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**Human Rights Council**

**Fifty-fourth session**

11 September–6 October 2023

Agenda item 6

**Universal periodic review**

**Report of the Working Group on the Universal Periodic Review**[[1]](#footnote-2)\*

**Serbia**

**Addendum**

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review**

| *Recommendation Number* | *Recommendation status* | *Rationale* |
| --- | --- | --- |
|  |  |  |
| 131.1. | NOTED | There are no objective conditions for fulfilling the recommendation during the term of the cycle. It should be noted here that the domestic legislation provides an adequate framework for the protection of migrant workers, since the same rights as those enjoyed by the domestic workers are guaranteed to them therein. |
| 131.2. | NOTED | See 131.1. |
| 131.3. | NOTED | See 131.1. |
| 131.4. | NOTED/SUPPORTED | See 131.1. |
| Supported in the part relating to ratification of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; ratification procedures are in progress for the Optional Protocol to the Convention on the Rights of the Child in conformity with the Government Plan for 2023. |
| 131.5. | NOTED/SUPPORTED | See 131.4. |
|
| 131.6. | SUPPORTED |  |
| 131.7. | SUPPORTED |  |
| 131.8. | SUPPORTED |  |
| 131.9. | SUPPORTED | By accepting such a recommendation, the Republic of Serbia does not acknowledge any existence of nationalistic hate speech, but we have had in mind that the similar recommendations have already been accepted in a previous UPR cycle, as well as that the term “prevention” implies measures and activities of preventive character that are taken before commission of any offence, prior to the occurrence of any events during which the nationalistic hate speech is used, while the use of the term “suppression” would indicate the post-festum actions whereby responsibility of a person is to be established in the events during which hate speech was used. In addition to that, **the fact is that taking preventive measures to suppress** the nationalistic hate speech is an obligation from the Action Plan for the Chapter 23 “Judiciary and Fundamental Rights” in the accession process of the Republic of Serbia to the European Union (the measures against racism and xenophobia, interim benchmark 3.8.1), and that shall by all means have a positive impact on the condition of interethnic relations in multiethnic communities in the Republic of Serbia. |
| 131.10. | NOTED | It should be noted here that ethnic intolerance and hate speech are not defined as institutes in the Criminal Code by using these same terms, and are instead qualified differently as criminal offences, specifically in Article 317 as the criminal offence of “Instigating national, racial and religious hatred and intolerance”, in a part thereof in Article 344a as the criminal offence of “Violent behaviour in sports events or public gatherings”, as an attribute of a criminal offence: “Whoever ... by his/her behaviour or slogans during a sports event or a public gathering provokes national, racial, religious or other hatred or intolerance on a discriminatory basis due to which violence or physical fight is caused with participants” and in Article 387 as the criminal offence of “Racial and other discrimination”, where paragraph 3 of which reads as follows: “Whoever disseminates ideas of superiority of one race over another or promotes racial hatred or instigates racial discrimination shall be punished by imprisonment of the duration from three months to three years”, and where paragraph 4 of which reads as follows: “Whoever disseminates or otherwise makes publicly available any texts, images or any other representation of ideas or theories which are advocating or instigating hatred, discrimination or violence, against any person or group of persons, which are based on race, colour of the skin, religious affiliation, nationality, ethnic origin or another similar personal characteristic, shall be punished by imprisonment of the duration from three months to three years”.  In addition to the above, it should also be noted here that a special circumstance is prescribed in Article 54a of the Criminal Code for determining the sentence for the criminal offences committed from hatred, i.e. if a criminal offence is committed from hatred due to another person’s affiliation to a race or a denomination, their national or ethnic affiliation, sexual orientation or gender identity, such a circumstance shall be taken into account by the court as an aggravated circumstance, unless where it is prescribed as a characteristic of a criminal offence. Consequently, the existence of such a circumstance shall be taken into account by the court when determining the sentence for perpetrators of all the criminal offences prescribed by that Code, unless where it is prescribed as a characteristics of the criminal offences, in the above stated criminal offences. |
| 131.11. | SUPPORTED |  |
| 131.12. | SUPPORTED |  |
| 131.13. | NOTED | In the legislation of the Republic of Serbia, **the enforced disappearances** are, according to Article 371 of the Criminal Code, envisaged as a crime against humanity. Thus, in that context, the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance are being directly applied. In respect of all the other statements, the absence of a specific criminal offence does not prevent criminal prosecution of persons responsible for serious infringements of international criminal law for the crimes committed in 1990s. The generally accepted rules of the international law and the ratified international treaties are integral parts of the legal order of the Republic of Serbia and are being directly applied. (Article 16 of the Constitution). |
| 131.14. | NOTED | See 131.13. |
| 131.15. | SUPPORTED |  |
| 131.16. | SUPPORTED |  |
| 131.17. | SUPPORTED | The recommendation is acceptable in the part thereof relating to effective implementation of the National Strategy for the Prosecution of War Crimes and in the part thereof relating to the regional and broader international cooperation in these proceedings.  It should be noted here that the Strategy does not define the priority procedures or cases, and that it instead envisages activities aimed at general efficiently increasing in these proceedings and also that it provides a broader framework for passing further, concrete strategic documents in the field of war crimes, such as the revised Prosecution Strategy for Investigating and Prosecution of War Crimes. |
| 131.18. | SUPPORTED/ NOTED | The part of the recommendation relating to reparations to the victims is not completely clear, bearing in mind that the reparations are paid between two states, and in that part this recommendation does not enjoy support from the Republic of Serbia. |
| 131.19. | SUPPORTED/NOTED | See 131.18. |
| 131.20. | NOTED | The part of the recommendation relating to education – **shall be duly noted, with the following explanation**: It is not completely clear what educational programmes were mentioned here, a clarification will need to be provided here. If it is a case of educational contents and topics for further professional training of staff in the field of human rights, non-discrimination policies, learning about the Holocaust and suffering of other nations in armed conflicts, we can accept the recommendation. This part of the recommendation needs to be specified in more detail.  The part of the recommendation relating to reparations for victims is not completely clear, bearing in mind that the reparations are paid between two states, and in that part this recommendation does not enjoy support from the Republic of Serbia. |
| 131.21. | NOTED | Bearing in mind that the reparations are paid between two states, and in that part this recommendation does not enjoy support from the Republic of Serbia. |
| 131.22. | NOTED | “Avoiding conflict of jurisdictions” in relation to war crimes can be interpreted as a renewed introduction of the issue of “universal jurisdiction”, which is a legacy of the international humanitarian law. It should be noted here that that type of jurisdiction is recognized in the legal system of Croatia, and in the legal systems of other EU Member States as well, and Croatia has been increasingly insisting on abolition in Serbian legal order. The recommendation is imprecise in the part where “and related issues” are mentioned. |
| 131.23. | SUPPORTED/NOTED | **With a note** that in the part “guarantee the freedom of the press by discontinuing direct government influence on the press” this recommendation does not enjoy support from our country since we are of the opinion that the Government does not exert any direct influence on media or on the press for that matter. |
| 131.24. | SUPPORTED |  |
| 131.25. | SUPPORTED |  |
| 131.26. | SUPPORTED |  |
| 131.27. | SUPPORTED |  |
| 131.28. | SUPPORTED |  |
| 131.29. | SUPPORTED | **NOTE**: The provisions of the Inter-Church Agreement between the Serbian Orthodox Church (The SOC) and the Romanian Orthodox Church (the ROC) from 2006, and on the occasion of registration of the “Dakia Felix” Eparchy of the ROC in the Register of Churches and Religious Communities of the Ministry of Justice, in April 2009, based on the (canonical) consent of the SOC, it was prescribed that that organisational unit of the ROC should have the competence to act exclusively in the territory of the Serbian part of Banat. The issue of extension of its competences (the church jurisdiction) to Eastern Serbia (the Timok Valley) falls within the exclusive church jurisdiction, where, as a secular state, the Republic of Serbia may not interfere. |
| 131.30. | SUPPORTED |  |
| 131.31. | NOTED | The Republic of Serbia condemns infringement of the provisions of international law, as well as all kinds of violence and the use of sanctions when resolving political problems. |
| 131.32. | NOTED | “Within bilateral and regional cooperation mechanisms on missing persons, ensure full access to relevant information, including to state and military archives” should be noted, with the explanation that Croatia is treating the afore mentioned as open issues, by using, in doing that, untrue and incomplete, as well as malicious facts.  The Republic of Serbia condemns war crimes and crimes against humanity and is completely dedicated to establishing the fate of the missing persons. |
| 131.33. | SUPPORTED |  |
| 131.34. | SUPPORTED |  |
| 131.35. | SUPPORTED |  |
| 131.36. | SUPPORTED |  |
| 131.37. | SUPPORTED/NOTED | To be supported with a reservation relating to the mechanism for establishment of victim-friendly centres at police stations.  In the Operational Centre of the Republic of Serbia MoI, a telephone line 0800 100 600 has been opened, which can be called free of charge and which is available 24 hours a day, to which the occurrences of domestic violence on the level of the entire Republic of Serbia can be reported. Any person reporting a domestic violence occurrence is entitled to report the violence anonymously. |
| 131.38. | SUPPORTED |  |
| 131.39. | SUPPORTED |  |
| 131.40. | SUPPORTED |  |
| 131.41. | SUPPORTED |  |
| 131.42. | NOTED | Following the establishing of the Ministry of Family Welfare and Demography towards the end of October 2020, work on Draft Law on the Rights of the Child and on the ombudsman for children was not continued, and instead amendments and supplements to the Law on Family (Official Gazette of the RS, No. 18/05, 72/11 – other law and 6/15) were prepared, which have envisaged new solutions relating to the definition of the child and explicit prohibition of physical disciplining of children, which was initially to be regulated by the provisions of the afore mentioned Draft. In the past period, there has been no unified position in respect of the establishing of an Ombudsman for the Rights of the Child in the Republic of Serbia. The Protector of Citizens (Ombudsman) of the Republic of Serbia, which is a full and an active member of the European Network of Ombudsmen for Children, now has the position of a special body which is protecting, promoting and furthering the rights of the child in accordance with the provisions of Article 2, paragraph 4 of the Law on the Protector of Citizens. |
| 131.43. | SUPPORTED |  |
| 131.44. | NOTED | See 131.42. |
| 131.45. | SUPPORTED |  |
| 131.46. | SUPPORTED |  |
| 131.47. | SUPPORTED |  |
| 131.48. | SUPPORTED |  |
| 131.49. | NOTED | The same-sex partnerships have not been legally regulated in the Republic of Serbia, and such legal regulation would imply the systemic resolving of a completely new legal institute, which by all means requires time and serious, systematic and analytical approach. Bearing in mind the new character of this institute and its contents, in respect of which there is no unified practice or standards on the international level, in respect of which the comparative legal solutions are significantly differing, it will be necessary to achieve a broad social consensus with various social subjects in respect of that issue. In addition to that, it is necessary to seriously analyse the effects of such regulations in other spheres of the law and other legal regulations, as well as the scope of their harmonisation, which, taken all together, requires certain time to be done. |
| 131.50. | NOTED | See 131.49.  **NOTE**: For the part of the recommendation relating to protection of LGBTI persons in the Republic of Serbia, the legal protection has already been established through the Criminal Code and through the Law on Prohibition of Discrimination. |
| 131.51. | SUPPORTED |  |
| 131.52. | SUPPORTED/NOTED | The recommendation is duly noted in the part relating to adoption of a law on same-sex partnership with the explanation stated in the recommendation 131.49. |
| 131.53. | NOTED | See 131.49. |
| 131.54. | NOTED | See 131.49. |
| 131.55. | NOTED | See 131.49. |
| 131.56. | NOTED | See 131.49. |
| 131.57. | SUPPORTED |  |
| 131.58. | NOTED | See 131.49. |
| 131.59. | SUPPORTED |  |
| 131.60. | SUPPORTED |  |
| 131.61. | SUPPORTED |  |
| 131.62. | SUPPORTED |  |
| 131.63. | SUPPORTED |  |

1. \* The present document is being issued without formal editing. [↑](#footnote-ref-2)