their sentence through theatre—In order to achieve a better and more complete re-socialization. It is one of the very few projects of so-called legislative theatre in the world, covering one whole section of the population (in our case - thousands of prisoners in Serbian prisons), and the first legislative theater in the world which includes so many large population of prisoners. The project partners have visited all the major prisons in Serbia and listened to the experiences of many prisoners with the aim to formulate draft amendments to the Law on the Execution of Criminal Sanctions, which will be proposed by the Ombudsman to the



National Assembly for a vote. The project involves the active participation of 4,000 prisoners in 13 prisons in Serbia. The aim is to enable prisoners in Serbia to affect change through theater. For the first time in our country, ex-convicts (our associates) are returned to prison to coach development programs and help their former prison colleagues affect positive changes for themselves and others.

Based on interviews and experiences conducted and gathered during two info sessions in the Correctional Prison in Sremska Mitrovica and the District Prison in Novi Sad, which were attended by 400 convicts, workshops were held with former prisoners who were in the role of actors. During the performance the project team will select the 10 most important proposals and amendments, and then will organize voting through a questionnaire that will be sent to all interested prisoners in several prisons. Experts will also be consulted on the questionnaire. The questionnaire will narrow the number of proposals and changes from 10 to 3. The Ombudsman shall submit to the National Assembly's consideration of three voted for the proposal.

### **Name of Project:**

From breaking to making the law

### **Duration:**

April 2013. - March of 2014.

### **Partners:**

Centre for Theatre Research-ApsArt, Belgrade Centre for Human Rights and Lawyers Committee for Human Rights - YUCOM

### **Donor:**

The Foundation for an Open Society

### **Donator:**

Fondacija za otvoreno društvo

## Access to justice - justice for all

The unfavourable socio-economic situation in the country has resulted in the inability of citizens to pay for lawyers and thus the failure of securing rights for a large number of citizens of Serbia. Free legal aid is a way for them to achieve their rights, but due to problematic constitutional provision, a lack of initiative, and the unevenness of practice of local governments and the relevant laws have made the current system ineffective. YUCOM, in cooperation with SECONS, and with the support of USAID and the Institute for Sustainable Communities, in the period between November 2012 and March 2013, implemented the project *Access to Justice - Justice for all*, with the aim of lobbying for a new law on legal aid.

Based on the results of a survey conducted among 1,200 people in 25 cities in Serbia and after holding public hearings, as well as training to providers of free legal aid, the publication *Access to justice and free legal aid in Serbia - challenges and reforms* and handbo-

ok *Justice for all - How to get free legal aid in Serbia - handbook for the citizens* were distributed. *Access to justice and free legal aid in Serbia - Challenges and Reforms* provides an analysis of the legal framework of legal aid in our country, the results of the research, and recommendations for further development of the free legal aid system. *The Handbook for citizens* provides insight into the guidelines on the manner and procedure for achieving the right to legal aid, as well as a list of all non-governmental organizations which citizens can turn to. Video clips on free legal aid provided by YUCOM and strategic cases concerning the protection of the right to freedom of assembly and freedom of expression before the Constitutional Court of Serbia and the Human Rights Committee of the United Nations were also published.

The above activities are focused on the promotion of the free legal aid and recognition of the role of NGOs in this system. Many non-governmental orga-

nizations, such as YUCOM have rich experience in providing free legal aid.

### **Name of Project:**

Access to justice - justice for all

### **Duration:**

November 2012. - March 2013.

### **Donor:**

USAID and the Institute for Sustainable Communities

### **Partners:**

Lawyers Committee for Human Rights - YUCOM and SECONS - Group for Development Initiative





## Corruption Trial Monitoring

The Lawyers' Committee for Human Rights - YUCOM, through its long practice of providing legal assistance, as well as through the other aspects of the promotion of human rights in Serbia, came to realize the negative implications of corrupt conduct in the exercise of fundamental rights and the rule of law and democracy in society. The right to a fair trial is often compromised in complex cases of corruption, where the epilogue, as a rule, obtained after a few years because the authorities have not reached a high level of efficacy in the treatment or remained immune to corruption.

Through close observation of the work of the judiciary, encouraging closer communication and coordination of actions of all subjects involved in ending corruption, we have seen that there is a space in which civil society can be a partner in and serve as a corrective to justice and the broader national mechanisms to ending corruption. Through devising guidelines for the monitoring of trials and hearings in over 30 cases of criminal acts with elements of corruption Serbian courts and researching the obstacles and preconditions for the full contribution of all actors in the criminal process, we influence the achievement of a significantly higher quality of work in the field of corruption suppression. We identified systemic barriers to the full exercise of justice after meetings and discussions with those who are responsible for the protection of the public good and the interests of corrupt behavior (judges, prosecutors, police officers, representatives of independent regulatory bodies).

One of the most important results of our efforts is that we present to the public a different, professional background to create a legitimate position on accountability of the judiciary, from the one that is often present in the sensationalist, populist, and politically motivated descriptions in the mainstream media. Furthermore, we consider major contributors to motivate those who are responsible for the detection, prosecution, trial and punishment for corruption, and remind them that they have strong allies in civil society in the fight against corruption.

An interactive website ([antikorupcija.yucom.org.rs](http://antikorupcija.yucom.org.rs)) was launched as part of the project, where interested public can follow announcements of trials and daily reports from corruption trials. As a result of activities a study (publication) was designed called *For efficient judiciary against corruption*, which was presented at a conference at the Judicial Academy, in January 2013.

**Name of Project:**

Support to adequate response Serbian judiciary through monitoring the trial for corruption

**Duration:**

January 2012. - January 2013. (activities continued in 2013.)

**Donor:**

Partnership for Transparency Fund; the Foundation for an Open Society Serbia

**Partners:**

Lawyers Committee for Human Rights - YUCOM and CHRIS Network





## Criminal law protection of human rights

In cooperation with professional associations of public prosecutors, YUCOM supports the establishment of an accountable justice system (especially the public prosecutor's office) that has the capacity and skills to apply national legislation in the field of criminal law protection of human rights and international standards in this area. By raising awareness of the public prosecutors of the need for criminal protection of human rights, analysis of public prosecutions in the area, and the definition of recommendations for improving the treatment of public prosecutors in cases that violate human rights, the partners aim to contribute to the strengthening of the judiciary, which will be able to ensure the rule of law and provide adequate protection to citizens.

Research about the treatment of public prosecutors and deputy public prosecutors in cases that violate human rights, analysis of the role of prosecutors in the protection of human rights began monitoring visits to primary and senior public prosecutors in four cities in Serbia (Belgrade, Novi Pazar, Vranje, and Sombor), the most cases of human rights violations that entail criminal responsibility of the perpetrators were recorded in the last five years and in which the public prosecutor's office responded. Fieldwork included interviews with prosecutors and deputy public prosecutors, access to complete documentation of selected objects (with respect to the protection of personal data), as well as insight into the

way in which objects seduce and keep in prosecution. For the analysis we used a questionnaire that included questions relating to the offender, the victims, as a criminal offense, criminal proceedings and sanctions.

The analysis will be presented as a basis for discussion at the roundtable discussions with prosecutors, judges, police officers and civil society, after which conclusions will be formulated with recommendations for more effective criminal procedures for the protection of human rights where human rights of the victim and the defendant are respected.

Part of our activities include advocacy for strengthening the capacity of the Judicial Academy (human, material and financial) in order to be able to prepare and implement annual plans of continuous training for judges and prosecutors who will suit the real needs of the judiciary.

### **Name of Project:**

Partnership for the Protection of Human Rights: effective judicial cooperation with civil society

### **Duration:**

April 2013. - April 2014.

### **Donor:**

The Foundation for an Open Society Serbia

### **Partners:**

Association of Public Prosecutors of Serbia and the Lawyers Committee for Human Rights – YUCOM







## OTVORENI PARLAMENT



## Open Parliament

Project Open Parliament implemented initiatives of civil society organizations that make up the coalition Open Parliament.

The main objective is to increase the transparency of Parliament, informing the public about its work and the establishment of regular communication between citizens and their elected representatives. This is based on the values contained in the International Declaration on opening parliament, in which the preparation was involved in Open Parliament.

MP's in the National Assembly representing the interests of citizens. In the framework of the *Open Parliament* there was created a tool for monitoring the work of MPs - [www.otvoreniparlament.rs](http://www.otvoreniparlament.rs) which are regularly published transcripts of parliamentary sessions, different analyzes of laws and amendments, as well as recommendations to improve the transparency of Parliament

and to improve communication between citizens and their representatives.

By street action and through direct communication, we inform citizens about how they can demand responsible behavior from their representatives in parliament.

Representatives of the coalition Open Parliament attended a large number of public hearings and other events, and thus participated in the National Assembly. The coalition also organized a series of events in order to establish and strengthen cooperation between parliament and civil society organizations and the National Assembly more transparent and closer to the citizens. One such event was the *Forum - the citizens, the media and Parliament*, which was held on 5th December 2013 in the National Assembly.

**Name of Project:**

Open Parliament

**Duration:**

March 2012. - February 2013. , July 2013. - July of 2014.

**Donor:**

USAID through the Institute for Sustainable Communities (ISC), the British embassy in Belgrade and National Endowment for Democracy (NED)

**Partners:**

CRTA - Center for Research, Transparency and Accountability, the National Coalition for Decentralization, Lawyers Committee for Human Rights - YUCOM , SECONS - Group for Development Initiative



## The position of refugees from Republic of Croatia

Seven organizations from the Republic of Serbia and the Republic of Croatia –have joined together with the task of mapping the reasons why citizens of Serbian nationality, who became refugees during the 1991-1995 war, were not returned to Croatia, regardless of whether they still have refugee status or not. Special attention was paid to the question of whether the return and integration in general was enabled, and if not, what the obstacles were that prevented the return.

Our initial task was to conduct research on return and the reasons why citizens of Serbian nationality were not returned to Croatia. In order to fulfill this task YUCOM conducted research and organized three focus groups.

The research consisted of two parts, qualitative and quantitative. This combination of methods has contributed to a better understanding of the issue of the return of refugees to the Republic of Croatia. The quantitative survey was focused on the socio-demographic characteristics, possession of documents from the country of origin, the issue of the return, and legal issues. It is anticipated this will grant us insight into the important aspects related to return, to determine the proportion of different attitudes and perceptions of obstacles and reasons for return. This research was conducted on a sample of 321 refugee people of all age groups, but with the increased focus on persons under the age of 30, which, as a young population, could be most successfully integrated into Croatian society, if they would be given the opportunity to return.

In addition to this part of the research SECONS - Group for Development Initiative conducted qualitative

research with young people aged 18-35 years who belong to the so-called second generation of immigrants. There were three focus group discussions with the 10-14 participants who find a deeper insight into the problems that this generation faces. In this phase the focus was on the perception of their lives in Serbia, as well as their possible return to Croatia. The data presented are an important complement to already conducted survey research in order to discover the deeper reasons for the different orientations, attitudes and factors that underlie the decision recognized, perceived barriers and experience.

YUCOM is working together with the Center for Peace Studies published a study on *The situation of refugees in the Republic of Croatia*, which was presented in Belgrade and Zagreb.

### **Name of Project:**

Highlighting human rights in areas of special state concern

### **Duration:**

January 2012. - July 2013.

### **Partners:**

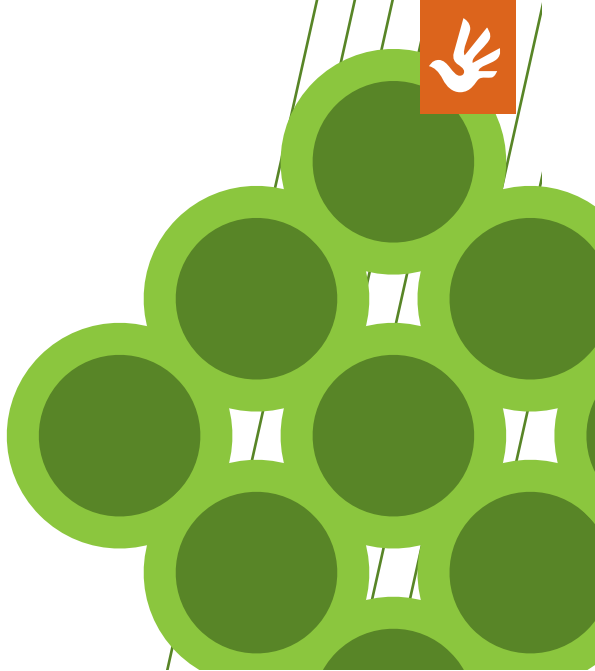
Centre for Peace Studies (CPS) - Zagreb, Center for Support and Development of Civil Society Delfin - Pakrac, the Human Rights Committee - Karlovac, Generator - Korenica, Human Rights House – Zagreb, Society for the restoration and revitalization of the Tower of Stojan Jankovic - Bridges - Zagreb / Islam Greek, Lawyers Committee for Human rights - YUCOM - Belgrade, Group for Development Initiative - SECONS - Belgrade

### **Donor:**

Central Agency for Financing and Contracting of Zagreb







## Anti-discrimination mechanisms in practice

YUCOM conducted research on whether, to what extent, and how the mechanisms for protection against discrimination are used in court proceedings, in order to improve the procedural position of victims of discrimination, especially those belonging to one of four specially designated target groups (refugees, internally displaced persons, returnees under the readmission agreements, and Roma). Since the Anti-Discrimination Law is later date, we felt it was important to test the application of these mechanisms in the court proceedings, the ways in which the obligations undertaken by the ratification of international documents interpret, etc. YUCOM supports members of the aforementioned groups through advice, submissions and court advocacy support, especially in cases of discrimination.

The survey covered the work of the civil departments of all basic courts in Serbia, and the results we obtained were systematized and analyzed qualitatively and statistically. The collected information allowed us insight into the total number of legal proceedings that have been initiated to protect against discrimination since the law took effect, the outcome of these proceedings, respect the specificities of procedural rules in litigation to protect against discrimination, the use of international instruments by all subjects in the process etc. Finally, these data, together with the conclusions and recommendations derived based on the research results, brought together in a publication - Anti-discrimination mechanisms in practice.

This publication is presented on a two-day seminar Court civil legal protection against discrimination, which was held in Vrdnik 5th and 6th December 2013. The seminar, for judges in the civil departments of basic courts, was organized by the Judicial Academy RS and the OSCE.

### Name of Project:

Strategic litigation and monitoring the implementation of anti-discrimination mechanisms in practice, especially in the case of refugees, internally displaced persons, returnees under the readmission agreement and Roma.

### Duration:

May 2012. - February 2013.

### Donor:

Embassy of the Federal Republic of Germany



## From law to justice

The judicial system in Serbia is going through another reform. One issue that remains unresolved concerns the access to justice by all social groups, including minorities, socially excluded, persons with language and other barriers, and other minority groups and individuals. YUCOM, in late 2013, started the project From law to justice – sustainable free legal aid system in Serbia, which involves advocacy to improve the free legal aid system through the involvement and networking of civil society organizations, free legal aid providers, legal experts, professors and students of law faculties, and all others interested. The project will aim at establishing a basis for assessing the degree of access to justice through the rule of law index).

**Name of Project:**

From law to justice - a sustainable free legal aid system in Serbia

**Duration:**

December 2013. - July 2014.

**Donor:**

Institute for Sustainable Communities – ISC

## Extended stay in elementary schools - development and support

Despite the fact that women and men in Serbia have guaranteed equal rights, women are exposed to direct, indirect, and systemic discrimination. This especially applies in the economic sphere, where women often have greater responsibilities in the private sphere and in unpaid care labour involving domestic work and childcare. In late 2013, YUCOM launched a project on the development and promotion of the concept of extended stay in elementary schools. The project aims to develop and promote the concept of daycare in the elementary schools—extended stay would harmonize the school day with the working day, which would indirectly allow a greater inclusion of women in political and public life without discrimination, improve the economic status of women, and promote gender equality and the breaking of stereotypical gender roles.

**Name of Project:**

Civil society for developing and promoting the concept of an extended stay in elementary schools

**Duration:**

December 2013 - February 2014.

**Donor:**

Swedish International Development Agency (SIDA) through the International Management Group - IMG and the Gender Equality Directorate of the Ministry of employment, labour and social policy of the Republic of Serbia

## Free legal aid - the experience of other countries

The right to free legal aid is a fundamental right in a democratic society. It allows all citizens equal access to justice. Although provided by the Constitution, the Law on Free Legal Aid has not yet been adopted, so that there is no basis for the creation of a system of free legal aid. Another important issue is the financial sustainability of the free legal aid system. The Lawyers' Committee for Human Rights - YUCOM began in late 2013 an analysis of comparative experiences that specifically deal with the financial sustainability of the free legal aid system in Slovenia, Croatia, Montenegro, Lithuania, and the Brčko District in Bosnia and Herzegovina. This comparative analysis should offer various solutions and experiences that will be used for the application of the best model for sustainable free legal aid system in Serbia.

**Name of Project:**

Legal aid - the experience of other countries (score financial impact on the legal regulation of legal aid)

**Duration:**

November 2013. - December 2013.

**Donor:**

World Bank





5

Komitet pravnika za ljudska prava YUCOM:  
promocija, zaštita i unapređenje ljudskih prava u godini 2013

# OTHER ACTIVITIES AND CONTRIBUTIONS IN 2013.

## Human Rights and Democracy House



Human Rights and Democracy House is a network of five civil society organizations from Belgrade. It was established in the November 2011 by the The Centre for Civic Initiatives, the Belgrade Centre for Human Rights, the Lawyers' Committee for Human Rights - YUCOM, Helsinki Committee for Human Rights, and the Policy Centre.

Human Rights and Democracy House Belgrade is part of the international Human Rights House Network, based in Oslo and supported by the Kingdom of Norway. The City of Belgrade, in support of the Human Rights and Democracy House, granted use of the building located at Knez Milos no. 4. At this address, a number of activities are taking place, such as debates on current issues related to human rights, the presentation of research and publications, as well as a specialized library about democracy and human rights.

The Human Rights and Democracy House was set up to promote, develop, and improve the protection of human rights in the Republic of Serbia through: *the development, monitoring and advocacy of national and international*

*policies related to the protection and promotion of human rights, with particular emphasis on freedom of association, freedom of expression and the protection of persons dealing with the protection of human rights; conducting research and writing reports on human rights - the annual reports on the state of human rights in the RS; empowerment and informal networking organizations and initiatives of civil society organizations working on the promotion and protection of human rights at the local, national and international level; providing direct protection (legal and psychological) to victims of various human rights violations.*

During 2013, the Human Rights and Democracy House has issued a number of statements relating to current issues such as: the drastic deterioration of the situation in the field of the protection of human rights and the frequent threats to representatives of civil society organizations, to media, to institutions and individuals who advocate for human rights and the rule of law, and a violation of the right to freedom of assembly and the repeated failure to secure and support the Pride

Parade. The Human Rights and Democracy House has also responded to the pressure on independent media and journalists, as well as to raising tensions in Vojvodina during the past year.

The request for the establishment of the Ministry of Human Rights has been denied, and the situation in this area is not improving. For this reason, the Human Rights and Democracy House again demanded that the Serbian government in the new Law on Ministries consider the request of more than 100 organizations, National Councils, and refugee associations from May 2012 to establish a Ministry of Human Rights. Part of the activities of the Human Rights and Democracy House is directed towards the monitoring the implementation of minority rights in Sandzak municipalities and the municipalities of Presevo, Bujanovac and Medvedja. Human Rights and Democracy House in the past year organized public meetings and educational activities such as training future researchers of human rights and conflict resolution in the south Serbia and the Sandzak.

## Participation in working groups and drafting laws

YUCOM participated in the development of several draft laws through participation in working groups and giving comments on existing drafts. The most important was the participation in the working group for drafting the Law on Free Legal Aid, which was formed in April 2013. The working group included YUCOM in regular monitoring of its activities and allowed representatives of YUCOM to constantly attend meetings of the working group. Thanks to the clear indicators of the state of free legal aid which YUCOM presented as part of the research which was published in the publication Triple A for

citizens: access to informations, advice and active assistance, NGOs have proven to be de facto providers of free legal aid in the last 20 years and are recognized as such in the new draft of the Law on Free Legal Aid. YUCOM provides daily support working group on improving the draft law.

Since October 2013 YUCOM has been a member of the working group of the Ministry of Justice and the State Administration for making up of the Law on Amendments and Supplements to the Law on Courts and drafting amendments to the Court Rules, which will be related to methods of harmonization of judicial practice and necessary changes to regulation which will result in its standardization.

The Belgrade Incest Trauma Center has started the initiative for alteration of the Criminal Code in April 2013, by adopting a provision of imprescriptibility of sexual offenses against children.

YUCOM provided the Incest Trauma Center with technical assistance in the form of writing proposals for mentioned changes to the Criminal Code and thereby contributed to the abolition of limitation of sexual offenses by voting in the National Assembly of the Republic of Serbia. With this progress Serbia has become, after the UK, the second country in Europe in which legislation recognizes the long-term effects of child sexual trauma.

The Belgrade Open School - BOS and YUCOM have put together comments on the Draft Law on Amendments and Additions to the Law on Environmental Protection, and sent them to the Ministry of Energy, Development and the Environmental Protection in November 2013. YUCOM's and BOS's comments were related to the right of access to environmental information.

## Comments on strategies and action plans

The Government of the Republic of Serbia on 27th June 2013 adopted a Strategy of prevention and protection against discrimination for the period from 2013 to 2018 in order to provide a higher level of respect for constitutional principles of non-discrimination. The coordinator of this strategy was the Office of Human and Minority Rights, with civil society organizations providing a large contribution. YUCOM participated in the work of five of the nine thematic groups and contributed to the formulation of priorities that are incorporated into the Strategy. These thematic groups are for improvement the position of women, LGBT people, ethnic minorities, religious groups, and refugees, internally displaced persons and other migrant groups. After the adoption of the Stra-

tegy, the drafting of the Action Plan for its implementation is in progress. YUCOM has contributed through development of specific measures and activities related to the improvement of the status of LGBT people.

The National Assembly of the Republic of Serbia passed the National Judicial Reform Strategy for the period from 2013 – 2018 in July 2013. The Strategy is a response to requests for the improvement of the justice system, and civil society had the opportunity to participate in the public hearing and submit comments on the strategy to improve its text. YUCOM organized a round table in April 2013 on the topic Increasing the quality of justice - Judicial Reform Strategy where some issues were discussed and constructive suggestions for improving the text given. After that YUCOM sent five specific comments that have proved to be constructive and have entered into the National Judicial Reform Strategy.

The National Anti-Corruption Strategy in the Republic of Serbia for

the period from 2013 - 2018 was adopted on 1st July 2013 at the sitting of the National Assembly. The Strategy is guided by the principles of systemic upgrades and strengthening institutions in the fight against corruption, with respect democratic values, the rule of law, and protection of fundamental human rights and freedoms. The realization of the objectives of the Strategy is closely defined by the Action Plan that contains all the relevant information regarding the specific measures and actions needed to achieve strategic objectives, timelines, responsible parties, and resources for implementation. The public was involved in the drafting of the Action Plan through the possibility of commenting on its contents. YUCOM contributed by drawing attention to the active participation of civil society organizations in establishing efficient and effective protection of whistleblowers, which was adopted in the Action Plan. The conclusion on the adoption of the Action Plan for the Implementation of the National







Anti-Corruption Strategy was finally adopted on 25th August 2013 by the Government of the Republic of Serbia, at the proposal of the Ministry of Justice and Public Administration.



## Cooperation with the National Assembly of the Republic of Serbia

In 2013 YUCOM had extensive cooperation with the National Assembly and in particular with the Committee for Human and Minority Rights and Gender Equality. We have initiated and supported the organization of a public hearing about the role of independent institutions in promoting human rights and consideration of the need for improvement of the legal framework. By active participation in public hearings and other activities of the parliament, YUCOM initiated a meeting between the President of the Committee for Human and Minority Rights and Gender Equality and representatives of the Office of the Ombudsman with the aim of completing the institutional framework for their cooperation. We compiled a document that will represent the basis for the development of the Protocol on cooperation between the two bodies.

## Participation in the National Mechanism for the Prevention of Torture (NPM)

Based on the Agreement on Cooperation with the Ombudsman, YUCOM has been, since 2013, included in visits to correctional institutions and district prisons in Serbia for monitoring the implementation of the Law on Execution of Criminal Sanctions and compliance with international standards within the detention facilities.

During 2013, YUCOM joined the district prison visits in Kragujevac, Remand prison, and the Correctional Facility for Juveniles in Valjevo. Also, YUCOM is involved in a constructive dialogue between the National Mechanism for the Prevention of Torture (NPM) and prison staff regarding the consideration of the recommendations that were sent after completion of the monitoring.

Cooperation between NGOs and independent experts with the Ombudsman on matters of the national preventive mechanism resulted in the creation of a model that is considered positive by the Ombudsmen in the region. The members of NPM in Serbia and Ombudsmen from the region gathered in Belgrade at for the purpose of creating a Balkan regional NPM network at a first, founding meeting.

## Practice for students in YUCOM

During the school year 2012/2013, students from the Legal Clinic for Discrimination at the Faculty of Law, University of Belgrade, were engaged in the provision of free legal aid to citizens, in various projects in the field of human rights, and in organizing and conducting workshops on discrimination for high school students. The most active students were Vuk Raicević, Milan Radić, Violeta Kurti, Dragan Tosić, Nemanja Sladaković, and Natasha Tadić.

Also doing practice at YUCOM were students and young lawyers from overseas: Jean -Baptiste Merlin (France), Zoran Vasić (Germany), Benjamin Viennet (France), and Tea Hadžiristić (Canada).

Currently, our actively engaged volunteers include Jovana Spremo, graduate political scientist in international affairs, currently doing her Master of International Humanitarian and Human Rights Law at the Faculty of Political Science, Ana Janković, Degree in Law - Master of Human Rights Studies (LLM Human Rights ) at the University of London, and Momčilo Zivadinović, graduate social worker, currently completing his Master of Social Work at the Faculty of Political Science.

## Cooperation with TehnoArt School



Between April and June 2013, YUCOM organized five workshops on the fight against violence and discrimination for high school students of engineering and artistic crafts at the TehnoArt school in Belgrade. The workshops were led by students from the Law Clinic for Discrimination of the Law Faculty, with suggestions and guidance by the YUCOM team. The students had undergone training and then did practical work with high school students, and high school students had the opportunity to participate in workshops led by young people not much older than them, with whom they could openly discuss the problems they face every day, related to discrimination and violence. Through cooperation between the Law Clinics and the TehnoArt high school, YUCOM established a sustainable system of training both university students and high school students, given that students will train the next generation of their colleagues to work with the next generation of high school students.

It also held two trainings for teachers and administrative staff of TehnoArt, as well as meeting with parents. Continued cooperation is planned for the coming school year. It is particularly important that this cooperation is initiated by the school administration and teachers, who indicated the need for such activities, and the recognition of civil society as an important partner in solving these existing problems.

## Contribution to bilateral screening

YUCOM, within the Human Rights and Democracy House, contributed to the bilateral screening for Chapter 23 of the accession negotiations with the European Union. This section covers the area of judiciary and fundamental rights.

The Office for Cooperation with Civil Society, in cooperation with the Ministry of Justice and Public Administration, invited civil society organizations to participate in the preparation of the bilateral screening for Chapter 23. Screening is a preparatory phase that immediately precedes the accession negotiations with the European Union. Screening consists of three parts. Bilateral represents the second part, during which it estimates the level of harmonization of the legal systems of the candidate countries to the EU acquis, determines areas that need adjustment, and proposes a time frame for completion of the matching process in a given area.

On behalf of the Human Rights and Democracy House, YUCOM contributed in two areas:

1. protection of victims in criminal proceedings (YUCOM);
2. detention, conditions of detention and period of detention (prepared by the Belgrade Centre for Human Rights and the Human Rights and Democracy House).

Bilateral screening takes place after the explanatory phase, which is the first part of the screening and during which the European Commission to the candidate country presents the EU acquis in this specific chapter. YUCOM also participated in monitoring explanatory screening via video link from the National Assembly for Chapter 23 (Judiciary and Fundamental Rights) and 24 (justice and liberty and security).







## YUCOM PUBLISHING ACTIVITY IN THE 2013

*From the very beginning (1997) YUCOM has developed publishing activities. We publish specialized studies and research in the field of human rights protection. In order to encourage work in the field of human rights protection and presentation of the results of their field, YUCOM makes its publications at no charge. During 2013 we issued 13 publications, which can be downloaded at [www.yucom.org.rs/nova\\_izdanja](http://www.yucom.org.rs/nova_izdanja).*



## Anti-discrimination mechanisms in practice:

This report promotes the improvement of the status of vulnerable groups to enable them to fully enjoy all the rights guaranteed by the Anti-Discrimination Law, and thus support the establishment of effective anti-discrimination mechanisms. The report presents the legal framework for the protection from discrimination, the procedures in case of violation, the experience of countries in the region, and the practice of the courts and independent institutions. The report also contains the conclusions and recommendations of the court and possibilities of improvement of judicial practice when it comes to litigations for protection against discrimination.



## Preliminary report on the disadvantages of the Constitution of the Republic of Serbia and proposals for reform:

A preliminary report on the disadvantages of the 2006 Constitution of the Republic of Serbia was created as a result of work of the YUCOM's team of lawyers and experts on the analysis of disadvantages of the existing constitutional text and constitutional practice. The report was created as the first of three reports that are provided within the project. It contains part of the analysis that the YUCOM team already published in 2011 in the publication of the Constitution at the crossroads - Report about constitutional practice, the deficiencies of the Constitution and the ways of its improvement, as well as analysis of the Constitution by the Venice Commission. The report also analyzed the results of research carried out by the Open Society Fund in 2012 on the attitudes of citizens and representatives of the elite on the need to amend the Constitution. This preliminary report also contains the results of the ongoing consultation process and of research work that YUCOM associates conducted in daily practice, providing assistance to citizens whose constitutional rights and freedoms are threatened.





## Justice for All - How to get free legal aid in Serbia - handbook for citizens:

This handbook for citizens provides access to guidelines on the manner and procedure for approaching the right to legal aid. It contains a list of all non-governmental organizations which citizens can turn to and helps them to understand the difference between legal aid and free legal aid, and the ways of obtaining it, and also introduces them to YUCOM's practice.



## Access to justice and free legal aid in Serbia - challenges and reforms:

This publication was made based on the results of a survey conducted among 1,200 people in 25 cities in Serbia, and following public hearings and trainings of providers of free legal aid. Contents include: an analysis of the legal framework of free legal aid in the country, the results of the research, and recommendations for further development of the free legal aid system.



## Study about the situation of refugees from the Republic of Croatia:

The study is a result of cooperation between Center for Peace Studies - CPS Zagreb and YUCOM. The publication presents the results of quantitative and qualitative research. Quantitative research was conducted by YUCOM on sample of about 350 refugees in order to identify significant issues surrounding their possible return to Croatia. Qualitative research was conducted SeConS by organizing three focus group discussions. In this part of the research the focus was on the perception of the life of refugees in Serbia, as well as their possible return to Croatia. In addition, CPS has conducted qualitative research with returnees from Pakraca, Karlovac, and Korenice. Part of this publication are the recommendations that will serve the mentioned organizations in advocating for the sustainable return and better living conditions of refugees.



## Triple A for citizens - Access to information, Advice and Active assistance (National Report for Serbia):

The study includes an analysis of the legal framework in the field of information, counseling citizens, and providing free legal aid. The report provides an overview of the obligation to provide information and advice about the established regulations of the Republic of Serbia. It also contains a list of legally recognized legal aid in proceedings before various state agencies and the courts. Shown is the present situation in the field of regulation of free legal aid, and comments are given on the draft Law on Free Legal Aid, which was created as part of the former composition of the working group in charge of the relevant ministry. Based on empirical data, comments are presented on the needs of citizens for different types of free legal aid which have been identified through years of YUCOM's work and research.







## For an efficient judiciary against corruption:

YUCOM compiled this publication as a report within the anti-corruption activities in 2012. Through observation of the work of the judiciary, fostering closer communication with it, and coordination of actions of all entities involved in fighting against corruption, we have seen that civil society can be a partner in and corrective to justice and the broader national mechanisms to fight against corruption. After monitoring trials for corruption and holding meetings and discussions about these complex criminal cases, we have carried out key findings and identified systemic barriers to the full realization of justice. YUCOM presented to the public the technical base for the creation of a legitimate position on accountability of the judiciary, differentiated from the one that is often present in the sensationalist, popular, and politically motivated descriptions in the media. This report, intended for the civilian sector, deals with criminal cases, bodies, institutions, and organizations involved in the anti-corruption process, as well as an analysis of criminal regulation of corruption, the basis and the importance of observing these trials, as well as guidelines for monitoring. Part of this publication includes the ideas of judges, prosecutors, lawyers, police representatives, independent regulatory bodies, and non-governmental organizations that participated in the YUCOM panel discussions and the observations that were recorded in those meetings.



## Ombudsman - recommendations in practice:

In this publication, apart from presenting the actual legislative framework which regulates the work of the Ombudsman, the basic elements of the right to good administration created under the auspices of the Council of Europe were analyzed. It also presents a methodology for monitoring the implementation of the recommendations of the Ombudsman, the criteria for evaluation of the implementation of recommendations, and the instruments for implementation. It also contains insights collected from semi-structured interviews with representatives of public administration which were sent to the selected recommendations of the Ombudsman, as well as some conclusions and recommendations aimed at improving cooperation of the Ombudsman with the administration and improvement of the right to good administration.



## Hate crime - a brochure for citizens:

This brochure was published in order to better inform the public about the new Article 54a of the Criminal Code, which makes the existence of hatred as the motivation for a crime an aggravating circumstance, which is taken in consideration during sentencing. It presents the nature of this regulation, comparative legislation, its implementation, and the reasons that might lead to hate crimes.







## Equality - regulation and reality:

The brochure contains four parts. The first part deals with discrimination in general (the notion of discrimination, legal and institutional framework, the practice of the courts). The next part deals with the state of LGBT rights in Serbia, followed by one about the role of women in political and public life. The last part of the brochure deals with the methodology of monitoring trials for discrimination.

## Equality - regulation and reality in Montenegro:

This brochure also contains four parts. The first part deals with discrimination in general (the notion of discrimination, legal and institutional framework, the practice of the courts), followed by the state of LGBT rights in Montenegro the role of women in political and public life, and the last section provides guidance on the establishment and registration of non-governmental organizations in Montenegro. The brochure is in the Montenegrin language.

## Equality - regulation and reality in Kosovo:

The brochure contains three parts. The first part deals with discrimination in general (the notion of discrimination, legal and institutional framework, the practice of the courts), followed by the state of LGBT rights in Kosovo and the role of women in political and public life in Kosovo. The brochure is in the Albanian language.

## Equality - regulations and reality in Serbia, Montenegro and Kosovo:

This brochure is a compiled translation of all three brochures issued by the Coalition for Equality - Step. It includes a review of anti-discrimination norms, the status of women in political life, the state of LGBT rights, mechanisms for monitoring the trial for discrimination, and all others mechanisms to adequately fight against corruption in Serbia, Montenegro and Kosovo. The brochure is in English.



