
Towards White Schengen List

Serbia Progress Report on Visa Liberalisation Process

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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

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

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 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

The European Commission still uses the core principles of the Council of EU Regulation No. 539 of 2001, insisting on the approach "from case to case" related to the countries who wish to be included in the white Schengen list. This certainly does not diminish the need for closer cooperation among the countries of this region related to the implementation of necessary reforms in the fields foreseen by the so-called Road Maps.

The Road Map for visa liberalisation contains many elements that essentially go beyond the short-term priority of the Republic of Serbia – placing the Republic of Serbia on the white Schengen list. The requirements in the fields of control and monitoring migration flows, combating organised crime and corruption, human trafficking, money laundering, drug smuggling, etc. present one of the most important segments of reforms of Serbian society in the process of European integrations. The success in the implementation of relevant strategies and laws in these fields is the proof of essential changes of relations in Serbian society, representing the foundation of a different and modern Serbia.

Therefore, the Road Map must not be perceived as a document with a one-time value which will be used up once Serbia enters the white Schengen list. This document represents the matrix of necessary reform steps that should make the Serbian state administration more efficient in the realisation of *bono publico*, i.e. general interest of all its citizens.

We believe that the entire process of the fulfilment of the given requests foreseen by this document should be transparent and available to public. Consequently, the Government of the Republic of Serbia has the greatest responsibility to regularly inform public during the adoption and implementation of reform measures, and to develop clear criteria of the success of the implemented measures. In that process, the role of civil society is exceptionally important as a corrective, initiator and monitor of the work of the state administration. Without civil society, which must have access to all public information on the work of state organs in accordance with the law, there can be no properly implemented reforms and fundamental changes in Serbian society.

⁴ More about these agreements in the next segment of this document

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

AGREEMENT ON VISA FACILITATION BETWEEN THE REPUBLIC OF SERBIA AND THE EU AND AGREEMENT BETWEEN THE REPUBLIC OF SERBIA AND THE EU ON READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION

The Agreement on Visa Liberalisation between the Republic of Serbia and the EU

This agreement 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, 2007.⁶

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.

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.⁷

⁶ Official Gazette of RS No. 103/07

⁷ 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.

At the same time, it is obvious that citizens are not sufficiently informed about their rights, which should be clearly stated in the visa application.⁸

It should be emphasised that the Agreement does not apply to Denmark, Norway, Iceland, Switzerland, Great Britain and Ireland. Group 484 has learned that an Agreement with Denmark was signed in Belgrade on 13 March 2008. During the experts' talks in Bern, Switzerland, at the end of March 2008, the two parties agreed in principal on the provisions of a bilateral agreement. The Swiss party sent the official Draft Agreement at the beginning of August. The United Kingdom has responded positively to an initiative for entering into a bilateral visa facilitation agreement with certain reservations, stating that the issue of visa regime liberalisation should be postponed until Serbia begins issuing biometric passports. Ireland has announced that it will follow the steps of the UK as regards visa regime liberalisation for Serbian citizens.

Recommendations:

- *Intensify cooperation between representatives of Serbia and representatives of the EU at the common committee for the Agreement implementation, for the purpose of overcoming the identified difficulties in implementation and interpretation.*
- *Schengen states' embassies should harmonise their visa procedures in terms of number and types of required documents and the time necessary for scheduling interview appointments and submitting necessary documents.*
- *In cooperation with the civil society, the government of the Republic of Serbia should initiate an intensive information campaign on the rights of Serbian citizens derived from the Agreement on Visa Facilitation.*
- *Urgently initiate and finalise negotiations on the conclusion of individual agreements on visa facilitation with the countries that do not implement the Universal Agreement.*

Readmission Agreement between the Republic of Serbia and the EU

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

⁸ Group 484 has participated in the process of creation of a research of NGO the Citizens' Pact for South Eastern Europe aimed at identifying the citizens' perception related to the implementation of the Agreement on Visa Liberalisation. The final results of the research are not known at this moment, and the position is expressed based on preliminary results known to Group 484.

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 some modest attempts, there has been no systematic and organised approach to identify and record problems of returnees either in the countries of reception, western countries, or in the country of origin

Since 2000, Mol of Serbia has received 25,147 requests from western countries for the deportation of Serbian citizens. In 2008, after the uniform readmission agreement with the EU came into effect, there have been 965 requests - 799 based on bilateral readmission agreements⁹, and 166 based on the uniform agreement with the European Union. This is not a considerable increase compared to the previous period. Some 17 percent of the requests have been rejected, primarily due to inability to determine citizenship.¹⁰

The requests, as well as the readmission agreements, are primarily related to people who should be forcefully deported and most often do not encompass individuals who have returned 'voluntarily', i.e. those who have obeyed the decision of western country authorities to leave the country so that they would not be returned by police intervention.

Some EU countries, through the International Organisation on Migration (IOM) provide one-time assistance to returnees if they agree to return. Tickets and money (most often around 1,000 Euro per family) are given to returnees if they accept to be returned 'voluntarily'. Since 2000, the IOM Office in Belgrade has registered 13, 000 returnees who were beneficiaries of this assistance programme.¹¹ The assistance can cover basic needs for the first couple of months upon the return. After that, returnees are left on their own.

The readmission agreements obviously do not prevent Serbian citizens from seeking asylum in the EU countries and other western countries. By the number of filed asylum requests, 6,200, Serbia was seventh in the world in the first half of 2008.¹² In 2007, Serbia was fourth in the world with 15,400 asylum requests.¹³

An outstanding majority of Serbian people who applied for asylum were returned from Germany. In 2006 in Germany 3,282 citizens of Serbia applied for asylum. Most of them were Roma (43%) followed by Albanians (37%-mostly from Kosovo) . Only 2.5% were Serbs.¹⁴

As long as Serbia is high in the UNHCR statistics, it will not be admitted to the white Schengen list.

⁹ There have been 15 readmission agreements signed with 17 countries: Germany, Switzerland, Slovenia, Sweden, Slovakia, Bulgaria, Hungary, Italy, Denmark, Benelux, Croatia, BiH, Austria, France and Canada.

¹⁰ Source: Zorica Đokić-Milosavljević, Head of the Readmission Department of Mol of Serbia.

¹¹ Source: IOM Serbia

¹² UNHCR, Asylum Levels and Trends in Industrialized Countries - First Half 2008, October 2008.

¹³ UNHCR, Asylum Levels and Trends in Industrialized Countries - 2007, March 2008. Data for Serbia might include Montenegro in a few countries where no separate statistics are available for both countries.

¹⁴ Readmission from Germany, Voice of America, December 6, 2007.

In Serbia and western countries, the assistance to returnees whose asylum claims have been rejected or whose temporary protection has been terminated is often provided on an individual basis, since it is not a part of an overall development process and cooperation between the country of reception and the country of origin. In Serbia, the EU pre-accession funds do not encompass returnees and the very return is on an *ad hoc* basis, without support from the country of origin.

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. Often western countries do not submit information about these persons to Serbian authorities such as if they are individuals with chronic illnesses, persons who are not capable of taking care of themselves, unaccompanied children, or single parent families. The lack of information hampers adequate planning and organising for their admission to Serbia. According to the available data it seems that the laws and European Human Rights standards of protection of personal information, present ambiguous legally based justification for withholding personal information of people who have to be readmitted

The Inter-ministerial Council for Reintegration of Returnees from Western Europe, chaired by the Minister for Labour and Social Policy, Mr Rasim Ljajić, was established in November 2007 by a Serbian Government Decision.¹⁵ However, the Council has since gathered only once, during the previous government term. Additional ambiguities are the result of the fact that since the new government entered office in July 2008, the Sector for Population Policy, which should have been dealing with problems of returnees, has ceased to exist.

According to the European Commission, Serbia's capacity for integrating returnees remains poor. A national strategy has not yet been adopted, nor has the legal framework for reintegration been developed to allocate the necessary resources for implementing a comprehensive reintegration policy.¹⁶

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. Since 2003, 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:

- *The Ministry of Labour and Social Policy and the Ministry of Human and Minority Rights should urgently submit to the government of the Republic of Serbia the final draft of the National Strategy for Reintegration of Returnees. At the same time, it is necessary to ensure budget funds for its full implementation through relevant action plans that these ministries should create.*

¹⁵ Official Gazette of RS No.107/07

¹⁶ European Commission, Progress Report Serbia, November 2008.

- *Based on the National Strategy and Action Plans, the Ministry of Labour and Social Policy and the Ministry of Human and Minority Rights should create comprehensive reintegration programmes for returnees (for accessing the labour market, other social and economic rights, documents, etc.).*
- *In cooperation with the European Commission, it is necessary to advocate for the implementation 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.*

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

“According to the Serbian Mol data, in the period from the beginning of issuance of the new identity cards until August 4, 2008 in the territory of the Republic of Serbia, 116,406 applications for issuance of identification cards were submitted, among them 32,267 applications for issuance of identification cards without chips and 84,139 applications with chips. According to the same source, 78,891 identification cards were handed over to the applicants.”¹⁹

¹⁷ Official Gazette of RS No. 62/06

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

¹⁹ Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 8

In regards to travel documents, the National Assembly of the Republic of Serbia adopted the Law on Travel Documents²⁰, 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.

“Mass production of new biometric travel documents for those applications which had been submitted in the territory of the Republic of Serbia started on July 7, 2008. The first 204 new passports were promotionally handed out on May 3, 2008 to prominent citizens of Serbia. As soon as technical-technological conditions for transferring the data gathered by off-line acquisition are met (to be completed by October 2008), the production of new passports for Serbian citizens who submit applications outside the territory of the Republic of Serbia (in Diplomatic Consular Missions worldwide) will commence. 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

The implementation of the Law on Identification Cards and the Law on Travel Documents has produced initial confusion in police administrations that receive applications for the issuance of new identification cards and passports. Long lines of people forced the Mol services to work longer and start scheduling appointments for submitting documents for new documents. “In this way, people do not wait in lines and the legal issuance deadlines of 30 days are met.”²² However, precisely because of the long lines and the possibility to obtain travel documents via a simpler and less expensive method, large numbers of people have opted for the so-called old documents. “Since the beginning of summer, when the issuance of new passports started, 60,000 new and 130,000 old passports have been issued”.²³

It is obvious that Mol is not ready to completely replace old travel documents with new ones by the end of this year. As the Law on Travel Documents was being adopted, Group 484 pointed out that the deadline given for the replacement of old passports was too short and that it was necessary to extend the deadline, primarily because of citizens living abroad.

“As soon as technical-technological conditions for transferring the data gathered by off-line acquisition are met (this should be completed by October 2008), production of new passports for our citizens who submit applications outside the territory of the Republic of Serbia (in Diplomatic Consular Missions worldwide) will commence.”²⁴ Consequently, Mol has proposed changes to the Law on Travel Documents, Article 53, which will extend the deadline of validation of old passports until December 31, 2009. This proposal has been adopted at the National Assembly of the Republic of Serbia.

In regards to *administrative measures for ensuring integrity and security of personalisation process and distribution of travel documents*, “personalisation of travel documents is centralized and falls under the competence of the Information Technology Administration of the Ministry of the Interior (Mol). It is a part of the system which includes acceptance of applications for document issuance, data processing and personalisation. When citizens

²⁰ Official Gazette of RS No. 90/07

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

²² Minister Ivica Dačić, *Politika*, pages 1 and 8. from 25/09/2008

²³ Ibid, page 1

²⁴ Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 9

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 crypted tunnel into Mol IS. Through a courier service of authorised Mol 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 DHL²⁵.

In regards to the *establishment of training programmes and adoption of ethical codes on anti-corruption*, there is room for improvement and a need for necessary codes to be adopted. "The technical capacities of agencies involved in the issuing of visas, including equipment and training to detect forged and falsified documents, have not improved significantly."²⁶ According to the Serbian Mol data, the majority of trainings is yet to be realised. "Training on the adoption of police ethics is provided within the teaching program and the programs of the basic police training and within the Program of Professional Advance Training of the Serbian Mol officers, but with limited number of lessons. Mol – Administration for Professional Education, Qualification, Advance Training and Science, during 2008 and 2009 is planning to organise and implement the courses for managers in cooperation with the OSCE Mission and DCAF. Their teaching plan and programs will include the subjects of police ethics and ethical code on anti-corruption. Furthermore, the Administration for Professional Education, Qualification, Advance Training and Science is planning to organise and implement a special course on ethical code on anti-corruption. The attendees of this course will be: 1) administrative officers that deal with visas and travel documents; 2) operative officials involved in border security, control and management."²⁷ The new Code of Conduct has been implemented and as many as 70 employees have been dismissed as a result. These changes helped the disclosure of cases of abuse of office and the prosecution of these individuals before the court.²⁸ Trainings for employees at the Ministry of Foreign Affairs was delayed because the reception of applications for biometric passports at Consular Missions did not start before October 2008.

In regards to cooperation with INTERPOL, the Ministry of Interior reports regularly on stolen and lost documents.²⁹ 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 Mol 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.³⁰

²⁵ Report on Readiness, Visa Liberalisation with Serbia, October 2008, pages 14-15

²⁶ 2008 Serbia EC Progress Report, pg. 48

²⁷ Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 16

²⁸ 2008 Serbia EC Progress Report, pg. 34

²⁹ Dražen Maravić, *Head of Bureau for International Cooperation*, Mol of Serbia, interview, 13/10/2008

³⁰ Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 18

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 Card³¹ and the Rulebook on Identification Card³², 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.³³

Recommendations:

- *Mol of Serbia should continue with the full implementation of the Project of integrated automated system for personalisation of identification documents. With the full implementation of this Project, identification documents in Serbia will be harmonised with European standards, with the purpose of providing protection, keeping records, exchanging and browsing documents with automated identification of fingerprints and personal photographs. This also fulfils the short-term priority of the Government of the Republic of Serbia stipulated in the National Programme for Integration into the EU(NPI)*
- *Urgently adopt the necessary ethical codes and elaborate training modules and carry out trainings related to anti-corruption training of state officials.*
- *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 Mol that report to INTERPOL*
- *Fully implement laws and by-laws aimed at the protection of security of documents submitted for obtaining other identification documents. (More details in Block 4).*

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;*

³¹ Official Gazette of RS, 62/06

³² Official Gazette of RS, 11/07

³³ Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 22

- *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.*

On January 26, 2006, the Government of the Republic of Serbia adopted the “Strategy on Integrated Border Control in the Republic of Serbia “. This document expresses the readiness for the implementation of European standards in this field and sets foundations for passing sectoral strategies of border services (police, custom, sanitary and phytopathological inspection), as well as functional strategies that define the areas of common interest (joint trainings, telecommunication and information systems, infrastructure at border crossings, etc.)

“Upon adoption of the documents on Integrated Border Management Strategy and the Action Plan for its implementation, the Minister of the Interior; the Minister of Agriculture, Forestry and Water Management and the Minister of Finance signed “functional strategies” which define the areas of common interest for all four border services (joint training, infrastructure, equipment and IT and telecommunication systems). In connection with implementation of the part of the Integrated Border Management Strategy relating to cooperation within the services, three competent ministries produced ‘sectoral strategies’”³⁴

“Border services, including the Inland Water Transport Sector – the Ministry of Infrastructure (in charge of harbour authority), jointly produced the Agreement on Cooperation in the Area of Integrated Border Management. Preparation of protocol on cooperation is planned, which would specify conditions and procedures for cooperation in individual areas.”³⁵

“The strategy is supplemented by relevant action plans. A coordinating body has been appointed with representatives from all border services to monitor implementation. The transfer of competencies for control and supervision of the green (or land) and blue borders from the military to the border police has been finalized. The strategy of the Ministry of Interior to establish an integrated border management system has been drafted, along with the functional strategy for border services.”³⁶

Although the Ministry of Interior states that there have been improvements in the field of cooperation of border services at the central, regional and local level, the EC Serbia Progress Report emphasises that “Inter-agency cooperation is based on informal arrangements as multi- and bilateral agreements to cover the details of joint actions are not in place. There are considerable differences between the various border crossing points in terms of infrastructure and human and technical resources. Not all border crossing points have IT connections and some lack even basic equipment, in particular on the border with Montenegro.”³⁷ “No national assessment of external borders has taken place, however. No approach to common risk assessment has been developed. The strategy defines three levels of international cooperation and states that “legal regulations impede full cooperation in the area of border management, since there are no agreements on concrete cooperation with the neighbouring countries. The cooperation is not formalized through relevant institutions and there are no instructions, procedures and funds for its implementation”³⁸

³⁴ Report on Readiness, Visa Liberalisation with Serbia, October 2008, pg. 24

³⁵ Ibid, pg. 24

³⁶ 2008, UNDP Human Development Report, pg. 172

³⁷ 2008 Serbia EC Progress Report, pg. 49

³⁸ 2008, UNDP Human Development Report, pg. 172

The Ministry of the Interior of the Republic of Serbia in the previous period has undertaken measures and activities falling under its competencies in connection with application of this Convention. At the Fifth Annual Ministerial Conference on Cooperation on Border Security on the Western Balkans held in Budva in the period from February 21 to 23, 2008 the following documents were signed:

1. Protocol between the Ministry of the Interior of the Republic of Serbia and the Ministry of Internal Affairs and Public Administration of the Republic of Montenegro on holding regular meetings of representatives of border police authorities (came into effect and being enforced);
2. Protocol between the Ministry of the Interior of the Republic of Serbia and the Ministry of Internal Affairs of the Republic of Macedonia on holding regular meetings of representatives of Border Police authorities (came into effect and being enforced)

The majority of agreements are still in their draft versions. During 2007, representatives of Mol in cooperation with the Centre for Democratic Control of Armed Forces (DCAF), prepared drafts of the following implementation agreements and protocols for implementation of the Vienna Convention:

1. Agreement between the Serbian Government and the Government of the Republic of Croatia on Cross-Border Police Cooperation (Draft interchanged and amendments agreed)
2. Agreement between the Serbian Government and the Government of the Republic of Montenegro on Border Control at Joint Border Crossings;
3. Protocol between Ministry of the Interior of the Republic of Serbia and the Ministry of Internal Affairs and Public Administration of the Republic of Montenegro on Exchange of Liaison Officers,
4. Protocol between Mol of the Republic of Serbia and the Ministry of Security of the Bosnia and Herzegovina on Exchange of Liaison Officers,
5. Protocol between Mol of the Republic of Serbia and the Ministry of Security of the Bosnia and Herzegovina on Mixed Patrols along Common State Border,
6. Protocol between Mol of the Republic of Serbia and Ministry of Internal Affairs of the Republic of Croatia on Border Control at Joint Border Crossings;
7. Protocol between Mol of the Republic of Serbia and Ministry of Internal Affairs of the Republic of Croatia on Opening of and Cooperation in the Joint Centre;
8. Protocol between Mol of the Republic of Serbia and Ministry of Internal Affairs of the Republic of Croatia on Holding Regular Meetings of Border Services;
9. Protocol between Mol of the Republic of Serbia and Ministry of Internal Affairs of the Republic of Croatia on Mixed Patrols along Common State Border;
10. Protocol between Mol of the Republic of Serbia and Ministry of Internal Affairs of the Republic of Croatia on Exchange of Liaison Officers³⁹

The improvement in this field has been made through the adoption of the Law on the State Border Surveillance.⁴⁰ At the same time, The National Assembly of the Republic of Serbia ratified the Convention on Police Cooperation in the region of South Eastern Europe on July 23, 2007.⁴¹

³⁹ Report on Readiness, Visa Liberalisation with Serbia, October 2008

⁴⁰ Official Gazette of RS No. 97/08

⁴¹ Official Gazette of RS No. 70/07

Recommendations:

- *Continue further implementation of the Strategy for Integrated Border Control through further strengthening of cooperation among services included in the process of integrated border control. Apart from the Agreement on Cooperation among Border Services, it is necessary to sign relevant protocols that would operationalise that cooperation in the formal and institutional sense. With the successful implementation of the Agreement and the related protocols, the EC remark on interagency cooperation based on informal grounds would be dealt with.*
- *Continue further technical modernisation of border crossings through trainings provided to border officers. The Government of the Republic of Serbia should focus its attention on the budget allocations for these purposes, which means that the process of integrated border control should rely on national but also on the 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.*

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.”⁴²

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*

⁴² Defending Refugees’ Access to Protection in Europe, European Council on Refugees and Exiles (ECRE) pg. 28-29

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 Asylum⁴³ 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 Mol 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.

⁴³ Official Gazette of RS 109/07

On the basis of this Law, accommodation and basic living conditions are provided to the asylum seeker in the Asylum Centre, which operates within the Commissariat for Refugees, as a separate organisational unit.

In accordance with the Law on Asylum and the obligations arising from it and relating to the Commissariat for Refugees, adequate activities have been initiated in order to establish the Asylum Centre. The time limit for establishment and commencement of work of the Asylum Centre was April 1, 2008. In connection with this the Commissioner has enacted the following:

1. Rulebook on House Rules in the Asylum Centre
2. Rulebook on Manner of Keeping and the Contents of the Records on Persons Accommodated in the Asylum Centre
3. Rulebook on Accommodation Conditions and Provision of the Basic Living Conditions in the Asylum Centre⁴⁴

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

1. Proposal of the Decision on Establishment of the Asylum Centre and Provision of the Funds for Operation of the Asylum Centre in the Budget of the Republic of Serbia
2. Proposal of the Rulebook on Amendments of the Rulebook on the Internal Regulation and Job Systematization in the Commissariat, which envisages jobs in the Asylum Centre

Above proposals have been submitted to the competent ministries for review.

Although above mentioned documents which regulate operation of the Asylum Centre have not been adopted yet, the preconditions for its functioning have been provided by signing and implementing the Memorandum of Understanding between the Serbian Government and the UNHCR. Based on this Memorandum, the facility at Banja Koviljača was renovated in 2006 and will function as the Asylum Centre (accommodation and basic living conditions for asylum seekers). Currently the Asylum Centre is temporarily financed by the UNHCR.

At present, there are 49 asylum seekers in the Republic of Serbia.

Recommendations:

- *The Ministry of Interior should urgently carry out relevant reorganisation and establish the Asylum Office, the activities of which are currently realised by the Asylum Department of the Border Police Administration of MoI*
- *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;*
- *The Minister of Health should urgently enact the Rulebook on Medical Checkups of Article 39, paragraph 2 of this Law, which will be carried out at the reception in the Asylum Centre;*

⁴⁴ Official Gazette of RS No. 31/08

- *The Government of the Republic of Serbia should urgently adopt the list of safe countries of origin and third countries;*
- *The Government of the Republic of Serbia should make a formal decision on establishment of the Asylum Centre and ensures necessary funds in the budget for its functioning*
- *The Commissioner for Refugees should enact the Rulebook on Job Systematisation in the Asylum Centre*
- *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 Mol 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.*

Establishing the relevant mechanism for monitoring migration flows is one of the greatest priorities and challenges of the Serbian government. For the first time, a comprehensive policy of monitoring migration flows and defining Serbian migration profile should be established in the Republic of Serbia. At the same time, Serbia lacks a state organ that would formulate and implement such a policy. Some segments of the policy are presently under the competence of various ministries, which require efficient intersectoral cooperation and strong political will for prioritising the establishment of the policy in the field of migration.

Serbia 2008 Progress Report emphasises a modest improvement in the field of migration policy. "The handling of legal migration faces difficulties. Applications can only be filed from within the country. There is no central database of previous applications. Capacities of the competent Department for Foreigners are weak. Currently, there are 5,253 foreign citizens

permanently residing in Serbia. Serbia has continued to strengthen the capacities of the border police in order to fight illegal migration. Sections for suppression of illegal migration and trafficking within the border police and the criminal police directorate continued to ensure good coordination with the 34 police secretariats. From September 2007 to June 2008, 506 illegal border crossings were recorded. In 2007, 952 overstay cases were reported.”⁴⁵

The modest improvement of Serbia in the field of migration has created a need for serious analysis of the policy in the field of combating illegal migration and management of migration flows, i.e. illegal migration. Serbia still lacks a strategy related to combating illegal migration. For the adoption of the strategy it is necessary that Mol conceives a relevant proposal. In the field of migration flow management, the competences are divided among different ministries.

In regards to competences of state organs, the Law on Ministries⁴⁶ 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 of 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 abroad⁴⁷, 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.

The Serbian National Plan for the EU Integration (working version) foresees the adoption of the Strategy on Migration Flow Management as one of short-term priorities in this field, as well as strengthening capacities of the Sector for Population Policy of the Ministry of Labour and Social Policy, aiming at monitoring the situation, proposing certain measures, and strengthening capacities of the sector.⁴⁸

⁴⁵ EC Serbia 2008 Progress Report, pages 49-50

⁴⁶ Official Gazette No. 80/08

⁴⁷ 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)

⁴⁸ Serbian National Plan for the EU Integration, Government of the Republic of Serbia

However, the Sector for Population Policy has ceased to exist as a separate sector of the Ministry, which certainly does not contribute to the fulfilment of this short-term priority and can jeopardise the implementation of necessary measures in the field of both reintegration of returnees and future policy of migration flow management.

In contrast to the Republic of Serbia, some neighbouring countries pay much more attention to the issue of migration flow management. The Croatian Parliament adopted the Migration Policy of the Republic of Croatia for the years 2007 and 2008⁴⁹, and proclaimed that the migration policy would follow the principles of:

- State responsibility, primarily for legal transfer of population and regulation of naturalisation. This principle also refers to legal immigration and return of people of Croatian origin and the responsibility for maintenance and development of the identity of Croatian people,
- Solidarity, international division of burden and responsibilities, which is an obligation for providing protection and assistance to refugees, including illegal migrants,
- Long-term macroeconomic usefulness,
- Historical responsibilities, based on the concept of historical continuance and protection of national interests,
- Equality, freedom and mutual synergy, primarily based on integration policy⁵⁰

The explanation of this document states that special attention should be focused on the complex correlation between migration and economic growth, and that there is an increasing demand for labour force in Europe. The above mentioned is related to aging of the population, sustainable economic growth and changes in the labour market (new technologies, globalisation of economy, world trade agreement). In order to meet the mentioned challenges, states have to adopt new policies and practices for regulating and managing migration flows. "In the countries of origin, the so called »brain drain« is increasingly present, since the lack of educated labour force is a growing problem. Consequently, that leads to the lack of economic assets invested for education of these people and in general, to the outflow of qualified working age population. Therefore, it is the responsibility of all relevant bodies in the countries of origin to instigate the return of such migrants with relevant measures, since they bring with them knowledge, skills, experience and capital."⁵¹

These principles, but also the above mentioned facts, point to the need for dealing with the migration phenomenon in the Republic of Serbia as well. According to the OECD data, 127,000 people from Serbia (and Montenegro) with university education live in the territory of these countries.⁵²

The migration profile of the Republic of Serbia still does not exist. Such a profile should encompass all relevant data related to the field of immigration, but also emigration related to the Republic of Serbia, updated statistical data in these fields, established migration policies in the spheres of both forced and legal (economic) migration, as well as clearly identified problems in the field of implementation of these policies. Such a migration profile has been made for Croatia and Montenegro with the support of IOM. According to the Mol data, the

⁴⁹ Official Gazette of RC 83/07, 10/08/2007

⁵⁰ <http://www.infolex.hr/html/46239.htm>

⁵¹ Ibid

⁵² Prof. Vladimir Grečić, Group 484. Migration Flows in the SEE Region

migration profile will be created for the Republic of Serbia as well, also with the support of IOM.

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 term of science and practice, one of the most relevant 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."⁵³

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.

In regards 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 residence of foreigners through Internet, the existing types of visas have been abolished and new ones introduced (A – airport transit visa, B – transit visa, C – short stay visa and D – long stay visa).

The tourist pass has been abolished and border permit has been introduced, which is issued under strictly regulated conditions and within the procedure stipulated by the Law. Temporary residency has been introduced for the victims in human trafficking, which was previously regulated by the by-laws.

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

⁵³ Saša Božić et alia, Migration potential of Croatia...Migration and ethnic issues

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.

In regards to the visa regime of the Republic of Serbia, an improvement has been made in the field of visa abolition for EU citizens, and since June 30, 2007, visas have not been required for Romanian citizens as well. According to the data of the Ministry of Foreign Affairs, diplomatic and consular departments issued 80,806 visas in 2007. The most visas were issued to Turkish citizens (29,282), followed by the citizens of Ukraine and the Russian Federation (19,041).

In regards to establishing cooperation and concluding agreement with FRONTEX⁵⁴, the cooperation has not yet established in terms of a relevant agreement conclusion. The agreement with this EU agency would require additional obligations of the Ministry of Interior. Various kinds of operational cooperation might include, in particular, the exchange of information and experience. Frontex emphasises the development of a reliable third country information system with the aim to provide risk analysis units with appropriate information to integrate in future risk analysis reports. In concluding these agreements, FRONTEX gives priority to neighbouring third countries and those third countries, according to risk analyses, considered to be either countries of origin or transit in terms of illegal immigration or other kinds of serious cross border crime. This is also an indicator of how Serbia is perceived by the EU in terms of migration risks and the risk of cross border crime.

Recommendations:

- *Adopt and implement the Strategy on Migration Flow Management, i.e. the Strategy for Combating Illegal Migration. It is exceptionally important that the process of creation of this document is transparent and includes civil society representatives*
- *Form a relevant state organ or agency to deal with establishing, monitoring and realisation of the migration policy of the Republic of Serbia, responsible for intersectoral cooperation and cooperation with civil society. This will prevent ambiguities in competences of ministries and services 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*

⁵⁴ **Frontex**, the EU agency based in Warsaw, was created as a specialised and independent body tasked to coordinate the operational cooperation between Member States in the field of border security. The activities of Frontex are intelligence driven. Frontex complements and provides particular added value to the national border management systems of the Member States

- *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*
- *Start implementation of the Law on Aliens of the Republic of Serbia and continue with further reforms in this field, primarily in terms of establishing a database on aliens but also related to the adoption of other by-laws for the implementation of this law*
- *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*
- *Urgently conclude and implement the Agreement with FRONTEX and undertake joint actions in combating illegal migration and cross border crime*

Block 3: Public order and security - Preventing and fighting organised crime, terrorism and corruption

Serbia should:

- *Implement the Strategy to Fight 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

Combating organised crime, terrorism and corruption has lately been the issue on which the EU countries are particularly focused in the process of visa liberalisation. "Without an improvement in the areas of suppressing corruption and organised crime, visa liberalisation is unacceptable for the EU."⁵⁵ Although some improvement has been identified in the area of adoption of certain laws and measures, it is apparent that the European Commission expects results in the implementation of reform acts from this field as well.

The document European Partnership for 2008 stipulates the key priorities in this field: Adopt outstanding legislation, develop the capacity to seize assets, implement a national strategy against organised crime and strengthen criminal intelligence, Continue the fight against trafficking of human beings, including implementation of the strategy for prevention of trafficking and provision of adequate assistance and protection to victims, increase the efficiency of international cooperation and implementation of the relevant international conventions on terrorism, Improve cooperation and the exchange of information between all branches.

In its Progress Report on Serbia, EC states that: There has been little progress in the fight against organised crime. Organised criminal activities in the areas of drug trafficking and financial crime, including corruption and money laundering, remain a source of serious concern. Responsibility for the fight against organised crime is shared between the department for the fight against organised crime within the Ministry of Interior and a number of specialised police departments. New laws on seizure of assets acquired through criminal acts and on criminal liability of legal persons were adopted in October 2008. Several high-level cases are ongoing, including the trial concerning the assassination of former PM Zoran Djindjic, for which the second instance procedure started in September 2008. Support for the witness protection system continued.⁵⁶

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.⁵⁷

As one of the most important laws adopted in this field, certainly is the Law on Organisation and Competences of State Bodies in Countering Organised Crime ("The Official Gazette of the Republic of Serbia," number 42/02, 27/03, 39/03, 67/03, 29/04, 58/04, 45/05, 61/05) governs the education, organisation, competence and authorities of special organisational units of the state bodies with the aim to detect and criminally prosecute offenders who commit criminal acts with elements of "organised crime."

This Law stipulates the setting up of specialised state bodies for combating organised crime, as follows:

⁵⁵ Statement of the German Ministry of Interior, published in Politika, 14/11/2008

⁵⁶ EC Progress Report for Serbia, 2008, pg 53

⁵⁷ National plan for integration into the EU, working version, Government of the Republic of Serbia, may 2008, page.584

- Special Prosecution Office – a separate department for countering organised crime at the District Public Prosecution in Belgrade;
- At the Ministry of Interior – Criminal Police Administration, the Division for Combating Organised Crime has been set up;
- The proceeding in the criminal act cases in the area of organised crime falls under the competence of the District Court in Belgrade, as the first-instance court (Special Department), while the Appeal Court in Belgrade (Special Department) is the second-instance body.
- At the District Prison in Belgrade, there is a special detention unit being created for serving the detention established in a criminal proceeding for criminal acts of organised crime (Special Detention Unit).

Within the Division for Combating Organised Crime of the Ministry of Interior, the following organisational units have been created:

- Department for Combating Organised Financial Crime, within which there are three sectors:
 - Sector for countering money laundering
 - Sector for countering counterfeiting of money and other means of payment
 - Sector for countering corruption
- Department for Combating Organised General Crime, with the following units:
 - Sector for countering human trafficking and smuggling of people.
 - Sector for countering kidnappings, extortions and blackmails with elements of organised crime
 - Sector for countering smuggling of arms and hazardous materials
 - Sector for countering international smuggling of motor vehicles
 - Sector for countering smuggling cultural properties
- Department for countering smuggling of drugs:
 - Sector for countering smuggling of cocaine, heroine, marihuana and cannabis
 - Sector for countering smuggling of synthetic drugs and misuses with precursors
 - Sector for coordination tasks, exchange of information and operational work
- Department for Combating High-Tech Crime
 - Sector for countering electronic crime
 - Sector for countering crime in the area of intellectual property
- Department for operational telecommunications, permanent duties and security:
 - Sector for operational telecommunications and crypto protection
 - Sector for permanent duties and securing of facilities

The following laws have also been adopted: Law on the Protection of Participants in the Criminal Procedure, Code on Criminal Procedure, Law on Substances used in Illicit Production of Drugs, Law on Confiscation of the Assets obtained by the Criminal Act. However, the Progress Report states that “International police cooperation and the capacities of the specialised police services to investigate financial crime remain insufficient. Owing to the large number of police departments involved in the fight against organised crime, internal coordination is a challenge. Final convictions in organised crime cases are rare. A common database on information related to organised crime has not been set up. Although some efforts have been undertaken to improve the witness protection system, its

capacities remain very limited and it suffers from a lack of trust and cooperation. Management capacities for seized assets acquired through criminal acts are not in place and provisions on confiscation of the proceeds of crime are not sufficiently implemented. Preparations in the area of the fight against organised crime remain at an early stage, which is a matter of concern and affects the rule of law and the business environment.”⁵⁸

The statistics of the Division for Combating Organised Crime shows that 43 criminal groups of different level and degree of organisation were discovered during the period from 2006 to June 2008. A total of 123 criminal complaints have been filed against 742 individuals. Among the disclosed criminal groups, the highest number is from the field of organised financial crime, then from the field of organised general crime (18) and from the field of drug trafficking and smuggling (5).

On the basis of the statistical data of the competent court for the processing of this kind of criminal acts, 357 individuals were processed during the period from 2004 to 30th June, 2008. For 332 individuals condemnatory judgement was issued, 329 individuals were adjudged to jail, there was one probation judgement, 8 acquittals, 17 nonsuits and proceeds were confiscated from 106 individuals.

The type of criminal acts that were processed by disclosing individuals associated into groups for criminal acting are: homicide; aggravated murder; kidnapping; coercion; grand larceny; robbery; fraud; extortion; money counterfeiting; manufacturing, acquisition, and giving to others tools for counterfeiting; unauthorised production, keeping and putting into circulation of narcotic drugs; causing general hazard; assassination of the highest state representative; criminal association; illegal keeping of guns; illegal crossing of borders and smuggling people; counterfeiting documents; abuse of official position; receiving bribe; giving bribe and human trafficking⁵⁹

As a precondition for successful fight against organised crime, the Strategy for the Fight against Organised Crime is necessary. The Strategy has not yet been adopted, and the same is with the relevant action plan in this field.

In regards to *the fight against human trafficking and smuggling*, the importance of this segment is also emphasised by the document of the European Partnership for 2008, which insists on the implementation of the document.

In the aftermath of armed clashes and the break-up of 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.

⁵⁸ EC, Progress Report for Serbia 2008, pg.53

⁵⁹ Report on Readiness, Visa Liberalisation with Serbia, October 2008, pg. 45-46

In absence of an exact monitoring and analysis system in place, the majority of international, non-governmental and governmental organisations provide different estimates on the magnitude of the human trafficking in the world and in this region. According to UN reports, around 700,000 women and children annually become victims of human trafficking in the world. The Swedish women's non-governmental organisation *Kvinna till Kvinna* estimates that around 500,000 women from all over the world are transferred to Western Europe as human trafficking victims.⁶⁰ According to estimates by International Organisation for Migration (IOM), approximately 12% of all human trafficking victims are children.⁶¹ Data collected by MARRI shows that around 100,000 illegal migrants a year cross the territory of South Eastern European countries, out of whom around 15% originated from the countries of our region.⁶² According to the data provided by a group of researchers from South Eastern European countries, between 600,000 and 800,000 people from all over the world become the victims of human trafficker and are exploited by those who use their services (weekly *Vreme*, September 22, 2005, page 17). According to the same source, the American Federal Bureau of Investigation (FBI) claims that this type of illicit trade reaches 9.5 billion dollars annual turnover.

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 Serbian Mol, criminal charges encompassed 74 adult perpetrators, while in the period January-September 2008, 61 adult perpetrators were encompassed. During 2007, 96 individuals were aggravated (62 male and 34 female). In the period January-September 2008, 33 victims were identified (4 male and 29 female). In 2007, 5 individuals were up to 14 years of age (3 male and 2 female); 30 people between 14 and 18 years of age (13 male and 17 female); and 61 individuals over 18 years of age (46 male and 15 female). In 2008, 9 individuals were up to 14 years of age (4 male and 5 female); 8 individuals between 14 and 18 years of age (female) and 16 individuals over 18 (female). Interesting data are related to the citizenship structure of victims, identified by the Division for the coordination of the protection of the victims of human trafficking, showing predominant number of our citizens in 2007 and 2008, which points to the presence of internal human trafficking.

From the stated data, as well as according to the estimates of the Division for the coordination of the protection of the victims of human trafficking, it may be concluded that the trend of an increasing number of domestic female citizens in the total number of the identified victims continues. The fact which also worries is a high percentage of juvenile victims.⁶³ The number of our citizens among perpetrators is also dominant (73 in 2007 and 58 in 2008).

In regards to the criminal act of trafficking of children for adoption, during 2007 there were 3 criminal charges filed against 5 individuals, adult perpetrators, 4 men and 1 woman, with 3

⁶⁰ "Human trafficking in Serbia", Victimology Society of Serbia, Belgrade, 2004, pg. 24

⁶¹ IOM Kosovo (2002), Return and Reintegration Project, Situation Report, February 2000 – December 2002

⁶² Migration, Asylum, Refugees Regional Initiative ([www.marri-rc.org/Strategy and activities-Migrations](http://www.marri-rc.org/Strategy_and_activities-Migrations)), 2005–2006

⁶³ Progress Report on Visa Liberalisation, page 50

juvenile victims, while in 2008 there were no charges filed for this criminal act. For the criminal act of Article 390 of the Criminal Code, Holding in Slavery and Transportation of Enslaved Persons, there were no criminal charges.

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.⁶⁴

The new Criminal Code of the Republic of Serbia was adopted on June 29, 2005 ("Official Gazette" of the 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.

This criminal offence is in fact an elaborated and amended version of the existing Article 249 of the Basic Criminal Code of the Republic of Serbia. Amendments made the provision defining this criminal offence more updated and harmonised with the standard established by the Second Protocol (Article 6 para. 3) making it less legally uncertain.

In 2007, there were 874 aliens identified in the territory of the Republic of Serbia, entering illegally to the territory of the Republic of Serbia, and legal measures were taken against them. The most measures were taken against Albanian nationals, 39% (332) of the overall number. Out of the total number of people who entered illegally in Serbia, 195 (22%) were minors. The majority were men 797, and 77 women. During 2008 and till October 22, there were 602 aliens identified in the territory of the Republic of Serbia, who had illegally entered its territory.

During 2007, 89 criminal charges was filed for the criminal act of Article 350 of the Criminal Code of RS (the majority of perpetrators were Serbian nationals). Among 343 smuggled people identified in 2007, the majority were citizens of Albania, 173 individuals, followed by Serbian nationals, 75 individuals (27 from AP KiM), 40 Turkish citizens, etc. During 2008, there were 54 criminal charges filed, and 72 perpetrators were Serbian nationals. In the period January-September 2008. there were 152 smuggled individuals identified, the majority of them being smuggled from Albania 51, and Serbia 38 (11 from AP KiM)

The following case illustrates that smuggling of people is a rather big problem and that Serbia is a channel for human smuggling and trafficking:

Only during December, the Police Administration in Subotica and the Regional Border Police Centre detected several channels for smuggling people, Albanians from Kosovo and Metohija, Macedonia and Albania. Mainly the Albanians living in Subotica were arrested, but also one police officer of the Police Administration in Subotica. 280 individuals were prevented from entering the neighbouring Hungary from Serbia. The Police Administration in Subotica filed criminal charges for trafficking against all the arrested, and the competent investigating judge order one-month detention.

⁶⁴ Weekly 'Vreme', September 22, 2005

Source: Politika, 280 Albanians smuggled during one month, November 26, 2008

There can be no successful fight against human trafficking in Serbia without cooperation with non-governmental organisations. Women's groups in Serbia have been dealing with human trafficking issues since 1990s. ASTRA⁶⁵ was the first non-governmental organisation to focus on these issues considering them to be the gravest possible form of violence against women. Prevention of human trafficking, and education of and assistance to trafficking victims are aimed at making these issues visible in the society and addressing them without prejudice, especially when it comes to female victims who are often subjected to psychological and physical violence.

After the change of power that occurred in Belgrade in 2000 and after the inauguration of the new government of Serbia at the beginning of 2001, there were attempts to systematically involve various institutions in the fight against human trafficking. In mid 2001, the Yugoslav Team for Combating Human Trafficking, comprising representatives of competent ministries, non-governmental and international organisations, was formed.⁶⁶ **In April 2002 a National Team for Combating Trafficking in Human Beings** was established in Serbia. ASTRA has had representatives in both teams from the very beginning. Within the National 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).

ASTRA has its representatives in three working groups: Working group for the Prevention and Education which is coordinated by ASTRA, Working Group for Children and Working Group for the Assistance to the Human Trafficking Victims..

The National Coordinator created the Advisory Body for Combating Trafficking in Human Beings in February 2004 comprised of:

- 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.

⁶⁵ NGO ASTRA (<http://www.astra.org.yu>)

⁶⁶ Data provided by the Research Group, *Vreme* weekly, September 22, 2005, p. 16)

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.

NGO ASTRA warns we should be additionally cautious in expressing the final opinion on successfulness of the fight against human trafficking in Serbia.⁶⁷

- The Republic of Serbia has not yet adopted the National Action Plan for Suppressing Human Trafficking
- With the enacting of the new Criminal Code, there was an important improvement in regards to defining human trafficking, in the criminal act of Article 350 *Illegal crossing of state border and smuggling of people* (making clear distinction between these two acts), as well as the introduction of the criminal act of Article 389 Children trafficking for adoption. However, the new Criminal Code brings generally milder penalty policy, which is noticeable with the criminal act of human trafficking and so the penalty for children trafficking stipulated in Article 388, paragraph 3 is reduced from minimum five years to minimum three years of imprisonment. This is particularly worrying having in mind the increase in the identified juvenile victims of trafficking.
- National team for combating human trafficking is an excellent example of cooperation of government, nongovernmental and international organisations (mainly as observers), but unfortunately it still operates without a clear procedure and rule (unclear criteria for the reception/stepping out of the team, decision making, approaching working groups, etc.). This team has not yet carried out any joint activity related to the fight against human trafficking (underlined by the author). Members of the Republic team do not have clearly defined roles and responsibilities. The communication among the members is at the informal level⁶⁸. All the activities focused on suppressing human trafficking in Serbia have been carried out with the donations of international organisations and foreign governments, through the activities of nongovernmental organisations (shelters, SOS telephones, media campaigns, education) or through institutions through additional education, study travels and providing technical equipment (primarily of the police). In

⁶⁷ Interview with Marija Anđelković, NGO ASTRA, November 2008

⁶⁸ Thus, for example, the working group for the law implementation, steered by the Ministry of Justice, has not gathered ever since it was founded. The members of this working group, both government and nongovernmental organisations, did not even meet on the occasion of introduction of the criminal act of human trafficking in the criminal legislation of the Republic of Serbia.

previous budgets of the Republic of Serbia there were not funds allocated for suppressing human trafficking⁶⁹.

- The majority of nongovernmental organisations, but also a number of representatives of the government sector, participate in the preventive activities of suppressing human trafficking. Representatives of government institutions accept invitations and gladly participate in these projects (as either participants or lecturers). Unfortunately, there has not been any systematic approach to the prevention. Furthermore, evaluation has not been carried out in order to determine the real efficiency of these activities and their future direction.
- Although there was a considerable improvement by establishing the Service for Coordination of Assistance to Victims of Human Trafficking (2004)⁷⁰, the fact is that the direct assistance (medical, legal, psychological...) has been so far provided by only three nongovernmental organisations and IOM (through repatriation and supporting the work of shelters). Unfortunately, up to this day, there has not been any protocol on operating procedures related to trafficking victims in Serbia, the procedure is rather unclear and the majority of representatives of institutions is not familiar with the existence of the Service, and its competences. The practice shows that in Serbia the identification of victims is still mostly done by the police, while the Service mainly confirms this primary identification. There have been many cases of direct and indirect pressure put on trafficking victims to appear as witnesses in court proceedings. The reflexion period in practice is often not respected and the risk assessment is very rarely conducted. Furthermore, it is very important to conduct evaluation and assessment of the quality of the offered services to victims of trafficking of government, nongovernmental and international organisations. In the future, it is necessary to work on increasing the quality of services offered to victims, but also on improvement of the existing ones.
- In Serbia, there are no special programmes and measures related to operating procedures with children victims of trafficking. They receive the same type of assistance as adult victims, share the shelter with them and go through the same treatment.
- The Service has a database with the data on victims they have had contacts with since the Service was established. The methods of protection of these data are not known, as well as the criteria for accessibility/prevention of accessibility to the data to public, scientific workers, interested individuals and victims themselves⁷¹.
- The penalty policy for the criminal act of human trafficking is rather mild, apart from several exemptions. During 2005, some big court proceedings were completed, but unfortunately, the main organisers of this «business» in Serbia (but also in the region), are still at large and/or on the run. There has never been any investigation related to the connection of corruption of state organ representatives and human trafficking in concrete cases. The evidence procedures with this criminal act is still mainly related to witnesses/victims and their testimonies. Civil proceedings for damage compensation for victims of trafficking present a new problem. As it is the practice that this request of the witness/victim is not decided upon during the criminal proceedings, the court refers them to realise their right to damage compensation through the lawsuit procedure, which

⁶⁹ Law on the Budget of the Republic of Serbia, Official Gazette of RS No. 123/2007, 58/2007, 106/2005, 108/2005 - corrected, 85/2006 and 86/2006 - corrected, 127/2004 and 66/2005, 33/2004 and 115/2004, 86/2002 and 35/2003, 74/2001, 35/2002 and 86/2002, 21/2001 and 27/2001 - corrected) At the moment this report was being created, there was not any information as to the final draft of the Law on Budget for 2009.

⁷⁰ By 01/07/2005 this Service was financially supported by OSCE. After that, the Service should have been financed by the state budget, but unfortunately that did not occur.

⁷¹ Law on Protection of Personal Information, Official Gazette of SRY", No. 24/98 and 26/98.

usually lasts long, requires presence of the victims and big expenses (taxes, engagement of proxies...). The problem is even larger in cases of foreign nationals who have witnessed in criminal proceedings in Serbia and then repatriated to their countries of origin, being exposed to additional travel and accommodation expenses in case they want to realise their right to damage compensation. The issue of their safety during their return to the country where they were witnesses and possible encounter with the trafficker is the reopened. However, the existing education and trainings for judges and prosecutors should be continued, but the education for lawsuit judges should be considered in order for the revictimisation of victims in the court proceedings to be reduced to minimum.

- Reintegration and resocialisation of victims are burning issues. The victims are mainly offered language and IT courses but some systematic and long-term programmes are still not present. There is a visible lack of information after the victims have been repatriated and the success of their resocialisation in the country of origin. This segment requires urgent and more organised participation of social care system and creation of special programmes within the system.

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.

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*⁷² 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.⁷³

Representatives of NGO ASTRA have made certain remarks regarding the process of the creation of this document about which no public discussion has been organised, and they conclude that the text of the document does not state the timeframe the Strategy refers to.⁷⁴ Without a precise timeframe within which the defined objectives should be realised, there is a great concern that we will wait much longer for the next, revised Strategy, which will be harmonised with the new trends and problems on the field.

Furthermore, the part related to *Monitoring Implementation of Mechanisms for the Fight against Human Trafficking and Result Evaluation* has rather incomplete explanation of obligations of the actors included in suppressing human trafficking in the territory of Serbia.

Enacting of the Strategy should create preconditions for further elaboration of plans and programmes for the fight against human trafficking in the Republic of Serbia, above all the annual national action plans. Unfortunately, although the Strategy was adopted as early as in autumn 2006, no national action plan has been adopted, and the national coordinator was selected almost a year after his predecessor had resigned. Serbia has not yet ratified the Council of Europe Convention on Action against Trafficking.

⁷² Strategy was published in the Official Gazette of RS, No. 111/2006 of December 12, 2006

⁷³ More about the Strategy, see in the analysis of Article 9 of the Protocol

⁷⁴ During the creation of the first draft in 2005, the Strategy was planned to cover the period 2005 – 2008

In regards to *suppressing and combating money laundering and financing terrorism*, the document of European Partnership for 2008 emphasises that it is necessary to: Adopt the necessary legislation and a national strategy, including a timetable, against money laundering and financing of terrorism, 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. Serbia Progress Report states that insufficient improvement has been made in this field, and that the necessary relations have not been adopted. Criminal investigations in money laundering cases have had very limited success. Police and prosecution service lack the capacities and expertise to follow up properly reports issued by the Financial Intelligence Unit concerning suspicious transactions. This results in a low number of final convictions in such cases. Proper management of seized assets is still not assured. Legal entities do not fully comply with their reporting obligations and enforcement remains insufficient. Further efforts are needed in order to better control the high number of cash transactions. Preparations in the area of money laundering are still at an early stage. Money laundering continues to be a serious problem in Serbia (underlined by the author)⁷⁵

The National Strategy for the Prevention and Combating Money Laundering and Financing Terrorism was adopted by the Government of the Republic of Serbia on September 25, 2008 and the draft of the relevant law has been submitted to the National Assembly.

One of the concerns in the Progress Report is that “Progress in the fight against terrorism has been limited to improved protection of official buildings and training efforts. Ratification of key international conventions is still pending. Specific legislation is not in place. A database on terrorism suspects has not been established. Cooperation between police and the security agency, as well as their ability to exchange information, need to be reinforced. Serbia remains at an early stage in developing a comprehensive approach to fighting terrorism”⁷⁶. (underlined by the author).

Serbia has not yet ratified the Protocol of the Council of Europe Convention on the Prevention of Terrorism, the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from the Crime and the CoE Convention on the Prevention of Terrorism.

In regards to the *adoption and implementation of the National Strategy for the Fight against Drugs and the relevant action plan*, the European Partnership for 2008 emphasises the need for strengthening the fight against drugs, as well as for the adoption and implementation of the strategy in this field. The Progress Report identifies certain progress in this field but emphasises that the relevant strategy has not been adopted yet, as well as the action plan and the Law on Drug Trafficking and Production. The Report also states that the cooperation with international bodies in the drug control field, such as the European Monitoring Centre for Drugs and Drug Addiction and the United Nations Office on Drugs and Crime, needs to be improved. There is no exchange of operational data with UNMIK police. There is no databank on drug seizures. Drug abuse, in particular among young people, is increasing. Preparations in the area of the fight against drugs are moderately advanced, but drug trafficking remains a serious concern.

⁷⁵ 2008 Serbia EC Progress Report, page 50

⁷⁶ Ibid, page 52

In this report, Serbia is marked as one of the major Balkan routes for transit of heroin, cocaine, marijuana and synthetic drugs, with organised groups originating from Serbia being an important part of the criminal network.

Capacities of the border police have been strengthened and efforts have been made to improve regional and international cooperation. A number of successful operations were carried out which resulted in the detection of organised crime groups and narcotic drugs networks, as well as increased quantities of drugs seizures. From January to June 2008, Serbian authorities seized 350 kg of heroin, 15 kg of cocaine and 1000 kg of marijuana. Over 4000 criminal charges have been filed in relation to drug offences, compared to 5151 in 2007.⁷⁷

The important position of Serbia as a transit route in this criminal chain is also illustrated by the report of the US State Secretariat, Bureau for Drugs for 2008, stating that Serbia is the main transit route for narcotics and other drugs at the Balkan smuggling corridor. The report says that Serbia has achieved record results in confiscation of drugs, but that organised criminal groups still exploit inadequate border control and inefficient legal system. Mild penalty policy in this field is also emphasised. During 2007 as much as 71% probations sentences were pronounced for the criminal act of production, keeping and selling narcotics (6,141 cases) and 2,397 (28%) cases were sentenced to imprisonment.⁷⁸

In regards to combating corruption, the document European Partnership for 2008 emphasises that it is exceptionally important to implement the action plan on the anti-corruption strategy and establish an independent and effective anti-corruption agency, Ratify international conventions against corruption. Further clarify and enforce regulations related to the prevention of conflict of interests, in line with international standards. Develop and implement a transparent system of declaration of assets of public officials.

The Progress Report states certain improvement in the fight against corruption and in the creation of a comprehensive national policy in this field. However, by careful reading of this segment of the report, it can be clearly noticed that the stated improvement is only identified in the part related to the adoption of necessary laws and ratification of conventions, but not to the implementation of regulations in this field.

Up to this date, Serbia has ratified the UN Convention against Corruption,⁷⁹ Council of Europe Criminal Law Convention on Corruption⁸⁰ and Additional Protocol with the convention, as well as the Civil Law Convention on Corruption of the Council of Europe⁸¹ During 2008, many laws have been adopted: Law on Liability of Legal Persons for Criminal Acts⁸², Law on Seizure of Assets Acquired through Criminal Acts⁸³, law on the Agency for Combating Corruption⁸⁴ The changes and amendments to the Code on Criminal Procedures is under preparation. At the same time, the working group for the creation of the Law on International Legal assistance is formed.

⁷⁷ 2008 Serbia EC Progress Report, page 54

⁷⁸ 2008 UNDP Human Development Report for Serbia, page 159

⁷⁹ Official Gazette of SaM-International agreements No. 12/05

⁸⁰ Official Gazette of RS- International agreements No. 102/07

⁸¹ Ibid

⁸² Official Gazette of RS No. 97/08

⁸³ Ibid

⁸⁴ Ibid

Wishing to warn on the problem of implementation of regulations in this field, the Progress Report emphasises that “the anti-corruption agency has not yet been established. This is of particular concern in view of the new role assigned to it under new legislation in the areas of conflict of interest and financing of political parties. Serbia has to ensure that the new agency will have a sufficient level of independence, capacities and competencies in order to effectively fulfil its tasks. The current role of the Anti-Corruption Council is limited to advising the government. The Law on free access to information contains loopholes, such as criteria for the classification of information, which hamper implementation. The action plan for the fight against corruption lacks clear deadlines, specific action and the necessary resources for implementation and therefore needs to be revised. Public procurement and privatisation procedures along with major budgetary expenditure are not efficiently monitored by independent bodies. The State Audit Institution is not fully operational with only two auditors' posts filled, and currently cannot provide efficient auditing services. Other control bodies, such as the Commission for the Protection of Bidders in the area of public procurement, act only upon specific requests and conduct no general monitoring of the procedures for lack of appropriate powers and financial resources. The capacities of the law enforcement bodies to investigate corruption cases are limited. At the same time, courts are bound by highly complex procedural rules imposing strict conditions on the prosecution service. This results in a low rate of convictions in corruption cases. Overall, corruption continues to be widespread and to pose a serious problem in Serbia.”⁸⁵

Similar observations are expressed by NGO Transparency Serbia (TS) in its memo from June 2008, with recommendations for changes and amendments to the working version of the National Plan of Integration (NPI) to the EU, in its part related to combating corruption. The general remark of this acknowledged NGO is related to the fact that the implementation of the existing anti-corruption regulations was omitted from the analysis and planning. Referring to the NPI stating that the Government of Serbia has formed the Commission for the Implementation of the National Strategy for the Fight against Corruption, TS concludes that “The Commission has neither done any entrusted tasks nor has established the ways the tasks will be realised. The main reason for that is that the Government, as a founder, has not provided funds for the work of the Commission and the fact that the Commission was not assembled for a long time, mainly due to the election process and the slow forming of the Government in 2007.” In regards to the implementation of the Law on the Prevention of Conflicts of Interests and the work of the Republic Committee that monitors the Law implementation, TS states that “the Republic Committee has encountered great difficulties in their work, such as: large number of state officials who do not report on their assets and revenues (a couple of thousands); refusal of officials and organs to obey recommendations of the Committee; the lack of mechanisms for establishing and updating a common list of officials the law refers to. Besides, there are some shortcomings of the legal solutions – a number of important state officials remained uncovered with legal provisions, privacy of data from the reports, the lack of obligations to check the data accuracy in the reports of state officials, and the lack of sanctions.”

TS also states that the Law on Financing Political Parties is being constantly violated, but such behaviour remains unpunished. The reasons for such a situation partially lie in weaknesses of certain legal solutions, but much more in the lack of readiness of organs and bodies responsible for its control to do their job. It is particularly noticeable that the Republic Electoral Commission (REC) has not performed a comprehensive verification of accuracy and completeness of reports on financing campaigns, despite strong indicators for such an

⁸⁵ 2008 Serbia EC Progress Report, page 12

action. (underlined by the author). Furthermore, even in cases when the Republic Electoral Commission has confirmed irregularities, they have not filed the requests for initiating offence proceedings, for which they are authorised. REC has not always provided access to the data on financing campaigns. Generally speaking, neither REC nor the Finance Committee are the institutions that have sufficient level of independence (they are comprised of representatives of political parties) in order to perform the tasks stipulated by the law. Furthermore, they lack capacities for these activities.

The Law on State Audit Institution stipulates possibility (but not obligation) for this institution to control legality of financing political parties and electoral campaigns. The conditions have not yet met for the State Audit Institution to start working. The National Strategy for the Fight against Corruption foresees that these activities should be entrusted to the Agency for Combating Corruption.

The Public Procurement Law stipulated the establishment of the Public Procurement Office and the Commission for the Protection of Rights. Apart from considerable efforts of these two institutions, the Law has not yet achieved maximum effects. These two institutions lack basic conditions for efficient work, being without their own premises and the premises they are using now are inadequate. Furthermore, due to uncompetitive salaries, they have constant outflow of trained staff; they have insufficient number of personnel for accomplishing tasks imposed by the law and they lack relevant authorisation for conducting certain tasks. Furthermore, the control of exceptionally important parts of the public procurement process, such as planning procurement and implementation of agreements is under the competence of other state organs of which many have not been fully established (State Audit Institution, internal auditing services in large budget beneficiaries) or also lack appropriate capacities (budget inspection of the Ministry of Finance).

Commissioner for Information of Public Importance, as an independent state organ, started with efficient work after he had been provided with basic operating conditions in June 2005. However, the working conditions (above all the premises) are still inappropriate, which is directly reflected on the pace of their work. Furthermore, the implementation of the law is also hindered by the passivity of other state organs, above all the Government, which has not ensured its legal obligation of “providing execution of the Commissioner’s decisions when needed”, not in one single case. The mechanism for initiating offence proceedings is still inefficient primarily due to the lack of capacities at the Ministry of Culture, responsible for monitoring the law implementation.⁸⁶

At the 38th plenary session of the GRECO held from 9th to 13th June, 2008, the 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 adopted⁸⁷. The GRECO positively assessed the efforts and work of the state bodies of the Republic of Serbia in the fight against corruption, particularly taking into account that activities have been undertaken by the Republic of Serbia with regards to each recommendation. Out of 25 recommendations, the Republic of Serbia has fulfilled twelve recommendations.

⁸⁶ Proposals for changes and amendments to the document National Programme for Integration into the EU, Transparency Serbia, July 2008

⁸⁷ 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.

The positively tuned GRECO report highlights the fulfilment of forma criteria, above all the field of adoption of relevant legislation, but the full implementation of the National Strategy for the Fight against Corruption, the relevant action plan and law remain a serious problem for the future. Furthermore, the implementation of the Strategy for Judiciary Reform is already 2 years late.

Recommendations:

- *Urgently adopt and start the implementation of the National Strategy for the Fight against Organised Crime*
- *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
- *Ratify the CoE Convention on Action against Trafficking*
- *Urgently adopt the National Action Plan for Suppressing Trafficking with the full participation of civil society*
- *Tighten the penalty policy for the criminal act of human trafficking. The sentence of imprisonment for child trafficking foreseen in Article 388, paragraph 3 has been reduced from the minimum of five years to the minimum of three years of imprisonment, and this provision of the Law should be changed*
- *The National Plan for the Fight against Trafficking should function in terms of the implementation of joint actions 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 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*
- *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.*
- *Establish special programmes and measures related to children victims of trafficking*
- *Define clear methods of data protection on trafficking victims and criteria for accessibility/prevention of accessibility to the data to public, scientific workers, interested individuals and victims themselves*

- *Continue the existing education and trainings for judges and prosecutors should be continued, but the education for lawsuit judges should be considered in order for the revictimisation of victims in the court proceedings to be reduced to minimum*
- *Establish state programmes of reintegration and resocialisation of victims, through a more organised participation of the social care system*
- *Urgently appoint new national coordinator for the fight against trafficking*
- *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.*
- *The National Assembly of the Republic of Serbia should adopt the Law on the Fight against Money Laundering and Financial terrorism in compliance with the National Strategy*
- *Upon the proposal of the Ministry of Health, the Government of the Republic of Serbia should adopt and initiate implementation of the Strategy for Combating Drugs, with the relevant action plan, with clear responsibilities of state organs in the realisation of this Strategy. It is necessary to include civil society as well in the creation of this document and the monitoring of its implementation*
- *The Government of the Republic of Serbia and the National Assembly should focus attention to the implementation of the adopted laws, problems in their implementation and effects of the implementation*
- *Analyse the implementation of the National Strategy for the Fight against Corruption, and revise the expired deadlines for its implementation from the action plan*
- *The Ministry of Finance should consider forming a working group for preparation of draft changes to the Law on Financing Political Parties. Among the priority issues that should be tackled with the changes to the law are: establishing control over financing political parties and electoral campaigns by an independent and expert body, ensuring accessibility of the data on financing electoral campaigns during campaigns and prescribing relevant obligations and authorisations of the organs in the control procedure. Besides, for more efficient control of the implementation of the rules within the existing legal framework, it will be necessary that the Republic Electoral Commission changes its rulebook in order to provide better public insight into the data on financing campaigns, the realisation of a comprehensive control of the data from reports and initiation of offence proceedings against perpetrators.*
- *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.*
- *Urgently ensure adequate working conditions (primarily premises and finances) of the Public Procurement Office, Commission for the Protection of Rights, Commissioner for the Information of Public Importance and his services and State Audit Institution. It is necessary to ensure conditions for unobstructed work of the Republic Committee on Resolving Conflicts of Interest, at least by the time the Agency for the Fight against Corruption has become completely operational.*

Judicial cooperation in criminal matters

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.*⁸⁸

In regards to the implementation of the international conventions in this field, the Republic of Serbia has not yet ratified the following conventions of the CoE:

1. Convention on Cyber Crime of 2001.
2. Additional Protocol to the Convention on Cyber Crime relative to the incrimination of acts of racist and xenophobic nature perpetrated via PC systems of 2003.
3. Convention of the Council of Europe on laundering, search, seizure and confiscation of revenues acquired by crime and on financing terrorism of 2005.
4. Protocol Changing and Supplementing the European Convention on Combating Terrorism of 2003.
5. Convention of the Council of Europe on Combating Prevention of Terrorism of 2005.

The ratification of these Conventions will lead to the amendments of the related legislation and the adoption of new laws, so that the internal legal system could harmonise with the existing international and European standards.

As the cooperation in this matter is very important for combating organised crime, its efficiency is very important. According to the data of the Ministry of Justice, during 2007 13 persons were extradited from the Republic of Serbia and Serbia accepted 42 persons.

The European standards in this field impose the need for new and effective technology in this way of cooperation. Up to now, Serbia has not had an adequate approach to the need

⁸⁸ Eurojust is an EU body established in 2002 and is the first permanent network of judicial authorities to be established anywhere in the world.

for technical modernisation. Progress has been made in the procurement of necessary equipment in the department of Ministry of Justice dealing with this matter.

To that end technical equipment was procured for this Department from the donation of the Kingdom of Spain, to be started up by September 2008. In cooperation with the Kingdom of Netherlands, software was provided to enable efficient international legal assistance. The deadline for introduction of software is 31 December 2008. For further capacity building the direct communications will be established and meetings with the representatives from other countries held.⁸⁹

Concerning the cooperation with EUROJUST, Serbia has not yet signed the Agreement on Cooperation with this important European association, which has an important role in the battle against organised crime.

Recommendations:

- *Urgently ratify the CoE conventions of the EC and provide their full implementation by amendment to the existing laws and adoption of the new ones*
- *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*
- *Urgently adopt the Law of the International Legal Aid in Criminal Matters*
- *The agreement on Cooperation with EUROJUST should be urgently concluded and the internal infrastructure should be formed by opening the Office for Cooperation, appointing the person for contact, as well as attending all the important meetings, expert seminars and conferences.*

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;*
- *Improve operative and special investigation capacities of the department for law enforcement for more efficient fight against cross border crime;*

⁸⁹ Report on Readiness, Visa liberalisation with Serbia, page 79

- *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.⁹⁰

“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 Asia⁹¹

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.⁹²

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.

⁹⁰ Official Gazette of RS – International agreements 70/07

⁹¹ Minister of Interior of Slovenia, Mr Dragutin Mate, May 9, 2008, Toronto Newspaper, <http://www.novine.ca/arhiva/2008/1152/region.asp>

⁹² 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>

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 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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 if 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. Within his present competences, the Commissioner has been faced with ever increasing scope of activities. The number of

registered cases has long exceeded five thousand, some of them being exceptionally complex and delicate. 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.⁹³

This is also confirmed by the Progress Report for 2008, which states that in the absence of an independent and efficient data protection supervisory authority, existing data protection rules have not been implemented. Preparations in the area of protection of personal data are not well advanced.⁹⁴

Recommendations:

- *Change Article 45 of the Law on Personal Data Protection and ensure full independence of the supervisory organ*
- *Create all technical and financial preconditions for efficient work of the Commissioner for Information for more efficient implementation of the Law on the Protection of Personal Data and unobstructed work of the Commissioner and his associates*

Block 4: External relations and fundamental rights: freedom of movement of Serbian citizens, conditions and the procedure for the issue of the identity documents, and civil rights including the minority rights

Serbia should:

- *Guaranty that freedom of movement of Serbian citizens is not subject to unjustified restrictions, including measures of discriminatory nature, based on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.*
- *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*

⁹³ Rodoljub Šabić, *Fog on the road to Schengen*, Politika, 15/11/2008

⁹⁴ 2008 Serbia EC Progress Report, page 53

- *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.⁹⁵

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

⁹⁵ There are around 206,000 internally displaced persons and around 97,000 registered refugees in the Republic of Serbia.

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."⁹⁶ The law stipulates the efficient procedure of subsequent registration before the relevant administrative organ 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 Svrlijig 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 Mol 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.

(RTS, October 23, 2008.)⁹⁷

This example exactly shows that the corruption in the system of issuing registry certificates can seriously jeopardise the system of issuing new travel documents, since the necessary

⁹⁶ Model Law on the Procedure for Recognition of Legal Subjectivity, CUPS

⁹⁷ <http://www.rts.rs/page/stories/sr/story/135/Hronika/23648/Kosovskim+Albancima+izdavali+la%C5%BEna+dr%C5%BEavljanstva+.html>

documents for issuing travel documents and identification cards are birth and citizenship certificates.

The problem of criminal activities is also present in regards to misuse of personal documents of internally displaced persons.

Members of the Mol internal control have arrested ten people in suspicion of selling Serbian land in Kosmet and the criminal act of fraud, forgery and bribe. Among those arrested, there are police officers as well. They are charged for selling at least four estates that belonged to the Serbs from Kosovo with false documentation.

In May this year, the Mol internal control in Kragujevac also arrested a group of twelve people who had sold a Serbian estate in Kosovo and Metohija for 100,000 Euro. Each one in the group had a very precise task. Some produced false identification cards, others falsely introduced themselves as relatives of the deceased real owner of the estate and the police ensured unobstructed crossing of the administrative border with Kosovo and Metohija.

Among those arrested were also one former and two active police officers of Serbian Mol. The suspects had obtained documentation on displaced Serbs from Kosovo and Metohija from the police archive, forged identification cards with their names and their own photographs and introduced themselves as real owners. Although the group received around 100,000 Euro from the estate, its real value is twice as much.

(Glas javnosti, September 25, 2008)⁹⁸

These examples once more confirm the need for more efficient work of state organs in combating corruption and organised crime and they point to threats in the process of visa liberalisation with the EU.

In the Republic of Serbia's legal system, there is not a specific law that regulates the field of discrimination in a general manner, but discrimination is criminally sanctioned and forbidden in different legal acts.

Serbia still has to adopt the law on prohibition of discrimination, on prevention of domestic violence adopt the national strategy for improvement of the status of women and enhancement of gender equality, as well as to reinforce the role and weight of the Gender Equality Council, ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁹⁹.

Except the legal provisions that Serbia needs to adopt, it also needs to regulate and oversee the implementation of the already adopted laws. According to the European Commission report, discrimination is still very present especially against women, national minorities, and LGBT (lesbian, gay, bisexual and transgender) people and there is not enough protection from the authorities¹⁰⁰.

⁹⁸ <http://www.naslovi.net/2008-09-25/glas-javnosti/prodavali-tudju-zemlju-na-kosmetu/836594>

⁹⁹ Report on Readiness, Visa liberalisation with Serbia, page 101

¹⁰⁰ Commission of the European Communities, *Serbia 2008 Progress Report*, Brussels, 05/11/2008

“Minister Svetozar Čiplić says that the Government will submit the Draft Law against Discrimination to the Assembly procedure by the end of the year. At the gathering on the occasion of Serbian Presidency of the "Decade of Roma Inclusion 2005 - 2015.", Minister for Human and Minority Rights emphasised that the adoption of the new law was exceptionally important for enhancing the status of Roma minority exposed to various forms of discrimination, but also for the emancipation of Serbia.”¹⁰¹

Improvement has been also made by the adoption of the Law on Citizenship of the Republic of Serbia.¹⁰² 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.

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.

Although the constitutional solutions of the Constitution of the Republic of Serbia guarantee ethnic minorities the realisation of rights in compliance with international standards, the Progress Report points to problems in this field.

After the declaration of the Kosovo independence a number of violent incidents have occurred especially towards the Albanian minority. Also, the relations with minorities have deteriorated in the Sandzak region. The main problem is the lack of capacities on the municipal level to ensure minority rights.

The government also lacks a strategy of promoting multiculturalism and respect for different cultures in the education and media¹⁰³. The problem is also emphasised by the Office of Protector of Citizens in its report. In municipalities in Central Serbia, the realisation of minority rights, apart from all the efforts related to the promotion of rights of Roma and Bosniaks, there are no institutional capacities and consistency of municipal administrations and state authorities to spread the culture of human and minority rights but also to consistently ensure conditions for the realisation of minority rights stipulated by the law and Constitution. (underlined by the author)

¹⁰¹ B92, August 28, 2008

¹⁰² Official Gazette of RS No. 90/07. The Law on Citizenship of the Republic of Serbia, changed in 2007, adopted in 2004 and published in the Official Gazette of RS No. 135/04

¹⁰³ Serbian European Integration Office, National Strategy of Serbia for the Serbia and Montenegro's Accession to the European Union, June 2005 <http://www.seio.sr.gov.yu/code/navigate.asp?id=73>

The implementation of provisions of the Law on Local Self-government, as well as of the Law on the Protection of Minority Rights has encountered problems in some municipalities, as illustrated in the following example:

The Serbian Assembly MP from LDP, Mr Kenan Hajdarević emphasises that the issue of introducing the Bosnian language in the Statutes of Serbian municipalities is not a linguistic issue, but only the question of respecting the law. –The question whether Serbia and its organs, in this concrete case the Priboj Municipal Assembly, are willing to respect the law and Serbian Constitution. But obviously, they are not – says Mr Hajdarević.

As a MP and LDP as a political party, we are going to submit a relevant memo to the Ministry of Minority and Human Rights. We will then initiate the assessment of constitutionalism of the Statutes, Law on Local Self-government and Law on the Protection of Minority Rights, says Mr Hajdarević and reminds us on the fact that minority languages are in official use in ethnically mixed communities, and that in the last population census in this municipality, over 15 percent of population said that they spoke the minority language. According to the latest population census in Priboj municipality, 17.8% speak Bosnian and want to use Latin alphabet.

The introduction of the Bosnian language was ensured by the Serbian Government, i.e. The former SRY. If in a community more than 15 percent of people, as an ethnic minority, opt for the Chinese language, the Chinese language has to be introduced in the official use, because the Law is unambiguous, says Mr Hajdarević.

Danas Daily, September 2, 2008

One of the identified weaknesses of the administration organs related to protection of minorities is the unclear policy towards the integration of Roma. Despite the action plans adopted by the Government in 2005, according to which certain results related to education and health protection of Roma population have achieved, a comprehensive state strategy of socio-economic integration of Roma is lacking, as well as the clear position of the Government or the National Assembly in regards to the programme of Roma integration.¹⁰⁴

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*

¹⁰⁴ Report of the Protector of Citizens of the Republic of Serbia for 2007

- *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*
- *In compliance with the European Commission recommendations, state organs of the Republic of Serbia should:*
 1. *Adopt the law on prohibition of discrimination (Recommendation of the UN Human Rights Committee, Conclusive Remarks, CCPR/CO/81/SEMO and UN Committee on Economic, Social, and Cultural Rights, Conclusive Remarks, E/C.12//Add.108)*
 2. *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.*
 3. *Adopt the law on prevention of domestic violence (Recommendation of the UN Committee on the Elimination of Discrimination against Women, Conclusive Remarks, CEDAW/C/SCG/CO/1/CPR. 1)*
 4. *Adopt the national strategy for improvement of the status of women and enhancement of gender equality (Recommendation of the UN Committee on the Elimination of Discrimination against Women, Conclusive Remarks, CEDAW/C/SCG/CO/1/CPR. 1)*
 5. *Reinforce the role and weight of the Gender Equality Council (Recommendation of the UN Committee on the Elimination of Discrimination against Women, Conclusive Remarks, CEDAW/C/SCG/CO/1/CPR.*
 6. *Ratify the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** (Recommendation of the UN Committee on the Elimination of Discrimination against Women, Conclusive Remarks, CEDAW/C/SCG/CO/1/CPR*
 7. *Adopt the Law on National Minority Councils that would regulate competences of these councils and the manner of their selection. Therefore, it is necessary to hold National Councils for Minority Issues more regularly*
- *Urgently adopt the National Strategy for Roma Integration and ensure budgetary funds for its implementation*
- *Strengthen institutional capacities of municipal administrations and state authorities for the promotion of culture of human and minority rights and consistently provide conditions for the realisation of minority rights guaranteed by the Constitution and the law.*

CONCLUSION

The issue of visa liberalisation is still one of the most important segments of the process of European integration of the Republic of Serbia. Although the placement of Serbia in the white Schengen list is emphasised as a short-term priority of the Government of the Republic of Serbia, there is no clear deadline within which the process would have been finished. The European Commission officials do not mention precise deadlines since the issue of visa liberalisation is not exclusively under jurisdiction of this important institution. The final word in this process is that of the EU Council and ministers of interior of the EU member states.

The issue of visa regime is for them still the issue of safety and security, combating organised crime and irregular migration flows. The latest developments and the statement of the German Interior Minister suggest more participation of national ministries of interior in the process of visa liberalisation for the Western Balkan countries.

On November 24 2008, representatives of ministries of interior and justice requested and received authorisation for all the phases of visa abolition, which has established full control of this process and limited the influence of the European Commission. The authorisation is primarily related to proposing amendments to the EU Council Regulation 539/01, which with its annexes establishes a positive and negative list related to visa regime with the EU. This proposal originated from France, holding the EU Presidency, supported by Germany and Spain.

We believe that this latest development could slow down the visa liberalisation process, but that it will not essentially change it in terms of the sequence of established steps in the process of standing dialogue on this issue between Serbia and the EU.

The Government of the Republic of Serbia has submitted to the EU a detailed report on the progress in this process. Parts of this report have been quoted in this document. In our opinion, progress has been made in the adoption of laws and by-laws, relevant strategies and measures in this process. However, some constructive remarks could also be offered related to the report and the process of reporting.

It is not clear why the report is unavailable to wider public and why the Government of Serbia would rather inform the European Commission on the undertaken reforms than its own public, which is very interested in the visa liberalisation process.

On the other hand, the report could also be perceived in the context of other existing reports, opinions and positions of nongovernmental organisations presented in this document. Consequently, the newly adopted laws should have their full implementation in practice, which would eventually change the assessment of the European Commission on the slow and insufficient progress of Serbia in the fight against corruption, organised crime, migration policy, etc.

Furthermore, the review of the adopted and implementing laws is also missing. This remark is related to a series of laws important for combating corruption and organised crime.

“It is simply not good to have unrealistically high expectations from the formal adoption of laws. The new laws can have desirable effects only if they are harmonised with European standards and properly implemented in real life.”¹⁰⁵

Careful examination of the problems of visa liberalisation in the context of efficient implementation of adopted regulations, as well as perception of the *Road Map* as a document that establishes criteria for important reforms in the field of freedoms, security and justice, is the only right way towards the visa-free regime. Such an approach also ensures realistic timeframes for the realisation of visa liberalisation between Serbia and the EU.

It seems as if the process of visa liberalisation has marginalised the Agreement on Visa Liberalisation between Serbia and the European Union. The long-announced agreement that facilitates the process of obtaining visas for Schengen countries, it has not achieved the expected level of implementation. It has been also proved by the perception of citizens presented in a regional research of a group of NGOs. Special attention should be given to the observation that staff in embassies does not inform citizens on the possibilities for using benefits from the Agreement, and the lack of information provided to citizens on the solutions stipulated by the Agreement is a big problem.

At the same time, one of the rare numerical indicators mentioned in the *Road Map* is the number of denied visa requests, as a precondition for positive assessment of Serbia's progress in that process. According to the data of Group 484, by October 2008 the German Embassy has issued 42,872 visas and denied 4,116 requests (8.8%), Slovenian embassy responded positively to 29,131 requests and negatively to only 2.2% of the requests. Hungarian Consulates in Belgrade and Subotica have received 21,871 and 51,633 requests respectively, and denied 590 and 1,732 requests respectively. The percentage of the denied requests in the Consular Mission of Slovakian Embassy is 2.7%, Portuguese 0.97%, Norwegian 11%, Bulgarian 7.9%, Czech 3.5%, and Italian only 0.8% of 33,635 submitted requests. Given that the Road Map has foreseen the standard of around 3% of denied requests, it is obvious that for a large number of embassies Serbian citizens are not risky visa applicants. At the same time, the percentage of those who have been denied visas could be additionally reduced if the consular missions regularly informed Mol on the alleged forged documents. Exactly this issue, as well as other issues related to the Agreement implementation, can be examined at the joint committee for the implementation of the Agreement on Visa Liberalisation and Readmission.

In further process of visa liberalisation, the EU member states can also show understanding for the needs of Serbian citizens. We would thus suggest a model according to which visa liberation could be established. In case of further progress of Serbia in the implementation of regulations and clearly visible and measurable results of the reforms, time restricted visa liberalisation for Serbian citizens could be realised. It would mean that the Council of Europe, once they identify improvement, and upon the proposal of the European Commission, could suspend the visa regime for 6 months. During that period, responsible EU organs would monitor how often Serbian citizens leave their country and how they treat Schengen and internal regulations of the member states. That would be a pilot project, which would, on one hand, create possibilities for fast establishment of visa regime if needed, and on other hand, the Government of Serbia would be under constant pressure to continue with the reforms in order to keep the visa-free regime. In case of positive progress, the timeframe would extend for next 6 months, a year, until an equal treatment has been

¹⁰⁵ Rodoljub Šabić, *Fog on the Road to Schengen*, Politika, 15/11/2008

achieved as with other countries on the list of visa-free countries. As a reminder, a conditional placement on the positive list of visa regime to the EU is not unknown in the practice (Romania 2002). Furthermore, it should be noticed that the positioning on the white Schengen list does not have to be permanent (in 2005, Ecuador was transferred from the white to the black list). This proposal has not been tested in such a manner, but the EU has also never had the Road Map before and thus this model should be perceived as a joint effort for creating European practice in the same or similar cases. Consequently, the Task Force of the Serbian Government should revise its existing work and create an action plan that would not consider the enforcement of a law or some other act a success, but would clearly define results of the measures implementation, indicators of success of the reform measures, as well as means for the result verification. Group 484 is ready to assist in the creation of such a plan to be presented to the EC.