

TOWARDS WHITE SCHENGEN LIST

Serbia Progress Report on Visa Liberalisation Process



FOND ZA OTVORENO DRUŠTVO - SRBIJA
FUND FOR AN OPEN SOCIETY - SERBIA



Group 484

September, 2009.

Group 484 realises the project „Towards White Schengen List“ with support of Fund for an Open Society – Serbia. The views expressed in this document do not necessarily reflect the views of Fund for an Open Society – Serbia.

CONTENT

Introduction	2
The Agreement on Visa Liberalisation between the Republic of Serbia and the EU and Readmission Agreement between the Republic of Serbia and the EU and the reintegration of returnees policy	5
The Agreement on Visa Liberalisation between the Republic of Serbia and the EU.....	5
Readmission Agreement between the Republic of Serbia and the EU and the reintegration of returnees policy.....	7
Review of the fulfilment of legal-technical criteria foreseen by the EU Plan for Visa Liberalisation with the Republic of Serbia (Road Map)	10
Block 1: Security of documents	10
Block 2: Integrated border management	14
Responsibilities of carriers.....	18
Asylum policy.....	19
Migration control.....	22
Block 3: Public order and security	27
Preventing and fighting organised crime, terrorism and corruption.....	27
Fight against Financial Criminal, Terrorism, and International Collaboration Regarding Criminal Affairs.....	40
Law enforcement cooperation.....	43
Data protection.....	46
Block 4: External relations and fundamental rights	47
Conclusion	53

INTRODUCTION

The issue of placing the Republic of Serbia on the positive EU visa regime has been preoccupying the public attention for a long time. The general impression is that both Serbia and EU representatives have started to believe that it is necessary to undertake all required steps so that Serbian citizens can travel to the Schengen countries without visas in the nearest future.

However, the road to the so called white Schengen list is a complex process where state organs have to show readiness to fulfil basic legal and technical criteria imposed by the Council of Europe Regulation No. 539 of 2001, and clearly defined by the European Union Plan for the Liberalisation of the Visa Regime with the Republic of Serbia (Road Map).

For the sake of strengthening the dialogue on qualification of the Republic of Serbia for inception on the positive Schengen List, on 19 July 2007 the Government of the Republic of Serbia established the Task Force for coordination of activities aimed at fulfilling the provisional criteria for visa regime liberalisation of the European Union for the Republic of Serbia. It consists of three representatives from the Ministry of Interior and one each from the Ministry of Foreign Affairs, Ministry of Justice, the Vice-President's Cabinet and the European Integration Office.

This Task Force has the following tasks: coordination of activities aimed at fulfilling the provisional criteria for visa regime liberalisation, preparation of the action plan for relevant authorities for the purpose of fulfilling these criteria, identification of priorities and the tasks arising from the provisionally set criteria and their more precise definitions, preparation of the relevant authorities for political dialogue on European Union visa liberalisation for the Republic of Serbia.¹

In its conclusions of January 28, 2008, the EU General Affairs and External Relations Council commended the intention of the European Commission to initiate visa dialogue with all the countries of the Western Balkans. While selecting a methodology for the process of visa regime liberalisation, special attention is given to: the European perspective of the countries of Western Balkans; political obligation undertaken by the EU in regards to short-term visas for all citizens of the region, as a part of the Thessaloniki Agenda; conclusion of the readmission agreements by all the countries of the region; visa liberalisation that the countries of Western Balkans have to ensure for all EU citizens.²

The standing dialogue on visa liberalisation was preceded by the enforcement of the Agreement on Visa Facilitation and Readmission Agreement between the European Union and Serbia, on January 1, 2008.³ Certain countries have not been encompassed by the agreement, since they are not Schengen or EU states: Denmark, Norway, Great Britain, Ireland, Iceland, Lichtenstein and Switzerland. The purpose of the visa liberalisation agreement was to enable certain categories of citizens the issuance of Schengen visas for a longer period, the issuance of multi-entry visas under the simplified, accelerated procedures and free of charge.⁴

The next step in the process of visa liberalisation between Serbia and the EU was the EU Plan for Visa Liberalisation with the Republic of Serbia (Road Map), announced on April 25, 2008. "Having in mind a wide range of issues important for visa liberalisation, as well as the need to create adequate and secure circumstances for visa-free travels, the purpose of this document is to identify all measures that should be adopted and implemented by the Western Balkan countries in the nearest future: security of documents, illegal migration, public order and security, as well as external relations related to movement of people. The

1 Report on Readiness, Visa Liberalisation with Serbia, October 2008

2 Republic of Serbia, Cabinet of the Government Vice President, One Year into the Serbian European Road to Better Life, May 2007-May 2008

3 Official Gazette of RS No. 103/07

4 More about these agreements in segment II of this document

speed of movement towards visa liberalisation will depend on the progress made by each of the countries in fulfilling the conditions.(underlined by the author)⁵

In a very short period, slightly over a year since it was presented, Serbia has met most of the requirements from the Road Map, which has been stated through reports of the European Commission on the assessment of WB countries progress in meeting the criteria for entering the white Schengen list.

The first round of reporting was initiated in September 2008, when the Western Balkan countries submitted their reports according to which the European Commission, in November, gave its first, preliminary assessment on the progress made in the Road Map implementation. This was followed by visits of expert missions, comprised of experts from the EU member states and representatives of the European Commissions. The expert missions visited Serbia in the period February-March 2009. The experts prepared individual reports which, apart from the part assessing the activities of competent institutions in Serbia with regard to meeting all 42 Road Map criteria, included recommendations for concrete measures that should be undertaken by the state organs in the upcoming period. The individual reports served as a basis for the creation of an updated report on the assessment of whether and to what extent the criteria have been met, presented in June 2009. With the submission of this report, the second phase of the dialogue about the visa liberalisation of Serbia was completed.

Based on the achieved results, as well as on the positions of the EU member states, an official proposal of the European Commission to the Council of Europe followed, related to placing FYRM, Montenegro and Serbia on the white Schengen list, through amendments to the existing annexes of the EU Council Regulation No. 539-01 (in further text, Regulation 539 of 2001)⁶. On July 15, 2009, the European Commission adopted the Proposal for amending Regulation 539 of 2001, which foresees placing Macedonia, Montenegro and Serbia on the white Schengen list.

The EC Proposal was based on the process of dialogues on visa liberalisation with the WB countries, and also on the very Regulation 539 of 2001 that stipulates periodical reviewing of Annex 1 and 2, proposing that FYRM, Montenegro and Serbia are transferred from Annex 1 to Annex 2 (from black to white list) and Kosovo (Security Council Resolution 1244) to Annex 1, under the title Entities and Territorial Authorities that are not Recognised as States by at least one Member State. It is clearly suggested that the status of Kosovo is not prejudged (Resolution 1244). The security concerns for such a decision of EC are also clearly presented in the part of the Memorandum related to KiM.

In the introductory part of the Proposal, the remaining open benchmarks are clearly stated:

- the improvement of cross-border/boundary surveillance, which includes in particular the exchange of information with EULEX/Kosovo police
- the effective implementation of the Law on Foreigners in force since April 2009 and the adoption of the Migration Management Strategy
- the effective implementation of the legal framework for the fight against organised crime and corruption, including through allocation of adequate financial and human resources
- the integrity and security of the procedures followed in issuing new biometric passports to persons residing in Kosovo

With the EC decision the first formal step towards visa liberalisation between the EU and Serbia was made, but it is necessary to continue with the reforms since another assessment will be conducted prior to the formal decision on placing Serbia on the white Schengen list.

5 Explanation of the EC Decision, taken from the document One Year into the Serbian European Road to Better Life, May 2007 – May 2008

6 Amending Regulation (EC) NO 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (hereinafter Amending Regulation (EC) NO 539/2001 from 2001)

At the beginning of October, the European Parliament should adopt its positions on the Proposal, for the EU Council to reach its final decision by the end of November. With the positive decision of the EU Council Serbian citizens would have the possibility to travel without visas to the EU countries from January 1, 2010.

THE AGREEMENT ON VISA LIBERALISATION BETWEEN THE REPUBLIC OF SERBIA AND THE EU AND READMISSION AGREEMENT BETWEEN THE REPUBLIC OF SERBIA AND THE EU AND THE REINTEGRATION OF RETURNEES POLICY

THE AGREEMENT ON VISA LIBERALISATION BETWEEN THE REPUBLIC OF SERBIA AND THE EU

The Agreement on Visa Liberalisation was signed on September 18, 2007 and the Law on the Verification of the Agreement was adopted at the National Assembly of the Republic of Serbia on November 7, 2007.⁷

The purpose of the Agreement is to facilitate the issuance of Schengen visas for certain categories of citizens through: fewer documents necessary for the issuance of visas, less time for processing applications, free processing of applications, as well as the issuance of multi-entry visas for a longer period of time under certain circumstances.

The categories of applicants include: business people, representatives of business organisations, drivers conducting international cargo and passenger transportation services in vehicles registered in the Republic of Serbia, members of train, refrigerator and locomotive crews, journalists, for visiting military and civil burial grounds, representatives of civil society organisations travelling for educational training, seminars or conferences, and representatives of the religious communities in the Republic of Serbia.

Almost a year after the Agreement came into force, we believe that it has not completely fulfilled its purpose. By simply reviewing web presentations of Schengen states' embassies, one can notice that apart from an invitation letter as a proof of the purpose of travel, western embassies still require many other documents, including the proof of employment, and thus youth between the age 25 and 30 still have difficulties in obtaining visas. Although Schengen states' embassies mainly respect the period of 10 days necessary for processing application, appointments for interviews should be scheduled almost 2 months in advance (Spain, Italy). However, improvement has been made in regards to free processing of applications and obtaining multi-entry visas.

In the analysis of the agreement implementation, positions of the embassy representatives of the Schengen countries should be taken into consideration. In their opinion, the system of visa facilitation has been introduced as the first step in the procedure of visa regime liberalisation and has completely met the expectations. The negative attitude present in our wider public has been caused by the lack of information on practical implementation of the Agreement, i.e. what exactly and practically it means for applicants, and consequently by high expectations due to the lack of related information.

As for the management of the implementation of the Agreement with the EU, the Republic of Serbia made a list of uniform documents/certificates to be issued for certain categories of applicants for the Schengen visas. Form of the certificate and the Info leaflet were adopted by the Conclusion of the Government of the Republic of Serbia 27-1255/2008 of 27 March 2008. In addition to the uniformity and specification of the kinds of documents/certificates, the issuing authorities are also specifically stated – Commercial Chamber of Serbia, national company or Association of the international road transport operators of the Republic of Serbia, Serbian Railways Company, Association of Journalists (UNS, NUNS, NDNV), municipal administrations, NGO and citizens' societies registrars, etc.⁸

7 Official Gazette of RS No. 103/07

8 Republic of Serbia, Cabinet of the Government Vice President, One Year into the Serbian European Road to Better Life, May 2007- May 2008

Interestingly enough, Group 484 has never been in the possession of this conclusion. As a rule, conclusions of the Serbian government are not published in the Official Gazette and are rarely made available to public. It remains unknown to what extent this Government conclusion has contributed to facilitated visa procedures.

The positive step forward was made during 2009 by structuring the procedure of issuing certificates necessary for issuing visas to business representatives within the competence of the Serbian Chamber of Commerce.

This Agreement is not applicable to Denmark, Norway, Island, Switzerland, Great Britain and Ireland.

A visa facilitation agreement between **Denmark** and Serbia came into force as of May 1, 2009.⁹ Most of the agreement's provisions, which are similar to the provisions in the visa facilitation agreement between the EU and Serbia, have already been implemented by Denmark. With the final ratification from Serbia now concluded, the remaining provisions will come into force.

As far as **Switzerland** is concerned, a visa facilitation agreement was signed on June 30, 2009, with clear positions of both signatory countries that the document will only be temporarily implemented and that Serbian citizens will be able to travel without visas as of January 1, 2010. As regards **Great Britain**, after the initial positive position towards the initiative to create a bilateral visa facilitation agreement, which was conditioned by the issuance of biometric passports for Serbian nationals, during 2009 no improvement in negotiations has been made. **Ireland** will follow Great Britain with regards to the issue of visa regime liberalisation for Serbian citizens.

Recommendations:

- *Urgently initiate and finalise negotiations on the conclusion of individual agreements on visa liberalisation with The United Kingdom and Ireland which are the countries that do not implement the Universal Agreement.*

READMISSION AGREEMENT BETWEEN THE REPUBLIC OF SERBIA AND THE EU AND THE REINTEGRATION OF RETURNEES POLICY

In the 1990s, during the armed conflicts that followed the disintegration of former Yugoslavia, 4 million people left their homes. Several hundreds of thousands of them received temporary protection in the countries of Western Europe due to discrimination and wars in their country of origin. After the democratic changes in October 2000, thousands of Serbian citizens continued to seek asylum in Western Europe. Since almost all applications for asylum have been rejected and temporary protection withdrawn, those people are now returning on grounds of obligations undertaken by our government by signing the readmission agreement.

Apart from several modest attempts, until the beginning of 2009 there were not systematic efforts made to identify and monitor the problems of returnees in both western countries and the countries of origin.

On June 5, 2009, the Government of the Republic of Serbia presented its report on the activities related to reception and integration of readmission returnees, which states that, according to the data of the Integration Office, there have been 774 claims submitted since the beginning of the year, out of which 96 people have been returned, escorted by MoI, mainly from Switzerland, Croatia and Denmark.

According to the Readmission Office data, in the period May through August, reception was required for 218 returnees, and Germany, Switzerland, Denmark, Austria, Sweden and Slovenia are mentioned as the countries of temporary stay.

Source: Office for Readmission - Report of the Commissariat for Refugees on the number of readmitted returnees in the period June-August 2009

Serbian nationals still seek asylum in the EU countries and other developed countries of the world. By the number of asylum claims, 15.200, Serbia was on the sixth place in the world in 2008.¹⁰ However, by going through individual UNHCR monthly reports it is obvious that 60% of Serbian nationals, asylum seekers are from the territory of Kosovo and Metohija. Regarding the first half of 2009, the January-June period, according to UNHCR monthly reviews, the total number of Serbian nationals seeking asylum is 8.859.¹¹

The statistics certainly influences somewhat reserved position of certain EU countries related to placing Serbia on the white Schengen list.

During 2008, the Republic of Serbia lacked a clearly defined state policy of reintegration of returnees under readmission agreements.

The Conclusion of the Government No. 05/27-5560/2008-1, adopted on December 10, 2008, foresees the plan of priority activities of competent organs for the period up to April 2009, for the purpose of fulfilling conditions for placing Serbia on the white Schengen list. The creation of the Strategy for Reintegration of Returnees under Readmission Agreements¹² and the relating Action Plan for the period 2009-2010¹³ is one of the activities.

The Ministry of Labour and Social Policy was responsible for the creation of the Strategy and Action Plan. The Strategy was adopted at the Government session on February 13, 2009 and the Action Plan on April 16, 2009. In this way, foundations were laid for thorough changes in the position of the state related to this issue.

10 UNHCR, Asylum Levels and Trends in Industrialized Countries – 2008, March 2009. Data for Serbia may include Montenegro data in the case of several countries where no separate statistics are available

11 2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, Country Data Sheets, 16 June 2009, Annexes (Excel tables) available for downloading on <http://www.unhcr.org/pages/statistics>

12 RS Official Gazette 15/09

13 RS Official Gazette 22/09

The Deputy Prime Minister responsible for social policy and affairs has taken over chairing of the interministerial body – Council for Integration of Returnees, formed in 2007, which used to be chaired by the Minister of labour and social policy and which had only one session in that period.

The responsibilities of this interministerial body are to examine and propose measures and activities for the realisation of reception, accommodation and integration of people returned to Serbia according to reemission agreements. Having in mind the previous experience related to inefficiency of government bodies formed at such high level, the Team for the Strategy Implementation has been formed as an expert and coordination body.

The Team comprises of members of all relevant and responsible ministries and other organs and organisations (representatives of the Ministry of Labour and Social Policy, Ministry of Interior, Ministry of Foreign Affairs, ministry of Human and Minority Rights, Ministry of Health, Ministry of Education, Ministry of State Administration and Local Self-government, Ministry of Environment and Spatial Planning, Ministry for Diaspora, EU Integration Office, Commissariat for Refugees). The Team cooperates with other organs, institutions and public services, both national and international. It monitors the problems of returnees, exchanges information, and proposes necessary solutions and measures. The Team can be positively assessed primarily due to its efficiency and the fact that the continuity of monitoring of all changes in this field is provided by monthly meetings of the Team members, and their regular reporting.¹⁴

The Action Plan provides detailed elaboration of the objectives defined by the Strategy and identifies institutions responsible for the implementation of all activities, deadlines, and funds for their implementation.

Apart from the Team for Strategy Implementation, the novelty is also a large number of activities under the competence of the Commissariat for Refugees. The Commissariat is responsible for coordination and organisation of reception and cooperation with reception communities in Serbia, operational implementation of planned activities on the field, working on successful reintegration of returnees, working on the prevention of human trafficking and the promotion of positive discrimination principles. The novelty is also the Intervention Reception Centre for Returnees, also under the competence of the Commissariat. The Centres are the result of the change in purpose of the existing collective centres and their adaptation, and there are four such Centres, in Obrenovac, Žitorođa, Zaječar and Šabac.¹⁵

The efficiency of the Readmission Office has also improved. The Office was established in 2006 at Nikola Tesla Airport in Belgrade. The Office is now working two shifts, has more employees, and will be technically improved. Since June this year, the employees from the Commissariat and the Ministry of Human and Minority Rights have also participated in the work of the Office.

The lack of coordination and information exchange between western countries and Serbia is a main obstacle in the registration of returnees and understanding their needs in order to offer adequate assistance

At the same time, as an additional consequence of poor cooperation is that very returnees have been uninformed. Certain information, important for the realisation of their rights was available to them only at the moment they returned to the territory of the Republic of Serbia. Very often returnees lack the information on the importance of certain documents. They leave destination countries without diplomas on gained education, birth certificates, proofs of the years of service, etc, and such a situation deprives them from certain rights in the territory of the Republic of Serbia.

The creation of a new, better information handbook and its distribution through diplomatic-consular offices of RS can primarily inform people waiting for return under readmission agreements. As an additional measure, this handbook could be distributed through international NGO networks (i.e. ECRE). Apart

14 Source : Rade Dubajić, coordinator of the Team for returnees reintegration, interview, June 19 2009

15 Source: Svetlana Jovanović, member of the Team for Strategy Implementation, Commissariat for Refugees, interview June 23 2009

from the information handbook, another handbook has been created to help state organs in working with readmission returnees.¹⁶

The identification of the importance of solving problems of returnees has resulted in greater engagement of competent RS organs since the beginning of 2009, and a series of measures have been taken to comprehensively regulate the activities aimed at solving multiple problems of returnees. These efforts of the state organs have been recognised by the European Commission since parts of the report related to this issue are positively assessed.

The readmission agreements that Serbia has signed, apart from the return of citizens, also include the return of third country citizens and stateless persons who have transited Serbia on their way to western countries. Prevention related to reception of these individuals can be provided by efficient control of external borders, as well as by clearly defined visa policy of the state. Since 2003-2008, 1,711 requests for reception of third country nationals have been filed from western countries. Group 484 has not managed to obtain data on how many have been returned, what nationality, how many potential asylum seekers and how many have entered the procedure; how many have been returned to the countries they transited before coming to Serbia and whether any individuals have been returned to the country of origin without having their asylum requests examined.

Recommendations:

- *It is necessary to ensure budget funds for full implementation of the Strategy for Reintegration of Returnees under Readmission Agreements through an adequate action plan created by competent state organs*
- *Based on the national strategy and action plans, relevant state organs should fully implement reintegration programmes (their access to labour market, other social and economic rights, documents, etc.) The process of reintegration of returnees is an important link in the system of migration control and management, because it reduces the cases of the so-called secondary migration – moving back to the country of reception*
- *The existence of available and precise data on the number and structure of returnees would greatly contribute to more successful fulfilment of their needs*
- *In cooperation with the European Commission, it is necessary to advocate for the implementation of the declaratory statement on the possible financing of projects for reintegration of returnees within the uniform readmission agreement between Serbia and the EU.*
- *Improve cooperation of competent state organs (National Employment Service) with relevant organs of the EU member states in regards to exchange of information and creating projects of re-training, professional training and additional education in the country of reception, all according to the needs of labour market in Serbia.*
- *The reintegration process of returnees should start as early as possible in the country of reception, and the civil society in Serbia can play an important role in the cooperation with nongovernmental organisations in the EU member states, in terms of creating relevant projects that would be supported by the Return Fund of the European Commission. Only EU countries can apply for these funds.*
- *In accordance with provisions of the Law on Asylum of the Republic of Serbia, third country nationals should have unobstructed access to the system of refugee protection.*

16 Source: Svetlana Jovanović, member of the Team for Strategy Implementation, Commissariat for Refugees, interview June 23 2009

REVIEW OF THE FULFILMENT OF LEGAL-TECHNICAL CRITERIA FORESEEN BY THE EU PLAN FOR VISA LIBERALISATION WITH THE REPUBLIC OF SERBIA (ROAD MAP)

BLOCK 1: SECURITY OF DOCUMENTS

Serbia should:

- *Issue machine readable biometric travel documents in compliance with standards of the International Civil Aviation Organisation (ICAO) and EC and gradual introduction of biometric data, including photo and fingerprints;*
- *Adopt relevant administrative measures for ensuring the integrity and security of personalisation process and distribution of travel documents;*
- *Establish a training programme and adopt ethical codes on anti-corruption targeting officials of any police authority that deal with visas and passports;*
- *Report to Interpol / LASP Database on lost and stolen passports;*
- *Ensure a high level of security of breeder documents and identification cards and define strict procedures related to their issuance*

The National Assembly of the Republic of Serbia adopted the *Law on Identification Cards*¹⁷ in 2006. The implementation of the law that included the issuance of new electronic cards started in April 14, 2008.

“By introducing new biometric identification cards, a dynamic document was created which enables certain data contained in the document to be changed because the prescribed identification card form contains area for contact microcontroller (chip) and area for machine readable zone for the needs of automated data reading from the identification card. At the same time, it contains security elements owing to which the possibility to counterfeit the identification card as document is drastically minimized. The mechanisms for control of identification card issuance were also implemented, which are contained in the form of program protection of the application for issuance of identification card. In this way the operating process for issuance of this document is fully automated.”¹⁸

The information published on the official website of the Ministry of Interior, responsible for issuing biometric IDs, says that for the period from April 2008 through June 1, 2009, 675,000 biometric IDs were issued.¹⁹

In regards to travel documents, the National Assembly of the Republic of Serbia adopted the *Law on Travel Documents*²⁰, which entered into force on October 9, 2007. For the first time in Serbian history, the Law has introduced a biometric travel document for the purpose of protection and security of travel documents. The Law encompasses standards imposed by the EU regulations and standards of the International Civil Aviation Organisation (ICAO), which stipulate that by 2010 all countries must introduce travel documents with integrated photograph and mechanically readable zone.

The creation of biometric passports for applications submitted in the territory of the Republic of Serbia started on July 7, 2008.

17 Official Gazette of RS No. 62/06

18 Report on Readiness, Visa Liberalisation with Serbia, October 2008, pages 8 and 9

19 <http://www.mup.sr.gov> Ministry of Interior news bulletin from June 2 2009

20 Official Gazette of RS No. 90/07

Originally, the creation of biometric passports for the applications submitted out of the territory of Serbia, at diplomatic-consular offices throughout the world, should have started in October 2008, when technical conditions for data transferring were met. In this way, the collected data will flow into the Ministry of Foreign Affairs, from where it will, via protected connection, reach the Personalisation Centre in the Ministry of the Interior for production.²¹

This procedure was however initiated at the end of 2008, and only at 4 out of 66 diplomatic-consular offices of RS. According to the latest data for this year, including August, 25 diplomatic-consular offices have been equipped with devices for data activation of biometric passports.²² The preparations are being finalised in Pretoria and Prague, and the offices in Canada and Australia are to be finished by the end of the year. The reason all the offices have not been equipped so far is the lack of budget funds for this purpose. The order in which the offices have been equipped is related to the number of previously issued passports. According to the MoI data, until August 28, 2009, 28,884 biometric passports were issued, and at some diplomatic-consular offices appointments are fully scheduled for the following couple of months.²³

The implementation of the Law on ID Cards and the Law on Travel Documents has produced initial confusion in police offices responsible for receiving requests for issuance of new ID cards and passports. Due to large crowds, the offices extended their working hours and started scheduling appointments for submitting documents for new ID cards and passports. The need for improving capacities of the entire system for issuing biometric ID cards and passports has been even more highlighted since November 1, 2008 when relevant organs stopped issuing old, the so-called blue passports. Up to that date, Serbian citizens could choose between old and new, biometric ones. The original expiry date of old passports, stipulated by the Law on Travel Documents, was December 31, 2008 and it was prolonged until December 31 2009 upon the proposal of MoI representatives²⁴. Old ID cards cease to be valid five years after the enforcement of the Law on ID Cards, in July 2011.

According to the MoI data, during the period of 14 months a total of million biometric passports have been issued.²⁵ The capacities have been increased so that around 6,000 passports are issued daily in Serbia. At the same time, it is assessed that by the end of 2009, 1.4 million biometric passports will be issued to Serbian citizens.²⁶

During this year as well, Group 484 suggested to relevant organs that the foreseen deadline for the issuance of new passports is too short, since the experiences of other EU countries prove that between 5 and 7 years are necessary for the process to be completed. The number of equipped diplomatic-consular offices also points to the insufficient time for changing passports.

The proposed amendments to the Regulation 539-2001 clearly state that if Serbia enters the white Schengen list on January 1, 2010 only the citizens with biometric passports can visit some of the Schengen countries without visas. MoI estimates that around 15% of Serbian population will have biometric passports by January 1, 2010, which corresponds with the number of issued passports.²⁷

Until that moment and provided that the existing efficiency of relevant organs when issuing passports is concerned will not decrease, there is still one question that remains open. Until Serbia is placed on the white

21 Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 9

22 The following diplomatic-consular offices have been equipped; Vienna, Salzburg, Berlin, Dusseldorf, Munich, Stuttgart, Frankfurt, Hamburg, Paris, Strasbourg, Bern, Zurich, Rome, Trieste, Milan, London, Stockholm, Copenhagen, Brussels, Washington, New York, Chicago, Moscow and the Hague.

23 Source: Miroslav Prcović, Deputy Director of the Directorate for Consular Affairs, Ministry of Foreign Affairs

24 Law on Amendments to the Law on Travel Documents RS Official Gazette 116-08

25 RTS, September 12 2009, Deputy Prime Minister and Minister of Interior Ivica Dačić presents the one millionth issue of the biometric passport

26 It should be noted that this number contains individuals receiving the passport for the first time, which indicates that the number of our citizens living abroad and still not in the position to replace their passports remains unknown.

27 Source: Politika daily website, www.politika.rs, July 16 2009

Schengen list, the same rigid rules of embassies, members of the Schengen circle, are implemented for issuing visas. One of the general conditions for obtaining visas is related to the expiry date of the applicant's passport. Having in mind the existing legal regulations on travel documents in Serbia, certain Serbian citizens might be left without visas if they own the so-called blue passports. For issuing visas, the passports have to be valid for at least three months from the date of the last day of the requested visa. It actually means that although the old passports are valid until December 31, 2009, individuals who have blue passports will not be able to get visas if their travel ends on September 30, 2009 or later.²⁸

In regards to *administrative measures for ensuring integrity and security of personalisation process and distribution of travel documents*, "personalisation of travel documents is centralised and falls under the competence of the Information Technology Administration of the Ministry of the Interior (MoI). It is a part of the system which includes acceptance of applications for document issuance, data processing and personalisation. When citizens submit an application for the issuance of new passport, the processed data, through telecommunication and information system of the Ministry of the Interior, reaches the data preparation system. Via protected connection, the prepared encrypted data is transmitted to personalisation, what implies laser engraving of alphanumeric data and inscription of data on the chip. After that, visual and electronic control of passports produced is conducted. Information on produced passports is returned via the same tunnel into MoI. Through a courier service of authorised MoI officers, personalised passports are forwarded to the point of issuance. The Ministry of Foreign Affairs of the Republic of Serbia will not perform personalisation of travel documents, but only data acquisition for personalisation purposes in the premises of the Ministry for diplomatic and official passports and in diplomatic consular missions of the Republic of Serbia abroad for ordinary passports. Delivery of personalised diplomatic and official travel documents from the Ministry of the Interior to the Ministry of Foreign Affairs will be made through official couriers, with all necessary security measures. Delivery of personalised travel documents to diplomatic consular missions of the Republic of Serbia abroad will be made through DHL²⁹.

The expert report related to the block 1, travel documents and ID cards, emphasises a high level of reliability of the documents, in accordance with the ICAO and EU standards. The process related to personalisation and distribution of biometric documents is also assessed positively.³⁰

In regards to cooperation with INTERPOL, the Ministry of Interior reports regularly on stolen and lost documents.³¹ However, the problem is that reports to Interpol are submitted mainly in writing because necessary conditions for electronic reporting have not been met yet. It is necessary for MoI of Serbia to have free access to Interpol databases. Furthermore, it is necessary to initiate direct and better data exchange through an early warning system among the countries of South Eastern Europe.³² It should be emphasised that, according to the EC Report, MoI is working on the project of establishing the national electronic database on lost and stolen documents.³³

In regards to *ensuring a high level of security of breeder documents and identification cards*, the Ministry of Interior applies the procedure in compliance with the European and ICAO standards. By passing the Law on Identification Card³⁴ and the Rulebook on Identification Card³⁵, the recommendations of the Council of Europe for implementation of the project for integrated automated system for identity documents personalisation are incorporated, and in this way the need to follow the world's technology trends in the field has been satisfied.³⁶

Security of documents necessary for obtaining biometric passports (registers - citizenship and birth

28 Web site of the Spanish Embassy in Belgrade www.maec.es/Subwebs/Embajadas/belgrado/se/home

29 Report on Readiness, Visa Liberalisation with Serbia, October 2008, pages 14-15

30 Expert Report on document security, February 16-20 2009, p. 5

31 Dražen Maravić, Head of Bureau for International Cooperation, MoI of Serbia, interview, 13/10/2008

32 Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 18

33 Expert Report on document security, February 16-20 2009, p. 5

34 Official Gazette of RS, 62/06

35 Official Gazette of RS, 11/07

36 Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 22

certificates) has been most poorly assessed in the expert report of EC. This is particularly related to registers from the territory of AP KiM. It has been assessed that the storage space is overcrowded and inadequate. That leads to the conclusion that the access to registry books is hindered and that the documents cannot be properly secured. There is also a problem with the process of issuing birth certificates related to access to blank forms, the way the forms are filled out, language and spelling mistakes in certificates, etc. The conclusion is that the system cannot guarantee high level of safety of these documents in the entire territory since the situation is different depending on the region and town.

The report also provides a medium-term timeframe within which the legal framework on registers can be implemented, which would guarantee the safety and reliability of the documents.³⁷

On March 18, this year, the Serbian Assembly adopted the Law on Registry Books³⁸, prepared by the Ministry of State Administration and Local Self-government. Due to the Law, the national register will be established, enabling citizens to obtain their certificates faster, regardless of the place registry books are kept. Furthermore, the certificate will not have expiry dates.

The issuance of certificates “without expiry date” will start from January 2010, since it is expected that by then they will be on new forms, prepared by the Institute for Manufacturing Banknotes and Coins. All the data will be protected from malversations, guaranteed by the Constitution, and the collected data can be used only for the intended purpose. The forms used so far have not had adequate protection.

The law foresees that all the organs responsible for keeping registry books are obliged to provide electronic data evidence within the five-year period, which will enable the creation of the national register of citizens.

Recommendations:

- *Initiate and directly exchange data through the early warning system, among ministries of interior of the countries of South Eastern Europe, which implies further technical modernisation of relevant operational units of Serbian MoI that report to INTERPOL (project of establishing national electronic database on lost and stolen documents)*
- *Fully implement laws and by-laws aimed at the protection of security of documents submitted for obtaining other identification documents*
- *It is necessary to procure related equipment (reader) for biometric passports in the upcoming period, for all border crossings in the Republic of Serbia*
- *Registers from the territory of KiM should be treated as a priority in the reform of registers. Having in mind the fact that the Law on Registry Books will start with implementation no sooner than on December 27, 2009, the Ministry of State Administration and Local Self-government should redirect available funds for improving conditions of registers from KiM (storage space for registry books, working conditions of employees, etc.)*

37 Expert Report on document security, February 16-20 2009, p. 16

38 RS Official Gazette 20/09

BLOCK 2: INTEGRATED BORDER MANAGEMENT

Serbia should:

- *Adopt and implement legislation that will regulate the movement of people at the external borders, as well as the law on organisation of border organs and their tasks in compliance with the National Strategy on Integrated Border Control in the Republic of Serbia, adopted in January 2006;*
- *Undertake necessary budgetary and other administrative measures for ensuring efficient infrastructure, IT technology equipment at external borders;*
- *Establish training programmes and adopt codes of ethics for combating corruption, aimed at members of border patrol, custom and other officers included in the border control;*
- *Conclude agreement with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union", EU – FRONTEX.*

The expert mission of EC that visited Serbia in March 2009, created a report on the implemented reforms in this field. The report has positive connotation, even in its parts about weaknesses of the IBM system³⁹, justified with the statement that time is needed for the implementation of reforms in this field.

For the purpose of further harmonisation of Serbian legal framework with the EU standards related to the field of integrated border management, after the Integrated Border Management Strategy⁴⁰ and the Action Plan had been adopted, enactment of other relevant regulations was initiated.

The improvement in this field was also made by the adoption of the Law on Border Protection, on October 23, 2008⁴¹, enforced on April 1, 2009 and completely harmonised with the European standards. The adoption of the Law is important, but in order to reach full effects of this law, all the necessary by-laws should be adopted by November 2009, and all additional conditions for its full implementation should be provided.

Having in mind that the essence of integrated border management is the establishment of the most optimum proportion between the flow of people and goods and security challenges, and that the optimum results can be achieved only with the coordinated work of all services on the border, the Agreement that formalise this cooperation was signed in February 2009. The Agreement on Cooperation in the Field of Integrated Border Management⁴² was signed by ministers of the following ministries – Ministry of Agriculture, Forestry and Water Management, Ministry of Interior and Ministry of Infrastructure, and thus one of the main conditions for further implementation of the Strategy was fulfilled.

The purpose of this Agreement is to harmonise and coordinate all the services on the borders, for faster flow of people and goods and with maximum respect of the security principles. Direct exchange of obtained information is also important, which leads to joint actions and seizure of goods, prevention of human trafficking, and arms and drug smuggling. Besides, it cuts expenses of the state through the reduction of number of state employees from all services present on the borders, use of equipment that need not to be purchased for each service but is jointly used by all the services.

The organisational and personnel structure of the Border Police Directorate is defined in the document on the job classification of the Ministry of Interior. The document gives a comprehensive description of all tasks and responsibilities of the Border Police. The Border Police belongs to the Border Police Directorate, which with its annual plans defines achievements, objectives and activities, priority actions, ways of their

39 Integrated Border Management (hereinafter IBM)

40 RS Official Gazette 11/06

41 RS Official Gazette 97/08

42 See www.minpolj.sr.gov.yu

realisation and the activities of the Border Police. The defined methods of work are good.⁴³

Regarding the EC report suggestions related to personnel solutions, it is necessary to point to the lack of required capacities of the Border Police. It is necessary to add more personnel (83% of the required capacities have been employed) and provide better mobility of personnel and equipment in accordance with the existing needs. According to the report, MoI has already pointed to that, but there have not been funds in the state budget for that purpose. Having in mind that the capacities should not contain only the quantitative but also the qualitative element, it is necessary to focus on their psychological stability, a certain level of knowledge on legal issues, liability and professionalism. The Border Police comprises of regular police officers from the Serbian MoI. The education of members of the Police is the same for all. However, the tasks and activities of the Border Police members require special types of trainings. There is a new education system introduced in the school for police officers in Sremska Kamenica, but there is no a special course or the border police. It would be useful for members of the Border Police to be encouraged to learn other European languages, and not only English.⁴⁴

In the upcoming period special attention should be given to clearly established coordination of duties and competences among all the state organs included in the IBM system. Consequently, the EC Mission has recommended the enhancement of the cooperation between the Border Police and the Customs, i.e. work in pairs, which would establish a more efficient system of detection of illegal migratory movements and trade.⁴⁵

The statistical data from 2007 and 2008 point to the increased number of people crossing Serbian border on some of its 82 border crossings, and it is sufficient indicator of the importance of border crossing modernisation. In 2008, the total number of border crossings consisted of 48.7 million passengers (42.9/2007), out of which 16.5 million are Serbian nationals. According to the MoI statistics, most of them are from neighbouring countries. The largest number of crossings were recorded in Batrovci, border with Croatia (6.9 million), followed by Horgoš with Hungary (5.6), Preševo with FYRM (3.8) and Gradina, with Bulgaria (3.8). It is important to say that these crossings exactly were the most used in the past for illegal entering in the country.⁴⁶

Therefore, it is very important that the modernisation has started from these four border crossings. Another 9 crossings are to be modernised, with the funds secured by the EU.). The technical equipment for conducting border controls has not been harmonised with all the border crossings, but the improvement is that all the border crossings have permanent connection with the national database (through optic cables). It is a considerable step forward compared to last year where this kind of connection at some crossings did not exist or did not work properly.

The Ministry of Interior has plans to install instruments for detection of suspicious travel documents during the first verification at all border crossings, as well as more sophisticated equipment that will be used for the second verification of travel documents.

As regards technical equipment, the early warning system has been praised, but its further improvement and upgrading have been suggested. At the same time, detailed suggestions have been given as to what kind of equipment is necessary for the improvement of efficiency of the border police and the IBM system, even with the alternative, cheaper but equally effective technical solutions. The introduction of cameras on all border crossings would facilitate court proceedings related to giving bribe to customs officers.⁴⁷

There is no direct link between the border crossings and the INTERPOL database, but the data the INTERPOL submits to the Ministry of Interior are directly entered into a common informational system,

43 Expert Report relating to block 2- IBM, March 2009, page 8

44 Expert Report relating to block 2- IBM, March 2009, page 8

45 Expert Report relating to block 2- IBM, March 2009, page 8

46 Expert Report relating to block 2- IBM, March 2009, page 9

47 Expert Report relating to block 2- IBM, March 2009, page 9

directly available to around 65% of border police stations.⁴⁸

Aimed at increased efficiency and ability of the state administration responsible for implementation of the system of integrated border control in compliance with the European standards, a Twinning project on implementation of the Integrated Border Control Strategy in the Republic of Serbia is implemented.

As regards electronic readers of biometric travel documents, so far they have been set at Belgrade Airport and Horgoš and Batrovci border crossings. According to MoI, another 10 should have been installed by May 2009. Finger print readers will also be installed at the crossings. The border police already possesses 660 passport readers (including 330 mobile ones), and 460 finger print readers are to be installed.⁴⁹

The EC report does not treat the administrative line as other border lines. In this way, the main principle has been fulfilled that the system of integrated border control is established only on state borders. A part of joint report of EC for Serbia mentions the administrative line and calls for cooperation with EULEX.⁵⁰

Agreement between the Ministry of Interior of Serbia and the EULEX Mission was signed on September 11, 2009

The Agreement is supposed to secure a much more stringent control of the administrative line between Kosovo and central Serbia, and in this way provide for a considerably stronger fight against organised crime.

The protocol is related to cooperation of EULEX and Serbian police in fighting organised crime, border and administrative line control. Priština has objected to the agreement, saying that the EULEX is not entitled to sign such agreements on behalf of Kosovo.

Deputy Prime Minister and Interior Minister Ivica Dačić explained that it is the police cooperation protocol “without a single word related to politics”.

“The protocol will define cooperation in fighting all forms of crime, such as trafficking of persons, arms and narcotics, organised crime and all other illegal activities across borders or the administrative line”, said Dačić.

The Interior Minister said that Serbian Ministry of Interior cooperates with EULEX on the basis of the UN Security Council Resolution 1244, UN Secretary General Ban Ki-Moon’s report and the six-point plan.

Source: B92, September 11, 2009.

During recent years, cooperation among the Western Balkan states has considerably improved. On March 6, 2009, ministers from Serbia, Albania, BiH, FYRM, and Montenegro signed the Joint Declaration on Border Security Cooperation in South Eastern Europe, within the DCAF initiative.⁵¹

Despite the fact that the part of bilateral agreements covering cooperation in this field has yet been adopted, the aspects of practical cooperation with these countries are satisfactory. Apart from monthly meetings held at the local and regional level, dealing with the forms of practical cooperation, they have daily contacts via direct telephone lines or the radio system.

The international cooperation established in this way leads to exchange of information and better prevention and fight against smuggling and illegal cross-border trade.

48 Expert Report relating to block 2- IBM, March 2009, page 10

49 Expert Report relating to block 2- IBM, March 2009, page 10

50 EC report on the progress of Western Balkans countries in fulfilling the conditions stipulated by the road map, May 18, 2009

51 DCAF- The Geneva Centre for the Democratic Control of Armed Forces,

In the previous period, Serbia has set the legal framework for cooperation with the neighbouring countries - within DCAF, upon establishment of the legal framework with the Convention on Police Cooperation in SEE – related to mixed police squads along joint borders (the agreements have been signed with BiH, Montenegro, and the signing is soon expected with Macedonia). The office of the joint border police has been established at the Romanian-Serbian border in Đerdap, and it will be fully functional by the end of this summer. Since 2007 there has been such cooperation with Bulgarian Border Police on board of trains.

The EU standards in this field, with regards to bilateral and multilateral agreements, impose their practical and pragmatic nature as the main criteria, for the purpose of more efficient fight against illegal migration and cross-border crime. Further development of the system should be based on plans related not only to the level of central authorities of one country but also to the regional level. Serbia has signed the agreement on strategic cooperation of the Republic of Serbia and the European Police Office (EUROPOL)⁵², as well as the Working Agreement for the Establishment of Operational Cooperation with FRONTEX, and Memorandums of Understanding with international organisations such as DCAF, IOM, MARRI and OSCE. The Declaration signed with UNDOC is also important, relating the cooperation in the field of fight against drugs and organised crime.

Cooperation with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) started through participation of members of the Ministry of Interior in international seminars and trainings organised by FRONTEX. The beginning of formal cooperation started after the statement of intentions for cooperation initiation had been submitted, in March 2008.

The working arrangement on establishing operational cooperation between the Ministry of Interior and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union was signed on February 17, 2009.

Recommendations:

- *It is necessary to continue with the implementation of the Integrated Border Control Strategy through further strengthening of the cooperation among services included in the process of integrated border control. With the successful implementation of the Agreement on Cooperation in the Field of Integrated Border Control, the EC proposal would be adopted related to interagency cooperation, which would impose more efficient system of detection of illegal migratory movements and illegal trade of goods. Therefore, it is also necessary to clearly assign competences of services present on borders.*
- *It is necessary to continue with technical modernisation of border crossings and training of border officers. As regards the training, it is necessary to introduce special (specialised) trainings or members of the border police, in compliance with the EU standards in this field. The Government of the Republic of Serbia should focus special attention to budget allocations for these purposes, which means that the process of integrated border control uses both national and EU funds.*
- *Intensify the regional cooperation in this field, including the conclusion of agreements and relevant protocols with neighbouring countries which are presently in the draft versions.*
- *At all levels, it is necessary to implement the Ethics Code and anticorruption measures, as well as prevention measures such as unannounced visits to border services, rotation of officers on borders, etc.*
- *It is necessary to initiate the implementation of the agreement with the EULEX mission as soon as possible, which would contribute to successful fight against all types of crime.*

RESPONSIBILITIES OF CARRIERS

- *Serbia should adopt and implement the legislation on responsibilities of carriers, which defines certain sanctions.*

The Law on Aliens of the Republic of Serbia stipulates that “the carrier may bring a foreigner to the border crossing only if such foreigner holds valid travel document (and visa, if required). If a foreigner has no valid travel document (or the visa required), the carrier must, without delay and at its own cost, drive the foreigner away. If such transport can not be immediately effected the carrier will bear the costs of the foreigner’s stay and his forceful escorting. The same applies to the carrier which brings a foreigner to the international transit zone of an airport, if another carrier refused to transport the foreigner into the country of destination or if entrance to the country of destination is prohibited to such foreigner. The organiser of a tourist or business trip must compensate the costs of stay and forceful escorting of the foreigner (in the manner described above) if such costs can not be collected from the foreigner himself, and if his illegal stay in Serbia resulted from the fault of the trip organiser.

As regards the sanctions, Article 81 of the above mentioned Draft Law prescribes the pecuniary penalty in the amount of CSD 100,000 to 500,000 for legal entity and/or entrepreneur which brings or refuses to drive away a foreigner in the territory of Serbia, contrary to the provisions of Article 22 of the Draft Law on Foreigners. The same article prescribes the penalty in the same amount for the legal entity and/or entrepreneur – tourist or business trip organiser, due to whom an illegal stay of a foreigner in the territory of Serbia occurred. A penalty for the responsible person in the legal entity in the amount of CSD 10,000 to 50,000 is prescribed for above mentioned violations

It is in these provisions precisely that a large number of NGOs in the EU have recognised the need for special attention towards potential asylum seekers who often do not have necessary documents, and the carriers are not willing to transfer them out of fear of being sanctioned.

“Carrier sanctions had been in place in some countries since the mid-1980s, when common EU rules were introduced with the Schengen framework (Schengen Convention, article 26) The Schengen Convention explicitly stated that the imposition of penalties should be in line with obligations under the 1951 Refugee Convention, but countries interpreted it differently. For example France, Italy and The Netherlands waived the fines if a person was admitted to their asylum procedure, while Denmark, Germany and the United Kingdom (UK) fined carriers regardless of protection concerns. In 2001 the EU brought in legislation on carriers’ liability, as a supplement to the relevant provisions of the Schengen Convention (Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. OJ L 187, 10.7.2001, p. 45.), specifically removing the obligation to fine in cases where the person seeks international protection. ECRE regrets that it does not foresee special safeguards to:

- ensure protection from refoulement of persons for whom carriers are unable to effect return and for whom carriers are therefore obliged to arrange onward transportation;
- ensure that asylum seekers who have been refused permission to travel on a carrier, are forced to return or taken to a country where they might face treatment contrary to the 1951 Refugee Convention or the ECHR, are given the possibility to appeal;
- require Member States to exempt carriers from liability if the third country national is admitted to an asylum procedure or is subsequently granted refugee status. At present, all EU countries have introduced provisions in their legislation to conform to the EU regime of carriers’ liability. However, given the discretion left to Member States by the Directive, there are substantial differences amongst them, with some States providing for exemptions only for those who are subsequently recognised as refugees and others providing for exemptions also when the third country national is granted a subsidiary form of protection. Often the relevant legislation is not applied consistently.’⁵³

53 Defending Refugees’ Access to Protection in Europe, European Council on Refugees and Exiles (ECRE) pg. 28-29

Recommendation:

- *Having in mind the fact that the Republic of Serbia is at the very beginning of the implementation of the new relevant legislation on movement and stay of aliens, as well as on asylum, it is of utmost importance that the provisions of Article 22 of the Law on Aliens are interpreted in line with the Convention Relating to the Status of Refugees of 1951*

ASYLUM POLICY

Serbia should:

- *adopt and implement legislation in the field of asylum in compliance with international standards (Geneva Convention of 1961 with the New York Protocol) and legal framework and standards of the EU;*
- *ensure relevant infrastructure and empower responsible bodies, particularly in the field of asylum procedures and accepting asylum expenses.*

With a view to harmonising legal regulations with the regulations of the European Union, the Law on Asylum⁵⁴ was adopted in November 2007 and entered into force on April 1, 2008.

The Law on Asylum is harmonised with the UN Convention on Status of Refugees from 1951, the Protocol on the Status of Refugees from 1967, the Universal Declaration of Human Rights from 1948, the European Convention on Protection of the Human Rights and Fundamental Freedoms from 1950, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment from 1984 and the UN Convention on the Rights of the Child from 1989.

Group 484 has fully supported the adoption of this law, which has set benchmarks for the further development of the asylum policy of the Republic of Serbia, where the first instance, the Asylum Office, as the competent organisational unit of the Ministry of the Interior, takes decisions on the submitted requests for asylum and on the type of protection granted.

It is possible to lodge a complaint against the decisions taken by the Office to the Asylum Commission, which is established under the Law as an independent, second instance body in the procedure of establishing the right to asylum. In this way the principle of two-instance system is observed (and by that fact, objectivity in decision making), as one of the fundamental postulates of our legal system.

The asylum procedure provides for court protection of the asylum seeker in the form of possibility to initiate administrative dispute before the Supreme Court of Serbia, in which way the principle of court control over operation of the public administration organs is also realised.

To enable the implementation of this Law, the Serbian MoI enacted the Rulebook on the Contents and Appearance of the Asylum Application and Documents which may be Issued to Asylum Seekers and Persons to whom Asylum of Temporary Protection have been Granted

By the Resolution of the Serbian Government no. 119-1643/2008 dated April 17, 2008 which was published in the Official Gazette of RS, 42/08 dated April 20, 2008, the members of the Asylum Commission were appointed. At the Commission session held on August 11, 2008 the Committee members unanimously adopted the Rulebook on Asylum Commission Operation, and thus this Commission commenced its official work.⁵⁵

54 Official Gazette of RS 109/07

55 See web site of the Asylum Protection Centre www.apc-cza.org/content/view

The Asylum Commission was based on the Asylum Law, as a body that examines asylum claims in the second instance. The Asylum Commission is an independent body of the Government, comprising of 9 members. All the members are experienced experts from different fields and they are appointed for the period of 4 years. The establishment of such a body is an important step in completing the creation of an efficient asylum system in Serbia. However, for achieving full effects of its work, it is necessary to provide all technical conditions. In other words, the Asylum Commission still does not have its premises, and they use the premises of the Border Police Directorate for their meetings, and the administrative work for the Commission is done by the employees of the Directorate.

According to the Asylum Law, the Republic of Serbia will, within its abilities, ensure conditions for the inclusion of refugees in the social, cultural and economic life, as well as their naturalisation. However, the Law does not define an institution that will be dealing with the integration of refugees that have gained the status according to the Asylum Law. The budget of the Republic of Serbia for 2009 fails to foresee funds for the integration of individuals who have gained the status of refugees or are under the subsidiary protection.⁵⁶

According to the data of the Ministry of Interior, during last year 52 people submitted asylum claims in Serbia, and all of them are in the decision procedure, some of them in the second instance procedure before the Commission for Asylum. Most claims were filed by the nationals of Ivory Coast 19, followed by the nationals of Georgia - 11, Armenia - 5, Ethiopia – 3, and 2 from Nigeria, Chad, Sri Lanka and Palestine.

Among those who are seeking asylum in Serbia are a citizen of France, Iraq, Somalia, Angola, Albania and a stateless person.

(RTV Studio B, August 5, 2009)

In accordance with the Law on Asylum and undertaken obligations related to the Commissariat for Refugees, appropriate measures for establishment of the Asylum Centre have been taken. The deadline for establishment and start of the work of the Centre was April 1, 2008. Therefore, the Commissariat has adopted the following:

- Rulebook on House Rules in the Asylum Centre
- Rulebook on Manner of Keeping and the Contents of the Records on Persons Accommodated in the Asylum Centre
- Rulebook on Accommodation Conditions and Provision of the Basic Living Conditions in the Asylum Centre⁵⁷
- Bulletin for persons accommodated in the Asylum Centre (written in Serbian, English and Arabian language)⁵⁸

Ministry of Health published Rulebook on health checks on admission to the Asylum Centre, for persons seeking for asylum

Within the Centre, asylum seekers are provided with accommodation, food, clothes and shoes, and in case they are not accommodated in the Centre, they are entitled to financial aid through a competent social care centre.

For the purpose of further implementation of this Law, the Commissariat has also prepared the following:

- Decision on establishment of the Asylum Centre and provision of funds intended for the work of the Asylum Centre, from the budget of the Republic of Serbia.
- Rulebook on amendments to the Rulebook on internal rules and job classification in the Commissariat,

56 See Expert Report relating to asylum, March 2009,

57 Official Gazette of RS No. 31/08

58 See RS Commissariat for Refugees web site www.kirs.sr.gov.yu

which provides for jobs in the Asylum Centre.

Even before the adoption of these two documents by the Commissariat, the conditions for its work had been fulfilled by conclusion and application of the Memorandum of Understanding between the Serbian Government and UNHCR. Based on this Memorandum, the facility in Banja Koviljaca was renovated in 2006, and it has been used as an Asylum Centre ever since (accommodation and elementary conditions for asylum seekers). The Decision on the official establishment of the Asylum Centre that operates as a part of the Commissariat for Refugees was adopted on December 6, 2008. Until December 15, 2008, the Asylum Centre was financed by UNHCR, after that it was the responsibility of the Commissariat for Refugees.

One of the advantages is that the employees were trained in specialised courses implemented in cooperation with UNHCR, CARDS, AENEAS and through various other projects. The Asylum Sector prepared Guidebooks, intended mostly for police officers, on the rules on treatment of asylum seekers.

Recommendations:

- *It is necessary to create conditions, as soon as possible, for undisturbed functioning of the Asylum Commission. Simultaneously, it is necessary to enable the Asylum Office to be separated from police structures.*
- *The Minister of Interior should urgently enact the Rulebook on Manner of Keeping Records of Asylum Seekers of Articles 23 and 24 of the Law and manner of keeping and the contents of records of Article 64 of the Law;*
- *As a long-term goal, it is necessary to introduce judicial instance in the refugee status establishment procedure*
- *It is necessary for the Serbian Government to continuously provide the necessary funds in the budget, allocated for the work of the Asylum Centre.*
- *It is necessary to allocate funds in the budget of the Republic of Serbia for integration of persons who have gained the status of refugees or are under subsidiary protection.*
- *Public administration capacities need to be improved, in respect of integration of persons whose refugee status has been recognised, and an institution that would facilitate solving disputable issues regarding refugee integration should be appointed. A good mechanism includes a Migration Management Strategy which envisages that a Coordination Body should coordinate work of various ministries that deal with migrations and that it should (could) also consider refugees (foreigners) integration issues.*
- *Continue trainings of the border police on the rights of asylum seekers, but the training should be also administered in other state organs, especially to magistrates, regular court judges, centres for social work. The Government of the Republic of Serbia should allocate some funds from the budget for these purposes.*
- *Establish programmes of border monitoring with the full cooperation of civil society organisations and MoI of RS.*

MIGRATION CONTROL

Serbia should:

- *Establish and initiate implementation of mechanisms for monitoring migration flows that will define the migration profile of Serbia, which will be regularly updated and contain data on both legal and illegal migration, and establish bodies responsible for gathering and analysis of data on migration scope and flows;*
- *Adopt and implement the National Strategy on Reintegration of Returnees, including sustainable financial and social support;*
- *Define and implement the methodology for identifying internal migration and undertake measures for improving capacities and researching cases of organised and assisted illegal migration;*
- *Adopt and implement the Law on Reception and Stay of Third Country Nationals that defines rights and obligations of these people (including family members of third country nationals),*
- *Ensure efficient expulsion of third country nationals residing illegally in its territory.*

Establishment of a relevant mechanism for monitoring migration flows is one of the biggest priorities and challenges for the Serbian Government. For the first time in the Republic of Serbia, a comprehensive migration flows monitoring policy was to be established, and a Serbian migration profile defined.

Migration Management Strategy was adopted on July 23, 2009⁵⁹. Competent ministries shall, within three months from adoption of this Strategy, draw up action plans based on which a Common Action Plan will be created. Drawing up of the Action Plan, which will refer to two-year period, is the responsibility of the Commissariat for Refugees. Upon the proposal of the Commissariat, the Government will establish the Common Action Plan within 6 months from the adoption of this Strategy.

Recommendations and measures provided for in the Strategy:

- Contents of the Serbian migration profile shall be defined in accordance with the European integration requirements, taking into account specific characteristics of the Republic of Serbia.
- The Serbian migration profile shall be updated on regular basis
- Statistics shall be harmonised with EU standard requirements
- Normative and technical conditions shall be established for data exchange among relevant institutions
- Gather information, statistics and reports on migration in RS.
- Designate an institution responsible for data gathering
- Follow migration movement trends

The Strategy also lays the foundations for an institutional framework for migration policy development. It is defined in line with competences and duties that ministries and state institutions have in the area of migration within the Law on Ministries, other laws and appropriate normative acts and Strategies.⁶⁰

A large number of regulations of the Republic of Serbia are included in this Strategy. One of those whose implementation is most needed is the Development Strategy of the Official Statistics in the Republic of Serbia for 2009 to 2012 period⁶¹. The latter defines an obligation of the Statistical Office of the Republic of Serbia to conduct annual research on internal migration on regular basis, as well as to establish annual research on external migration, starting from 2012, where the research on external migration will be based

59 RS Official Gazette 59/09

60 Migration Management Strategy, July 2009, p.4

61 RS Official Gazette 7/09

on the results of the population, households and apartments census in 2011.

As regards the funds necessary for the Strategy implementation, it could be concluded that the Republic of Serbia should allocate significant funds. The Strategy itself stipulates that the funds are for the most part provided from the budget for regular activities of the ministries, as well as for implementation of measures foreseen in strategies of sectors.⁶² The latest EC Report and Proposal for amending Regulation 539 suggest that it is important that after its adoption, funds for its implementation are provided. In respect to imminent rebalance of the budget for 2009, some concrete measures that could be taken for the purpose of provision of the necessary funds should be considered.

In February 2009, the Government established a Coordination Body for Migration Monitoring and Management⁶³ composed of ministers who are, within their purview, in charge of certain migration aspects. The Commissariat for Refugees is in charge of vocational, operational and administrative-technical tasks for the Coordination Body. The Coordination Body submits to the Government a written progress report every 90 days. This role of the Commissariat is totally acceptable due to poor performance of the Government working bodies established at high level. There have been some ideas to establish a working group as well, which would act on an operational level, since this system of work has proved very efficient.⁶⁴

As regards the competences of state organs, the **Law on Ministries**⁶⁵ is particularly important. Article 25 of the Law foresees that the Ministry for Diaspora is responsible for state administration activities related to: status of Serbian nationals living outside the Republic of Serbia; improving conditions for the realisation of the voting rights of Serbian nationals living abroad; improving communication of emigrants, Serbian nationals abroad and their organisations in the Republic of Serbia; informing emigrants, Serbian nationals living abroad on the policy of the Republic of Serbia; creating conditions for the inclusion of emigrants, Serbian nationals living abroad in the political, economic and cultural life of the Republic of Serbia and their return to the Republic of Serbia, as well as other activities stipulated by the law. Furthermore, the Law also stipulates other competences of other ministries important for diaspora. For example, the Ministry of Education is responsible for validation of diplomas obtained abroad (Article 15). The Ministry of Foreign Affairs is responsible for state administration activities related to protection of rights and interests of the Republic of Serbia and its citizens and legal entities abroad⁶⁶, and the Ministry of Economy and Regional Development is responsible for state administration activities related to: employment in the country and abroad; instructing unemployed citizens about working abroad; monitoring trends at labour markets in the country and abroad; conclusion and implementation of international agreements on social security; conclusion of employment contracts with foreign employers and other contracts related to employment; cooperation with international, foreign and national organs and organisations in the field of labour and employment; harmonisation with European legislation and standards in the field of employment and monitoring implementation of international conventions (Article 9, para.5). The cooperation in the field of employment of aliens is also realised by the National Employment Service.

As regards the migration profile for the Republic of Serbia, it has not been created yet. The profile would have to encompass relevant data for both the field of immigration and emigration connected to the Republic of Serbia, updated statistics in these fields, established migration policies, in respect to both forced migration as well as legal (economic) migration, and clearly identified problems in the field of implementation of the aforementioned policies.

In order to place Serbia on the positive list of the EU visa regime, it is necessary to determine the migration potential of the Republic of Serbia. "Determining the »migration potential« of local communities, regions or countries is one of the most difficult but in terms of science and practice, one of the most relevant

62 supra note 62, p. 42

63 RS Official Gazette 37/09

64 Svetlana Velemirović, Deputy Commissioner for Refugees of the Republic of Serbia, interview June 11 2009

65 Official Gazette No. 80/08

66 The Law on Foreign Affairs (Official Gazette No. 119/07) foresees that the Ministry of Foreign Affairs, in cooperation with the Ministry for Diaspora, promotes the realisation of human and minority rights of emigrants, Serbian nationals living abroad (Article 5, para.1, subpara. 19)

tasks in researching migration. It is very difficult to foresee the behaviour and action of large population with the existing methods and instruments. Interviews, surveys, observations and official statistical data on the existing, recorded movements of population, as well as official estimations on economic needs of immigration in the traditionally immigration countries have so far provided only an approximate number of future migrants. Therefore, the identification of migration potential is scientifically exceptionally relevant, since it requires the perfection of overall migration models and the existing microanalytical and macroanalytical methods for foreseeing the origination of real migration population.

The assessment of migration potential is also relevant in practical terms since it ensures the introduction of measures for keeping the population in the country or regulating migration flow, at the local, regional and state level. It can be directly used for preparing migration policy strategy programme, for compensating demographic, economic and social loss, but also for calculating potential reversible economic and socio-cultural gain, when money and knowledge begin to return to the emigrational region in a direct or indirect way.⁶⁷

By implementation of such a research at the representative sample in Serbia, answers related to readiness of Serbian citizens to migrate to the EU countries will be obtained. Consequently, it could be identified to what extent Serbia is a migration risk for the EU and whether it is a justified concern that a large number of Serbian citizens would rush into the EU once the visa regime with the EU has been liberalised.

The positions of embassies' representatives in Serbia on this issue are quite contradictory and mostly based on data from their countries on the number of Serbian citizens who chose their country as the country of residence in the previous years.

Within the project "Western Balkans towards White Schengen List" Group 484 has been researching whether the Serbian EU accession represents an immigration threat to EU Member States. For that purpose, it has carried out a research on migration potential on representative sample in Serbia, but also in Romania, an EU Member State, and made a comparative analysis in order to have a better insight in scope, structure, but also in migration potential determinants.

The implementation of the Law on Foreigners⁶⁸, although adopted last year, in accordance with the provisions from the Law itself, started from April 1, 2009.

Therefore, the part of the Proposal for amending Regulation 539-01 referring to effective application of the Law on Foreigners, is not surprising, especially in respect to visa and residence permit issuing, access to the rights of foreigners who have a temporary and permanent residence, sanctions for carriers, return and extradition of foreigners who have an illegal status, statistics on legal and illegal migrations in RS.

To the knowledge of Group 484, the adoption of by-laws for implementation of the Law on Foreigners is in progress, as well as further harmonisation of the Serbian visa regime with EU regime, the adoption of which is under the competence of the Ministries of Interior and Foreign Affairs⁶⁹. These two Ministries also perform the supervision over the implementation of the above mentioned Law, each in its own purview.

Provisions of this Law which are of special importance refer to the establishment of central database which will encompass data recorded in special records (total of 21 records - 16 of the Ministry of Internal Affairs and 5 of the Ministry of Foreign Affairs). The central database can be used by authorised police officers in the Ministry of Interior, authorised civil servants of the Ministry in charge of foreign affairs and diplomatic-consular offices of the Republic of Serbia, for the purpose of performing their duties in accordance with competences provided for in this Law.

67 Saša Božić et alia, Migration potential of Croatia...Migration and ethnic issues

68 RS Official Gazette 97/08

69 See RS Official Gazette 59/09, 66/09, 75/09 - rulebooks adopted to date

Research on the migration potential in Serbia has shown that 68% of the Serbian citizens have never thought of leaving Serbia and settling in another country, either temporarily or permanently. 12% of the citizens have thought of leaving the country, but gave it up. 19% of the Serbian Citizens, i.e. 1,200,990 persons over 15, are thinking of moving out of the country, which represents “total migration potential” of Serbia.

However, taking into account how often and how long these 19% of people have thought of moving out, as well as how much they honestly believe that they would move out from Serbia in a reasonable time period, this number is reduced by half. 50% of the citizens who make the total migration potential “very rarely” and “sometimes” think of moving out, 54% have thought of it for over 5 years, and 55% believe that it is “not likely” or “not very likely” that they would move out from Serbia.

Therefore, a “probable migration potential” has been determined, so the percentage of potential migrants who have taken some preparation measures for moving out of the country - 6% or 379,260 persons, and the “real migration potential” by identifying the percentage of potential migrants who have applied for work or residence permit – 0,5% or 31, 605 persons have been identified.

Migration potential determined by this research is much lower than the migration potential defined by IOM in the FRY in 1998, and the migration potential of Central and Eastern Europe - Poland, Czech Republic, Slovakia, and Hungary, that was determined in 1996. It is somewhat higher than the Croatian migration potential that was determined in 2004, which could be interpreted as differences in political, economic, and social context, especially by the current economic crisis, but also by differences in methodology.

Anyway, it is important to emphasise that potential leaving of about 380,000 people from Serbia, as well as 30,000, would have significant political, economic, social and demographic consequences for the country.

Source: Mr Tanja Pavlov, Migration potential of the Republic of Serbia in 2009, page 15.

Being authorised by the Minister in charge of internal affairs, the data from the central database can be used by other state institutions, when necessary, for the purpose of performing duties in their purview.

In the EU Progress Report for Serbia, in respect to meeting conditions for visa liberalisation process, disadvantages of the Law on the Employment of Aliens, which enables the work without a work permit, were emphasised. By adopting a new one and by updating the Law on the Employment of Aliens, the necessary harmonisation with the EU standards would be carried out in this field as well. Drawing up a proposal of this Law is under the responsibility of the Ministry of Economy and Regional Development, and to our knowledge, its adoption is planned for 2010.

With regard to movement and stay of aliens in the Republic of Serbia, the Law on Aliens also introduces types of visas in line with the Schengen standards. The Law defines requirements for entrance and stay of foreigners in the country, possibility of registering their residence through Internet, the existing types of visas that have been abolished and the new ones introduced (A – airport transit visa, B – transit visa, C – short stay visa and D – long stay visa).

As regards visa types, it must be noted that, unlike before, D visa – for temporary stay - can also be obtained at diplomatic-consular offices of the Republic of Serbia.

Tourist pass has been repealed, and border permit, which is issued under strictly regulated conditions and through the procedure stipulated by the Law, has been introduced. Temporary stay, which was previously regulated by by-laws, has been introduced.

The law stipulates exceptionally high penalties for either aliens who violate provisions of the law or for citizens, physical and legal entities who do not report the stay of an alien. Although the high fines are not usual in comparative practice, the cause for concern is a provision of Article 49 of this Law that gives competences to a *state administration organ* to determine a stay in the reception centre for an alien who cannot be immediately expelled and an alien whose identity has not been determined or who lacks travel documents, as well as in other cases stipulated by the Law. Such a detention may last up to 90 days, with the *enhanced police surveillance* (Article 50). The court can be included in the procedure of detaining an alien only upon a complaint filed by the detained person and without a suspensive effect of the complaint. The Law has a deferred implementation and begins with its implementation from April 1, 2009. This remark could also refer to Article 52 of the Law on Asylum, which stipulates the restriction of movement of an asylum seeker, by the decision of the administrative organ (Asylum Office), and can be extended by the decision of the same organ for a further three months. The court participates in the procedure only upon the complaint of an asylum seeker. These remarks, from the human rights perspective, represent a serious shortcoming in the above mentioned laws.

As regards harmonisation of the visa regime of the Republic of Serbia, it should be noted that progress has been made in the field of Visa Waiver Programme for the citizens of the Republic of Serbia

An Agreement on conditions of travelling has been signed with the Russian Federation, which stipulates a no-visa regime for holders of ordinary passports, for a stay up to 30 days long. The Agreement came into force on June 11, 2009⁷⁰. Negotiations on concluding an agreement on abolition of visa obligations for holders of diplomatic and official passports are still in progress with several countries.

According to the data available from the Ministry of Foreign Affairs, in 2008 about 60,000 visas were issued to foreigners. This number refers to both visas issued based on diplomatic-consular offices, and to visas issued based on previous checks in cooperation with the Ministry of Interior, envisaged for citizens of high migration risk countries.⁷¹

Work on the establishment of the Visa Information System has not been finalised yet. Realisation of the new Visa Module that will in its characteristics be harmonised with established EU technologies and duties in this field should be one of the priorities in the forthcoming period. A visa system of a county is a part of state security and its ability to manage borders in a coordinated manner. Establishment of such a system will provide support for the work of diplomatic-consular offices, as well as to the tasks regarding documentation checks on border posts which are the responsibility of the Ministry of Interior. Main holders of the project implementation are the Ministry of Interior and the Ministry of Foreign Affairs. The solutions envisaged by the project are based on Schengen Catalogue best practices and in accordance with the EU Consular Instructions⁷².

Drawing up of the Rulebook on Visa Issuing is currently in progress, and its adoption is pending. This rulebook will provide for codification of the existing visa regime of the Republic of Serbia, and currently, information on visa regime which the Republic of Serbia has with other countries is available on the official website of the Ministry of Foreign Affairs.

The Regulation on Detailed Conditions for Rejecting the Entrance of Aliens in the Republic of Serbia has also been adopted.

Recommendations:

- *It is necessary to implement the Strategy of Migration Flows Management. It is vital to provide financial means for the implementation process of the Strategy, but also for civil society representatives*

70 RS Official Gazette 31/09 31/09

71 Taken from the Migration Management Strategy, July 2009, p 14

72 Migration Management Strategy in the Republic of Serbia, July 23 2009, p. 16

to take part in the process.

- *Coordination Body for migration monitoring and management needs to function effectively, and all the necessary conditions for Commissariat to carry out operational activities in its competence, which are necessary for the Coordination Body, need to be provided. This would clear the ambiguities in respect of competences of ministries and other institutions in this field.*
- *Create a migration profile for Serbia, which will provide a review of the situation in the field of migration policy and clearly mark directions of its further development in compliance with the future strategy*
- *Determine the migration potential of the Republic of Serbia and constantly monitor changes in this field*
- *Re-establish the Sector for Population Policy at the Ministry of Labour and Social Policy in accordance with the priorities of the Government of the Republic of Serbia in the National Plan for the EU Integration*
- *It is necessary to continue with the implementation of the Law on Aliens of the Republic of Serbia and to resume further reforms in this field. This primarily refers to foreigners database establishment, but also to adoption of other by-laws for implementation of this Law.*
- *The Ministry of Economy and Regional Development needs to draw up a Proposal of the Law on Employment of Aliens, which would be in accordance with the Migration Management Strategy and the relevant action plan.*
- *The Ministry of Interior of the Republic of Serbia needs to implement the Strategy of Fight against Illegal Migrations, funds for its implementation need to be provided, and it should enable employment of the necessary staff and renovation of the Centre for Aliens.*
- *Change Article 49 of the Law on Aliens, so that the procedure of detention of individuals and their reference to reception centre for aliens is decided upon by the court of the first and second instances*
- *Carry out the training of people who will be directly included in the implementation of this law*
- *In the further process of reforms in this field, it is necessary to establish a state database on visas, as well as an IT system that would connect diplomatic and consular departments and organisational units of the Ministry of Foreign Affairs and the Ministry of Interior*

BLOCK 3: PUBLIC ORDER AND SECURITY

PREVENTING AND FIGHTING ORGANISED CRIME, TERRORISM AND CORRUPTION

Serbia should:

- *Implement the Strategy for Fighting Organised Crime (particularly with cross border aspects), through the adoption and implementation of the Action Plan which includes the timeframe and sufficient human and financial resources;*
- *Implement the Strategy to Combat Trafficking in Human Beings, through the adoption and implementation of the action plan which includes the timetable and sufficient human and financial resources;*
- *Adopt and implement the National Strategy for the Prevention of and Fight against Money Laundering*

and Financing of Terrorism; adopt and implement the Law on the Prevention of Financing of Terrorism; implement relevant legal regulations on the confiscation of assets of criminals (including the provisions relating to the cross border aspects);

- *Adopt and implement the National Strategy for the Fight against Drugs and the National Plan for the Fight against Drugs; prepare information on the seized quantities of drugs and the participants which will be available at the border crossings; further develop cooperation and exchange of information with the international bodies relevant in the field of drugs;*
- *Implement the legal regulations on the prevention and fight against corruption, including the creation of an independent anti-corruption agency*
- *Implement the relevant UN and Council of Europe conventions, as well as the recommendations of the Group of States against Corruption (GRECO) and other international standards from the aforementioned areas, as well as in connection with the fight against terrorism*

The importance of the fight against corruption and organised crime was confirmed by the Serbian Government in the National Plan for Integration into the EU, emphasising the need for the adoption of the strategic document in the fight against organised crime, but also the need for intensive regional cooperation in this field.⁷³

As a condition for a successful fight against organised crime it was necessary to adopt the Strategy for Fighting Organised Crime. The Strategy, whose adoption was the responsibility of the Ministry of Interior, was adopted on March 26, 2009.⁷⁴

The Strategy has tight conceptual and functional connections with certain strategies in RS, which refer to various fields, such as: fight against corruption, money laundry and financing of terrorism, integrated border management, trade in illegal drugs and combating illegal migration.

As it had identified the level of inter-dependence of these fields, the Government established a Commission for operation harmonisation and further improvement of cooperation in the field of justice and internal affairs on the issues of general interest, especially in the fight against corruption, organised crime, terrorism, drugs, human trafficking, property seizure, money laundry and other relevant issues (better known as the Commission for Cross-Sectors Cooperation in the Field of Justice and Internal Affairs). The Commission is composed of representatives of the Ministry of Justice, Crime Investigation Department within the Ministry of Interior, Public Prosecutor's Office, Security-Information Agency, and the Ministry of Finance (Anti-Money Laundering Administration, Customs Administration, and Tax Administration).

The Commission was established for the purpose of providing opinions, expert explanations, and proposing measures for operation harmonisation and further improvement of cooperation and information exchange in the field of justice and internal affairs in respect to the EU visa liberalisation process for Serbia and EU Integration Process. It was established for a four-year period, and vocational and administrative-technical tasks of the Commission have been designated to the Ministry of Justice. The Commission is obliged to submit its Progress Reports to the Government every 90 days.⁷⁵

The Strategy for Fighting Organised Crime is based on three basic principles – implementation and development of preventive, repressive action and illegally gained property seizure.

In order to provide full implementation of the Strategy, an action plan should be adopted within 6 months, which will develop the measures in details and especially consider preventive and repressive forms of

73 National plan for Integration into the EU, working version, Government of the Republic of Serbia, may 2008, page.584

74 RS Official Gazette 23/09

75 Slobodan Bošković, advisor at the Ministry of Justice, interview. May 28 2009

dealing with organised crime and illegally gained property.⁷⁶

The Proposal for amending Regulation 539 of 2001, within a small number of conditions from the Roadmap that Serbia is to fulfil, stipulates an adequate implementation of legal framework in respect to fight against corruption and organised crime. There is a need for allocation of the necessary human and financial resources in order to implement it efficiently. This is important to take into account when rebalancing the budget for 2009, drawing up the budget for 2010, and in respect of other non-budget funds that could be provided for this purpose.

For the purpose of an efficient Strategy implementation, the Government is going to establish a working body composed of state institutions representatives. This body will coordinate the work of state institutions responsible for the Strategy implementation, submitting reports to the Government on the Strategy implementation, and proposing the Strategy amendments in line with the needs.

Based on the legislation in force, the institutions in charge of fight against organised crime are: the Ministry of Interior, Security-Information Agency, Military-Security Agency as a public administration body of the Ministry of Defence, the Ministry of Justice and the Ministry of Finance (Anti-Money Laundering Administration, Customs Administration, and Tax Administration). The Law regulates organisation and competences of state institutions in respect of fighting against organised crime. Specialised state institutions for fight against organised crime have been established:

- Special Anti-Organised Crime Department - Special Prosecutor's Office at the District Public Prosecutor's Office in Belgrade⁷⁷
- The Administration for Fighting Organised Crime (SBPOK), within the Ministry of Interior (within SBPOK there are organisational parts that deal with fight against organised crime in the field of drugs, general, financial and high-tech crime)
- Special Department in the Belgrade District Court
- Special detention unit in the District Prison in Belgrade

The most important novelties of the Law on Changes and Amendments to the Law on the Organisation and Competences of State Organs in Fighting Organised Crime are the extended competences of specialised state organs for fighting organised crime, related to new criminal acts.

The new Law on Illegally Gained Property Seizure⁷⁸, which came into force on March 1, 2009, foresees the establishment of an organisational unit within the Ministry of Interior in charge of financial investigation related to illegally gained property and performs other tasks in accordance with this Law. Directorate for Seized Property Management is also provided for in this Law, and it will deal with management, estimation, keeping and sale of the illegally gained property. The Directorate started operating on March 1, 2009 and in accordance with the envisaged job classification, it will employ 25 persons. The Law provides for special procedures for temporary and permanent seizure of the illegally gained property. Judges and prosecutors had a preparation and training for implementation of the Law on Illegally Gained Property Seizure, thus fulfilling all the necessary conditions for an efficient implementation of this very important Law.

Proceedings for seizure have been instituted before courts against 260 persons, whereas the Special Prosecutor's Office for Organised Crime instituted proceedings against 124 persons.⁷⁹

The Directorate for Seized Property Management is financed from the budget with about RSD 156 million, which provides the necessary resources for its functioning. The court, Prosecutor's Office, and Directorate

76 See Strategy for Fighting Organised Crime in the Republic of Serbia, p. 1

77 The new Law on Public Prosecutor's Office (RS Official Gazette 11/08) stipulates establishment of the Prosecutor's Office against Organised Crime as an office of special competences established in the territory of the Republic of Serbia. This Law will be implemented from January 1, 2010

78 RS Official Gazette 116/08

79 See Blic daily: Property is to be Seized from Bojić, Karić, Amsterdam, September 3.2009

each get one fifth of the sold seized property, and the rest of the money, in accordance with the Government's Decision, will be used for financing social, health and other institutions. Objects of high artistic, scientific and historical value will be ceded to institutions in charge of their keeping. Seized movable assets which are not sold within a year, will be given away for humanitarian purposes.

In the aftermath of armed clashes and the disintegration of the former Socialist Federal Republic of Yugoslavia, South Eastern Europe region remained divided into numerous small states hostile to each other, but at the same time interlinked by poverty, misery, and the grey economy. Consequently, these newly formed states became permanently connected by transnational organised crime. Crime is not selective about the nationality or religion of people, it brings together those who find a sense of purpose in money, profit and getting rich. Traffickers of children, women and men, as well as smugglers of people, create unbreakable bonds and channels to provide a smooth flow for these illegal activities.

Trafficking in persons is a multi-layer, complex and a dynamic social phenomenon which demands a comprehensive (legal and social) approach to the problem, i.e. the implementation of efficient measures in respect to prevention, fighting, sanctioning of offenders and protection of victims, with an obligatory cooperation of victims.⁸⁰ It is estimated that there are about three million victims worldwide annually and that a turnover from human trafficking mounts to 10 billion Euros annually, which classifies human trafficking as one of the most profitable illegal activities.

According to the US State Department report on human trafficking for 2009, Serbia is the country of origin, transit and destination for men, women, and girls who are traded in the country and abroad for the purpose of commercial sexual exploitation and forced labour. Foreign victims reach Serbia from Eastern Europe and Central Asia through Kosovo and Macedonia. Serbia is still a transit territory for human trafficking from Bosnia, Croatia and Slovenia towards final destinations in Italy and other Western European countries. Children, mostly Roma, are still victims of human trafficking for the purpose of sexual exploitation, forced labour and forced street begging. Victims identified during 2008 are mostly women and girls from Serbia who are traded for sexual exploitation purposes and over a half of the victims are children. In 2008, human trafficking for the purpose of labour exploitation increased.⁸¹

Unlike other countries where only sexual exploitation is predominant, in Serbia there are many forms of human trafficking. Labour exploitation, persons forced to conduct crimes, child trafficking for begging purposes, forced labour and housework, use of persons for pornographic purposes, are all recognised in Serbia, and the latest one is child trafficking for the purpose of conducting crimes.⁸²

Human trafficking, as a criminal offence, is defined by the Article 388 of the Criminal Code of the Republic of Serbia. This provision relies on the definition set by the First Protocol to the UN Convention against Transnational Organised Crime, adopted in 2000 and ratified by the FRY Assembly in June 2001

According to the data of the Ministry of Interior, 70 victims of human trafficking were discovered in the first seven months of this year. 42 traffickers were arrested, out of which 5 are women.

Source: Politika daily, August 22 2009

Smuggling of people entails brokering i.e. taking part in providing illicit entry into another country to persons who gave their **consent** to it, with the intent of profiting directly or indirectly but without any intent to exploit those persons.⁸³

The State Department Report says that during 2008, criminal charges were filed against 94 persons for human trafficking. "The state has not provided comprehensive data on criminal prosecution, but it was said that in 2008, 18 traffickers were sentenced to prison, and 17 were cleared of charges. We did not get the data on the duration of the sentences, nor whether were these suspended sentences. Also, according to the state

80 Taken from the Strategy for Fighting Organised Crime in the Republic of Serbia, p. 1

81 US State Departmental Report – Serbia p. 256

82 See "Serbia has almost all the forms of human trafficking, RTV Studio B, www.studio-b.co.yu , August 8 2008

83 Weekly 'Vreme', September 22, 2005

data, in 2008 29 persons suspected with human trafficking were placed in detention during investigation or trial. Sometimes traffickers were not held in detention before the trial or during appellate procedure. According to law, the convicted defendants for human trafficking are to stay in detention during appellate procedure, only if they are sentenced to over five years of prison. Trials that last for months or years and many appeals cause delay in serving the sentence even for several years. One of the most notorious traffickers in Serbia, sentenced for 4 years and three months in 2006 before the Supreme Court, is still free. Nongovernmental and international organisations estimate that adjudicated prison sentences become longer due to the training of judges”.⁸⁴

Last year, 69 criminal charges were filed against 119 people, out of which 7 were women, for illegal border crossing and human trafficking.

Among the accused, there were 93 Serbian citizens and 26 aliens. These persons are charged with human trafficking of 242 people, out of whom 34 are women, and 55 are minors.

There are no data on sex and age of the 59 victims of human trafficking. Among the identified victims, the majority are citizens of Albania, China, Romania, Turkey, and Macedonia.

From the beginning of the year till the end of April, criminal charges were filed against 31 persons for human trafficking.

For more information, see RTV Vojvodina, www.rtv.rs, July 15, 2009

The Criminal Code of the Republic of Serbia was adopted on June 29, 2005 (“Official Gazette” of RS No.85/2005) and entered into effect as of January 1, 2006. Article 350, para 2, of that Code prescribes **illicit state border crossing and smuggling of people** as a criminal offence stating that whoever, for the purpose of obtaining any benefit, facilitates the illicit SaM state border crossing by a SaM-non-resident or illicit stay or transit through SaM shall be sentenced by imprisonment from 3 months to 6 years.

Taking into account the fact that there is no state border between the territories of the Republic of Serbia and AP Kosovo and Metohija, but only an administrative one, and that citizens of Kosovo and Metohija are citizens of the Republic of Serbia, possibilities for criminal prosecution in these cases, based on this Article, is disputable. The adopted changes and amendments to the Criminal Code foresee criminal prosecution of people trafficking Serbian nationals.

Practical reasons have caused an initiative for improvement of the Criminal Code provisions referring to this field.⁸⁵ Simultaneously, in practice, there is frequently no difference between a crime of mediation of prostitution and human trafficking, and it would be useful to envisage a different definition of the so-called exploitation for labour, which would immensely facilitate criminal proceedings and the work of state institutions in general.

The following case shows that trafficking is a serious problem and that Serbia is a channel for human trafficking and smuggling:

The Government of the Republic of Serbia, with the support of the OSCE Mission in Serbia enacted the *Strategy for the Fight against Human Trafficking*⁸⁶ in 2006, comprising a set of measures and activities that should be undertaken in order to tackle this problem. With the creation of the Strategy, strategic goals have been set, which should be realised through various activities of state institutions, nongovernmental and international organisations.⁸⁷

84 See US State Department Report – Serbia, p. 256 or ASTRA Serbia website www.astra.org.rs

85 Slobodan Bošković, Advisor at the Ministry of Justice, interview May 28 2009

86 Strategy was published in the Official Gazette of RS, No. 111/2006 of December 12, 2006

87 More about the Strategy, see in the analysis of Article 9 of the Protocol

Police officers of the Ministry of Interior, in a joint action with police officers from B&H, arrested 24 persons who participated in the international trafficking of Turkish and Albanian citizens, in the period January to July.

They smuggled these people from Turkey, through Macedonia, Serbia, Montenegro, Croatia and B&H and further on towards the EU countries, and thus smuggled over 60 Albanian citizens to the territory of EU, thus earning from 200,000 to 300,000 Euros.

For more information see RTV Vojvodina, www.rtv.rs, July 15, 2009

The efforts to prevent human trafficking were resumed during 2008. The new Government appointed a new national coordinator for fighting human trafficking, in November 2008, after months of not having anyone on this position during the previous Government's term. In the same month, the Government established a Council for Fighting Human Trafficking at the ministerial level. The Council and a Team for fighting human trafficking, which includes NGOs, worked together on drawing up an Action Plan for suppression of human trafficking, which the Government adopted in April 2009.

Although it had officially existed since 2004, due to lack of the national coordinator, the Advisory Body for Fighting against Trafficking in Persons concretely started its activities in January 2009. It includes the following:

- National Coordinator and his associates,
- Coordinators of all working groups and
- Representatives of OSCE, IOM and UNICEF

The main **role** of the Advisory Body is to assist and support the National Coordinator in the coordination and implementation of measures and activities undertaken in the fight against human trafficking.

The Advisory Body is, through the coordinators of working groups, connected with other members of the National Team in order to achieve better communication and information sharing among stakeholders.

On the basis of the Decision adopted by the Government of Serbia in October 2004 (Decision of the Government of Serbia No. 02-6783/2004-I, "Official Gazette of the RS" No.113, October 15, 2004, pg.2) the **Anti-Trafficking Council** was formed, comprised of the following ministers:

- Minister of Interior;
- Minister of Justice;
- Minister of Labour, Employment and Social Policy;
- Minister of Health;
- Minister of Education and Sport;
- Minister of Finance.

The Council is chaired by the Minister of Interior.

The role of the Council is to define a national policy for combating human trafficking. The Council reviews the reports of relevant international bodies, creates opinions and proposes measures and implementation of recommendations for combating human trafficking made by international bodies. The Council also prescribes and adopts strategic and general objectives in combating human trafficking.

There can be no successful fight against human trafficking in Serbia without cooperation with nongovernmental organisations and this cooperation is conducted in the Republic Team for Combating Human Trafficking. Within the Republic Team, there are four working groups in following areas:

- Prevention and education (coordinated by ASTRA),
- Assistance to victims by creating assistance mechanisms (coordinated by the Ministry of Labour,

- Employment and Social Policy),
- Suppression of trafficking in children (coordinated by nongovernmental organisation Beosupport),
 - Implementation of the Law (coordinated by the Ministry of Justice).

The Action Plan⁸⁸ is a positive example of successful both interdepartmental cooperation between state institutions and their cooperation with nongovernmental sector and international organisations.

The Action Plan covers the period from 2009 to 2011 and all relevant fields are included, such as national identification mechanism improvement, assistance in protection of victims, education and training, legal framework improvement in accordance with international obligations, statistic monitoring improvement, raise of awareness, reduction of risk factors to minimum, prevention of secondary victimisation of victims, as well as international cooperation. The emphasis are still on institutional capacity building necessary to the state, and to this purpose certain cooperation agreements are to be signed.

A great progress has been made by adopting amendments to Article 388 of the Criminal Code, which makes penal policy stricter.⁸⁹ Besides signing stricter sentences, those who use the services of trafficking victims are to take responsibility if they know or could know that the person is the victim of human trafficking.

The changes and amendments to Article 389 of the Criminal Code have also been adopted, related to the title, which is now “Underage Trafficking for the Purpose of Adoption“, which extends the age limit and protects underage persons from all forms of exploitation and trade.

Legal framework regulating the field of human trafficking was finalised in 2009 by ratification of, in the opinion of many experts, the most contemporary legal act for fight against human trafficking – The Council of Europe Convention on Action against Trafficking in Human Beings⁹⁰ in Warsaw on May 16, 2005. This Convention has an aim to prevent human trafficking, protect victims and prosecute criminal offenders.

In 2008, the Serbian Government increased efforts to protect victims, but did not improve identification procedure. While the state, with an assistance of international organisations, resumed training of police officers on the subject of victim identification and treatment, there are still no systematic procedures and standards for identification, instruction and treatment of victims of human trafficking, and the cases are being dealt with in an *ad hoc* manner.

However, civil servants and organisations dealing with human trafficking issues, believe that due to the lack of systematic victim identification procedures, some victims have not been identified and they are likely to have been punished for their actions while being exploited. According to organisations dealing with human trafficking issues, many victims did not receive an appropriate protection at court by applying the Law on Witness Protection of 2006, due to the fact that in courts there are no premises that would enable the victims to wait for the proceeding or to testify separately from the defendants. According to data of one NGO, at the beginning of 2009, one victim, together with her child, was exposed to continuous threats by a trafficker during the trial; finally she changed her testimony, for which she was charged with false allegation.⁹¹

A large number of NGOs, and a significant part of governmental sector representatives participate in preventive activities of fight against human trafficking. Representatives of governmental institutions gladly reply to and take part in projects of this kind (both as participants or lecturers). Unfortunately, there has not been any systematic approach so far to the prevention and evaluation in order to determine the real efficiency of these activities and their future directions.

As regards victim of human trafficking, beside prevention, attention must also be given to reintegration and

88 RS Official Gazette 35/09

89 RS Official Gazette 72/09

90 RS Official Gazette 19/09

91 US State Department Report – Serbia p.257

re-socialisation of victims, through their more organised inclusion into the social care system.

In July 2009, a handbook “Social Inclusion of Victims of Human Trafficking” was presented, and it was drawn up by the Mission of International Organisation for Migration (IOM) in Belgrade, Republic Social Care Institute and a NGO “Atina”. The Handbook is intended for everyone who works on programmes for social care of victims of human trafficking and provides a common framework for a sustainable protection and assistance of existing protection systems. For the first time, it describes cooperation of NGOs with relevant system institutions.

“The Handbook does not provide definitions of human trafficking, how it differs from other phenomena, but it describes concrete examples of good practices, innovative approaches and identifies resources that could be used for protection and assistance to victims of human trafficking.”, said one of the authors, Sanja Kljajic, Head of the Department for Estimation of Vocational Work and Supervision in the Republic Social Care Institute. She pointed out that this phenomenon had long been perceived from criminal-legal point of view and announced the application of a new methodology of work in the social care system.⁹²

It could be concluded that for the purposes of providing assistance, protection and inclusion of victims, a coordinated work of ministries of labour and social policy, police, healthcare system, education and of human and minority rights is necessary.

For successful fight against this specific form of violence, the state should be categorically and systematically involved in the eradication of poverty. We also have to be aware that human trafficking would not be so widely spread without corruption. Out of these reasons, the main causes of human trafficking, above all poverty, unequal position of women, and violence against them, corruption and organised crime are priorities in terms of suppressing human trafficking.

As regards fight against corruption, the EC Report notes a progress in the fight against corruption and creation of a compact national policy in this field. The basis of this system is certainly the national Strategy of the Government of RS, adopted in 2005, as well as an Action Plan for its implementation adopted a year later. For the purposes of efficient implementation of the Strategy, the Serbian Government formed a Commission for the Strategy Implementation and for the implementation of recommendations of the Group of States against Corruption (GRECO) that started operating in 2006. After the new Serbian Government had been composed, the original composition of the Commission was changed, thus it has been actually functioning since the change of the Government till the present times, taking into account that the Commission had only had one meeting before this period. “The newly formed” Commission deals with drawing up a revised action plan for the strategy implementation, and simultaneously, in the form of smaller work groups, it works on solving other insufficiently implemented fields from the Strategy.⁹³

By careful reading of this part of the Report, it could be concluded that Serbia has made the greatest progress in adoption of the necessary laws and ratification of conventions and insufficient progress has been made in implementation of regulations in those fields.

Up to this date, Serbia has ratified the UN Convention against Corruption,⁹⁴ Council of Europe Criminal Law Convention on Corruption⁹⁵ and Additional Protocol with the convention, as well as the Civil Law Convention on Corruption of the Council of Europe⁹⁶

In 2008, many laws that directly or indirectly refer to fight against corruption were adopted: the Law on

92 Borba Daily – “Serbian citizens also victims of trafficking“ June 3 2009 and “Serbian citizens victims of human trafficking”, June 03, 2009

93 Slobodan Bošković, Advisor at the Ministry of Justice, interview May 28 2009

94 Official Gazette of SaM-International agreements No. 12/05

95 Official Gazette of RS- International agreements No. 102/07

96 *Ibid*

Responsibility of Legal Entities for Crimes⁹⁷, the Law on Illegally Gained Property Forfeiture⁹⁸, the Law on the Agency for Fight against Corruption⁹⁹, the Law Amending of the Law on Financing Political Parties¹⁰⁰, The Public Procurement Law¹⁰¹, the Law Amending the Law on Criminal Proceedings¹⁰², the Law on Protection of Personal Data¹⁰³ and a set of judicial laws (the Law on the Organisation of Courts, The Law on Public Prosecutor's Office, the Law on Judges, the Law on High Judicial Council, The Law on State Council of Prosecutors, the Law on the Seats and areas of Courts and Public Prosecutors, the Law amending the Law on Offences)¹⁰⁴.

Adoption of these laws can be seen in the context of adopting GRECO recommendations which Serbia has been trying to fulfil since 2006.

On 36th plenary session of GRECO, held from 9 to 13 June 2008, **Report of the Group of States against Corruption (GRECO)** on the alignment of the Republic of Serbia for the Joint First and Second Circles of Evaluation was adopted¹⁰⁵. GRECO estimated positively the efforts and work of state institutions of the Republic of Serbia in their fight against corruption, especially the fact that Serbia has been conducting activities according to each individual recommendation. So far, Serbia has fulfilled 12 out of 25 recommendations. According to Information Booklet¹⁰⁶ on the work of the Ministry of Justice, Serbia has adopted all the laws that are necessary for fulfilling other 12 recommendations, but it is important to point out that fulfilling the recommendations does not refer only to adoption of laws, but also to their full implementation.

Of special importance in this field is the Law on Agency for Fighting Corruption. Beside practical effects of the its implementation, the importance of this law lays in the fact that its adoption, i.e. establishment of the Agency, would fulfil three more GRECO recommendations.

This Law foresees the establishment, legal status, competences, organisation and manner of work of the Agency for Fighting Corruption, rules in respect of prevention of conflict of interests in performing public functions and reporting of the property of a person having a public function, procedure and decision making in the case of infringement of this Law, introduction of integration plans, as well as other issues of importance for the work of the Agency.

The Agency is a separate and independent state institution, and it is responsible to the National Parliament for carrying out tasks in its purview. The bodies of the Agency are the Board (9 members) and the Director. As regards the conditions met so far for the Agency to become fully operational, in 2009 premises for its work have been designated, and staff issues have been solved.

The issue of the necessary resources for its work is inevitable. The resources for 2009 have been allocated, but certain resources are to be provided through projects for gaining funds from IPA programme, in order to fulfil its tasks adequately. The fact proves how seriously the Agency capacity building has been approached is that the Board of the Agency has drawn a draft of the budget for 2010 as well, when the Agency is expected to start operating, and it envisages that RSD 163 million is necessary to be allocated from the Serbian budget.¹⁰⁷

It is vital to point out that besides the Agency, the Commission for Fighting Corruption, as well as the Council

97 RS Official Gazette 97/08

98 *Ibid*

99 *Ibid*

100 *Ibid*

101 RS Official Gazette 116/08

102 Adopted on 30.12.2009

103 Supra note 103

104 Supra note 107

105 After the adoption of the report by the Government of the Republic of Serbia on 17th June, the confidentiality status was cleared and the publishing of this report was approved..

106 See Ministry of Justice website www.mpravde.sr.gov.yu

107 RTS August 26 2009, see www.rtv.rs

for Fighting Corruption, as the bodies of the Serbian Government, will continue to monitor implementation of the Strategy and to take further measures in the fight against corruption.

The corruption issue in Serbia is still an immense problem, which results in a bad ranking, according to an index of corruption perception. According to the latest research, out of 180 countries of the world, Serbia was on 85th position last year, with corruption index of 3.4 in the scale up to 10. Albania, Montenegro, India, and several more countries had the same corruption index.¹⁰⁸ An inevitable segment in analysing corruption in Serbia, and finding solutions for its reduction, is the manner in which political parties in Serbia are financed.

Experts warn that fight against corruption in Serbia has been slowed down due to, above all, lack of political will, negligence of effective laws, but also the imperfections of certain legal solutions. The former legislation was noted to have two shortcomings – one related to the fact that there was no independent institution to control the operations, i.e. financing of political parties and inexistence of an adequate legal measure to enable efficient control. By means of adopting the Amendments to the Law on Financing Political Parties, it is anticipated that the authority for controlling finance shall be transferred from the Republic Electoral Commission to the newly established Republic Anti Corruption Agency.

It has been noted that the adoption of the new Law on Financing Political Parties, aimed at contributing to the efforts of fighting corruption in Serbia, is necessary for this Agency in order to function properly. Adoption of this Law has been announced and the establishment of a workgroup supervised by the Ministry of Justice and in collaboration with the Ministry of State Government and Local Self-Government has been planned. Workgroup shall consist of experts of diverse profiles – economists, lawyers, representatives of NGOs and independent institutions.¹⁰⁹

The Law on State Auditors Institution opens the possibility (but does not necessary impose obligation) for that institution to control legitimacy of financing political parties and election campaigns.

The possibility of controlling the expenditure of public resources in this sector by the State Auditors Institution, thus contributing to decrease in corruption at all levels, additionally indicates to the importance of such an independent authority.

The State Auditors Institution was founded in 2007 and for the last two years has not had adequate working conditions. Although it presented its Report on Operations for the year 2008, it could not deliver final budgetary report for 2007 due to inadequate working conditions. In 2009, office space was allocated to the Institution, operations concerning solving the staff matters were initiated, and in the middle of May the audit of final account of the Republic of Serbia for 2008 was commenced, as the first activity of state auditors. After 2001, this shall be the first final budgetary report whose version will be provided to the Assembly for adoption, in the end of October. At the same time, it has been planned that the State Auditors Institution this year starts controlling final reports of a few public companies. Full engagement of the State Auditors Institution resources will enable more successful control of public procurement system, which is also one of the factors influencing the level of corruption on a large scale. Concerning the area of public procurement system, certain progress was achieved in the previous period, most importantly by putting into effect the new Law on Public Procurement on January 6, 2009.

Transparency of public procurement has been increased by setting up a web portal which provides for cost saving, intensified competition, better control, more reliable data collection, increase of visibility, and creation of more favourable environment for implementation of public procurement procedures.¹¹⁰

Inconsistencies between the existing legal solutions and the ones still to be implemented can easily be noted.

108 Source: The Voice of Serbia, Slobodan Homen, State Secretary of the Ministry of Justice, August 12 2009

109 *Ibid*

110 EC report on Serbia's progress in the Stabilisation and Association Process, November 5, 2008 (procurement, p.36)

Public procurement institutions operating according to the former Law include: the Directorate for Public Procurement and the Committee for Protection of Rights. Establishing the Republic Committee for Protection of Rights in Public Procurement (Republic Committee) is a novelty. The Directorate for Public Procurement, even after putting the Law into effect, continues its work as defined by Law. Speaking of the Republic Committee, it is specified that its members should be appointed 6 months latest after the Law enters into force.

By that time, its activities shall be performed by the Committee for Protection of Rights, which is not an autonomous body, but operates within the Directorate for Public Procurement instead.

As different from the former practice, independency from the executive government has been granted to the Republic Committee and its members, and it is necessary to provide protection for it, taking into account its authorities stipulated by Law– it operates as second-degree body which brings final decisions on complaints concerning the correctness of public procurement procedures.

Although the Republic Committee should have started operating in July 2009, the fact that the Memorandum on Budget for 2010 has not assigned any means for its financing is upsetting.

Speaking of state bodies whose work may contribute to decreasing corruption level in Serbia, it is necessary to pay special attention to the Trustee for Information of Public Importance. The Trustee for Information of Public Importance, as independent and autonomous state body, commenced operating effectively in June 2005, after provision of basic working conditions. Its working conditions are still insufficient, although certain progress has been achieved in 2009. In February 2009 an office was allocated to the Trustee but, despite large-scale operations, it still functions with insufficient human resources although, after the adoption of the Law on Personal Data Protection, the National Assembly approved the Act on Organisation prepared by the Trustee.

The state body at that time named the Trustee for Information of Public Importance undertook the activities in the area of personal data protection, and since that time has been functioning as the Trustee for Information of Public Importance and Personal Data Protection.

Aggregate monthly statistical data on the issues concerning availability of information and personal data protection additionally go in favour of the need to provide full efficiency of this body. For the period ending July 30, 2009, there were 5,849 processed cases, while additional 816 were in the procedure on that date¹¹¹. Although there is obvious need for increasing budget resources allocated to this user, those means have not been provided neither in the latest amending budget of the Republic of Serbia, nor have been assigned in the Memorandum of Budget for the forthcoming 2010.

Strategy for Fighting Drugs in the Republic of Serbia¹¹² for the 2009 - 2013 period was adopted at the government meeting on February 26, 2009. As stipulated in the Strategy, it has been harmonised with the EU Drugs Strategy and other international documents (recommendations of European Council, Single Convention on Narcotic Drugs, 1961, amended by the Protocol, 1972, Convention on Psychotropic Substances, 1971 and Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988) which regulate organised fight against drugs.¹¹³

Action Plan¹¹⁴ adopted in March 2009 referring to the 2008 – 2012 period describes in more detail certain objectives, ways to realise them, as well as concrete tasks of certain executives for the selected budgeting period based on the Strategy guidelines.

111 Source: Official web site of the Commissioner for Information of Public Importance and Personal Data Protection www.poverenik.org.rs

112 RS Official Gazette 16/09

113 Strategy to combat drugs in Republic of Serbia for the period 2009 to 2013. p 1

114 RS Official Gazette 24/09

Overall objective of the Strategy has been defined as improvement and preservation of public health by decreasing the use of drugs and harmful consequences caused by drug abuse.¹¹⁵

The Strategy encompasses areas referring to coordination, decreasing drugs supply, decreasing drugs demand, informing, research and evaluation, as well as international cooperation.

Taking into account that Serbia has still been labelled as one of major transitory routes for heroin, cocaine, marihuana and synthetic drugs, with organised groups from Serbia which form an important part of criminal network, and with minor changes in the routes they presently use as different from the ones in the previous period, the facts that the capacities of border police have been strengthened and that efforts have been made aimed at improving regional and international cooperation are praiseworthy. A lot of successful operations have been exercised, leading to discovering organised criminal groups and networks of drug smugglers, as well as confiscating large quantities of drugs.

In 2008 Serbian police confiscated approximately 1.7 t of drugs. Most of this quantity was marihuana - a ton and a half, but 200 kilograms of heroin and 10.5 kilograms of cocaine are also notable volumes. The single biggest confiscation was 275 kilograms of marihuana, the most widespread drug in Serbia.

Source: Danas Daily January 12 2009

The importance of a single database for monitoring in the area of drugs need not be discussed, and therefore it is necessary to improve and modernise the existing systems, as well as to harmonise them with international monitoring systems in the area of drugs (EMCDDA¹¹⁶, Pompidou Group).

Simultaneously, the necessity of conducting routine and occasional research on the causes of drug abuse, trends and consequences of the abuse, performed jointly with relevant institutions, research institutes and individual researchers, should be highlighted.

Drug abuse is a problem of international character which should be treated in cooperation with institutions and organisations of a region, Europe and the world. Within the context of Serbian integration into the EU, connecting and close cooperation with the European Monitoring Centre on Drugs and Drug Abuse (EMCDDA) and other institutions are highly important, as in this way, and by taking over their standards, a system for data collection in this area would be created, which would be compatible with the monitoring systems in the EU.

Recommendations:

- *It is necessary, within the shortest possible time, to initiate the application of the National Strategy for Fighting Organised Crime, as well as Action Plan for its implementation*
- *Continue and enhance international cooperation in combating organised crime, above all with countries in the region and through international and inter-governmental organisations, particularly with OSCE, Council of Europe, SEKI centre, UNDOC, EUROPOL*
- *Conduct staff trainings for the implementation of new methods in combating organised crime and technical equipment used for gathering and processing data on organised crime*
- *It is necessary that the Action Plans for fight against organised crime and fight against drugs should be developed in full coordination*
- *National team for fight against trafficking in humans should continually operate in terms of implementing joint activities of all members of this body, with clearly defined roles and responsibilities.*
- *Prevention in the field of human trafficking should be approached in a systematic manner, with*

115 Strategy to combat drugs in Republic of Serbia for the period 2009 to 2013. page 6

116 European Centre for Monitoring Drugs and Drug Addiction

the necessary evaluation, in order to establish the real efficiency of these activities and their future directions.

- *Create the protocol for operating procedures with trafficking victims, with a clearly defined procedure and roles of different actors. At the same time, it is necessary to continue further education of border police related to identification of victims of trafficking in humans.*
- *If possible, it would be of importance to establish a special unit within the Criminal Police Directorate, for risk analysis (including threats) and strategic planning*
- *Office for the coordination of the protection of the victims of human trafficking should have full authorisation, above all in identifying trafficking victims*
- *Conduct evaluation and assessment of quality of the provided assistance to trafficking victims of governmental, nongovernmental and international organisations. In the future, it is necessary to work on the increase of quality of offered and provided services.*
- *It is necessary to define clear methods of data protection concerning victims of trafficking in humans, as well as criteria for availability of those information or prevention of access, taking into account general public, scientific workers, interested persons and victims themselves respectively.*
- *It is necessary to continue with education of juridical bodies in the area of these criminal acts, above all Criminal Law judges, who would on a larger scale, when relevant proofs are provided, award property legal claims of those aggrieved by the crime.*
- *REFORM OF JUSTICE SYSTEM – the forthcoming reform provides the possibility to compensate for the lack of qualified staff in judicial authorities by means of re-election.*
- *It is necessary to set up state programmes for reintegration and re-socialisation of victims, by means of more organised participation of social protection system and coordinated work of the Ministry for Labour and Social Policy, police, health service, education system, and human and minority rights.*
- *It is necessary that Ministry of Health commences the implementation of Strategy on Fighting Drugs, as well as the Action Plan for realisation of this strategy. Inclusion of civil society in monitoring its application is essential.*
- *The importance of a single database for monitoring in the area of drugs need not be discussed, and therefore it is necessary to improve and modernise the existing systems, as well as to harmonise them with international monitoring systems in the area of drugs.*
- *It is essential to establish close connections with EMCDDA i Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group) of the European Council, as well as with the World Health Organisation, United Nations Office on Drugs and Crime (UNDOC), UN Development Programme.*
- *Government of the Republic of Serbia and the National Assembly should pay attention to application of the adopted laws, problems related to their implementation and the effects of application of those Laws.*
- *It is necessary to perform an analysis of implementation of National Strategy for Fighting Corruption.*
- *National Strategy for Fighting Corruption, as well as the Action Plan for its implementation, stipulate passing the Law on Lobbying. It is necessary, within the shortest period of time, to start with the creation and adoption of the Law on Lobbying, which would further determine the boundaries between the tolerable representation of interests and corruption.*
- *Ministry of Finance is required to discuss the establishment of a workgroup, with the aim of preparing the draft Law on Financing Political Parties, expected to contribute to suppressing corruption in Serbia*

- *The National Assembly should adopt the Draft Changes and Amendments to the Law on Free Flow of Information of Public Importance, which has been submitted as an initiative by more than 30,000 voters (in compliance with Article 107, paragraph 1 of the Constitution), containing proposals of changes that should ensure more efficient control of adherence to the law, wider legal protection of information seekers, sanctioning organ and organisation executives who unjustifiably withhold information, and protecting public officials who reveal information that point to the existence of corruption and other misuses. Prior to the adoption of this Draft, an internal act of the Government should regulate the execution of final decisions of the Commissioner for Information of Public Importance.*
- *An internal act of the Government should regulate mandatory examination of the report received from the Council for the Fight against Corruption and other organisations which point to corruption and other misuses in their reports, as well as undertaking of relevant measures based on the data from these reports.*
- *It is necessary to ensure adequate working conditions for the Directorate for Public Procurement, Republic Committee for the Protection of Rights in the Process of Public Procurement, Trustee for Information of Public Importance and his service, State Auditors Institution, Directorate for Seized Property management, Committee for Conflict of Interest Issues, at least from the date the Agency for Fighting Corruption becomes fully operational.*

FIGHT AGAINST FINANCIAL CRIME, TERRORISM, AND INTERNATIONAL COLLABORATION REGARDING CRIMINAL AFFAIRS

Serbia should:

- *Implement the international convention concerning judicial cooperation in the criminal matters (particularly CoE conventions);*
- *Undertake measures to enhance judicial cooperation between judges and prosecutors in criminal matters with EU member states and countries in the region;*
- *Develop relations with Eurojust, via contact person in Eurojust.*¹¹⁷

Speaking of application of international conventions in this area, Republic of Serbia ratified the following conventions of EC in 2009:

1. Convention of Cybercrime, 2001¹¹⁸.
2. Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, 2003¹¹⁹.
3. Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, 2005¹²⁰
4. Protocol Amending the European Convention on the Suppression of Terrorism, 2003.¹²¹
5. Council of Europe Convention on the Prevention of Terrorism, 2005.¹²²

Ratification of the Convention necessarily led to changes and appropriate regulation and adoption of new, to the internal legal system could harmonise with international and European standards.

117 Eurojust is an EU body established in 2002 and is the first permanent network of judicial authorities to be established anywhere in the world.

118 Official Gazette RS, no19/09

119 Official Gazette RS, no19/09

120 Official Gazette RS, no19/09

121 Official Gazette RS, no19/09

122 Official Gazette RS, no19/09

Regarding the area of money laundering and financing terrorism, the framework for improving the existing systems and formulating recommendations for overcoming problems is undoubtedly the Strategy for Fighting Money Laundering and Financing Terrorism, adopted on September 25, 2008. The Action Plan for application of this Strategy has not been created yet.

Recommendations given in the Strategy refer to enhancement of legal framework, both institutional and operational, as well as recommendations for improvements necessary to be implemented in the field of professional training, with five-year period planned for their application.

As stated in the Strategy, money laundering and financing terrorism are global problems with reciprocal effect on economic, political, security and social structures of a country. According to this, wide range of regulations effective in the Republic of Serbia is applied.¹²³ It may be stated that fight against money laundering directly relates to other forms of fight against crime, and that all regulations mentioned earlier may, to smaller or greater extent, be applied in this area too.

The Law upon which the success of fighting these forms of criminal operations is largely dependent is the Law on Prevention of Money Laundering and Financing Terrorism, adopted in 2009. The stated Law includes provisions prescribing necessary activities and measures aimed at revealing and prevention of money laundering and financing terrorism, defines authorities responsible for undertaking those activities and measures, as well as authorities of the Directorate for Money Laundering Prevention.

The Directorate for Money Laundering Prevention is a financial and intelligence agency established as management body within the Ministry in charge of financial activities. The Directorate collects, processes, analyses and forwards information, data and documents gathered in accordance with Law, to authorised bodies (police, justice and inspection bodies), and performs other duties related to prevention and revealing money laundering and financing terrorism in accordance with Law.

Resources for work and operations of the Directorate, as a user of budget funds, are provided by the budget of the Republic of Serbia. For the time being, the Directorate employs 24 individuals, while total number of positions amounts to 35, as planned by job classification of the Ministry of Finance.

Institutional framework in this area, apart from the Directorate, includes many state authorities such as the Ministry of Finance, Tax Administration, Customs Directorate, Ministry of Justice, Ministry of Interior, Security – Information Agency, Ministry of Defence, Public Prosecutor's Office, courts. Training and development of abilities and professional skills of the existing human resources in all the above mentioned relevant bodies is an essential condition for setting up an efficient state mechanism in fighting money laundering and financing terrorism.

Expert Mission Report suggested that special attention should be paid to training in investigations, criminal prosecution and proceedings in the financial crime area, improvement of technical equipment, collection of data, whose absence is obvious, as well as adequate data exchange between state bodies.

The best solution for efficient data exchange may be creation of a shared database of all relevant bodies, which would serve as a basic tool in both prevention and repressive implementation of effective laws.¹²⁴

Progressive trend achieved so far should also be continued in the following period, especially taking into account concrete consequences of money laundering and financing terrorism, such as endangering stability, transparency and efficiency of the state financial system, as well as creation of economic disorder and ruining the state reputation.

123 Strategy for Fighting Financial Crime and Financing Terrorism, p. 2

124 Individual expert reports of the EC relating to bloc 3 - Fighting financial crime, terrorism and international cooperation in criminal affairs, February 2009 , p. 13

International Monetary Fund estimates that the total worth of money laundering in the world amounts to 2-5 percent of world's total Gross Domestic Product. Monetary value which equals the stated percentages ranges from 590 billion to 1.5 trillion US dollars a year. Taking into account the secrecy and nature of money laundering, quoted data serve as indicators of the size of the problem.¹²⁵

Speaking of high technology criminal, it should be stated that this area encompasses criminal acts whose objects of criminal activity, or means for their execution, include computers, computer networks, data, as well as their products in material or electronic form. Products in electronic form especially imply computer programs and copyright works which may be used in this form.

Present situation in this area indicates to the fact that increase rate of this type of crime and the number of multiple offenders in execution of the relating criminal acts is high, especially in the domain of unauthorised access to protected computer, computer network or electronic data processing, as well as intellectual property rights. In 2008, 166 criminal information were filed, most of them dealing in so called 'piracy', and it was also noted that prosecutor's office received a criminal information file concerning computer frauds, unauthorised access to the protected computer data. Prosecutor's office for high technology crime brought 55 legally binding judgements in two years of operation¹²⁶. The threatened penalty to offence within the area of high technology crime range from monetary charges to ten-year prison sentence.

It is estimated that the future period of high technology crime will be characterised with more significant inclusion of organised crime in computer use in the process of narcotic drugs distribution, child abuse, pay card frauds, prostitution, trafficking of human organs, electronic transfer of money, which offers attractive possibilities for quick and reliable money laundering, as well as higher participation of underage persons in execution of serious criminal offence, identity stealing and frauds related to e-commerce.

In accordance with this situation, as well as obvious increasing trend of this kind of crime, ratifications of European Council Conventions should not be viewed only from the aspect of fulfilling the conditions stated in the Road Map, but from a wider perspective which includes improving the legal system in the Republic of Serbia.

In 2009, the Law on International Legal Assistance in Criminal Matters¹²⁷ was passed, which provides directions for offering international legal assistance in criminal matters in cases for which there are no verified international agreements or when certain issues have not been elaborated in the existing ones.

Provisions of the Law regulate this kind of international cooperation in a comprehensive way, and out of this reason the provisions from various chapters of the Code on Criminal Procedure are not longer valid. Indirect goal of the Law is simplifying the procedure for acting upon these matters. Namely, according to formerly effective provisions, communication or filing appeals and other written documents was established through the Ministry of Exterior, whereas presently it is directed through the Ministry of Justice. Simultaneously, it is planned that, in case of mutual relation, files should be provided directly to foreign justice authority, while in case of emergencies they may be provided by means of the International Criminal Police Organisation (INTERPOL). With this in mind, domestic courts and public prosecutors' offices have been assigned the authorities related to international legal assistance.

Certain activities in the procedure of international legal assistance are executed by the Ministry in charge of justice, Ministry in charge of foreign affairs and Ministry in charge of interior affairs. Adoption of this Law is yet another way of improving regional cooperation, especially having in mind its cross-border character arising from the very nature of numerous criminal acts.

Speaking of regional cooperation in this area, in June 2009 Serbia and Montenegro signed the Agreement on International Legal Assistance in Citizen and Criminal Matters on execution of court decisions in criminal

125 Blic daily "Crisis changes the money laundering flows", September 7 2009

126 Personal Magazine, High-tech crime is increasing", February 27 2009, www.personalmag.rs

127 RS Official Gazette 20/09

matters and on extradition, thus contributing to more efficient solving of court cases requiring international legal assistance. At the same time, Memorandum of Cooperation between the Ministries of Justice of Serbia and Montenegro was signed, which provides for exchange of experiences concerning harmonisation of legal systems with European standards, as well as passing Laws in the area of improving the operations of courts related to fighting organised crime, drug or trafficking in humans, etc. ¹²⁸

Concerning the cooperation with EUROJUST, Serbia has not yet signed the Agreement on Cooperation with this important European association which plays a major role in fighting organised crime. In March 2009, representatives of the Ministry of Justice initiated opening negotiations, and upon that occasion received draft Agreement which Serbia should sign with the EU concerning cooperation of public prosecutor's office, police and courts. The stated Agreement shall define the issues of Serbian cooperation with judicial organs of all EU member states, based on exchange of information and complete documents from court proceedings of organised crime criminal acts. Schedule of future negotiations depends on the decisions of EUROJUST. ¹²⁹

Recommendations:

- *All the new information and technical capacities should be fully operationalised in the Ministry of Justice, which also means additional trainings for employees in the Department of the International Legal Aid*
- *Strengthen national bodies for the fight against money laundering and improve inter-agency and international cooperation. Increase the efficiency of international cooperation and implementation of the relevant international conventions on terrorism.*
- *Full implementation of the Law Against Money Laundering and Financing Terrorism in accordance with the National Strategy is required, as well as adoption of the related Action Plan. It is essential to administer training of state authorities and representatives of judicial organs in the area of financial crime*
- *It is necessary to provide resources and required staff for the Directorate for Prevention of Money Laundering and Suppression of Terrorism*
- *Inadequacy of data collection and data exchange between state authorities indicate to the need for creation of a shared database of all relevant authorities involved in fighting financial crime*
- *Serbia is required to resume negotiations with EUROJUST in order to sign the Agreement with the EU related to cooperation of public prosecutor's office, police and courts*

LAW ENFORCEMENT COOPERATION

Serbia should:

- *Undertake necessary steps to ensure cooperation within law enforcement among relevant national agencies – particularly border guard, police, customs officers and cooperation with judicial authorities;*
- *Improve information sharing between national agencies via adequate coordination mechanisms;*
- *Empower regional cooperation among the law enforcement agencies and implementation of agreements on bilateral and multilateral operative cooperation, including timely sharing of relevant information with the competent authorities for law enforcement of EU member states;*

128 See Ministry of Justice web site www.mpravde.sr.gov.yu

129 Slobodan Bošković, Advisor at the Ministry of Justice, interview May 28 2009

- *Improve operative and special investigation capacities of the department for law enforcement for more efficient fight against cross border crime;*
- *Undertake necessary steps for preparing signing of the agreement on operative cooperation with Europol, with the emphasis on the provisions related to data protection.*

More about the need for the full implementation of the laws, problems in the cooperation and functioning of the state organs and the exchange of information was presented in the part on the integrated border management, fight against corruption and organised crime.

However, here we are focused on the regional cooperation in combating all forms of organised crime.

The Convention of Policing Cooperation in South Eastern Europe, signed by the Minister of the Interior at the Ministerial Conference in Vienna, May 2006, was confirmed by the National Parliament under the Law confirming the policing cooperation in South Eastern Europe.¹³⁰

“The well-known Balkan road stretches across south east Europe and is the steady channel for smuggling drugs, arms and human trafficking on one side, and for transport of stolen vehicles, stolen engineering mechanization, etc. in the opposite direction. In the last few years the flow of illegal migration over the western Balkan has changed in terms of both quality and quantity, but is still very interesting for illegal migration from the Western Balkan, Middle East and Asia’¹³¹

However, besides the ratification and the beginning of the implementation of the Convention, there is a need for further promotion of the cooperation, says the Minister of Interior of Serbia, who called for a quick and operative exchange of information for a successful battle against organised crime in the countries of the former Yugoslavia. The Ministers agreed to implement the signed agreements about the police cooperation and conclude new ones, to strengthen cooperation in combating money laundering, financial crime and the witness protection on the basis of bilateral and multilateral agreements and strengthen cooperation in combating cyber crime. The arrangements were also reached about regular communication of the high officials of the Ministry, who will meet every six months, as well as about asking for assistance from European partners in the implementation of new experiences, with the purpose to form identical legal platforms of the states.¹³²

Up to this date, Serbia has signed the following agreements:

1. Agreement on cooperation in suppressing the international organised crime, international illicit drug trafficking and international terrorism between the Ministry of the Interior of the Republic of Serbia and the Federal Ministry of the Interior of the Republic of Austria, signed in Vienna, 11 November 2004.
2. Protocol on cooperation of border police through pilot Contact Bureau between the Ministry of the Interior of the Republic of Serbia, Border Police Administration and Ministry of Administration and the Interior Affairs of the Republic of Romania, Inspectorate General of the Border Police, was signed in February 2006.
3. The Agreement on Cooperation in Suppressing the Organised Crime, international illicit drug trafficking and international terrorism between the Government of Romania and the Government of the Republic of Serbia, signed 5 July 2007 in Bucharest.
4. Agreement on Cooperation in Suppression of Crime between the Government of the Slovak republic and

130 Official Gazette of RS – International agreements 70/07

131 Minister of Interior of Slovenia, Mr Dragutin Mate, May 9, 2008, Toronto Newspaper, <http://www.novine.ca/arhiva/2008/1152/region.asp>

132 Minister of Interior of the Republic of Serbia, Sarajevo, Third Informal Meeting of Ministers of Security and Internal Affairs BiH, Serbia, Croatia and Montenegro, 29/11/2008. <http://www.mup.sr.gov.yu/domino/mup.nsf/29nov08sporazumpolicija>

the Government of the Republic of Serbia, signed 16 November 2007 in Bratislava, Slovakia. Simultaneously was signed the Protocol Implementing the Agreement.

5. The Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Serbia on cooperation of border authorities. The Agreement was signed on 12 November 2007 in Belgrade.

Memorandum on cooperation in suppressing terrorism, organised crime, illicit trafficking of narcotics, psychotropic substances and precursors, illegal migrations and other crimes between the government of the Republic of Bulgaria and the government of the Republic of Serbia signed 26.09.2003.

6. Memorandum of interest to cooperate in the area of prevention of natural disasters, techno accidents and elimination of their consequences between the government of the Republic of Serbia and the Ministry of Russian Federation for civil defence, emergencies and alleviation of consequences of natural disasters, signed 21 Jun 2007.

7. Memorandum of understanding and cooperation in the area of protection and support to witnesses and other participants in the criminal proceedings between the Units for Witnesses Protection in the Ministry of the Interior of the Republic of Serbia, State Agency for Investigation and Protection (SIPA) of Bosnia and Herzegovina and Police Headquarters of the Republic of Montenegro. The Agreement was signed 20 July 2006, in Washington, USA during the First international symposium on witness protection. The said Agreement was confirmed by the conclusion of the Government of 30 August 2007.

8. Agreement between the governments of participating states in BSEC (Organisation for Black sea economic cooperation on cooperation in the area of crimes, particularly its organised forms, “Additional Protocol to the Agreement between the governments participating in BSEC on cooperation in suppression of terrorism relating to the Agreement between participating Governments in the Black Sea Economic Cooperation in combating crime, particularly its organised forms” was signed by Police Director at BESC Meeting in Kiev, 17 April 2008.

9. Protocol between the Ministry of the Interior of the Republic of Serbia and the Ministry of the Interior and Public Administration in organising and holding regular sessions of representatives of Border Police at the central, regional and local levels, and Protocol between the Ministry of the Interior of the Republic of Serbia and the Ministry of the Interior of the Republic of Macedonia in organising and holding regular meetings between the representatives of Border Police in the central, regional, and local levels.

The Agreement of Triple Cooperation in combating organised crime, with focus on border crime, signed between Republic of Serbia, Republic of Romania and the Republic of Bulgaria, is of utmost importance. That agreement foresees very intensive cooperation of the Police in suppressing all types of crime and the mechanisms of cooperation in this transit area.

More about the need for signing agreements on cross-border cooperation was presented in the part related to the need for integrated border management.

In regards to the cooperation with EUROPOL, by signing the Strategic Agreement on Cooperation with this organisation, Serbia is no longer among those rare European countries that have not signed this agreement. However, the full cooperation with EUROPOL is possible through the Agreement of Operative Cooperation, which is legally possible after the Law on Personal Data Protection has been adopted.

Recommendations:

- *Intensify cooperation of the police services in the region of South Eastern Europe through further implementation of the Convention on Cooperation, implementation and signing bilateral agreements.*

- *All the countries in the region should intensify the processes of signing agreements on cross-border cooperation in combating organised crime, border control and exchange of necessary information*
- *Further develop all the technical and human capacities in the police for combating organised crime and develop the models of mutual cooperation in that process.*

DATA PROTECTION

Serbia should:

- *Adopt necessary legal regulations on the protection of personal data and implementation of regulations, including setting up of independent supervisory board for data protection;*
- *Sign, ratify and implement relevant international conventions, such as the Additional Protocol to the CoE Convention on the Protection of Privacy in the Automatic Data Processing.*

On October 23, 2008, the National Assembly of the Republic of Serbia adopted the law that confirms the Additional Protocol to the CoE Convention on the Protection of Privacy in the Automatic Data Processing. At the same time, the controversial Law on Personal Data Protection was adopted as well.

Article 45 of the Law is still disputable, since “it is based on the idea that someone can suspend or restrict the body in charge of personal data protection to have insight into the data, data collections, documentation, and even the premises where they are kept. The international standards foresee full independence of bodies in charge and thus such a solution cannot find anywhere but in our country. In regards to real conditions for the implementation of this law, the Commissioner for Information of Public Importance undertakes the functions of the supervisory authority from January 1, 2009. This solution was taken from experiences of other countries, where it has proved satisfactory. Unfortunately, it has not been taken into account that the conditions in which our Commissioner and his colleagues in other countries work are quite different. Serbian Commissioner has been facing big problems which, among other things, include a specific obstruction of work by the Government of Serbia. At the same time, the Commissioner works in completely inadequate conditions, with the staff several times smaller than originally planned. I had the opportunity to see the look of disbelief on faces of my foreign colleagues when I told them that I do my job with only seven associates (two technical secretaries, one driver and four lawyers).

As an illustration, the Commissioner for Information in Slovenia, the country with four times smaller population (and problems) has four times more associates. The Slovenian Commissioner has ten inspectors, and the Serbian Commissioner has none and it is so obvious that the number of his associates compared to the scope of work is tragically small. For that reason there are several hundreds of unsolved cases at the moment, which require many months of work, even without the influx of new cases.”¹³³

In May 2009, the Trustee for Information of Public Importance passed two bylaws, which are important for application of the Law on Personal Data Protection. These include a Rulebook which regulates the procedure of preliminary verification of personal data processing, as well as a Rulebook which regulates a form of special professional identification of individuals – inspectors, who will be given access to all data in the process of monitoring, as authorised by the Trustee. In this respect, Trustee Rodoljub Šabić stated: “By passing these two acts I have executed my obligation, completely aware of the fact that this has only doctrinal, abstract, but not any concrete meaning, as in this moment the Trustee does not literally have anyone available for work on personal data protection issues”.¹³⁴

133 Rodoljub Šabić, *Fog on the road to Schengen*, Politika, 15/11/2008

134 Source: BETA News Agency, Rodoljub Šabić, August 24 2009

Assisted by international partners, the Trustee also published a Guide through the Law on Personal Data Protection and prepared a Draft Strategy of Personal Data Protection for implementation of European standards in the area of personal data protection.

Absence of independent and efficient supervising body for data protection caused the situation in which the existing rules on data protection are not being administered. Preparations in the field of personal data protection have not achieved sufficient progress.

In order for the personal data protection system to be actually functioning, and apart from building up institutions, it is essential to improve the awareness of citizens concerning which personal data may be published only upon their approval, but also to introduce the state bodies to the fact that not all personal data may be published anytime.

Recommendations:

- *It is necessary to amend the Article 45 of the Law on the Personal Data Protection and ensure full independence of the monitoring body*
- *It is necessary to ensure all technical and financial preconditions for the efficient work of the Trustee for Information, for efficient implementation of the Law on Personal Data Protection and unhindered work of the Trustee and his associates*
- *Serbian Assembly should adopt the Law on Confidentiality, which is one of the key laws missing in the legal system of the Republic of Serbia. The Law should establish a uniform system of determination and protection of confidential data of interest for the Republic of Serbia, competences of the organs responsible for the implementation of this Law, as well as other issues important for the protection of confidential data.*

BLOCK 4: FOREIGN RELATIONS AND FUNDAMENTAL RIGHTS

FREEDOM OF MOVEMENT OF SERBIAN CITIZENS, CONDITIONS AND PROCEDURES FOR ISSUING PERSONAL DOCUMENTS AND CIVIL RIGHTS INCLUDING PROTECTION OF MINORITIES

Serbia should:

- *Ensure full and effective access to travel and identity documents for all citizens in Serbia, including women, children, people with disabilities, people belonging to minorities and other vulnerable groups;*
- *Ensure full and effective access to identity documents for internally displaced persons and refugees*
- *Adopt and enforce legislation to ensure protection against discrimination*
- *Specify requirements and conditions for acquirement of Serbian citizenship;*
- *Ensure investigation of ethnically motivated incidents in the area of freedom of movement, including cases targeting members of minorities;*
- *Ensure that constitutional provisions on protection of minorities are observed;*
- *Implement relevant policy towards minorities, including Roma.*

In regards to the freedom of movement of Serbian citizens, the Constitution of Serbia, Article 39 stipulates that everyone has the right to free movement and residence in the Republic of Serbia, as well as the right to leave and return. Freedom of movement and residence, as well as the right to leave the Republic of Serbia may be restricted by the law if necessary for the purpose of conducting criminal proceedings, protection of public order, prevention of spreading contagious diseases or defence of the Republic of Serbia.

Entry and stay of foreign nationals in the Republic of Serbia shall be regulated by the law. A foreign national may be expelled only under decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him and only when there is no threat of persecution based on his race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution. The Constitution also foresees that the movement and stay of aliens is regulated by separate law. The new law that regulates this field has been adopted at the National Assembly and we were dealing with its solutions in more details in other parts of this report.

The aforementioned constitutional solution has to be formally implemented on refugees and internally displaced persons. According to the legal regulations, people with valid travel documents and identification cards can move freely. However, after more than 15 years from their refuge and almost 10 years from their replacement, their access to documents is still a substantial problem.¹³⁵

This problem is especially pronounced when related to obtaining necessary documents from the territory of Kosovo and Metohija. Work booklet and M4 forms, are the documents necessary for regulating rights from labour relations and the right to pension. Many archives have been destroyed, or relocated to unknown locations. Furthermore, the big problem is that the documents with the UNMIK seal are not acknowledged. Some registry offices remained in Kosovo and Metohija and the documents from these offices can be obtained only with the UNMIK seal on them. No institution in Serbia acknowledges such documents, and vice versa, institutions in the territory of Kosovo and Metohija do not acknowledge documents issued by the relocated registry offices. Another big problem for IDPs is the geographical remoteness of the relocated offices from their places of residence. They travel couple of hundred of kilometres on their own expense to relocated registry offices and since they cannot obtain necessary documents for only one day, they often pay for accommodation. Furthermore, IDPs are often uninformed about their right to the reduced administrative tax of 70% for this category of forced migrants for obtaining documents from these registry offices. Since the registry offices do not put such information on their information boards, IDPs often do not use this legal benefit. The problem is also uneven practice of administrative and legal organs related to entering relevant data in registry books in administrative and court proceedings. There are two such proceedings: re-registration and subsequent registration. For re-registration, the procedure that may last up to 6 months, IDPs have to submit certificates they often do not have. Some registry offices accept partial documentation while most offices require all the accompanying documentation. There is also uneven practice in regards to subsequent registration. It is noticeable that registry offices often avoid obtaining necessary verification but refer clients to courts. At the same time, courts approach this issue in different ways. As the legal verification of birth is not clearly defined in the legal system, some courts verify the fact of birth in the lawsuit proceedings and some enter the out of court procedures. Belgrade courts, but also those in Central Serbia carry out the data reconstruction while the courts in Novi Sad, Kraljevo and Čačak insist on the competences of administrative organs and do not enter the procedures.

Consequently, the initiative of the Centre for Advanced Legal Studies and a group of experts to create Model Law on the Procedure for Recognition of Legal Subjectivity is very important. "It is estimated that there are dozens of thousands of persons living in Serbia, mainly Roma, who do not have their legal subjectivity recognised. From the legal standpoint, these persons do not exist, they are not registered into birth registry books, they are unable to enjoy their basic rights, right to health care and social welfare, right to education, they cannot participate in public life, vote, appear before courts (...) The aim of these regulations would be providing recognition of legal subjectivity in a simple and efficient procedure, which would not be burdened by numerous formal legal conditions, related to both the fact of birth itself and proving of the same fact."¹³⁶
The law stipulates the efficient procedure of subsequent registration before the relevant administrative organ

135 There are around 206,000 internally displaced persons and around 97,000 registered refugees in the Republic of Serbia.

136 Model Law on the Procedure for Recognition of Legal Subjectivity, CUPS

but also before the competent court.

In the context of the visa liberalisation process, it is necessary to point to certain incidents related to issuing certificates from registry books from the territory of Kosovo and Metohija.

The Public Prosecutor in Niš has filed criminal charges against a registrar from Svrljig and two former Priština registrars for misusing their official positions. For issuing false Serbian citizenship certificates to Kosovo Albanians, the registrars charged between 200 and 300 Euro. In that way, the individuals who had not been registered in the registry books of the Republic of Serbia were enabled to submit requests for issuing personal documents and Serbian travel documents at the Priština Secretariat of Interior, located in Niška banja. The Priština registry office, which has been a part of Niš Administration for Civil Issues for more than four years, has received 35,500 requests for issuing citizenship certificates, births and death certificates, as well as for changing data in the existing documents. Around 80 percent of the requests have been filed by Albanians from Kosmet. The MoI representatives claim that only during last year, Police Administrations from Kosovo and Metohija issued almost 13,000 passports to Kosovo Albanians and as many identification cards. The Albanian media in Priština say that around 250,000 Albanians in Kosovo now have Serbian passports. It is not established how many false documents have been issued to Kosovo Albanians in Niš.

Source: RTS, October 23, 2008. Information in Serbian available at www.rts.rs

The state of original records from the region of Kosovo and Metohija was rated as worst in the Expert Report of European Commission. Consequently, this created the need to suggest that issuing travel documents for all citizens of the Republic of Serbia with registered stay in Kosovo and Metohija should be organised through a centralised system of the Coordinated Directorate of Ministry of Interior of the Republic of Serbia. The Government adopted the act of September 15 that this issue is closely regulated. It is the Regulation on the procedure of determining the fulfilment of prescribed conditions for issuing passports for people from the area of AP Kosovoo and Metohija.¹³⁷

Regarding discrimination, until 2009 there was no separate Law in Serbia to regulate in general terms the field of discrimination, and this issue was criminally sanctioned and prohibited by diverse legal documents.

After intensive debates in public caused by the Law on Prohibition of Discrimination, which was at one moment withdrawn from the adoption procedure, it was eventually passed in March 2009¹³⁸. The Ministry of Labour and Social Policy was in charge of formulating, while the Ministry of Human and Minority Rights was responsible for implementing the Law.

The Law, for the first time, sanctions in a comprehensive way all cases of discrimination and protects especially vulnerable and endangered groups. The Law regulates overall prohibition of discrimination, discrimination forms and cases, as well as practices for protection from discrimination. Important novelty refers to the fact that the Law also establishes the Trustee for Protection of Equality (hereinafter: Trustee), as independent state authority, autonomous in execution of assigned duties.

Having analysed the responsibilities commissioned to the Trustee, the fact that the Trustee may, apart from the possibility of informing the public about cases of discrimination, act before court (filing suits on account of violation of rights related to this Law, in his name, with the approval and on behalf of a discriminated person, if a court procedure upon the same case has not already been initiated or legally closed; submitting charge sheets on account of violation of rights stipulated by the Law) must be marked positively. Application of provisions referring to operation of the Trustee starts on January 1, 2010, and within 60 days from that date the National Assembly should appoint the Trustee.

Although the significance of passing such a Law was recognised, a single Law on prevention of family violence, which would include efficient family and crime-related legal provisions, as well as rules on

137 RS Official Gazette 76-09

138 RS Official Gazette 22/09

activities of police in cases of family violence, has not been produced.

In February 2009, Serbia also endorsed National Strategy for Improving the Position of Women and Strengthening Gender Equality¹³⁹, which sets out the activities planned for the 2009-2015 period. This document defines complete and harmonised state policy aimed at eliminating discrimination of women, improving their position and integrating the principle of gender equality in all areas in which system institutions operate, as one of the elements of modernisation and democratisation of society. It incorporates the fields dealing in participation of women in creating policies and decision making in economy, education, health, as well as issues of violence over women, and other matters related to mass media and public opinion.¹⁴⁰ Institutional framework for implementing the Strategy consists of the Ministry of Labour and Social Policy, Ministry of Human and Minority Rights, Ministry of Culture, Ministry of Telecommunications and Information Society, provincial authorities, authorities of local self-government, and professional and other associations.

Speaking of state bodies which, by means of their activities, should contribute to the improvement of gender equality, the Directorate for Gender Equality and the Council for Gender Equality should undoubtedly be mentioned.

Directorate for Gender Equality – this is an executive governmental mechanism established in July 2007, operating within the Ministry of Labour and Social Policy. The tasks of this body imply analysing the existing state of gender equality, proposing solutions, creating and implementing National Strategy for Improving the Position of Women, cooperating with other state bodies, cooperating with other countries, integrating principles of gender equality in all areas and institutions, and implementing UN recommendations.

Council for Gender Equality – is a government interdepartmental and advisory body whose members are recruited from academic circles and civil organisations. It was founded in 2004. Its tasks include proposing measures for improvement of gender equality based on their analyses, initiating encouragement of women for participation in public and political life, formulating suggestions and directing them to the Serbian government.

One of the planned recommendations from the previous year, which Serbia has also implemented, relates to ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Despite the closure of legal framework in this segment, discrimination is still present to a large extent, especially against women, national minorities, and LGTB community (lesbians, gay, transsexuals and bisexuals), as government still does not offer sufficient protection.

The legal act regulating acquisition of citizenship of the Republic of Serbia is the Law on Citizenship of the Republic of Serbia.¹⁴¹ Article 23 stipulates that a person belonging to the Serbian or some other nation or ethnic community from the territory of the Republic of Serbia, who has no permanent residence in the territory of the Republic of Serbia, may be accepted into the citizenship of the Republic of Serbia if he or she has attained 18 years of age and has not been deprived of his or her legal capacity and if he or she files a written statement that he or she considers the Republic of Serbia to be his own state. Subject to the conditions referred to in paragraph 1 of this Article also a person born in another republic of the former SFRY who had the citizenship of that republic or has the citizenship of another state formed in the territory of the former SFRY and who resides in the territory of the Republic of Serbia as a refugee, expellee or displaced person or has taken refuge abroad may be accepted into the citizenship of the Republic of Serbia. This legal regulation has almost removed obstacles for members of the diaspora to obtain Serbian citizenship if they wish and thus have easier access to rights in the republic of Serbia.

139 Official Gazette RS 15/09

140 National Strategy for improving the position of women and strengthen gender equality, page 1

141 RS Official Gazette 90/07, Law on Citizenship of the Republic of Serbia adopted in 2004 and amended in 2007, published in the RS Official Gazette 135/04

With this legal solution, members of all ethnic communities living in the territory of Serbia but without residence in its territory can have Serbian citizenship.

As for bilateral agreements on dual citizenship with the countries arising from the former Yugoslavia, Serbia has so far signed such agreements with Slovenia and Bosnia and Herzegovina, but not with Croatia and Montenegro. Negotiations with Montenegro seem to be complicated mainly due to more restrictive attitude to dual citizenship of Montenegro than it is the case of Serbia.

Approximately 70,000 persons with other country's citizenship and with residence in Serbia also acquired citizenship of the Republic of Serbia in 2008, while the number of persons living in other Republics who have acquired passports is still noticeably small.

According to the information from Bosnia and Herzegovina, approximately 7,000 persons from Serbia (and Montenegro) acquired citizenship of Bosnia and Herzegovina on account of the effective Agreement on Dual Citizenship, while 2,322 persons from Bosnia and Herzegovina obtained Serbian citizenship pursuant to this Agreement. As Serbia at the same time applies both the provision of Article 23 of the Law on Citizenship and Agreement on Dual Citizenship, relevancy of the stated data, in terms of applied legal acts defining the grounds for obtaining citizenship, is restricted.¹⁴²

Provisions of the Constitution of the Republic of Serbia grant to national minorities the rights in accordance with international standards. At the same time, rights granted to national minorities, apart from those included in the Law on Protection of Rights and Freedom of National Minorities, are also integrated in other legal documents of the Republic of Serbia (the Law on Education, the Law on Official Use of Language and Script, the Law on Education Systems, recently passed Law on Prohibition of Discrimination, etc.)

Serbia concluded bilateral agreements on protection of national minority rights with Hungary, Croatia, Macedonia and Romania, by which establishment of joint committees had been planned, but they have either not been founded at all or have not been completely functional.

National Minority Councils have been established for most national minorities registered in Serbia, including Roma. 16 out of 28 national minorities registered in Serbia have established Councils. Foundation of National Councils has been hindered due to the adoption of the new Law on National Councils of National Minorities¹⁴³. The Law prescribes the conditions for democratic election of National Councils, precisely defined authorities of Council in the fields of culture, education, informing and official use of language and script, procedures for election of National Councils, financing, as well as other matters important for the operations of National Councils.

National Councils shall have the Memorandum of Incorporation, president, executive body, committees for education, culture, information, and official use of language and script, as well as at least 15 and at most 35 members, depending on the size of national minority population, while term of office for members of National Council shall last for four years.

Pursuant to the recommendations of the European Commission, Serbia should also endorse National Strategy for Improvement of Position of Roma¹⁴⁴, which was actually performed in April 2009. Implementation of the Strategy has been elaborated in the Action Plan, defining the objectives in the fields of education, living conditions, employment, displaced persons, returnees on account of the Readmission Agreement, personal documents, social insurance and social protection, position of women, informing, culture, discrimination and related rights, as well as concrete measures for their realisation.

Certain results concerning the improvement of Roma position were achieved last year, especially in terms

142 Taken from individual expert report of the EC in relation to block 4, March 2009 p. 2

143 RS Official Gazette 72/09

144 RS Official Gazette 27/09

of education and health protection, but there is a prevailing impression that this national minority is still the most endangered one, and that decreasing poverty in Roma population should be a top priority of Serbian Government in the future period.

Recommendations:

- *Urgently establish full cooperation with the UNMIK administration in the territory of Kosovo and Metohija, for the purpose of mutual acknowledgement of documents with the seals of the Republic of Serbia and UNMIK*
- *Exchange information and establish cooperation with the aim to obtain lacking documents of IDPs, above all work booklets and necessary registry certificates*
- *Financially support the work of civil society organisations dealing with obtaining documents for IDPs and Refugees, from the budget*
- *In accordance with the existing regulations, relevant local self-government organs should ex officio implement provisions of the Law on Republic Administrative Taxes and inform IDPs about that*
- *In accordance with the existing regulations, relevant local self-government organs should ex officio ask for the lacking documents for re-registration and subsequent registration of IDPs, primarily Roma*
- *Harmonise the work of competent administrative and legal organs in the republic of Serbia, related to procedures upon requests of internally displaced people*
- *The Ministry of State Administration and Local Self-government should urgently examine the Model Law on the Procedure for Recognition of Legal Subjectivity and upon the public discussion, submit relevant draft law to the Government and the National Assembly for the adoption*
- *It is essential for the Government of Serbia to pass the decision by which it would regulate centralisation of the system for issuing travel documents for the citizens with residence in the territory of Kosovo and Metohija within the shortest possible time.*
- *Full implementation of anti-discrimination law is required, while special attention should be paid to establishment and functioning of independent and autonomous body of the Trustee for Gender Equality.*
- *It is necessary to adopt the Law on Gender Equality (Recommendation of the UN Committee on the Elimination of Discrimination against Women, Conclusive Remarks CEDAW/C/SCG/CO/1/CPR., as well as the Law on Prevention of Family Violence (Recommendation of the UN Committee on the Elimination of Discrimination against Women, Conclusive Remarks, CEDAW/C/SCG/CO/1/CPR. 1)*
- *It is essential to provide conditions for implementation of National Strategy for Improving the Position of Women and Strengthening Gender Equality (Recommendation of the UN Committee on the Elimination of Discrimination against Women, Conclusive Remarks, CEDAW/C/SCG/CO/1/CPR. 1)*
- *Application of the Law on National Councils, which regulates authorities of National Councils and procedures for their election, is required. In this respect, it is necessary to have regular meetings of National Council for minority issues*
- *It is essential to continually provide budget resources required for application of National Strategy for Roma Integration.*

CONCLUSION

The issue of visa liberalisation regime has been one of the most important steps in the process of European integrations of the Republic of Serbia. This conclusion gains additional significance from the viewpoint of individuals, Serbian citizens, who are to benefit from immediate positive effects at the end of the process. Inclusion of Serbia in white Schengen list would be the initial concrete effect of European integrations for the citizens of Serbia. They would be provided with the possibility to enjoy one of the fundamental freedoms the EU is grounded upon, the freedom of movement. This would lead to additional encouragement to persevere in further process of reform implementation aimed at Serbian accession to the EU. The EU Integration Office conducted a survey in May 2009 on the attitudes of Serbian citizens towards the possibility of travelling without visas, which indicated that even 82 % of citizens found that inclusion in white Schengen list was important for Serbia, 49 % responded that this was important for them from personal viewpoint as well, 16% stated that this was both important and not important, while 33% claimed that this was not of importance at all.¹⁴⁵

Serbia has presently reached the third phase of dialogue on visa liberalisation. After the adoption of Draft Amending Regulation 539 by the European Commission, Serbia still has two parallel processes to follow. It is necessary, on one hand, to continue with reforms, and implementation of laws and strategies, and on the other to advocate among the European delegates and the EU member states for the EU Draft to be finally accepted, as the key role in this process is taken by the EU Council, i.e. Ministers of Interior of EU member states.

Concerning the procedure of EU authorities, the first step awaiting Serbia is issuing opinion on the side of the European Parliament regarding Draft Amending Regulation 539. The opinion of the European Parliament shall be formed through the work of its two Committees: the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Foreign Affairs (AFET).

Only after obtaining the opinion of the European Parliament member states can vote on the final decision, during which process they are not obliged to accept the recommendation of the Parliament. Following procedural rules, Ministers of Interior of Schengen Agreement countries shall vote. The Ministers will hold three meetings in autumn: the first in September, the second on October 23, but it is more probable that the voting will take place at the meetings scheduled for November 30 and December 1, 2009.

EU countries which are not part of Schengen zone shall not vote – United Kingdom and Ireland – while other 25 countries do not have the same number of votes. Decisions are brought by qualified majority. Having in mind the procedure, it is extremely important for authorised bodies of Serbia to pay special attention in the following period to visit member states playing key roles in bringing such a decision and advocating in favour of their positive attitude.

Simultaneously, further implementation of reforms should not be neglected, especially of those referring to recommendations for which additional assessment was planned by the latest European Commission Report.

The Government of the Republic of Serbia provides the European Commission with detailed Reports on Progress in this process. It is unclear why the stated reports are not available to general public and why the Government of the Republic of Serbia has greater need to inform the European Commission rather than public about the undertaken reforms, taking into account that the public is very interested in the visa liberalisation process and that it is the party mostly concerned in the process.

145 Government of Serbia EU Integration Office, research: European Orientation of Citizens of Serbia - Trends , May 2009

The entire process of meeting the requests should be more transparent and accessible to public. Consequently, the Government of the Republic of Serbia has the largest responsibility to regularly inform the public during the process of adoption and implementation of the reform measures, and to develop clear criteria for the successfulness of the implemented measures. Most information used by Group 484 for creating this report was collected by interviewing state authorities, representatives of Embassies, by desk research, analysis of EC reports obtained by personal efforts of employees.

In this process, the role of civil society is extremely important, since it corrects, instigates and monitors the work of state administration. Without the civil society, which must have access to all public data on the work of state organs, without any limitations and restriction, there would not be well implemented reforms and real changes in the Serbian society.

In addition, review of the laws which have been adopted and effective is also missing.

“It is simply not right to attach insubstantial importance to formal adoption of Laws. New Laws can provide desirable effects only in case they are positively evaluated from the aspect of harmonisation with European standards and their application in real life”.¹⁴⁶

Considering the visa regime liberalisation programme in the context of efficient application of adopted regulations, as well as perceiving the Road Map as a document which established the criteria important for reforms in the areas of freedom, security and justice, is the only proper way to visa-free regime.

In accordance with our opinion, it can be stated that significant progress has been achieved in the process of adopting laws and bylaws, as well as related strategies and measures.

In further process of visa liberalisation state authorities must show particular responsibility towards their citizens.

In the first place, by continuing the reforms initiated by adoption of Road Map criteria, since the document serves as a matrix of required reformatory steps which would provide for improved efficiency of Serbian state, aiming at *bono publico* i.e. general interest of its citizens, where state administration represents only an efficient service in the process. Furthermore, creating the conditions for citizens to be able to actually enjoy the benefits of inclusion into the white Schengen list, above all by having the opportunity for obtaining biometric travel documents in the country and abroad. It is of special importance to make efforts to inform the public about the rights and obligations imposed by the Schengen system.

High level of certainty that Serbia will be included in white Schengen list starting from January 1, 2010, imposes the obligation to provide for continuation of initiated reforms, as positioning in the white Schengen list need not be permanent. This was the case of Ecuador, which was removed from white and included in the black list in 2005.

In the following period, Group 484 will continue its activities aimed at introducing the public with all issues related to white Schengen list, while simultaneously prompting state authorities to access all aspects of necessary reforms in systematic and comprehensive ways.

146 Rodoljub Šabić, *Fog on the Road to Schengen*, Politika Daily November 15 2008, p.10