

Chapter 23 Judiciary and Fundamental Rights

1. Short Policy Overview, i.e. chapter overview (1 page) + did the policies suffer heavy changes within the EU itself (due to crisis or some other internal factor), 23, 24, 30, 31, 35 as well as other chapters if there were any changes)

Article 49 of the Treaty on the European Union guarantees every European state that respects and promotes the values expressed in Article 2 of the aforementioned agreement (human dignity, freedom, democracy, equality, rule of law and respect for human rights, including the rights of minorities) the right to submit an application for accession to the European Union. In 1993, these criteria were supplemented with the 'Copenhagen Criteria' (political, economic and legal) that were additionally complemented by the Madrid criterium of 1995 on the existence of suitable administrative capacities for a gradual and harmonious integration into the EU. All of the criteria became an integral part of the EU's Treaty of Lisbon from 2009, as well as its legal customs (also known as *acquis communautaire*).

The conditions under which the candidate will accept and implement the EU's legal customs are determined within the negotiations for accession to EU membership. Conditions for becoming a member of the EU include the acceptance of all the rights and obligations upon which the EU is founded, as well as its institutional framework. European Union *acquis* are divided into 35 negotiation chapters.

While directing the enlargement process, and based on experience, it became crystal clear that the key negotiation chapters are those covering judiciary and fundamental rights, as well justice, freedom and security. At first, the two chapters were integral parts of a single chapter at the time known as Justice and Home Affairs. It was only during the negotiations with Croatia that the area was divided into two chapters, 23 – Judiciary and Fundamental Rights and 24 – Justice, Freedom and Security, with the chapter subjects within their frameworks clearly defined. The implementation and enforcement of regulations in these areas is monitored throughout the entire negotiation process, and it is possible to halt the negotiations in other chapters if the state fails to make a satisfactory improvement in these two chapters. In addition to being the first ones to open, the two chapters are also the last ones to close, allowing the EU to monitor the negotiation process.

In the Republic of Serbia, jurisdiction over the negotiation process for Chapter 23 is held by the Chapter 23 Negotiation Group based on the Decision on Founding the Coordination Body for the Process of Accession of the Republic of Serbia to the EU (Official Gazette RS, Nr. 84/13, 86/13, 31/14 and 79/14), composed of representatives from the following institutions: Ministry of Internal Affairs; Ministry of Foreign Affairs; Ministry of State Administration and Local Government; Ministry of Defence; Ministry of Culture and Information; Ministry of Construction, Transportation and Infrastructure; Ministry of Mining and Energy; Ministry of Health; Ministry of Labor, Employment, Veteran and Social Issues; Ministry of Education, Science and Technological

Development; Ministry of Finance; Cabinet Minister without Portfolio responsible for European Integration; Anti-Corruption Agency; Commissariat for Refugees and Migration; Office for Human and Minority Rights; High Judicial Council; State Prosecutors Council; Republic Secretariat for Legislation; Public Procurement Office; Agency for Restitution; Office for Cooperation with Civil Society; Commissioner for Protection of Equality; Supreme Court of Cassation; State Prosecutor's Office; Judicial Academy; Social Inclusion and Poverty Reduction Team and Office for European Integration.

Since the Law on Ministries (Official Gazette RS, Nr. 44/2014) allocates jurisdiction to the Ministry of Justice to outline and implement policies defined within the framework of Chapter 23, the Negotiation Group for this Chapter is led by the State Secretary from that Ministry. The negotiation team and Office for European Integration are involved in the activities of all the negotiation groups during all phases of the process.

Chapter 23 of the negotiations covers the following subjects: judiciary reform, anti-corruption policy, basic rights and EU citizen rights.

2. Chapter Status (Source: Government): were the screening report, negotiation position, action plan published; (1 page)

The explanatory screening meeting for the Negotiation Chapter 23 took place from 25 to 26 September 2013 in Brussels. All the material from the meeting is available on the website of the Ministry of Justice.¹A live broadcast of the explanatory screening was organized for all interested parties in the National Parliament RS, attended by 48 representatives from 31 civil society organizations. A bilateral screening meeting for the Negotiation Chapter 23 was held from 9 to 10 December 2013 in Brussels.

After finishing the screenings, the European Commission completed the Report on Assessment of Serbian legislation with EU legislation, available on the website of the Ministry of Justice.²Based on the report and recommendations that the European Commission gave within it, the line ministry went ahead with creating an Action Plan for this chapter. In partnership with the Office for Cooperation with Civil Society, on 30 July 2014, the Ministry of Justice sent civil society organizations a *Public Invitation for Involvement in Preparing the Action Plan for Chapter 23*. The Office selected a part of the submitted comments and sent to the Ministry 13 annexes that held 73 activity proposals. From the sent proposals, 37 were adopted by the Ministry, 24 were partially adopted, while 12 proposals were rejected.

¹<http://www.mpravde.gov.rs/tekst/7040/eksplanatorni-skrining.php>

² The screening report is prepared by the European Commission; after which it is forwarded to the European Council for a final decision. Report available (in Serbian) at: <http://www.mpravde.gov.rs/files/lzvestaj%20o%20skriningu%20-%20tekst%20na%20srpskom%20jeziku.pdf>.

After creating a Draft Action Plan, the Ministry and Office sent another invitation to CSOs to provide comments on the draft³. The total number of comments received was 20. In total, 72 of the proposals were adopted (28.34%), 51 proposals were partially adopted (20%), while 151 proposals were rejected (51.57%).⁴ The European Commission gave a positive review and adopted the Draft Action Plan for Chapter 23, which was the third of its kind for this chapter. The plan defines the measures and specifies the deadlines for the reforms Serbia intends to undertake in the areas of justice, fundamental rights and the fight against corruption with the goal of harmonization and standardization with the EU.⁵

The final version of the Action Plan for Chapter 23 was agreed on with the latest recommendations and confirmed by the European Commission in Brussels on 25 September 2015 and sent for consideration to the Committee for Enlargement of the Council of the European Union (COELA).

The information we received as the organization in charge of leading the Working Group of the Convention for Chapter 23 is that the negotiation position is established, the overview of which was sent to the Convention's Working Group on 4 March 2016, with a discussion on the overview being held during a meeting of the Working Group that was attended by representatives of the Ministry of Justice, members of the negotiation team and Committee for European Integration. The opening of negotiations for Chapter 23 is expected during 2016, however it is questionable whether expectations of the chapter's opening in June will come to fruition.

3. Status Overview (Main evaluations from the screening report – Source: European Commission) + what were the main problems and obstacles (3 pages)

In the judiciary area, the basic problems that have been identified relate to the areas of independence, impartiality and responsibility, expertise and efficacy, as well as in conducting trials for war crimes. One of the areas highlighted as requiring mandatory improvement is the independence of judicial bodies, especially the High Judicial Council (VSS) and State Prosecutorial Council (DVT), where an improvement of the current solution is noted as necessary. A fundamental analysis of existing solutions and possible amendments to the Constitution that would take into account the recommendations of the Venice Commission and the European standards has been proposed, that would ensure the independence and accountability of the judicial system –this refers to the system of selection, nomination, appointment, relocation and cessation of judges, presidents of courts and public prosecutors; entry into the judicial system according to objective evaluation criteria, fair selection procedures, open to all candidates with suitable qualifications and transparent from the perspective of the general public; the DVT and VSS taking the lead in the administration of justice, but also when it comes to the immunities; their composition should be

³ First Draft of the Action Plan for Chapter 23 is available (in Serbian) on the website of the Ministry of Justice at <http://www.mpravde.gov.rs/tekst/7079/prvi-nacrt-akcionog-plana-za-poglavlje-23.php>.

⁴ The report on submitted proposals by CSOs in the process of creating the Action Plan for Chapter 23 is available at <http://www.mpravde.gov.rs/tekst/7715/drugi-nacrt-akcionog-plana-za-poglavlje-23.php>.

⁵ The final version of the Action Plan for Chapter 23 is available at: <http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nacrt-%20Konacna%20verzija1.pdf>.

mixed, without the participation of the National Assembly, and members should be elected by colleagues.

Other recommendations relate to: ensuring the election of presidents of other courts; establishment of a fair and transparent system of promotion of judges and prosecutors, including periodic evaluations of judges' and public prosecutors' professional performance; securing sufficient administrative capacities and budgetary powers of the High Judicial Council and State Prosecutorial Council for the control of the aforementioned capacities and powers; establishment of clear procedures for public response of the High Judicial Council and the State Prosecutorial Council towards cases of political influence on judiciary and public prosecution activities; securing full respect for judicial decisions; ensuring the participation of civil society and professional associations in defining the future steps in the reform process, as well as in supervising the implementation of action plans; ensuring the adoption of specific provisions relating to the judicial institutions of the Republic of Serbia.

In terms of *impartiality and responsibility*, the Screening Report recommends the precise definition and implementation of rules on automatic (random) allocation of cases, including the development of technical solutions to prevent the cheating of the system. The strengthening of the accountability of judges and prosecutors through a strict application of all legal and disciplinary means is also proposed. Competence and efficiency can be enhanced by improving the work of the Judicial Academy in accordance with the decisions of the Constitutional Court on the provisions of the Law on Public Prosecutor's Office and the Judicial Academy. The following necessities are envisioned: developing a system that enables the assessment of training needs as a segment of judges' and public prosecutors' performance evaluation; implementation of a comprehensive analysis in terms of cost, efficiency and access to justice before taking further steps in the reform of the court network; adoption and implementation of medium-term human resources strategy for the judiciary system on the basis of an analysis of needs and workload, and bearing in mind possible further changes in the structure of the courts, selection and training of personnel; sustainable solution to the problem of unequal workload for judges and public prosecutors in terms of number of cases; implementation of the Program for Resolving Old Cases, including the introduction of alternative methods of dispute resolution; improving enforcement of verdicts, particularly in cases of civil law; the gradual development of the system of e-Justice; improving the uniformity of judicial practice; establishing control over the implementation of the new Code of Criminal Procedure and taking corrective measures where necessary.

For the area of *prosecuting war crimes*, it is proposed that it is necessary to ensure that all allegations are properly investigated, with the alleged offenders being subsequently prosecuted and brought to court, followed by ensuring appropriate sentencing, as well as equal treatment of suspects, including high-ranking officials who are allegedly involved in war crimes. An additional request is the raising of safety levels for witnesses and cooperating witnesses and the improvement of the work of the department in charge of witness and cooperating witness support, as well as ensuring investigation confidentiality, including witnesses' and cooperating witnesses' testimonies.

For the **anti-corruption** area, aside from *implementing existing measures*, recommendations are put forth regarding the improvement of *prevention of corruption*. In that sense, the steps foreseen for improvement, above all else, are the clearer defining of the jurisdictions of the Anti-Corruption Agency and the efficient implementation of regulations on financial control of political subjects and financing of election campaigns, especially via efficient sanctions in cases when subjects fail to submit reports and when there are proven misconducts. In this way, it is necessary to improve the legal and administrative framework for preventing conflicts of interest and the implementation of measures when such conflicts arise; consideration of adequate legal and institutional solutions for the efficient solving of illegal profiting issues; improvement of rules on free access to information of public importance and their implementation in practice; taking measures for the depoliticization of the public administration, as well as strengthening its transparency and integrity; enacting and implementing a new law on whistleblowers; implementing measures for strengthening the control system for public procurements and monitoring of achieved results and other measures.

With the aim of *combatting corruption*, the Screening Report calls for revising a number of financial crime acts in the Code of Criminal Procedure, in light of finding alternatives for the abuse of power criminal act (with special focus on Article 234 of the Code), ensuring the independence, efficacy and specialization of bodies in charge of investigations/prosecution, implementing of efficient investigations of all allegations of corruption in privatization cases and ensuring complete transparency and responsibility in order to avoid such cases in the future, improving the collection of uniform statistical data on corruption, ensuring that the legal and constitutional framework allow for efficient, temporary and/or permanent seizure and control of property gained as a result of criminal acts; and measures for the police and judiciary systems to prevent 'leakage' of confidential information about investigations to the media. For the same purpose, a periodic revision by the end of 2015 and assessment of results in 2018 for results achieved by implementing the strategy from 2013 and accompanying action plans is proposed.

The third part of the Chapter is about **fundamental rights**. Namely, the following areas are recognized as requiring an improvement in their overall state: *outlawing torture and inhuman and/or degrading treatment and punishments*, where the full implementation of recommendations sent by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is expected, *the position of the national, provincial and municipality Ombudsmen*, where it is necessary to strengthen the capacities of the Ombudsman (especially in the sense of his role as a national preventive mechanism), provincial Ombudsman and Ombudsman departments on local levels; in relation to the incarceration system, it is necessary to continue improving living conditions in prisons, introduce measures for reducing prison populations and efficient reduction of the number of mistreatment cases in police prisons. In order to *advance freedoms of speech, consciousness and religion*, it is necessary to secure state neutrality towards the internal affairs of religious communities and to additionally secure that the rights of persons who belong to an ethnic minority to equal access to religious institutions, organizations and associations be equally guaranteed in legislation and in implementation, including implementation in line with recommendations from independent bodies.

When it comes to *freedom of expression and freedom and pluralism of the media*, the screening calls for the protection of journalists from threats of violence and assessments of legislative amendments and the institutional framework for the protection of freedom of media by implementing a strategy on media in terms of appropriate regulation of state financing and ending state control of the media. Respecting the *principles of non-discrimination and improvement of the position of socially-vulnerable groups* can be achieved by amending the Antidiscrimination Strategy with a feasible action plan, that includes measures for encouraging gender equality and a mechanism for implementation monitoring, but also by strengthening the institutional capacities of relevant institutions and their cooperation. Special measures of support must be foreseen for women, LGBT people, children and people with disabilities. For the *improvement of the position of ethnic minorities*, the enactment of a special action plan is foreseen, that would be focused on the efficient enforcement of ethnic minority rights, taking into account the recommendations published in the third opinion about Serbia of the Advisory Committee in the context of the Framework Convention for the Protection of National Minorities. Also foreseen are preparations for the adoption of a multi-year strategy and action plan for the improvement of the living conditions of the Roma people, including measures for enabling their registration, all-encompassing measures against discrimination, ensuring conduct according to international standards in cases of forced removals and access to guaranteed socio-economic rights, and securing additional financial means for the implementation of the current and future strategy, especially for education and health.

The report also pays attention to the *position of refugees and internally displaced people*, where the proposal is to secure full access to rights, including the provision of personal documents and housing solutions for the most vulnerable. Adequate pursuit of hate crime perpetrators and monitoring the implementation effects of the Strategy (2013 – 2018) for Combatting Violence and Misbehavior at Sports Events and taking corrective measures where necessary, *with measures against racism and xenophobia* suggested. For the better *protection of personal data*, it is necessary to ensure constitutional and legislative compatibility with EU *acquis* in the area of personal data protection and to enable an assessment of compatibility by making an appropriate compatibility table.

4. WG NCEU Session Review (source: NCEU): what was the topic, the significance of the topic, who made introductory statements, how was the discussion conducted and what are the main recommendations (5 pages)

- **Meeting of the Working Group NCEU for Chapter 23 – 15 July 2015**

The meeting was attended by representatives of the Ministry of Justice, members of the Negotiation Working Group for Judiciary and Fundamental Rights, the Office for Cooperation with Civil Society, NGOs and representatives of professional associations. At the very beginning of the discussion, it was explained that the finalization of the Action Plan depends on two documents that present the results of a visit by experts from the group for the advancement of ethnic minorities and conferences on the situation of the Roma population. The main topic of the meeting was the

differences in the second version of the draft Action Plan. It was emphasized that addressed remarks are not essential, but rather refer more to clarifications and technical amendments.

The first topic of discussion was the judiciary area. The discussion revolved around the progress on creating the National Strategy for Processing War Crimes, followed by the question of the involvement of civil society in the dialogue. Subsequently, representatives of the working group were asked about the plan for the adoption of amendments to the Law on Judges and Public Prosecutors' Offices. After this, objections were made at the area of the Action Plan that deals with war crimes, such as the lack of technical conditions for the work of judges, the inability of judges to focus on their subjects and poorly defined terms. One of these objections includes the proportionality of punishments, i.e. verdicts. The answer to these objections was that the body of the Action Plan is still being elaborated upon, and that the final draft will be made only after a public discussion in which all doubts will be clarified.

The second point of discussion was the area of fundamental rights, where attention was primarily given to the Action Plan for the Enforcement of National Minority Rights, currently being developed. The harmonization of judicial practices was also discussed, as the project starts later this year, after a study of the experiences of 3 related legal systems: Hungarian, Austrian and German. Following this, the issue of combating torture through the improvement of the National Preventive Mechanism and the preservation of the position of the Ombudsman in amending the Constitution was raised. Finally, issues were mentioned regarding the generality of the definitions of rights of victims and the problems related to the fight against corruption, namely the definition of conflict of interest that does not involve officials, but rather only those employed in public administration.

- **Meeting of the Working Group for Chapter 23 – 3 September 2015**

This meeting of the Working Group for Chapter 23 was attended by representatives of the Ministry of Justice, the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, the European Union Delegation in Serbia, OSCE Mission in Serbia, the Dutch Embassy, NGOs and representatives of professional associations. The meeting was dedicated to the *independence of the Public Prosecutor's Office and the necessity of amendments to the Law on State Prosecutorial Council (SPC) before the election of the new members of the SPC*. The meeting discussed the draft text of the Action Plan for Chapter 23 and the independence of the prosecution and on this occasion supported initiatives and proposals of the Association Public Prosecutors of Serbia (UTS) on changing the law on SPC, to be made before carrying out the procedure for the selection of a new convocation.

Representatives of UTS pointed to flaws in the selection process for members of the SPC in terms of the voting limitations of public prosecutors and deputy public prosecutors in relation to the type or degree of public prosecution in which they perform functions, which disrupts the equality of the voting; and violating voting secrecy through determining the polling stations by the Election Commission in almost every prosecutor's office, even where there are very few voters. At the meeting, it was pointed out that the latest version of the Action Plan for Chapter 23 provides for amendments to the law on SPC in the third quarter of 2015, reversing the Venice Commission's argument that this law should not change before changing the Constitution. These changes would

be aimed at ensuring a higher degree of transparency of the SPC and its more credible composition. This position is supported by the Judges' Association of Serbia, while emphasizing the similarities of problems between the SPC and the High Judicial Council (VSS). It was pointed out that all UTS proposals are also applicable to the VSS and that both laws be changed before the start of the electoral process. It was emphasized that preoccupation with theories and revisions should be avoided, and that attention should be paid to the creation of a consistent practice of secret ballots, which would avoid the knowledge of election results in advance. The OSCE representative noted that in reality there will be no amendments to the laws on SPC and VSS before amending the Constitution. However, she also stated that the important changes in voting methods do not have to wait for the constitutional reform. It was pointed out that the Action Plan, which was sent to Brussels, must be realistic and logical, so that the Commission and Negotiation team may better monitor its implementation.

Conclusions and Recommendations: It is necessary to amend the Law on SPC in order to ensure free, universal, equal and direct electoral process, as well as the secrecy of voting; absolute priority must be given to the amendment to the Law on SPC before the adoption of a new constitution and the election of new members; aforementioned conclusions should be applied to Law on VSS as well; the process of amending the laws must be accompanied by consultations with the inclusion of both professional associations, as well as the Working Group for Chapter 23 NCEU.

- **Presentation of the Activities of the Working Group NCEU for Chapter 23 in Sjenica – 29 September 2015**

The topic of the forum was the clearer defining of the *contents of Chapter 23 of the negotiations between the European Union and Serbia and clarification of the negotiation process itself*. The forum defined current activities regarding Chapter 23 in the process. A vision of chapter 23 was presented by members of the Regional Forum through proposals and recommendations, as well as their follow-up negotiations on Chapter 23 and participate in the work of the Working Group NKEU for Chapter 23. The second session dealt with the rights and position of national minorities in chapter 23 of drafting the Action Plan for the implementation of the rights of national minorities. Defined as the achieved results and current activities that contribute to this goal. The question was asked what are the possibilities for contribution of the members of the Regional Forum in the process of developing an action plan for minorities.

- **Public meeting regarding the presentation of the final version of the Action Plan for Chapter 23 in Niš - 20 October 2015**

The purpose of holding a meeting in Niš was to bring the work of the National Convention and its role closer to the citizens of Serbia, i.e. to explain what are the specific benefits that citizens of Serbia gain from a detailed elaboration of the Action Plan for Chapter 23. The current third draft received a verification from the European Commission, which forwarded the document to authorities in each member state (COELA). One of the hardest things the working group will face in the negotiations for Chapter 23 will be the choice of quality staff for work in the judicial system. It

will be necessary to take the opportunity to rely on the help of various professionals that will improve the process with their own ideas and comments. In accordance with constitutional changes, as envisioned by the AP, the selection of judges and prosecutors must not be or be allowed to become a product of the influence of the executive branch. The upcoming elections for the High Judicial Council and State Prosecutorial Council will be closely monitored by experts, in order to make the process more efficient and transparent.

The second part of the meeting was devoted to the preparation of the Action Plan for the realization of national minority rights within Chapter 23. The Action Plan focuses on economic empowerment, mostly of the Roma community. The Action Plan contains 11 strategic objectives, and since it is open to suggestions and comments, now is the right time to react if something should be changed. The Action Plan should be used as an additional mechanism to pressure the state. The role of civil society is to control the measures, their implementation, as well as mechanisms for early response and early warning with regard to minority rights. The position of the Albanian, Roma and Vlach minority in southern Serbia is backward in relation to the position of national minorities in Vojvodina. The mechanism of early warning is a good tool that will help the Roma community in receiving actual benefits from the new action plan.

- **Working Meeting regarding the conclusion of preparations for the opening of negotiations for Chapter 23 - 28 October 2015**

The meeting on the occasion of completion of preparations for the opening of negotiations on Chapter 23 was attended by the head of the Negotiation Team of the Government of RS, representatives of the Ministry of Justice, specifically the Working Group for Negotiations for Judiciary and Fundamental Rights, the cabinet of the Minister in charge of European integration, non-governmental organizations and professional associations that are members of the NCEU Working Group for Chapter 23. At the very beginning it was emphasized that, above all, it is necessary to determine the dynamics of reporting. Emphasis was also placed on guidelines for the cooperation of the Government with civil society. This dynamic works well, but there is always room for improvement. The mechanism for early warning of missed deadlines in certain areas is also part of this action plan.

It was noted that this is the first time there is this kind of cooperation between the government and non-government sectors, and that these meetings are a learning opportunities for all participants. The Action Plan covers the three major areas - the fight against corruption, judicial reform and minorities for which there are no existing EU rules or laws that need to be adopted. Strategies for these areas are priority commitments. These commitments are a part of this detailed and wide Action Plan, requiring the alignment with a large number of governmental and independent institutions in Serbia. A request for the submission of a report the current state of the Action Plan to the Working Group is in being made. This is to be followed by the establishment of a body that will monitor implementation - Coordinating Body Council. In terms of budgetary aspects, it should be clarified that the subject was not additional money, but rather existing costs. Questions were raised about the analysis of constitutional provisions relating to the judiciary system and the

creation of national and prosecutorial strategy for processing war crimes. It was emphasized that the moment when the AP will be amended will be determined by the European Commission.

Conclusions and recommendations: Maintaining the level of cooperation and consultation between members of the negotiation group and NCEU Working Group for Chapter 23; Closer defining of the role of civil society in using early warning mechanisms for non-compliance with the Action Plan, missed deadlines in certain areas, etc; Avoiding the risk of leaving certain parts of the Action Plan for Chapter 23, and other related areas from any other action plan, without a control mechanism; Monitoring compliance with deadlines defined in the Action Plan for Chapter 23 during the period before the conclusion of the final version, as there are many unfulfilled measures whose completion is expected in Q4 of 2015; Clarification of reasons for rejection of certain proposals, and if applicable, pointing them towards the body or working group who received the forwarded proposal; Allowing members of the NCEU WG for Chapter 23 access to the latest version of the Law on Free Legal Advice; Proposal for inviting consultants, in line with the topic, for concentrated areas within subgroups, as well as representatives of working groups for creating and amending laws envisioned in this chapter.

- **Working Meeting regarding the Draft National Strategy for Prosecuting War Crimes – 25 December 2015**

The working meeting *regarding the Draft National Strategy for Prosecuting War Crimes* was attended by representatives of the Ministry of Justice, members of the Working Group for Creating the Draft National Strategy for Prosecuting War Crimes, OSCE Mission in Serbia, EU Delegation, NGOs, as well as experts in the area of international humanitarian law. At the meeting, it was highlighted that the Ministry of Justice had a two-fold role in creating the draft of the Strategy for Prosecuting War Crimes as part of the Action Plan for Chapter 23. The working group, made up of experts in the field of international law and relevant actors in the domestic judiciary system, composed a draft strategy that garnered praise from international experts. Three steps were defined for the complete coverage of this area – creating a war crimes section in the AP for Chapter 23, developing the National Strategy for Prosecuting War Crimes, as well as developing a Prosecution's Strategy for Prosecuting War Crimes, that deals with the issue of prosecuting war crimes in a general way.

This kind of strategy received positive reviews from Amnesty International, as well as the OSCE Mission in Serbia, with certain recommendations primarily regarding the selection of judges, role of the Ministry of Internal Affairs and control of regular debates with outside experts and the civil sector. Experts in international law have also praised the draft, but remarked that the language of the strategy should be tougher regarding the jurisdictions of the Ministry of Foreign Affairs, training of prosecutors and regional cooperation via the formation of joint investigation teams. Questions from NGO representatives regarded the financing of the Prosecution for War Crimes, inaccessibility to trials, choice of prosecutors, witness protection, the problem of introducing ethnicity in the strategy and the realization of the strategy itself by Q3 2016.

Conclusions and recommendations: Obligating the Government of RS to secure the financial means necessary for realizing the goals of the strategy; Amendment of the legislative

framework with the aim of having the High Judicial Council elect judges, rather than the High or Court of Appeal in Belgrade, to terms lasting no more than 6 years; Regarding the role of the Ministry of Internal Affairs, the Department for Investigating War Crimes (SORZ) and Witness Protection Unit (TRZ) should be joined by someone from a higher level when analyzing unit status, as well as in the working group for monitoring; Inclusion 2-3 annual public debates participated by experts and civil society representatives in the Draft; Considering Aim 5, first point, it is necessary to formulate work procedures between the SORZ and TRZ regarding joint investigation teams; Regarding prosecutors' training – apart from the suggested training in the international humanitarian and international criminal law, as well as project writing, it is necessary to highlight the importance of trainings on investigative techniques; Regarding judges' training – introducing trainings on managing cases, followed by working with sensitive victims and witnesses, which is partially covered; Regarding regional cooperation, joint investigation teams should find a spot in the strategy, as one of the mechanisms that yields excellent results.

- **Working Meeting regarding the presentation of the final version of the Action Plan for Implementing National Minority Rights – 19 February 2016**

This meeting, regarding the *presentation of the final version of the Action Plan for Implementing National Minority Rights*, was attended by representatives of the Working Group for Creating the AP for Implementing National Minority Rights, Ministry of Justice, Ministry of State Administration and Local Government, Office for Human and Minority Rights, Office for European Integration, OSCE Mission in Serbia, as well as NGOs that are members of the NCEU for Chapter 23. From the start, the efforts made by the Government to include civil society organizations in the negotiations for Chapter 23 were highlighted, as well as the contributions made by civil society representatives, or more specifically the people from that sector that were engaged in writing the Action Plan, and all the collaborators from ministries, but also the fact that the AP for minorities is not a benchmark for opening negotiations regarding Chapter 23 with the EU. It was noted that the first meeting regarding the AP was attended by all 20 national ethnic minority councils, but only 11 representatives were delegated to be involved in the development of the AP.

All topics that make up the material elements of the AP are grouped into 11 subject areas, while the formal element of the AP was a table, with the text coming as a result of a consensus between representatives of minority communities, which gives it legitimacy and an expectation that it could actually improve the position of minority groups. By forming the second special working group for creating the Law on National Councils of Ethnic Minorities, work has begun on the development of the aforementioned law. The priorities of the working group are the clear definition of council authorizations, prevention of excessive political influence as well as the regulation of the financial aspect of the councils' activities, i.e. transparent usage of means. Further discussion was related to issues of improving the economic position of minority groups within the AP, activities of the Coordination of National Council of Ethnic Minorities, foundation of the Council for Interethnic Relations in Local Governments and the issue of monitoring the implementation of the AP for Implementing Minority Rights.

Conclusions and recommendations: It is necessary to develop a clear methodology for monitoring the implementation of the Action Plan for the Implementation of Minority Rights by civil society organizations; Monitoring of ambitiously set deadlines in the AP and compliance with them; Encouraging transparency in the foundation and activities of the Council for Interethnic Relations in Local Governments; Reevaluation of the position and role of the Coordination of National Council of Ethnic Minorities, as well as reporting by the Office for Human and Minority Rights towards the Coordination.

- **Consultative session regarding the presentation of the negotiation position of the Republic of Serbia within the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Chapter 23 'Judiciary and Fundamental Rights' – National Convention on the European Union for Chapter 23 – 08 March 2016**

At the very beginning, it was clarified that this is a *summary of the negotiation position* that is the narrative part of the Action Plan, as the entire document is classified. The summary was created during the writing of the Action Plan, specifically with the delineation of the negotiation position. Once more, the issues of the independence of activities by the VSS and DVT arose, due to current legislation, as well as problems with the selections of prosecutors and judges. Related to this, a proposal by the Venice Commission asserting that the only way to solve this problem is by changing the Constitution was mentioned, in addition to the opinion that current priority problems can be solved within the existing constitutional framework.

It was underlined that the basic elements of the plan are professionalization, depoliticization and Constitutional amendments. However, it was assessed that the text submitted to the Convention was incomplete. Certain human rights were neglected or left out within the document. It was also noted that the summary does not adequately address the repressive measures against corruption or business crimes. In the end, the issue of ethnic minorities was raised, via the definition of the position of ethnic minority councils and coordination of national councils.

4a. Evaluation of the fulfillment of NCEU recommendations (what was adopted, what was not, have we received an explanation...)

The Book of Recommendations for 2014 and 2015 contained recommendations in two segments, specifically – a Public Model and a Consultation Model. As the Public Model experienced certain advancements, while noting that deadlines for responses from the civil society are very short, greater attention should be focused on the division of consultations in the coming period. Above all else, this would include the increase of expert debates on certain issues from the AP. A specific set of activities is opened, which will be in full swing once the Chapter 23 negotiations, and its implementation monitoring, are commenced. At the sessions discussing the final versions of the action plans for both Chapter 23 and Improvement of Position of Ethnic Minorities, an announcement was made on the formation of a mechanism for the monitoring of implementation of measures from these two documents by the civil society. In addition, the civil society sector will use

the possibility of early warning on belated implementation of measures from the action plans, as the mechanism is clearly defined in the action plan.

During the activities of the WG for Chapter 23, the following recommendations were defined:

- Public Model
 - Maintaining access to documents throughout the entire negotiation process for Chapter 23
 - Maintaining and improving the timeframes of document submission, with appropriate deadlines for civil society contributions
 - Encouraging the permanent exchange of information
 - Collecting and promoting examples of good practice in public models for Chapter 23 that would serve as models for negotiations in other chapters
- Consultation Model
 - Creating a clarification of the methodology and dynamics of the negotiations on Chapter 23
 - Forming subgroups within topics, for both the negotiation team and civil society sector
 - The formation of a subgroup in charge of minority issues is currently undergoing, which will deal with Roma vulnerability problems and the involvement of minority representatives in the negotiation process through the Convention and WG for Chapter 23, as well as other chapters that deal with minority rights questions (such as Chapter 24 that contains readmission, which affects the Roma population the most).
 - Currently taking place are consultations with groups 10 and 28 on the creation of a subgroup that would entirely encompass topics regarding the freedom of expression and media pluralism.
 - Connecting subgroups within the NCEU with members of the Negotiation Team
 - Organizing essential talks on topics with regular communication, raising of questions and timely responses

Here we will list some of the examples of proposals from previous editions of the Book of Recommendations that were entirely or partially adopted and implemented, as well as those that have not yet been implemented.

Partially implemented:

A request was made to the Government of RS to ensure that all ministries consistently allow the participation of civil society in the process of EU negotiations and the careful consideration of all comments that have the aim of advancing Serbia's process of accession to the EU.

Recommendation on the timely submission of documents to the NCEU Working Group – This recommendation from the Public Model is partially fulfilled – deadlines are still very short, with the justification that the negotiation team for Chapter 23 also experiences short deadlines. As a result, CSOs often cannot submit adequate comments and suggestions due to the short deadline for document creation.

Implemented:

Proposal for the Ministry of Internal Affairs to publish the Draft Action Plan for Chapter 24 and supporting documentation based on the model implemented by the Ministry of Justice (setting up a dedicated page on the ministry's website with relevant information on the preparations for Chapter 24).

Aside from the aforementioned recommendations from the 2014 and 2015 reports, as the Working Group sessions during 2015 and 2016 also discussed the current state of the media, the following proposals were added in this specific area:

- Involving the public in activities related to the recommendations from area 5.1, especially regarding proposal 3.5.1. from the Screening Report that deal with the protection of journalists against threats of violence.
- Complying with deadlines set in the AP in area 5.1. – Freedom of Expression and Freedom and Pluralism of the Media. Inform the public on reasons for the delay of activities.

Specifically, the following recommendations were also suggested at WG for Chapter 23 sessions:

- It is necessary to change the Law on DVT (State Prosecutorial Council) to ensure a free, general, equal and direct election process with secret ballot voting;
- Priority should be given to amendments on the Law on DVT before the enactment of the new Constitution and election of new members; the aforementioned conclusions are to be applied on the Law on VSS (High Judicial Council) as well;
- The law amendment process must be accompanied by consultations with the involvement of expert associations as well as the NCEU WG for Chapter 23;
- Maintaining the level of cooperation and consultation between members of the Negotiation Team and NCEU WG for Chapter 23;
- Defining the role of civil society in the usage of early warning mechanisms for non-compliance with the action plan, its deadlines in certain areas, etc;
- Avoiding the risk of leaving parts of the Action Plan for Chapter 23, and with them other related areas from any other action plan, without a control mechanism;

- Monitoring compliance with deadlines defined in the Action Plan for Chapter 23 during the period before the conclusion of the final version, as there are many unfulfilled measures whose completion is expected in Q4 of 2015;
- Clarification of reasons for rejection of certain proposals, and if applicable, pointing them towards the body or working group who received the forwarded proposal;
- Allowing members of the NCEU WG for Chapter 23 access to the latest version of the Law on Free Legal Advice;
- Proposal for inviting consultants, in line with the topic, for concentrated areas within subgroups, as well as representatives of working groups for creating and amending laws envisioned in this chapter;
- Obligating the Government of RS to secure the financial means necessary for realizing the goals of the strategy;
- Changing the legislative framework with the aim of reducing executive authority involvement in the selection of judges;
- Amendment of the legislative framework with the aim of having the High Judicial Council elect judges, rather than the High or Court of Appeal in Belgrade, to terms lasting no more than 6 years;
- Regarding the role of the Ministry of Internal Affairs, the Department for Investigating War Crimes (SORZ) and Witness Protection Unit (TRZ) should be joined by someone from a higher level when analyzing unit status, as well as in the working group for monitoring;
- Inclusion 2-3 annual public debates participated by experts and civil society representatives in the Draft; Considering Aim 5, first point, it is necessary to formulate work procedures between the SORZ and TRZ regarding joint investigation teams;
- Regarding prosecutors' training – apart from the suggested training in the international humanitarian and international criminal law, as well as project writing, it is necessary to highlight the importance of trainings on investigative techniques;
- Regarding judges' training – introducing trainings on managing cases, followed by working with sensitive victims and witnesses, which is partially covered;
- Regarding regional cooperation, joint investigation teams should find a spot in the strategy, as one the mechanisms that yields excellent results;
- It is necessary to develop a clear methodology for monitoring the implementation of the Action Plan for the Implementation of Minority Rights by civil society organizations;
- Monitoring of ambitiously set deadlines in the AP and compliance with them;

- Encouraging transparency in the foundation and activities of the Council for Interethnic Relations in Local Governments;
- Reevaluation of the position and role of the Coordination of National Council of Ethnic Minorities, as well as reporting by the Office for Human and Minority Rights towards the Coordination.