

Human Rights Committee

Concluding observations on the third periodic report of Serbia *

1. The Committee considered the third periodic report of Serbia (CCPR/C/SRB/3) at its 3341st and 3342th meetings (see CCPR/C/SR.3341 and 3342), held on 7 and 8 March 2017. At its 3364th meeting, held on 23 March 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Serbia and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's large delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/SRB/Q/3/Add.1) to the list of issues (CCPR/C/SRB/Q/3), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided in writing.

3. The Committee recalls its previous concluding observations (see CCPR/C/UNK/CO/1) and notes that the State party continues to declare that it is unable to monitor the application of the Covenant in Kosovo** owing to the fact that, pursuant to Security Council resolution 1244 (1999), civil authority there is exercised by the United Nations Interim Administration Mission in Kosovo (UNMIK). The Committee considers that the Covenant still applies in Kosovo and therefore encourages UNMIK to provide the Committee, in cooperation with the institutions of Kosovo and without prejudice to the final legal status of Kosovo, with a report on the human rights situation there.

B. Positive aspects

4. The Committee welcomes the following institutional and legislative measures taken by the State party:

* Adopted by the Committee at its 119th session (6 - 29 March 2017).

** All references to Kosovo in the present document should be understood to be in full compliance with Security Council resolution 1244 (1999).

(a) The adoption of the Law on the Execution of Criminal Sanctions and the Law on the Enforcement of Non-Custodial Sanctions and Measures in 2014;

(b) The adoption of the National Strategy for Improving the Position of Women and Promoting Gender Equality (2016-2020) with Action plan (2016-2018) for its implementation;

(c) The establishment of the Gender Equality Coordinating Body in 2014;

(d) The adoption of the new Law on the Prevention of Domestic Violence in 2016.

5. The Committee also welcomes the ratification of, or accession to, the following instruments by the State party:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 18 May 2011;

(b) The Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence, on 31 October 2013,

(c) The signature with the Republic of Bosnia Herzegovina of the Protocol on cooperation in searching for the missing persons in 2015.

C. Principal matters of concern and recommendations

Optional Protocol and domestic applicability of the Covenant

6. While welcoming the establishment of the Council for Monitoring the Implementation of Recommendations of the UN Mechanisms, the Committee remains concerned about the lack of clear legal mechanisms to implement and monitor the implementation of the Views adopted by the Committee under the Optional Protocol. The Committee notes that the provisions of the Covenant are integrated into domestic law and consequently may be protected in courts. However it regrets that awareness of the practical applicability of the Covenant in the domestic legal system among the judiciary and legal community appears to remain low (art. 2).

7. The State party should ensure that the Committee's Views are systematically disseminated and implemented, including the Views in Novaković and Novaković v. Serbia, and strengthen its efforts to ensure that authorities, in particular judges, prosecutors and lawyers, are aware of the applicability of the Covenant's provisions in the State party.

Anti-discriminatory legal frameworks

8. While the Committee acknowledges the Strategy for Prevention and Protection from Discrimination, it remains concerned about: (a) the lack of, or delays in, practical implementation of the Strategy; (b) the non-recognition of indirect discrimination in the current anti-discrimination law; (c) the lack of information on civil proceedings and the limited number of criminal proceedings on the basis of discrimination; and (d) the State party's failure to collect disaggregated data regarding ethnic and racial minorities (arts. 2, 3, 26 and 27).

9. The State party should: (a) take concrete measures to ensure that the Action Plan for implementing the Strategy of Prevention and Protection against Discrimination is carried out in a timely and effective manner; (b) ensure that the planned amendments to the anti-discrimination law adequately address indirect discrimination as a form of discrimination; (c) increase the capacity of the

Commissioner to bring claims under the anti-discrimination law; (d) strengthen judicial enforcement of the anti-discrimination law through criminal and civil proceedings, including by training judges, law enforcement officials and lawyers regarding non-discrimination; and (f) allow the collection of data and develop tools to allow the State party to assess and ensure the effective enjoyment by racial and ethnic minorities of all human rights and fundamental freedoms and make use of such data for planning and evaluation purposes.

Hate crimes

10. The Committee is concerned that despite the State party's efforts to combat offences motivated by hatred, hate crimes, particularly against Roma, remain prevalent in the State party. While noting the amendments to article 54 a. of the Criminal Code introducing aggravating circumstances for crimes committed based on hatred of a person's race, religion, nationality or ethnicity, sex, sexual orientation or gender identity, it regrets that the State party did not provide any example of its practical implementation (arts. 2, 6, 20 and 26).

11. The State party should: (a) increase its efforts to promote tolerance for persons belonging to ethnic, national, racial, religious and other minorities, including the Roma; and (b) effectively implement article 54 a. of the Criminal Code, including ensuring that hate crimes are identified and promptly investigated, that alleged perpetrators are prosecuted and, if convicted, that they are punished with appropriate sanctions.

Discrimination against LGBTI persons and persons with HIV

12. The Committee is concerned that: (a) discrimination, intolerance and violence against LGBTI persons remain very high; (b) the legal consequences of adjustment or change of sex are not currently regulated by any legal framework and there is no right to preferred gender in the absence of surgical intervention; and (c) persons with HIV continue to face discrimination and violations of their privacy, particularly within the context of healthcare (arts. 2, 7, 16 and 26).

13. The State party should: (a) strengthen its measures to eradicate all forms of social stigmatization, discrimination and violence against persons based on their sexual orientation and gender identity, or HIV status; and (b) implement a procedure for legal gender recognition that is compatible with the provisions of the Covenant.

Roma exclusion

14. The Committee reiterates its concerns that, despite State party efforts, Roma continue to suffer from widespread discrimination and exclusion, unemployment, forced evictions, and de facto housing and educational segregation. While noting the State party's progress related to registration, it is concerned about the continued difficulties facing internally displaced Roma in (a) registering births and their place of residence and acquiring identification documents, including as a result of a narrow interpretation of the Law on Permanent and Temporary Residence; and (b) being integrated in Serbian society, and (c) poor conditions reported in collective centers (arts. 2, 7, 16, 17, 24 and 26).

15. The State party should increase its efforts to: (a) promote non-discriminatory access to opportunities and services in all fields for members of the Roma community; (b) facilitate and enable registration of children born to parents without identification documents and allow internally displaced Roma who live in informal settlements to

register their place of residence and to acquire identification documents, including by reviewing the Law on Permanent and Temporary Residence; (c) work with internally displaced Roma communities to develop durable solutions that are suitable to them, including local integration; and (d) take all necessary steps to implement the Strategy for the Social Inclusion of Roma.

Persons with disabilities

16. While the Committee notes that the State party has made some progress, it is concerned that (a) persons with disabilities still face many challenges in getting access to justice, education, employment and political participation. The Committee notes with concern: (b) the forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities; (c) the inadequacy of the current legal frameworks to achieve deinstitutionalization and enhance appropriate community-based support; (d) the reported overuse of deprivation of legal capacity, including full legal capacity, which disproportionately affects the rights of persons with disabilities, and (e) the limited scope of protections against discrimination on grounds of disability (arts. 2, 7, 14, 16, 25 and 26).

17. The State party should: (a) take appropriate measures to ensure that persons with disabilities are not discriminated against in the enjoyment of their rights; (b) take all measures necessary to implement a policy of deinstitutionalization of persons with disabilities accompanied by appropriate community-based support; (c) ensure that any decision to isolate, place or treat persons with mental, intellectual and psychosocial disabilities is made after a thorough medical assessment, that any restrictions are legal, necessary and proportionate to the individual circumstances and include guarantees of an effective remedy, and that any abuse is effectively investigated and that criminal liability is imposed; (d) pursue legal amendments in order to eliminate full deprivation of legal capacity and strengthen its efforts to restore the legal capacity of persons with disabilities; and (e) recognize denial of reasonable accommodation for persons with disabilities as a form of discrimination and include disability as a grounds for hate crimes.

Gender equality and discrimination against women

18. While the Committee notes that Serbia has taken significant steps to improve representation of women in the public sphere, patriarchal cultural patterns and stereotypical gender roles of women and men remain prevalent in the Serbian society. It is also concerned about: (a) the situation of women in vulnerable groups; (b) the reported cases of early arranged marriage in some Roma communities; and (c) the lack of implementation of the Law on gender equality (arts. 2, 3, 7, 23 and 26).

19. The State party should: (a) pursue efforts to raise awareness of women's equality with a view to combating all prejudices and stereotypes against women; (b) take all necessary measures to protect women from vulnerable groups, including from early marriages; and (c) ensure that its legal frameworks regarding gender equality are fully implemented at all levels.

Violence against women and children, including domestic violence

20. While acknowledging the State party's efforts, the Committee is concerned that in practice, severe forms of violence against women and children, including domestic violence, remain prevalent. The Committee is particularly concerned at the inadequacy of the response of law enforcement and judicial authorities to cases of domestic violence, as few reported cases result in prosecutions and convictions (arts. 2, 3, 6, 7 and 26).

21. The State party should increase its efforts, including: (a) ensure that sufficient technical and financial resources and training are dedicated to addressing the problem of violence against women and children; (b) strengthen its efforts to raise the awareness of the wider public to the adverse impact of domestic violence; (c) ensure that women are made aware of the option of a restraining order provided in the new Law on Prevention of Domestic Violence and that the law is effectively implemented and enforced; and (d) ensure that domestic violence cases are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with sanctions commensurate to the severity of the crime.

Disappeared persons and accountability for past human rights violations

22. While acknowledging the State party's efforts, the Committee remains concerned about (a) the limited progress made in the search for disappeared persons; (b) the low rate of prosecutions for war crimes committed during the armed conflicts including by middle and high-ranking officials; (c) the narrow definitions of victim under the Law on Civilian Invalids of War and of injured parties under the Criminal Procedure Code, and the requirement that victims declare the disappeared person dead to obtain compensation; and (d) the lack of resources for the Office of War Crimes Prosecutor, the lack of a new War Crimes Prosecutor and alleged pressure exerted by the government on the office of the Prosecutor (arts. 2, 6, 7, 9 and 16).

23. The State party should: (a) continue to investigate all unresolved cases of disappeared persons in order to clarify their fate and whereabouts and ensure that victims and their relatives are informed of the outcome of the investigation; (b) ensure that all perpetrators of war crimes are prosecuted, including middle and high-ranking officials; (c) amend the Law on Civilian Invalids of War and Criminal Procedure Code to expand the definition of a victim and injured party and ensure that all victims of enforced disappearance have an effective right to full reparation in conformity with human rights standards; and (d) ensure the office of War Crimes prosecutor sufficient resources, appoint without delay a new War Crimes Prosecutor and ensure its independence to effectively discharge its mandate.

Death or disappearances from maternity wards

24. The Committee is concerned about the lack of legislation providing redress to parents of new-born children allegedly dead or disappeared in maternity wards, mostly between the 1970s and 1990s (arts. 2, 6 and 23).

25. The State party should take steps to ensure the rapid adoption of the law addressing alleged past deaths or disappearances of newborn children and providing parents individual redress.

Prohibition of torture and ill-treatment

26. The Committee is concerned that: (a) the definition of torture is still not in conformity with article 7 of the Covenant; (b) independent investigations undertaken by prosecutors wherever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed are allegedly not systematic; (c) the prosecution rate for torture and ill-treatment remains low and convicted perpetrators receive lenient penalties; and (d) victims' access to reparation is often hindered due to the high standard of proof of harm set by courts and the application of statutes of limitations to their claims (arts. 2 and 7).

27. The State party should take measure to: (a) amend its Criminal Code to include a definition of torture that is fully in line with article 7 of the Covenant and other

internationally established norms; (b) ensure that an independent body conducts effective investigations into all credible allegations of torture or ill-treatment; (c) amend its legislation to ensure that acts of torture or ill-treatment are punished by penalties commensurate with their grave nature and repeal the statute of limitations for crimes of torture and ill-treatment; and (d) remove all obstacles that hinder the exercise of the rights of victims to a judicial remedy.

Persons deprived of their liberty

28. While acknowledging the State party's efforts, the Committee is concerned about continuing overcrowding in prisons; poor detention conditions especially in police detention premises; and the insufficient health care services and meaningful activities for prisoners (arts. 7 and 10).

29. The State party should strengthen its efforts to reduce overcrowding, including continuing to develop the use of alternatives to detention, improve conditions of detention, including access to health care and activities, and increase its efforts to guarantee the right of detainees to be treated with dignity.

Trafficking in persons and forced labour

30. The Committee is concerned about (a) the presence of national and foreign criminal groups involved in trafficking, and exploitation by these groups of the large number of migrants and refugees in the State party. It also remains concerned about: (b) information that the National Anti-Trafficking Coordinator was not provided with a formal work plan or budget; and (c) the situation of children trafficked or exploited by family members or others who are forced to work, beg or engage in prostitution (arts. 7, 8, 13 and 24).

31. The State party should: (a) strengthen its measures to prevent and combat trafficking in persons, with a specific focus on migrants and refugees; (b) devote the necessary resources to investigating cases of trafficking in persons against all perpetrators; (c) provide the National Anti-Trafficking Coordinator with necessary resources and a formal work plan; (d) ensure that children are removed from families that are responsible for their exploitation, and fully recognized as victims rather than perpetrators of crimes; (e) ensure that the Labour Inspectorate and relevant coordinating bodies are provided with sufficient resources, training, and access to identify and prevent child labour; and (f) develop programs to rehabilitate victims, including children, of trafficking and forced labour.

Refugees and asylum seekers

32. While acknowledging the current challenges regarding refugees and appreciating the basic legal protections in place, the Committee is concerned about: (a) the existence of significant obstacles and delays in the process of registering, interviewing and providing identification for asylum-seekers and the low number of asylum claims granted; (b) reported cases of "push-backs" denying access to Serbian territory and asylum procedures; collective and violent expulsions; and misapplication of the "safe third country" principle, despite concerns regarding conditions in some of those countries; and (c) inadequate conditions in reception centers, including when unaccompanied minors are placed with adults, and the absence of care for individuals outside of reception centers. The Committee is also concerned about (d) inadequate access for unaccompanied minors to guardians that make decisions in the best interest of the child, and (e) inadequate procedures to determine their age (arts. 6, 7, 13 and 24).

33. The State party should strictly respect its national and international obligations by: (a) ensuring that access to formal procedures for asylum applications is available

at all border points, notably in international airports and transit zones and that all persons engaging directly with refugees or migrants are appropriately trained; (b) ensuring that all asylum applications are assessed promptly on an individual basis with full respect for the principle of non-refoulement and that decisions of denial can be challenged through suspensive proceedings; (c) refraining from collective expulsion of aliens and ensuring an objective assessment of the level of protection when expelling aliens to “safe third countries”; (d) ensuring adequate conditions both inside and outside reception centers for all refugees and asylum seekers; and (e) ensuring that appropriate protocols are in place for identifying the age of unaccompanied minors and that they receive appropriate guardianship and treatment commensurate with the principle of the best interests of the child.

Administration of justice

34. While acknowledging the National Judicial Reform Strategy and recent efforts to reduce the large backlog of cases, the Committee is concerned about: (a) the probation period of three years for new judges; (b) alleged cases of pressure and retribution exercised by politicians and the media on judges, prosecutors, the High Judicial Council and the State Prosecutorial Council; (c) the remaining backlog of court cases, and (d) the delays in the adoption of the Draft Law on free legal aid (art. 14).

35. The State party should: (a) take steps to entrench judicial independence including by ensuring the tenure of new judges and removing political interference from the work of the High Judicial Council and the State Prosecutorial Council; (b) take steps to ensure that all cases of political and media pressure against the judiciary and prosecutors are strictly investigated and sanctioned; (c) strengthen its efforts to ensure that trials are delivered in a reasonable time and reduce the backlog of court cases; and (d) strengthen its efforts to adopt the law on free legal aid.

Freedom of thought, conscience and religion

36. With reference to its previous concluding observations (CCPR/C/SRB/CO/2, para. 20), the Committee reiterates its concerns about the practical consequences of the legal differentiation between “traditional” and “non-traditional” religions (arts. 2, 18 and 27).

37. The State party should guarantee in practice that the principle of equal treatment of religions is respected in compliance with the requirements of article 18.

Freedom of expression

38. The Committee is concerned about (a) allegations of public officials publicly vilifying and intimidating media workers, and (b) the narrowing of space for debate and, in particular, the prosecution of journalists and civil society actors for expressing their opinions. While noting the privatization of media, the Committee remains concerned about (c) the lack of transparency of media ownership and the ongoing public influence exercised on some media. The Committee is also concerned about aspects of the application of the Public Assembly Act of 26 January 2016 that might hinder, and not facilitate, the right to freedom of assembly (arts. 19 and 21).

39. The State party should: (a) take immediate steps to provide effective protection to media workers from all forms of intimidation and ensure that all cases are duly investigated and perpetrators of those acts of intimidation prosecuted and appropriately sanctioned; (b) refrain from prosecuting journalists, human rights defenders and other civil society actors as a means of deterring or discouraging them from freely expressing their opinions; (c) take steps to ensure the transparency of media ownership and that privatized media are free and independent in conformity

with the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression; and (d) review the application of the Public Assembly Act of 26 January 2016 so as to ensure its compatibility with the Covenant

Participation in public affairs

40. The Committee remains concerned about (a) the low level of representation of minorities in government bodies and public administration, including the Roma, and regrets the lack of relevant statistics in this area. It is also concerned about (b) the allegations of attacks against political opposition figures and the serious reported cases of pressure exerted on voters (art. 25).

41. The State party should: (a) strengthen its efforts to increase representation of Roma and members of other national minorities in State bodies at both national and local levels, including if necessary, through appropriate temporary special measures; (b) ensure that an effective and independent election monitoring body is established and that allegations of attacks on politicians and intimidation of voters are promptly reported, investigated, and addressed.

D. Dissemination and follow-up

42. Through the Council for Monitoring the Implementation of Recommendations of the UN Mechanisms and otherwise, the State party should widely disseminate the Covenant, the third periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, as well as the public. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.

43. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 15 (Roma exclusion), 33, (refugees and asylum seekers) 39 (freedom of expression) above.

44. The Committee requests the State party to submit its next periodic report by 29 March 2021 and to include in that report specific and up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to consult widely with civil society and NGOs operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The Committee also invites the State party to agree, by 29 March 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's replies to this list would constitute its fourth periodic report due under article 40 of the Covenant.
