

STATEMENT

UPR Pre-session on Serbia

Geneva, 5. April 2023

Delivered by: Lawyer's Committee for Human Rights – YUCOM

1- Presentation of the Organisation

This statement is delivered on behalf of the Lawyers Committee for Human Rights – YUCOM, an expert NGO engaged in promoting and advocating for the rule of law and compliance with human rights and providing legal assistance to victims of human rights violations for more than 25 years and the Platform of Organizations for Cooperation with UN Human Rights Mechanisms member.

2- National consultations for the drafting of the national report

The Ministry of Human and Minority Rights and Social Dialogue led the drafting of the National Report. Consultations with all relevant actors at the national level did not follow the process of preparing the state UPR report.

3- Plan of the Statement

This statement addresses the following issues: (1) Access to justice (2) the Situation of Human Rights Defenders.

I. Access to justice

A. Follow-up to the previous review

During the Third UPR Cycle, Serbia received three recommendations regarding access to justice, six regarding the independence of the judiciary, and one referring to free legal aid to victims of gender-based violence.

B. New developments since the first review

Constitutional changes regarding judicial independence were completed in January 2022 and new judicial laws were adopted in February 2023. Serbian Parliament has no more direct competencies in the election of judges and prosecutors. However, the executive branch's legal space to influence the judiciary's functioning remained through budget dependence. The implementation of new laws will start with the election of lay members of judicial councils, which remained politically influenced. The Venice Commission recognizes that judicial reform success relies on strengthened legal culture and empowered integrity. In March 2023, several high prosecutors working on corruption cases acknowledged that they were subjected to pressure from their superior prosecutor, through relocation from the special department on organized crime to other departments. The citizens' protest started as a result of ineffective mechanisms to combat undue influences.¹ Hence we recommend

- **to strengthen the work of judicial councils in combating undue influence against judges and prosecutors.**

The 2018 Free Legal Aid Law negatively impacted vulnerable groups. The state system of FLA lay on attorneys paid by municipalities, municipalities' legal aid offices and CSOs. Local budgets do not predict sufficient funds for hiring attorneys. Only 25 percent of Serbian municipalities have free legal aid offices. FLA law has limited CSOs' ability to provide and organize specialized legal aid in cooperation with human rights attorneys, although Ministry of Justice statistic shows that legal assistance of CSOs is most productive due to the trust within marginalized groups.

¹ See: <https://www.reuters.com/world/europe/serbians-protest-removal-prosecutors-probing-corruption-2023-03-02/>

However, Ministry of Justice has never allocated funds specifically for assistance provided by CSOs. Hence, we recommend

- ***to Amend the Law on Free Legal Aid to improve the position of CSOs as providers of free legal aid to vulnerable groups and to ensure funds for their work and***
- ***to ensure that financial support for local free legal aid offices is provided by state, especially in the case of underdeveloped municipalities.***

Citizens face obstacles in timely access to justice, especially regarding the execution of judgments. Reasonable Time Act introduced time-consuming formal steps that delay and duplicate proceedings.² The Government fails to address systemic issues that undermine judicial efficiency and limit access to justice such as the non-implementation of repetitive ECtHR judgments,³ handling abuse of process rights and manifestly unfounded process.

Hence, we recommend

- ***to establish an efficient mechanism, also rallying independent bodies and CSOs, to monitor and coordinate the state bodies' implementation of ECtHR judgments in repetitive cases, such as Kačapor V. Serbia***
- ***to provide training for judges to recognize the abuse of process rights and manifestly unfounded process in accordance with international standards and prevent mass lawsuits clogging the judiciary.***

Position of Human Rights Defenders

A. Follow-up to the previous review

During the Third UPR Cycle, Serbia received nine recommendations regarding protecting Human Rights Defenders against attacks and pressures.

B. New developments since the first review

Serbia has not taken any measures to implement the recommendations regarding Human Rights Defenders. The continued attacks against human rights defenders, the misuse of anti-terrorism laws, and the lack of effective legal remedies for organizers and protesters are all causes for concern. The government needs to take concrete actions to ensure the protection of human rights defenders and the promotion of freedom of expression and assembly.

YUCOM has been documenting attacks against human rights defenders since 2020 and recorded over 200 incidents involving thousands of activists and citizens.⁴ The data reveals that freedom of expression and freedom of assembly are the most frequently targeted rights of human rights defenders. Additionally, state or state-affiliated actors are often the sources of these attacks.

² 79% of ECtHR applications against Serbia allege breaches of the right to a fair trial.

³ For example: 1. Kačapor and Others v. Serbia (2269/06, 3041/06, 3042/06, 3043/06, 3045/06, and 3046/06) is a leading ECtHR case in a group regarding, among other things, the non-execution of judgments ordering socially owned enterprises to pay their debts to their employees. Although more than 14 years have passed since the Kačapor judgment became final, Serbia has yet to adequately redress the workers and put in place effective measures to prevent similar breaches of the right to a trial within a reasonable time as the ones suffered by the claimants in the Kačapor group. Serbia has so far paid only a tiny portion of the total debt owed to date.

2. Zorica Jovanović v. Serbia (21794/08) is a leading ECtHR case in this group. In its judgment, the ECtHR obliged Serbia to create a mechanism providing individual redress to parents enabling them to learn the truth about the fate of their children who had gone missing in maternity wards. The Act on Establishing Facts on the Status of Newborns Suspected to Have Disappeared in Maternity Wards in the Republic of Serbia adopted in 2020, seven years after the Jovanović judgment, compensates the parents for the breach of their right to family life, but has failed to discover the truth in any of the 700 cases filed by the parents.

⁴ See: <https://en.yucom.org.rs/inmap/>

Serbia's anti-terrorism laws have been misused to target and curb the work of NGOs. The Ministry of Internal Affairs continues to ban peaceful assemblies citing an inability to ensure safety against right-wing counter-demonstrators. Organizers have no effective legal remedies as the judgments reviewed banning the protest are issued months after police banned the gathering. Peaceful protesters are subjected to inflammatory statements from the highest government officials justifying attacks and violence against them. There is no effective accountability mechanism against police brutality. The case of police brutality in the July 2020 protest wasn't prosecuted despite a complaint to the UN Special Rapporteur on Torture.⁵ Citizens who share assembly invitations online are processed as organizers of illegal gatherings. Therefore we recommend:

- to ensure effective and timely investigation and prosecution of attacks against Human Rights Defenders.
- that state or state-affiliated actors refrain from making inflammatory statements that can cause further attacks and violence against Human Rights Defenders.

⁵ See: <https://balkaninsight.com/2020/07/10/serbian-protests-police-brutality-mapped/>