



Konrad-Adenauer Stiftung e.V.
Rule of Law Programme South East Europe
May 2021
www.kas.de/rlpsee



Rule of Law - South East Europe

Press Review May 2021

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Regional

Western Balkan countries successfully adopt anti-corruption laws, do not implement them effectively

<https://europeanwesternbalkans.com/2021/05/06/western-balkan-countries-successfully-adopt-anti-corruption-laws-do-not-implement-them-effectively/>

May 6, 2021 – EWB, Geneva



London Summit Leaders Meeting; Photo: Flickr / Western Balkans Summit 2018

Corruption is both a cause and consequence of a criminal culture that permeates the Western Balkans, and the way that corruption is linked to politics suggests a degree of organized, systemic corruption, and elements of state capture, in a number of countries in the region, find the new reports on the anti-corruption practices in the region.

The two new reports have been released this week as part of the 'Infrastructure of Integrity' series by the Global Initiative Against Transnational Organised Crime, looking at the phenomenon of 'organized corruption' in the Western Balkans and monitoring implementation of the anti-corruption pledges that governments of the region made in the framework of the Berlin Process.

A report entitled Western Balkans Anti-Corruption Pledge Monitor lists the pledges that were made and tracks what progress has been made since 2019. It is one of the few if only, comprehensive evaluations of the implementation of the 2018 Berlin Process anti-corruption pledges.

“Fighting corruption is clearly a priority for the European Union”, said author Sunčana Roksandić who noted that the word ‘corruption is mentioned 88 times in the EU 2020 Communication. “Fighting corruption is also a priority for civil society in the Western Balkans, and hopefully also for the governments,” said Roksandić.

A second report entitled Political Economy of Organized Corruption and Anti-Corruption looks at the factors that enable organized crime to flourish in the region and the impact that this has.

It points out that while significant progress has been made in putting in place appropriate anti-corruption legislation, institutions and strategies, the effective use of these measures and bodies is too often lacking. The result is what the report calls ‘organized corruption’ – a symbiosis of organized crime, criminal methods and high-level corruption, which creates a crooked ecosystem that enriches and protects those with access to power.

“Organized corruption is not only about systemic illicit financial gains and undue influence in decision making but also about systemic ‘buying’ and ‘influencing’ of social support to gain or stay in positions of political and economic power” explained the lead author the report Uglješa (Ugi) Zvekić.

John Penrose MP, the United Kingdom Prime Minister’s Anti-Corruption Champion and Mark Shaw Director of the Global Initiative against Transnational Organized Crime welcomed the growing focus on anti-corruption under the auspices of the Berlin Process and said that “we hope that these reports will help inform delivery of ongoing and future anti-corruption initiatives, such as the Illicit Finance and Anti-Corruption Roadmap.”

Albania

Albania's Highest Court Upholds Right to Protest Without Permission

<https://balkaninsight.com/2021/05/06/no-permission-needed-to-protest-says-albania-constitutional-court-in-major-ruling/>

May 6, 2021 - Gjergj Erebara, Tirana, BIRN

In a victory for human rights, Albania's Constitutional Court on Wednesday scrapped the provision in the penal code deeming rallies held without police permission illegal – and told parliament to revise the country's law code.

In a major ruling, Albania's Constitutional Court on Wednesday annulled the need to request police permission to stage a protest, calling the obligation non-constitutional and ordering parliament to revise the law code.

Many protests in Albania end up with police notifying that the protesters have been referred to prosecutors for “participating in an unlawful protest”. Under the penal code, police have the right to issue permits for public rallies and can refuse them without explanation. Participating in an illegal protest is punishable by a fine or a prison sentence of up to one year.

Based on a submission by the Court of Appeal in Shkodra, the country's top court ruled “to abrogate the expression ‘without prior permission by the competent authority’” from the penal code. The court also asked parliament to substitute the provision with one guaranteeing the constitutional right to protest.

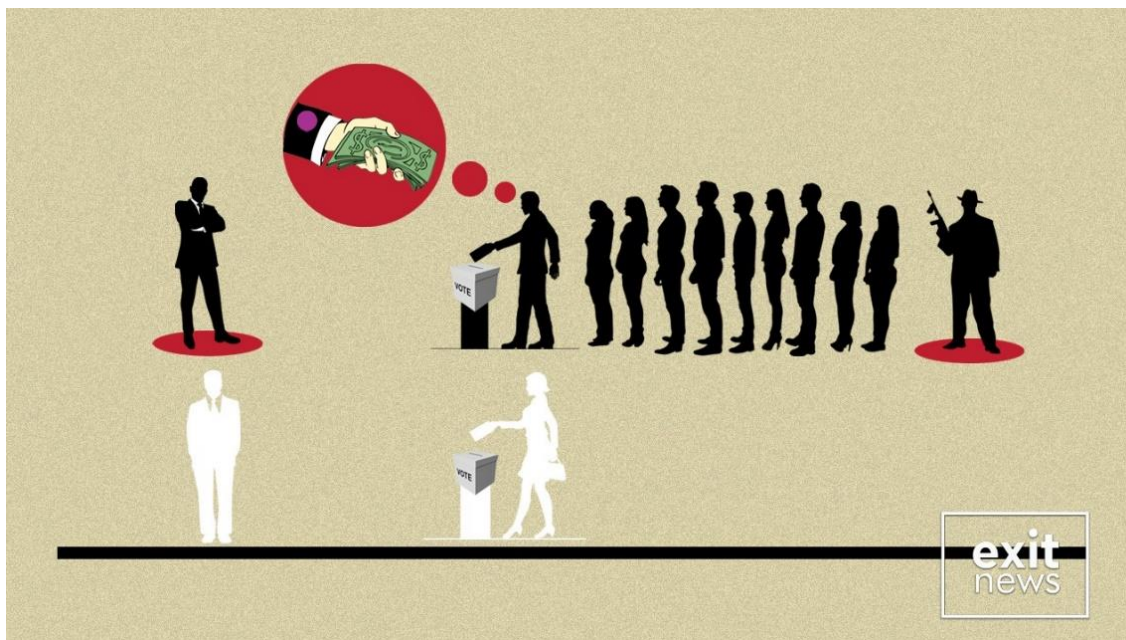
Dorjan Matlija, a human rights lawyer, told BIRN the decision aims to tackle the fact that police have referred even peaceful protesters who were refused permission to protest on no known ground for prosecution. “The European Court of Human Rights says that protesters should not face criminal prosecution if their protest has not caused serious harm to public order,” Matlija said.

The provision is, however, rarely used in the courts. Statistics from the Ministry of Justice show only two cases were found guilty of this offence in 2019, the latest available data.

125 Reports of Electoral Crimes Filed with the Albanian Prosecution

<https://exit.al/en/2021/05/09/125-reports-of-electoral-crimes-filed-with-the-albanian-prosecution/>

May 9, 2021 - Exit News



The prosecution office has received 125 reports on electoral crimes related to the April 25 general elections in Albania.

Investigations are ongoing into 10 suspects, and 5 people were arrested, the General Prosecutor's Office announced in a statement on Saturday.

Political parties, candidates, individuals and public institutions filed 82 of the 125 reports, while 20 were filed by the police and 23 were transferred by the Special Prosecution.

Crimes suspected in these reports include the rigging of votes and election results, intentional damaging of ballot papers, multiple voting, vote buying, abuse of office by public officials, military and police, intimidation and threatening of voters, obstruction of voters.

The Socialist Party won a third term in the last elections in Albania, with 74 mandates in the 140-seat parliament.

Opposition leader Luzlim Basha has called the election "an electoral massacre". The opposition says it is preparing criminal reports to be filed with the prosecution office to evidence electoral crimes.

Albania Jails Former General Prosecutor Llalla for Corruption

<https://balkaninsight.com/2021/05/20/prison-sentence-for-albania-former-general-prosecutor-adriatik-llalla/>

May 20, 2021- Gjergj Erebara, Tirana, BIRN

Former General Prosecutor Adriatik Llalla has been sentenced to two years in prison for not declaring his real wealth in asset declarations – one of the most senior ex-officials to be found guilty of such charges in Albania.



Adriatik Llalla. Photo: LSA

Adriatik Llalla, 52, a former General Prosecutor of Albania, was found guilty and sentenced to two years in prison and his assets confiscated after being found guilty of not declaring his wealth and other irregularities on asset declarations. He becomes one of the highest officials in the country to be found guilty of such charges. The Special Court Against Organised Crime and Corruption issued its verdict on Thursday. Llalla was present in court but didn't comment to journalists.

Llalla was elected General Prosecutor in 2012 and held this position until 2017 when his five-year mandate expired. On February 2017, as Albania was working on its flagship Justice Reform, the then US Ambassador in Tirana, Donald Lu, branded him as an "enemy of the reform". Llalla retorted by claiming the ambassador was exerting "typical Sorosian pressure" on him, referring to the US millionaire philanthropist George Soros who is often a target of conspiracy theories. The US State Department declared him "persona non grata" in 2018, the first known Albanian official to be banned from entering the US for suspected involvement in "significant corruption".

Prosecutors started investigating him in March 2018 and issued a seizure order for an apartment in the port city of Durrës and 22,000 square metres of land near Tirana.

Under the Justice Reform process, Albania fired scores of judges and prosecutors, mostly due to unexplained personal or family wealth. Most of them faced no other penalty than losing their jobs but lately prosecutors have issued asset seizure orders for some of those dismissed. Llalla was not among these who were dismissed because he decided to resign from the justice system following the end of his mandate as General Prosecutor.

Bosnia and Herzegovina

Bosnian Serbs Reject Call to Revoke War Criminals' Honours

<https://balkaninsight.com/2021/05/12/bosnian-serbs-reject-call-to-revoke-war-criminals-honours/>

May 12, 2021 - Danijel Kovacevic. Banja Luka, BIRN



A video of Ratko Mladic and Radovan Karadzic broadcast during Karadzic's Hague Tribunal trial. Photo: EPA/Fehim Demir.

Parliament in Bosnia's Serb-dominated Republika Srpska entity rejected a demand from the High Representative, the country's top international official, to revoke decorations awarded to people convicted of war crimes.

Lawmakers in the Republika Srpska National Assembly voted on Tuesday evening to reject a demand from High Representative Valentin Inzko, the international overseer of Bosnia's peace agreement, for people convicted of war crimes to be stripped of decorations awarded to them by the National Assembly in 2016.

In addition to rejecting the demand, lawmakers adopted a statement that declared that Inzko cannot have higher authority than Republika Srpska in any situation.

The statement also accused Inzko of overstepping the authority granted to him under the 1995 Dayton Peace Agreement.

It claimed that he has "illegally, unconstitutionally and without restrictions appropriated legislative, executive and judicial powers, violating basic human rights and international instruments for their protection using the so-called 'Bonn powers'".

The 'Bonn powers' allow the High Representative to over-ride nationalist politicians' obstruction of legislation if it is vital to maintaining the peace in Bosnia and Herzegovina. The last time that Inzko used them was 11 years ago.

Inzko sent a letter to the speaker of the Republika Srpska parliament earlier this year demanding that honours given to people convicted of war crimes be annulled by the end of April.

"Among those awarded were all former National Assembly speakers and members of Republika Srpska's first presidency, including Radovan Karadzic, Momcilo Krajisnik and Biljana Plavsic, whose actions shocked the world during the armed conflict and caused unimaginable human suffering," said the letter.

It also said that "the glorification of war criminals directly hurts and provokes those who suffered the consequences of the war and damages the memory of the victims".

Inzko did not say what action he might take if his request was not met by the deadline, which has now expired.

He told Nova BH television on Tuesday evening that he was "sorry that the deadlines were not met", but that "punishment is not the most important thing for me". "It's a possible consequence, but it doesn't matter. It is more important that some Serbs begin the process of thinking differently about their past, thinking about where they want their children to live," Inzko said.

He added that his next move is to inform EU foreign policy chief Josep Borrell about the Republika Srpska National Assembly's response.

Radovan Karadzic, the wartime president of Republika Srpska, was sentenced to life in prison by the UN court in The Hague in March 2019 for the Srebrenica genocide, persecuting Bosniaks and Croats throughout Bosnia and Herzegovina, terrorising the population of Sarajevo and taking UN peacekeepers hostage.

Biljana Plavsic, also a former president of Republika Srpska, plea-bargained with the Hague court in 2003 and was sentenced to 11 years in prison for war crimes. In October 2009, she was released after serving two-thirds of her sentence.

Momcilo Krajisnik, the former speaker of the Republika Srpska parliament, who died in September 2020 as a result of complications caused by COVID-19, was sentenced to 20 years in prison in March 2009.

Christian Schmidt to succeed Valentin Inzko as High Representative in August, OHR announces

<https://europeanwesternbalkans.com/2021/05/27/christian-schmidt-to-succeed-valentin-inzko-as-high-representative-in-august-ohr-announces/>

May 27, 2021 – EWB, Sarajevo / Banja Luka



Christian Schmidt; Photo: Office of High Representative

The Ambassadors of the Steering Board of the Peace Implementation Council, the international body guiding Bosnia's peace process, formally appointed Christian Schmidt as the next High Representative in Bosnia and Herzegovina, following his candidature put forward by Germany, the Office of the High Representative announced today. The statement noted that the Russian Federation did not agree with this decision.

Valentin Inzko, who has been the High Representative since 2009, has resigned from his position and will be replaced by Schmidt in August. "The PIC Steering Board looks forward to working with Mr Schmidt when he takes up his duties as the High Representative on 1 August, 2021 upon which Mr Valentin Inzko's resignation will become effective," the statement said.

The PIC SB thanked Germany for its initiative and is confident that Mr Schmidt will accelerate the completion of the 5+2 agenda and contribute to the stability in BiH by ensuring consistent implementation of the civilian aspects of the Dayton Peace Agreement, which ended the 1992-1995 war in Bosnia.

Christian Schmidt has been a member of Bundestag since 1990, representing the conservative Christian Socialist Union (CSU). He served as Minister of Food and Agriculture from 2014 until 2018 and was Parliamentary State Secretary in the German Federal Ministry of Defence from 2005 to 2013. The Office of the High Representative is an ad hoc international institution responsible for overseeing the implementation of civilian aspects of the Peace Agreement ending the war in Bosnia and Herzegovina. The position of High Representative was created under the General Framework Agreement for Peace in Bosnia and Herzegovina, usually referred to as the Dayton Peace Agreement, that was negotiated in 1995.

Bulgaria

Supreme Judicial Council Adopts Declaration against Closure of Specialized Courts

<https://www.novinite.com/articles/209483/Supreme+Judicial+Council+Adopts+Declaration+against+Closure+of+Specialized+Courts>

May 13, 2021



The Plenum of the Supreme Judicial Council (SJC) Thursday voted, 18-3, to adopt a declaration against the closure of the specialized criminal courts and prosecution offices as proposed by legislative revisions which did not reach a plenary debate before President Rumen Radev dissolved Parliament on Wednesday. The discussion on the declaration lasted two hours.

The declaration expresses the Plenum's full support for the magistrates and staff who oppose the closure of the specialized jurisdictions.

It will block the justice system and create tension among the magistrates and the public at a time of political instability and economic uncertainty, the declaration says. The amendments in question, moved by Democratic Bulgaria, were approved on first reading by the Parliamentary Legal Affairs Committee on April 28.

"There Is Such a People" and "Rise Up! Mutri Out!" and "BSP for Bulgaria" backed the bills amending and supplementing the Judicial System Act and the Criminal Procedure Code, whereas GERB-UDF abstained.

The document defending of the specialized criminal courts was proposed by Boyan Magdalinchev, Tsvetinka Pashkunova and KalinaChapkanova. Pashkunova described it as an act of solidarity.

She argued that the revisions were submitted in a way that indicated disregard for the separation of powers and that they had not been put up for public discussion - all of which was a demonstration of disrespect for the institutions and an act of revanchism.

Interior Ministry Secretary General's Dismissed over Police Violence against Protesters

<https://www.novinite.com/articles/209515/Interior+Ministry+Secretary+General%27s+Dismissed+over+Police+Violence+against+Protesters>

May 16, 2021



The Council of Ministers' proposal to President Rumen Radev to relieve Chief Commissioner Ivaylo Ivanov of his responsibilities as Secretary General of the Interior Ministry, has been made because of Ivanov's violation of core principles of the Interior Ministry's work in the form of

failure to respect and guarantee citizens' rights, freedoms and dignity, as well as of lack of objectivity and equity.

Ivanov has thus damaged the Interior Ministry's image in the eyes of both its employees and society, reads the reasoning for the caretaker Cabinet's proposal published in the Information System for Legal Information of the Council of Ministers on Saturday.

The reasoning for the proposal, which the Council of Ministers made late on Friday, also reads that Ivanov bears responsibility for the Interior Ministry's actions amid last year's protests "against the growing corruption and lawlessness in the country's governance".

While neutralizing the protests, which began on July 9 and continued until the end of 2020, the Interior Ministry employees made mistakes of organizational and tactical nature. Despite Ivanov's claims that the police operation was "perfectly organized" and "professionally handled", on the evening of September 2, 2020 the tension between the law enforcement bodies and the protesters in Sofia escalated and clashes were allowed to happen, the reasoning reads further. Affected to a various degree were persons with an aggressive behaviour but also peacefully protesting citizens and journalists.

September 2, 2020 marked the 56th consecutive day of anti-government protests demanding the resignation of the Boyko Borissov Cabinet and of Prosecutor General Ivan Geshev. In the evening the protest in Sofia culminated around the building where the National Assembly was holding its first plenary sitting after summer recess.

Over 100 pyrotechnics were fired at the enforcers, and 80 police officers sustained injuries during the ensuing scuffles. A total of 126 persons were detained, of whom 62 had a criminal record and a part proved to be football hooligans. Photos and videos on social media later showed scenes of police brutality while the protest was being suppressed.

Croatia

Croatian Rights Groups Hail Ruling on Same-Sex Adoption

<https://balkaninsight.com/2021/05/05/croatian-rights-groups-hail-ruling-on-same-sex-adoption/>

May 5, 2021 - Anja Vladislavljovic, Zagreb, BIRN

An association that gathers LGBT couples and parents has welcomed as 'historic' a Zagreb court ruling supporting the right of same-sex couples to apply to adopt children.



Illustration. Photo: EPA/MARC MUELLER.

After Croatian courts last year confirmed that same-sex couples have the right to become foster parents, LGBT+ advocacy groups have welcomed a ruling of the Zagreb Administrative Court that they can also apply to adopt.

The Rainbow Family Association, which gathers LGBT couples and individuals who have or want to have children, on Wednesday hailed the ruling as a “historic moment”. “The verdict opens the door to all gay and lesbian couples” in Croatia who want to adopt, and guarantees that they must not be discriminated on the basis of their sexual orientation, it said.

At the end of last month, it recalled, the court ruled in favour of a same-sex couple Mladen Kozic and Ivo Segota, saying they must not be discriminated against “in the assessment procedure for adoption because they have entered into a life partnership”, referencing the legal term for same-sex marriage in Croatia.

“The child’s right to the best possible adoptive parents remains a priority, and this ruling does not automatically mean that gay and lesbian couples are to become adoptive parents – but life partners can now fearlessly contact their social welfare centre and apply for an evaluation for adoption,” Rainbow Family Association said.

Association president Daniel Martinovic said they expected a long, exhausting struggle that might involve bringing the case to the European Court of Human Rights.

“However, the Zagreb Administrative Court has acted correctly, respecting the Constitution ... international conventions and our laws, and has ruled in favour of our members Mladen Kozic and Ivo Segota,” he said.

In May 2016, they filed an application for adoption to the local social welfare centre, but after a few months, they were rejected.

Rainbow Families described the rejection as “absurd” as individuals and single persons in Croatia can adopt. It noted that other members of the association had adopted in the past ten years, by applying individually, not as couples.

Meanwhile, Kozic and Segota have become the foster parents of two children. A Croatian Constitutional Court ruling in January last year obliged courts and authorities to give all competent appliers to foster equal opportunities, including same-sex couples.

Kosovo

Kosovo to File Genocide Lawsuit against Serbia, Says Prime Minister Kurti

<https://exit.al/en/2021/05/07/kosovo-to-file-genocide-lawsuit-against-serbia-says-prime-minister-kurti/>

May 7, 2021 - Exit News



Kosovo Prime Minister Albin Kurti has confirmed that his government will file a genocide lawsuit against Serbia. “We are going to conduct a principled dialogue with Serbia, well-prepared and on equal grounds, with agreements on mutual recognition. We are going to prepare a genocide lawsuit against Serbia [to be filed] with the International Court of Justice,” Kurti said during a government meeting on Friday, RFE reported.

This week, Serbia’s President Aleksandar Vucic warned Kosovo against filing a genocide lawsuit through Albania, claiming that this would amount to unification of the two countries from an international relations perspective. “You threatening with genocide lawsuit? In order for this to happen, you should only do it through Albania, and this means unification with Albania. I ask Albanians from Kosovo to not do that,” Vucic said. His statement implies that Kosovo cannot act on its own in relation to the ICJ as it is not a member of the United Nations.

It’s not clear how Kosovo will proceed with the lawsuit but it is expected to be filed next year. Kosovo got independent from Serbia in 2008, after a brutal war that left thousands of Albanian civilians killed and more than half of the population displaced by Serbian troops.

Moldova

President Sandu sends back laws to Parliament, including “billion law”

https://www.ipn.md/en/president-sandu-sends-back-laws-to-parliament-including-billion-law-7965_1081666.html

May 15, 2021



A number of laws “with major problems” that were adopted by the Parliament of the tenth legislature were remitted back by President Maia Sandu to the legislative body for being examined and amended so as to eliminate the shortcomings they contain or to withdraw them.

“The Shor-PSRM alliance voted a series of laws during the last part of the former Parliament’s mandate. Many of them have nice names, but contain provisions for the thieves, make the implementation costs the people’s burden and, by vaguely formulated articles, open up corruption gates for schemes to appropriate public property,” said Maia Sandu, being cited by IPN.

One of the returned laws is that of April 23 by which the debt related to the stolen US\$1 billion is annulled. According to Maia Sandu, the given law does no way ease the burden of the debt for the citizens. The stolen US\$1 billion will remain with the thieves if the prosecutor’s office does not get down to business. This law just transforms a state debt into inflation and financial instability. In other words, the citizens repay the stolen funds by higher prices and higher interest rates on loans.

Among the laws that were sent back are also the law by which the state was to compensate the costs incurred by household users for electricity for April and May, because it is inequitable and provides compensations to the poor and the wealthy alike, as President Sandu said, the law on domestic trade, which would lead to price rises and which violates provisions of the Association Agreement with the EU, the law that enabled the interim Government to sign international treaties that imply financial commitments for the Republic of Moldova and to hire and fire persons with public posts and functionaries.

With reference to the last law, President Sandu said fewer than two months remained until the elections and Moldova does not have any international financial commitment that cannot wait for two months for being signed, while “the appointments and dismissals in agencies and ministries will be within the remit of the plenipotentiary Government that will be named after the elections, not of Voicu, Nagachevski or other accidental people that form part of an outgoing Government”.

Maia Sandu promulgated yet the law on the social protection of the citizens who suffered as a result of the Chernobyl nuclear disaster, which amends a number of regulations, the law to amend law No. 1435/2002 to compensate for the difference in the tariffs of electricity and natural gas used by the inhabitants of a number of villages of Dubăsari and Căușeni districts and of Varnița village of Anenii Noi district, the law on the measures of support for entrepreneurial activity, the law to amend a number of regulations on the special taxing of services by which the VAT for the hospitality industry is decreased to 6% during the state of public health emergency.

“This way, I have done with the Parliament that was elected in 2019 according to the Plahotniuc-Dodon rules. I can now breathe freely as I will no longer receive laws full of stratagems, traps and corruption motivations,” stated Maia Sandu.

She noted that the dissolution of Parliament opens the way for order and development in the country. She called on the citizens to go to the polls on July 11 in a large number so as to decide who to entrust the administration of the country to.

Maia Sandu about her visit to SCM: It is not interference

https://www.ipn.md/en/maia-sandu-about-her-visit-to-scm-it-is-not-7965_1081944.html

May 28, 2021

President Maia Sandu rejects the idea that her presence at the meeting of the Superior Council of Magistracy (SCM) on May 27 is interference in the affairs of the judiciary.

She said she went to see the judges and to personally transmit to them the message that the phenomenon of corruption in the system represents a danger to state security.

“It wasn’t a planned meeting of the SCM. I asked the Council to come together. I went there to transmit very clear and serious messages, based on the analysis I have made for months given that I now have access to more information. A majority of honest people is needed in Parliament as the justice sector reform needs to be adopted in Parliament. Until we get there, we see that decisions that cause considerable damage to the state are now taken. There are risks threatening whole sectors, like the insurance one,” Maia Sandu stated in the talk show “Natalia Morari’s Politics” on TV8 channel.

President Sandu noted that the presence of her adviser on legal issues at the SCM meeting wasn’t a violation of the legislation, even if Olesea Stamate runs for MP on the PAS list.

“Olesea Stamate is my adviser on justice and it was normal for her to be present at that meeting. She didn’t leave office. If she decides to leave her post for a period, she will do it. There is not illegality here,” stated Maia Sandu.

President Sandu noted that the visit to the SCM was not political in character and cannot be regarded as a political advantage for an election runner.

“What I did at the SCM wasn’t for a political party, for the PAS or for another candidate. This issue is the major concern of the citizens and a major risk for the country. We should not avoid the necessity of reforming the justice sector and speak about auxiliary elements only,” stated Maia Sandu.

On May 27, President Maia Sandu had a meeting with members of the Superior Council of Magistracy. In the discussions, she noted she will insist on the external assessment of judges as an instrument for cleaning the system.

Moldovan president cancels decree on appointment of Vladislav Clima as president of Chisinau-based Court of Appeal

<https://www.moldpres.md/en/news/2021/05/28/21003839>

May 28, 2021



photo: magistrat.md

President Maia Sandu today informed that she had cancelled the decree of the former Moldova's president Igor Dodon, under which Vladislav Clima was appointed as president of the Chisinau-based Court of Appeal.

„The Superior Council of the Magistracy (CSM) infringed the legal procedures and allowed an inadmissible conflict of interests when it proposed Clima's appointment to this office. CSM must reconsider the decision taken and make sure that the next decisions on appointment to office will fully observe the legal provisions and the persons put forward will meet the integrity criteria,” Sandu said.

On 28 July 2020, Vladislav Clima was elected to the position of president of the Chisinau Court of Appeal. The decision was taken at the CSM meeting and nine members of the Supreme Council of the Magistracy voted for Clima's candidacy. He has been acting as judge since 2006 and was promoted at the Chisinau-based Court of Appeal in 2017.

Jurists of Promo-LEX are banned access to Transnistria. Case communicated by ECHR

https://www.ipn.md/en/jurists-of-promo-lex-are-banned-access-to-transnistria-case-7967_1081955.html

May 28, 2021



The European Court of Human Rights (ECHR) communicated the case Zubco v. the Republic of Moldova and the Russian Federation to the governments of the two countries. The case refers to the banning of Promo-LEX jurists' access to the Transnistria region. [...]

This article is subject to payed content. For the entire article please revert to the link above.

Montenegro

Montenegro 'Failing to Deal with Wartime Crimes': Survey

<https://balkaninsight.com/2021/05/06/montenegro-failing-to-deal-with-wartime-crimes-survey/>

May 6, 2021 - Samir Kajosevic, Podgorica, BIRN

A public opinion survey suggested that a majority of Montenegrins believe their country is failing to properly address the crimes of the 1990s and that the judiciary is incapable of dealing with war-related cases.



Dubrovnik in Croatia after it was attacked by Yugoslav forces in November 1991. Photo: EPA/PETER NORTHALL.

About 55 per cent of the respondents to a public opinion survey of Montenegrins published on Thursday by the Centre for Civic Education said the country has not managed to deal properly with its wartime past.

“The public believe that political parties are not committed to transitional justice and dealing with the wartime past,” said Milos Vukanovic from the Centre for Civic Education.

Half of the respondents said they did not support Minister of Justice, Human and Minority Rights Vladimir Laposavic, who sparked a row last month when he expressed doubt about the rulings of international courts classifying the 1995 Srebrenica massacres by Bosnian Serb forces as genocide.

Eighty-nine per cent of respondents said they knew what happened in Srebrenica in 1995, and 67 per cent classified the massacres as genocide.

On April 8, Prime Minister Zdravko Krivokapic proposed the sacking of Laposavic for his comments about the Srebrenica massacre, but the minister said he did not deny the suffering of victims of the 1995 Srebrenica massacres but only criticised the UN war crimes tribunal in The Hague.

More than 60 per cent of the survey's respondents said they think the Montenegrin judiciary doesn't have the capacity to deal with the wartime past.

Since Montenegro became independent in 2006, it has held just eight trials for war crimes committed in Croatia, Bosnia and Herzegovina and Kosovo. But only the lowest-level suspects have been tried, including guards, cooks, drivers and military volunteers.

The European Union has been urging that war crimes should be a high priority for Montenegrin prosecutors as the country makes progress in accession talks.

But despite this, Montenegro did not initiate a single new war crimes case in 2020, while senior wartime officers suspected of offences remain unprosecuted and only one low-ranking soldier has been convicted.

As part of Yugoslavia, Montenegro took part directly in the wars in Croatia and Bosnia and Herzegovina under the leadership of Slobodan Milosevic, although it saw no conflict on its own soil. Analysts say that some former and current politicians had roles in wartime events that they would like to keep under the carpet.

More than 74 per cent of the survey's respondents said that they believed that NATO committed war crimes during the Western alliance's bombing of Yugoslavia in 1999. A total of 828 Montenegrins aged over 18 were quizzed for the survey.

VC: Draft prosecutorial laws still contain shortcomings

<https://www.cdm.me/english/vc-draft-prosecutorial-laws-still-contain-shortcomings/>

May 20, 2021



Venecijanska komisija

While using its legislative power to design the future organization and functioning of the judiciary, the Parliament should refrain from adopting measures that would jeopardize the continuity of membership of the High Judicial Council and the independence of the judiciary (judges and prosecutors), according to a new Venice Commission (VC) opinion which CdM has had access to.

Premature dismissal of all members of the Prosecutorial Council would set a precedent according to which any government or any new Parliament could terminate its existence early and replace it with a new Council, thus violating its independence.

The VC, on the other hand, has found that the renewal of members could be justified only when the method of appointment is changed from a simple to a qualified majority, as this would pose less risk to the politicization of the Council. As for the method of electing eminent lawyers, the VC has stressed again the need to ensure that the Prosecutorial Council is not politicized.

Lawyers on strike as of Monday

<https://m.cdm.me/english/lawyers-on-strike-as-of-monday/>

May 20, 2021 - CDM



Zdravko Begović, predsjednik Advokatske komore

The Bar Association of Montenegro has decided to suspend the provision of legal aid to lawyers throughout the country as of Monday, 24 May, until the request to amend the Law on Fiscal Policy and exclude this activity from its application is met. The decision on the strike was made at the Bar Association's extraordinary session.

Prosecutor's law re-adopted

<http://www.rtcg.me/english/montenegro/322626/prosecutors-law-re-adopted.html>

May 27, 2021

The Parliament of Montenegro adopted amendments to the Law on the State Prosecutor's Office for the second time, after the President of Montenegro, Milo Đukanović, refused to sign the act.

41 government deputies voted for the amendments to that law. Opposition MPs were not in the Assembly when it was voted on the act.

As a reminder, President Milo Đukanović returned to the Assembly the Law on amendments to the Law on the State Prosecutor's Office for reconsideration.

Earlier, on May 12, the MPs adopted amendments to the Law on the State Prosecutor's Office. The opposition then boycotted the vote.

Djukanovic refused to sign the act and returned it to the Assembly for a new decision. He assessed that the constitutional and legal system of Montenegro is endangered by this law. "The constitution envisages a divided system of government, but it does not provide for control over the judiciary. Fundamental democratic principles are being destroyed, partnership with the EU is being destroyed," Djukanovic said earlier.

North Macedonia

North Macedonia Criticised for Police Brutality, Bad Prison Conditions

<https://balkaninsight.com/2021/05/11/north-macedonia-criticised-for-police-brutality-bad-prison-conditions/>

May 11, 2021 - Sinisa Jakov Marusic, Skopje, BIRN

A new report by the Council of Europe said police in North Macedonia have been mistreating suspects, and that the authorities have persistently failed to improve bad prison conditions.



Europe Anti-Torture Committee members meet Prime Minister Zoran Zaev in Skopje in November. Photo: CoE.

The report published on Tuesday by the Council of Europe's Committee for the Prevention of Torture, CPT, based on a visit to the country in December 2019, raises concerns that police ill-treatment of suspects has resumed in North Macedonia and that the authorities have done far too little to address the longstanding shortcomings within the prison system.

"The CPT's delegation received many allegations of physical ill-treatment of criminal suspects by police officers during the 2019 visit. Persons complained of being subjected to slaps, punches, kicks and blows with truncheons and other objects at the time of their apprehension or inside a police establishment for the purpose of extracting a confession," the report said.

The CPT recommends holding to account senior officers for their and their subordinates' misdeeds, as well as stronger investigations for mistreatment and better training for officers.

It also notes that the safeguards such as access to a lawyer must be applied from the moment a person is detained, and that investigations into allegations of ill-treatment must be made more effective.

The report is particularly critical of the poor situation in prisons and detention facilities, noting that the authorities have persistently failed to address these longstanding problems.

“Immediate action is required to address the lack of a professional approach in managing complex situations within the prison system, the poor management and performance of staff, the low staffing levels, the poor quality of health-care provided to inmates, the lack of an appropriate regime on offer to inmates, the high-levels of inter-prisoner violence, the squalid material conditions and the endemic corruption of staff,” the report says.

The CPT notes that the problems are most acute in the country’s largest prison, Idrizovo near Skopje, which holds some 60 per cent of the country’s entire prison population. It describes “inhumane and degrading conditions” in the prison’s accommodation areas.

Police misconduct and brutality as well as bad conditions in prisons have long been a problematic topic for North Macedonia, with various EU and US reports over the past 20 years pinpointing the necessity for change.

Criticism was particularly strong when authoritarian Prime Minister Nikola Gruevski, who was ousted in 2017, was in power.

The CPT report also includes an attached 32-page response from the current Social Democrats-led government which said it is working on improving many things noted in this and previous reports, including closing down problematic parts of the Idrizovo prison and renovating facilities there and in other prisons elsewhere in the country.

North Macedonia's Ex-PM Gruevski Indicted Over Illicit Property Purchases

<https://balkaninsight.com/2021/05/13/north-macedonias-ex-pm-gruevski-indicted-over-illicit-property-purchases/>

May 13, 2021 - Sinisa Jakov Marusic, Skopje, BIRN

The Organised Crime Prosecution has filed charges against the fugitive ex-prime minister, and some of his old associates, in a case that centres on the illicit purchase of building lots via an offshore company in Belize.



Former North Macedonian Prime Minister Nikola Gruevski. Archive photo: EPA-EFE-Nake Batev

North Macedonia's Organised Crime Prosecution on Wednesday filed charges against the country's fugitive former prime minister, Nikola Gruevski, and some of his former close associates, in a high-profile case linked to the illicit purchase of building sites. The charges focus on the alleged purchase and concealment of the real ownership of three valuable building lots in the elite Skopje suburb of Vodno, another building site and two apartments. The charges also cover two building lots in the town of Krushevo.

The prosecution has called for the seizure of the real estate in question, which has an estimated total value of 1.5 million euros.

Gruevski is the first accused in a case concerning six persons. He is charged with money laundering and illegal acquisition of property, as well as concealing that he was its true owner.

His best man, Risto Novacevski, as well as businessmen Nenad Josifovic, Orce Kamcev and Kamcev's mother, Ratka Kamceva, are charged with money laundering; Gruevski's cousin, the former secret police chief Saso Mijalkov, is charged with aiding money laundering.

According to the charges, Gruevski used money drawn from donations made to the then ruling VMRO DPMNE party, which he then led, to purchase the properties, using

an offshore company registered in Belize. Gruevski allegedly obtained some 1.3 million euros between 2006 and 2012 which he used to buy the attractive sites.

The prosecution claims that after Gruevski learned in mid-2012 that a 11,000-square-metre plot was on sale in Vodno, he asked his cousin, Mijalkov, to help him buy it, and also hide that he was the real owner. Mijalkov, then head of the secret police, then included Nenad Josifovic in the scheme.

“The defendant S.M. contacted defendant N.J., who owned an already registered offshore company in Belize, and agreed that this company would be the founder of a domestic legal entity that would be used to purchase the land. Although he knew that his legal entity would be used to cover up the real owner of the land buyer, defendant N.J. in agreement with the defendant S.M. established a legal entity in Skopje,” the indictment says.

In 2015, according to the prosecution, Kamcev and his family entered the scheme, by having their own company take over the share of the offshore company from Belize in the Skopje company, “although they knew the property was acquired through criminal activities”.

Besides the three plots in Vodno, the indictment covers another construction plot of 2,729 square metres in the centre of Skopje, two apartments in Skopje, as well as two building lots in Krushevo, worth almost 800,000 euros in all. The prosecution claims that Risto Novacevski was only their fictitious owner, and the real owner was again Gruevski.

Gruevski, who ruled the country from 2006 to 2016, fled to Hungary in 2018 to avoid serving a two-year jail sentence for the illicit purchase of a luxury limousine.

In a post on his Facebook, he said the latest case was also politically motivated. “The criminal Zoran Zaev [the current Prime Minister] continues with the politically motivated pursuits and with terror against those who don’t think like him,” he wrote on Facebook on Wednesday. Gruevski accused his political arch-rival of putting pressure on people to become false witnesses in this latest case against him.

The prosecution first opened an investigation into this case in October last year. While Gruevski enjoys political asylum in Hungary, Mijalkov is already in detention, after in a first-instance verdict in February found him guilty and sentenced him to jail for the mass illegal wiretapping of people.

In March, Kamcev was also put in detention, citing the likelihood of possible escape in connection with this case, which his lawyers called ungrounded.

Romania

Romania: compliance with GRECO's recommendations to prevent corruption in respect of MPs, judges and prosecutors remains very low

<https://www.romaniajournal.ro/politics/romania-compliance-with-greco-recommendations-to-prevent-corruption-in-respect-of-mps-judges-and-prosecutors-remains-very-low/>

May 5, 2021 - Romania Journal



In a report published today, the Council of Europe's anti-corruption body (GRECO) concludes that Romania's level of compliance with its recommendations to prevent corruption in respect of MPs, judges and prosecutors remains globally unsatisfactory despite some progress and planned reforms that still are at an early stage.

GRECO concludes that Romania has only fully implemented in total five of 18 recommendations emanating from a 2015 evaluation and from an ad hoc Rule 34 evaluation procedure launched in 2017 on issues related to the judicial reform.

With respect to members of parliament, the level of implementation remains unchanged, except for some procedural requirements with only two of nine recommendations implemented. Given the importance of these recommendations for the prevention of corruption among parliamentarians, GRECO underlines that more determined action is required to implement them.

Concerning corruption prevention in respect of judges and prosecutors, following the heavily criticised reforms of the criminal justice system (2017-2018) in Romania and GRECO's decision to apply its ad-hoc procedure, GRECO now acknowledges that some measures have been taken and more promising initiatives are underway which have the potential to rectify many of the pending shortcomings.

A promising draft Law on the Status of Romanian Magistrates is underway and currently undergoes public consultation. It envisages a more transparent procedure and more objective evaluation criteria for the appointment of prosecutors to the most senior posts, etc., and also deals with judges' liability.

A stronger role for the Supreme Council of the Magistracy (SCM) in this process is still required, and the involvement of the executive power, i.e. the Minister of Justice, in the appointment or revocation of the most senior prosecutors should be diminished in order to provide for judicial independence. Likewise, objective and clear criteria, based on merit and qualification, for the promotion of judges and prosecutors to higher positions need to be established.

GRECO also welcomes further strengthening of the supervisory powers of the SCM and of the Judicial Inspectorate and the carrying out of training and awareness-raising initiatives aimed at reinforcing, strengthening judicial integrity and providing for more uniform and swift disciplinary procedures in the judiciary.

GRECO has requested the Romanian authorities to provide an update on measures taken to implement the pending recommendations by 31 March 2022 at the latest.

CJEU leaves Romanian authorities to decide on specialised section

<https://www.romania-insider.com/cjeu-romania-specialised-section-ruling>

May 19, 2021 - Iulian Ernst

The Court of Justice of the European Union on May 18 released a series of six rulings pertaining to Romania concerning a wide-ranging reform in the field of justice and the fight against corruption.

The rulings are highly technical in their nature and diverse in their scope, but two conclusions stirred most of the public interest.

Firstly, the CJEU leaves the Romanian authorities to decide on the fate of the controversial specialised section, a prosecution body specialised in investigating magistrates.

However, guidelines are provided for assessing whether the section is in line with the EU laws: whether there is a good reason for setting it up in the first place and whether it can be kept apart from political influence.

“The Court clarifies that, in order to be compatible with EU law, such legislation must, first, be justified by objective and verifiable requirements relating to the sound administration of justice and, secondly, ensure that that section cannot be used as an instrument of political control over the activity of those judges and prosecutors and that the section exercises its competence in compliance with the requirements of the Charter of Fundamental Rights of the European Union,” according to the CJEU’s ruling. A second ruling that prompted public comments relates to the supremacy of the EU laws in front of national legislation - including the rulings of the constitutional provisions.

“The Court recalls that, in accordance with settled case-law, the effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without provisions of domestic law relating to the attribution of jurisdiction, including constitutional provisions, being able to prevent that,” the CJEU release reads.

Specifically, the ruling was interpreted in the sense of finally finding a way to overrule the decisions of the Constitutional Court that were sometimes seen as contradictory.

Anticorruption prosecutors also investigate shooting of large brown bear in Romania

<https://www.romania-insider.com/dna-investigation-bear-killing-prince>

May 11, 2021 - Irina Marica



The National Anticorruption Directorate (DNA) also opened a criminal investigation into the shooting of Arthur, the large Romanian brown bear that was allegedly killed in March by Prince Emanuel von und zu Liechtenstein. The DNA prosecutors started an in rem criminal investigation for possible offenses of abuse of office, local Digi24 reported.

The Prosecutor's Office attached to the local court in Targu Secuiesc, central Romania, also opened an investigation in this case for poaching offenses.

Meanwhile, the controversial bear shooting case in Romania also attracted the attention of the European Commission. Virginijus Sinkevičius, European Commissioner for the Environment, said that he is looking into this case. "I trust the Romanian authorities investigate this incident in very close details," he said, according to Politico.

Environmental organizations Agent Green and VGT (Austria) announced last week that Prince Emanuel von und zu Liechtenstein shot and killed the largest brown bear in Romania. The prince allegedly used a derogation released by the Romanian Ministry of Environment to shoot the bear nicknamed Arthur. However, according to the two organizations, the derogation was issued for the elimination of a mother bear that had caused damage last year to some farms in Ojdula, Covasna county, and not the giant bear killed by the prince.

The Romanian government also opened an investigation in this case. Meanwhile, the prince reportedly said that he legally shot a bear in Romania, and that bear was not Arthur. He also offered his full support to the investigation, according to Digi24, which quoted Austrian media.

Romanian deputy PM Barna possibly investigated for EU funds embezzlement

<https://www.romania-insider.com/dan-barna-investigation-eu-funds-embezzlement>

May 12, 2021 - Andrei Chirileasa



Romania's Anti-Fraud Department (DLAF) announced that it completed the investigations and sent to the anticorruption directorate (DNA) the European fund embezzlement cases involving four persons - including, according to Newsweek, deputy prime minister and USR-PLUS co-president Dan Barna.

Barna has served as an expert in both projects, and his sister was the manager of a social enterprise that received EU funding.

According to sources familiar with the case, the current deputy prime minister is targeted by the documentation sent by DLAF to DNA. DLAF data show, according to the sources, that some payments reached the declared recipients, and some equipment was purchased from uncertain sources, which raises suspicions of fraud.

The USR-PLUS leader announced that he requested a statement from the DLAF, as he had not been informed of this step, and stressed that he was not part of the group of four persons accused in that case. In case he is put under investigation in the case, Dan Barna said that he would "step down," Digi24 reported.

Romania's Dragnea Faces New Trial Over Trump Inauguration Lobby

<https://balkaninsight.com/2021/05/17/romania-dragnea-faces-new-trial-over-trump-inauguration-lobby/>

May 17, 2021 - Marcel Gascón Barberá, Bucharest, BIRN

Romania's now jailed former de facto prime minister, Liviu Dragnea, has been sent to trial for allegedly abusing his power to secure his attendance at Donald Trump's presidential inauguration.

Former Romanian Social Democrat leader Liviu Dragnea, who de facto ran the country from the side from January 2017 until his imprisonment in May 2019, was on Monday sent to trial by anti-corruption prosecutors, charged with influence peddling in order to secure his presence at former US president Donald Trump's inauguration.

Prosecutors say that Dragnea, who is already serving a three-and-a-half-year prison term for corruption, used his power as a party boss to offer favours to a businessman who then ensured him access to the ceremony, held in Washington on January 20, 2017.

"Nicolae-Liviu Dragnea allegedly peddled, in favour of the Romanian businessman, the influence he had over the prime minister and other members of the Romanian government, promising that he would ensure they protected his business interests in the military and intelligence fields," the National Anti-Corruption Directorate, DNA, said on Monday.

The arrangement to grant Dragnea access to the US event involved the vice president of the inauguration committee and cost some 250,000 US dollars. The Romanian businessman in question, Gheorghe Dumitrescu, has also been sent to trial alongside Dragnea.

Dragnea's political career ended abruptly on May 27, 2019, when he was convicted of the fictitious employment as public servants of two Social Democratic Party employees in the southern county where he built his political career. He was then sentenced to three-and-a-half years in jail.

Following his party's victory in the December 2016 election, Dragnea became Romania's de facto prime minister, a position he could not formally assume due to a previous conviction.

In power, he championed justice system changes that included softening some of the laws eventually applied to send him to prison. His judicial overhaul was widely deemed an attack on judicial independence by the EU, the US and many Romanian judges and civil society organisations.

Staatschef fertigt Änderungen der Strafprozessordnung aus - Urteilsfällung nur noch mit -begründung

<https://adz.ro/artikel/artikel/staatschef-fertigt-aenderungen-der-straafprozessordnung-aus>

14. Mai 2021 - Bukarest (ADZ)

Staatschef Klaus Johannis hat am Mittwoch die jüngst vom Parlament verabschiedeten Änderungen der Strafprozessordnung ausgefertigt, die infolge eines Urteils des Verfassungsgerichts zwingend geworden waren. Die Änderungen sehen vor, dass Strafgerichte ihre Urteile spätestens 120 Tage nach den gestiegenen Schlussverhandlungen und -plädoyers zu fällen und am gleichen Tag auch die Begründung des Richterspruchs bekannt zu geben haben. Prinzipiell haben aufgrund der novellierten Strafprozessordnung Urteile künftig binnen 60 Tagen gefällt zu werden, die Frist kann allerdings aus „äußerst triftigen Gründen“ verdoppelt bzw. auf 120 Tage verlängert werden.

Die Änderungen der Strafprozessordnung waren unabdingbar geworden, nachdem das Verfassungsgericht Anfang April einem Antrag auf Feststellung der Verfassungswidrigkeit stattgegeben und befunden hatte, dass rechtskräftige Urteile in Strafprozessen künftig von der Urteilsbegründung des Spruchkörpers begleitet werden müssen. Die Umsetzung eines rechtskräftigen Gerichtsentscheids, etwa im Sinne eines Haftantritts, sei ohne die einschlägige Urteilsbegründung verfassungswidrig, so die Verfassungshüter.

Serbia

Vučić says he will not sign the same-sex unions law, his justification raises suspicion

<https://europeanwesternbalkans.com/2021/05/06/vucic-says-he-will-not-sign-the-same-sex-unions-law-his-justification-raises-suspicion/>

May 6, 2021 – EWB, Belgrade



Aleksandar Vučić; Photo: Tanjug / Sava Radovanović

President of Serbia Aleksandar Vučić stated that he will not sign the law on same-sex unions, which is in the process of preparation, deeming it unconstitutional, while the supporters of the law have been arguing that this is not the case. Analysts believe that the majority of Vučić's voters oppose the law.

"I don't know what the Assembly is planning when it comes to the law on same-sex unions. But, as the President of Serbia, I am obliged to protect the Constitution and I cannot sign that law", Vučić said in last week's interview for Blic, commenting on the proposed piece of legislation expected to enter the parliamentary procedure in June.

The President of Serbia can veto a law adopted by the parliament, but the parliament can override the veto with an absolute majority of votes. In the current political environment of Serbia, in which Vučić is also the President of the highly-disciplined and hierarchical Serbian Progressive Party, which on its own has 170 out of 250 MPs and virtually no opposition, it is hard to imagine the parliament and the President genuinely disagreeing on any major issue. [...]

President's justification of why he thinks the law is unconstitutional has also raised eyebrows.

"Vučić explains that Article 62 of the Constitution states that a man and a woman enter into marital relations of their own free will in front of state institutions and that by signing the mentioned law he would violate the highest legal act of the state", Blic reported. "The Constitution refers to the Family Law, which defines marriage as a legally regulated union of a man and a woman. Therefore, I would not be able to sign the law on same-sex unions and I would return it to the National Assembly", Vučić said for Blic.

However, as the primary initiator of the law, Minister for Human and Minority Rights and Social Dialogue Gordana Čomić has explained on multiple occasions so far, that the law does not regulate the legal institution of marriage nor the adoption of children, but other issues of same-sex couples such as inheritance and hospital visits.

The director of "Belgrade Pride", Marko Mihailović, stated that LGBT activists are "confused" by the message of the President of Serbia. [...]

Asked how she comments on Vučić's statement, Minister Čomić pointed out that Vučić also said that there is a possibility of changing the Constitution in this area.

Vučić was indeed asked by Blic if the ongoing process of changing the Constitution in the field of the judiciary can also be used to change the definition of marriage, to which he replied that he "did not exclude that possibility".

If the Constitution were to change in this area, as well as in the area of the judiciary, it would have to be confirmed by the citizens in a referendum. There are still no indications that such a referendum for the changes in the field of the judiciary, which are a condition for Serbia's EU accession process, will be held soon. [...]

It is nevertheless the obligation of Serbia to introduce this law, through the analysis of the judgment *Oliari and Others v Italy*, where the European Court of Human Rights (ECtHR) has established the legal precedent regarding the necessity of the recognition of same-sex relationships within the Council of Europe (CoE) member states, a recent policy paper reminds. Serbia has also been urged by European Parliament to regulate the position of same-sex couples in its most recent Resolution. [...]

Warning signs for the process of amending Serbia's Law on Free Access to Information

<https://europeanwesternbalkans.com/2021/05/25/warning-signs-for-the-process-of-amending-serbias-law-on-free-access-to-information/>

May 25, 2021 - Aleksandar Ivković

This article was published as part of the project "Civil society for good governance and anti-corruption in southeast Europe: Capacity building for monitoring, advocacy and awareness-raising (SELDI)" funded by the European Union.



Photo: Flickr/ MoodyPDX

The new deadline for amending Serbia's Law on Free Access to Information of Public Importance is expected to be the fourth quarter of 2021, but the way the process has been conducted so far leaves causes for concern.

This law is one of the main tools of journalists, members of civil society and academia dedicated to the transparency of state institutions and the fight against corruption. However, the proposals that have appeared in public so far indicate that in some areas current rights could be limited rather than strengthened.

Like some other processes, such as the amendment of the Constitution in the field of the judiciary, the amending of the Law on Free Access to Information was initiated in the context of the process of European integration of Serbia, but the original deadlines have already been missed. Also, just as in the case of amending the Constitution, instead of using these reforms to bring Serbia as close as possible to the highest standards of the rule of law and respect for human rights, some proposals seem to lead the country in the opposite direction.

The process has been going on for more than three years, and it started when the Ministry of State Administration and Local Self-Government published the first draft of amendments to the current Law in March 2018.

According to the members of the organization Partners Serbia, despite some good solutions in the Draft, one of them threatened to seriously violate the right of the public to be informed, and that is the proposal that the law would no longer apply to the enterprises, regardless of their owner or shareholder. This, they added, would have excluded enterprises such as Telekom, Serbian Railways, Srbijagas and others, state-owned companies for whose business dealings have been in the public eye for many years, from the scope of application of the law.

After the criticism, the new draft was published in November 2019, and it did not contain the problematic provisions that were pointed out.

However, this proposal was not without objections, once again pointed out by civil society. This was followed by a long pause, among other things due to the holding of the 2020 elections, with the process being re-starting at the beginning of this year.

Problems in the functioning of the Commissioner for Information of Public Importance

The report of the Commissioner for Information of Public Importance and Personal Data Protection for 2020 cites the recently erected monument to medieval Serbian ruler Stefan Nemanja in Belgrade, the price of which part of the public has wanted to know, as an illustrative example of difficulties in obtaining information on the spending of public funds.

According to the report, the Commissioner ordered the Mayor of the City of Belgrade and the City Assembly, to release the information on whether they possessed the details of the contract and fees. As these institutions did not act within the deadline ordered by the Commissioner, he sent a request to the Government for assistance in the procedure of administrative execution of his decisions. Even then, the Commissioner's decisions were not implemented. [...]

The existence of problems in this area was also noted by the European Commission's report on Serbia from 2020, in which it was pointed out that "administrative silence, whereby public authorities fail to properly act on the citizens' information requests, remains a major issue" and that enforcement of the decisions taken by the Commissioner for Information of Public Importance has yet to be ensured.

Therefore, the institution of the Commissioner itself proposed that the new Law clearly prescribe the authorizations for issuing misdemeanor warrants for the silence of the administration, as well as to prescribe sanctions imposed on the authority for non-execution of the Commissioner's decision.

A lengthy and non-transparent process

Serbia has committed itself to amend the Law on Information under the Action Plan for Chapter 23, in order to improve access to information and overcome existing problems, especially in the areas of privatization, state-owned enterprise activities, public procurement, public spending and donations to political parties.

However, this process, as with many other aspects of the Action Plan, has been delayed. In July last year, the Action Plan was revised again, envisaging that the law would be changed by the end of 2020, which was, obviously not met.

As Ana Toskić Cvetinović, Executive Director of Partner Serbia, states for the European Western Balkans, one of the reasons for the delay is that a wide range of entities are interested in implementation of this law, whose interests have manifested themselves in recent years through various solutions or proposals for amendments to the Law. [...]

What is even more worrying, however, is the fact that in January 2021, the Ministry of State Administration and Local Self-Government formed a new Working Group to draft the law without involving civil society in this process.

Only after the reactions of the CSOs, including the meeting of the National Convention on the EU (NCEU) with Prime Minister Ana Brnabic, representatives of the civil sector, delegated by NCEU – Ana Toskić Cvetinović and Nemanja Nenadić, were included in the working group as observers.



National Convention for EU in Dialogue with PM Brnabić; Photo: NCEU

“We are not clear about the reasons why this process continued without the participation of experts and the general public. It is a law that, among other things, regulates the so-called proactive transparency of government bodies, so the process of amending it should have been participatory and transparent ... Maybe the idea was to end the process as soon as possible, and maybe to offer some solutions without critical re-examination “, says Toskić Cvetinović.

She adds that, although they have been given enough time to present their views, she is not sure that most of the civil society’s proposals, aimed primarily at preserving the

achieved level of rights and eliminating problems in the application of the Law, will be adopted.

“We are still waiting for the Draft, and after that the public debate, so it will be an opportunity to propose some solutions,” she added, noting that it should not be forgotten that this Law should have a significant anti-corruption effect, and the attitude towards its implementation and amendments also speaks of the attitude of government officials towards the fight against corruption and accountability in general.

What is problematic in the proposals?

Even though the official proposal of the Ministry is still awaited, some of the proposals that have already reached the public, such as the draft from 2019, worry our interlocutors.

Potentially harmful proposals include the introduction of additional grounds for restricting the right of access to information and the exclusion of certain entities from the application of this law, such as political parties. These changes would result in a diminished chance for citizens to access certain information related to government action, with a questionable legitimacy for such restrictions.

Nemanja Nenadić, Program Director of Transparency Serbia, the second representative of civil society delegated by NCEU to the Working Group for Drafting Law, points at Article 9, which prescribes the grounds for restricting the right to access information – endangering life, health, security of the country and similar reasons – where eight bases are currently in circulation, instead of the previous five.

“In principle, I think that these new bases are unnecessary because everything that should be protected through them can be included under some of the existing exceptions,” says Nenadić.

Asked why new grounds were introduced for restricting the right to access information, including the interests of the enterprises, Nenadić said that it is quite certain that neither then nor now were the proposals coming from the Ministry of State Administration, but from other places.

“Experience has shown that in a large number of cases, it was not really about protecting some interests that could be considered legitimate, but about the desire to prevent the documentation of concluding deals that were harmful to the public interest,” he notes.

Nenadić emphasizes another important provision of Article 9, the deletion of which was proposed in 2019: it is about the fact that according to the Law, the mere fact that some information is in a document marked as secret cannot be interpreted as a sufficient reason for denying access.

On the contrary, there is a duty for the authority to explain that the disclosure would have severe legal or other consequences for the interests protected by law and that the protection of those interests prevails over the public's right to know. "Regardless of the fact that the lines of defense of rights exist in other articles of the Law, our fear is that deleting this rule could lead to the denial of more information," says Nenadić.

He also notes that, based on what was heard in the Working Group, some positive changes can also be expected.

"This primarily refers to the expansion of the definition of government bodies to entrepreneurs entrusted with public authorities, as well as the introduction of additional obligations for some public authorities that have not had them so far (e.g. obligations to inform and publish information on the work of local public companies).

Then, it is certain that the amendments to the Law will establish a system for the execution of the Commissioner's decision. Some novelties have been announced that can have a very useful effect, such as the possibility for the Commissioner to issue misdemeanor orders in case the body does not act upon the request within the prescribed deadline," he says.

For the process of weighing the positive and negative changes that will be brought by the new law, first of all, its official draft needs to be published, which is still pending. Nevertheless, the government's actions in its preparation so far leave enough reason for caution on the part of civil society, journalists, and all those who will continue to use the law.

Sources

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