HUMAN RIGHTS DEFENDERS
IN THE WESTERN BALKANS

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FOREWORD

The position of human rights defenders (HRDs) in the Western Balkans is increasingly precarious. Across the region, HRDs and organisations, as well as independent media outlets, are prone to intimidation, threats, smear campaigns, digital and physical attacks, and an overall disregard by national authorities.

While the region shares several common features (sluggish integration, weak rule of law, intimidation of HRDs, limited democratisation, lack of press freedoms etc.), naturally each country faces specific challenges and the protection of human rights has unique consequences, depending on local contexts.

As such, this report has been compiled by experts from each of the six Western Balkan states, who have extensively researched the challenges and position of HRDs in the region, and offered a broad range of recommendations to national authorities, the international community, media and HRDs themselves. Having interviewed 100 HRDs for the purpose of this report, it represents one of the most prolific and detailed on-the-ground studies of their position in the Western Balkans, on a country-by-country basis.

The countries of the Western Balkans (except Kosovo due to its non-full member status in the Council of Europe) are signatories or parties to all relevant international documents guaranteeing the protection and advancement of human rights. The national legal frameworks of relevance for human rights defenders are largely in place in all of the countries and, despite emerging downward trends in some states, it is assessed that the national legislation is significantly in line with international standards in the field. Yet, the legislation is considered general and not adjusted to accommodate for the particularities of HRDs’ claims. Further, the report will show cases where existing mechanisms for the prevention, protection and prosecutions against various forms of violations against human rights defenders are not efficient and their enforcement is considerably weak. In all countries, it is noted that improvements in the legislation should be made so as to provide adequate mechanisms for HRDs’ protection.

Across the region, there are clear cases of failure to implement legislation. Cases were noted where the legal framework was either disregarded, or where damaging practices have been developed, at the expense of the rights of HRDs. In addition, it notes that rights are limited due to the ignorance or unwillingness of some states to cooperate, or even communicate with HRDs, as well as the unavailability of information and lack of readiness by state authorities to provide data of public importance. As a result of this concerning trend, HRDs are becoming more vulnerable and constrained in their work.

The lack of efficiency and effectiveness of law enforcement agencies is one of the factors contributing to such unfavourable environment for human rights work. Each of the country-specific reports outline the violations and restrictions in the exercise of freedom of assembly (also exercised as the right to protest), the right to freedom of association and, above all, the freedom of expression. The exercise of the freedom of assembly is limited, not as much by legislative obstacles, but by the actions taken - or not taken - by authorities to enable safety during gatherings, especially when the gatherings challenge traditional social concepts. Similar situations exist when it comes to the right to freedom of association.

The researchers also offer insights into individual cases of assaults, harassments and restrictions of human rights defenders, thus breaches of the right to be protected and the right to effective remedy.

The normalisation of such climate of impunity for hate speech impacts HRDs as it encourages self-censorship and tailoring of the human rights agenda. Trolling and harassment of HRDs, including regular, highly sophisticated and coordinated smear campaigns, too often bare signs of state-sponsorship. In other instances, HRDs experience various types of hate speech or verbal abuse, yet receive little or no protection from national authorities.

In addition, the human rights agendas are to a great extend shaped by the available funding, and the past years have witnessed trends in the retraction of funds for human rights organisations, not least those that work with gender equality and women’s rights. Having in mind that the overall working environment is particularly unfavourable for women and HRDs working on issues of gender equality, gender-based violence and LGBTI+ community, this is trend is particularly concerning.

Each country report concludes with shrewdly crafted recommendations for parties involved at either end of the human rights struggle. Above all, these chapters set out to advise national authorities on how to treat and approach HRDs. They offer a series of recommendations concerning the status and protection of HRDs, strengthening the capacities of law enforcement agencies, confronting hate speech and public smearing, as well as ensuring that attacks - especially against those from marginalised communities - are met with effective, constructive protocol and condemnation.

Recommendations are thereon addressed to state-sponsored media outlets, who have been largely responsible for propelling-on the poisonous narratives surrounding human rights work. It offers suggestions for how journalists can take a more proactive approach to covering human rights issues, and how to shift the debate on media regulation, particularly ethical norms and standards for protection against hate speech.

With each of the Western Balkan states gearing their ambitions towards European integration, the international community – especially EU institutions, which enshrine human rights at their core - bear some responsibility for the treatment of HRDs in the accession countries. The reports detail the importance of continuously monitoring the protection of human rights at national and regional level, and encourage the donor community to increase funding for technical and financial capacities of the HRDs.

Finally, the reports address HRDs themselves, and asks how they can become more proactive in reporting cases, establishing working relations with authorities and partners, or diversifying their funding to seek long-term sustainability.
EXECUTIVE SUMMARY

Over the last two decades, Albania has made significant progress in promoting and enforcing human rights and fundamental freedoms. Human rights defenders have played an instrumental role in these achievements and the advancement of human rights, democracy and the rule of law. However, despite the progress made so far, Albania still needs to ensure full regulatory compliance with international standards and better address the concerns of human rights defenders, who are often subject to undue restrictions and hardships that undermine their work. Many of the ongoing struggles in their everyday work are caused by inadequate legal, institutional and policy frameworks. This report highlights some of the challenges human rights defenders in Albania have been experiencing and provides recommendations for overcoming them.

The research found that the threats and attacks experienced by human rights defenders in Albania range from smearing campaigns and intimidation to hate speech and harassment, both physical and psychological. Although they generally operate in a non-restrictive environment, they have also reported instances of direct and indirect pressure by the state authorities. The human rights defenders most at risk in Albania are those working to protect the rights of the LGBTI+ community, victims of trafficking and domestic violence, as well as investigative journalists, who are also subject to frequent targeted attacks. Women Human Rights Defenders (WHRDs) are particularly subject to gender-based attacks such as online intimidation and sexual harassment. The space for demonstrating freedom of expression for HRDs has further deteriorated over the last few years, notably exemplified by the introduction of an “anti-defamation package” in 2018, intended to regulate the activity of online media. On the other hand, there are few mechanisms in place to protect and promote the work of human rights defenders, such as the resolution for protecting human rights defenders, the Ombudsman and Commissioner for Protection from Discrimination, but they do not provide for effective implementation and protection. There is no legislation in place for the authorities to act with due diligence against violations against human rights defenders in Albania. Attacks, threats or intimidations performed against human rights defenders are often neglected, disregarded or not investigated properly. The lack of a proactive response by the state institutions in safeguarding human rights defenders makes their activities particularly insecure. Human rights defenders significantly contribute to promote and protect human rights and fundamental freedoms. Given the nature of their work, it is essential that the state institutions ensure appropriate recognition and protection to such groups. Moreover, although the constitution provides for an independent judiciary, human rights defenders are sceptical about the effectiveness of investigations carried out by the Albanian courts.

This report provides recommendations on how to improve and promote the work of HRDs. The national authorities are encouraged to improve the existing legal and institutional framework in order to ensure a more enabling environment of HRDs. This report highlights some of the challenges human rights defenders face in terms of their civil and political rights, including assaults, harassment and other forms of abuse, threats and attacks. The report draws attention to gender aspects of the identified challenges and recommends a series of measures for an effective protection of human rights defenders in Albania.

2. GENERAL CONTEXT ISSUES

Although human rights defenders from civil society generally feel free in their work, journalists have been facing increasing restrictions in expressing their opinions in terms of respect for their rights. It is worth mentioning the considerable level of restriction in expressing their opinions and ideas towards the government, institutions or affiliates. In Albania, both civil society and the media are widely perceived as having an important role in holding the government accountable, but their efforts are usually hampered by institutional setbacks, lack of capacities and politicisation of their activities. Although interviews suggest that the sector of civil society needs to work more to ensure sustainability of their actions and increase their policy advocacy efforts through evidence-based research. In addition, media independence and professionalism is without doubt essential in building public trust and confidence.

The challenges that human rights defenders face are diverse, depending on the nature of their work and whose rights they are defending. The first group, LGBTI+ activists and those on the rights of sex workers, are subject to targeted assaults. They are more likely to be exposed to verbal and physical violence. The online hate speech against activists of the community is quite common. There is an exacerbated risk against defenders protecting the rights of sex workers and transgender people. The second group, Women Human Rights Defenders (WHRDs), working with victims of trafficking or cases of domestic violence, are exposed to greater security risks and it is common that they are under acute threats from the perpetrators involved in the cases they are working on. They are exposed to continuous harassment, not only because of their gender, but also because of the work they do. Often, women activists do not report the threats against them to the police, as they fear that their existence will be revealed or that they, or their associates, will be targeted. Often, women activists have played an instrumental role in these achievements and the advancement of human rights, democracy and the rule of law. However, despite the progress made so far, Albania still needs to ensure full regulatory compliance with international standards and better address the concerns of human rights defenders, who are often subject to undue restrictions and hardships that undermine their work. Many of the ongoing struggles in their everyday work are caused by inadequate legal, institutional and policy frameworks. This report highlights some of the challenges human rights defenders in Albania have been experiencing and provides recommendations for overcoming them.

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This report provides recommendations on how to improve and promote the work of HRDs. The national authorities are encouraged to improve the existing legal and institutional framework in order to ensure a more enabling environment of HRDs. This report highlights some of the challenges human rights defenders face in terms of their civil and political rights, including assaults, harassment and other forms of abuse, threats and attacks. The report draws attention to gender aspects of the identified challenges and recommends a series of measures for an effective protection of human rights defenders in Albania.
In addition to this, there are several external factors that hinder the work of HRDs. The following offences and constraints are particularly obstructive to the work of HRDs:

- **Lack of public awareness**: There is a serious problem in the Albanian context. With many socio-economic challenges to deal with, the general public does not view such issues as traditional human rights or political values.
- **Lack of communication**: The government has used legal restriction to silence the opposition from NGOs/HRDs and media.
- **Current legal loopholes**: There have been several cases when the Commission for Protection from Discrimination had to drop a case or had to decide against prosecution because of these reasons. Interviewees have stressed that it is quite difficult for the victims to prove or “unveil” allegations of discrimination. There are also cases where the defendant might soon retaliate against the complainant. Moreover, issuing fines for discriminatory language can have the opposite effect of inciting more hate speech.

Anti-discrimination laws are rather difficult to prove. The concept of “burden of proof” in the administrative investigation procedure followed by the Commissioner is not fully explained in the Law on Protection from Discrimination. Referring to the right of subjects to appeal before the Commissioner, the Law determines that the applicant “may file a complaint with the available evidence before the Commissioner” (Article 331)). In court proceedings, the Anti-Discrimination Law states that the claimant “has the obligation to provide evidence to support the claim, using any legitimate evidence that can prove discriminatory behaviour”. Instead, it is the Code of Administrative Procedure that explicitly provides for the reverse of the burden of proof in administrative law: the claimant is supposed to provide evidence for his/her claim. Authorities do not have appropriate knowledge to understand and address the claims of human rights defenders. For example, in terms of environmental issues, prosecutors and judges do not know how to investigate an environmental crime.

While the legal framework for protection of human rights in Albania is broadly in line with international standards, the implementation of these instruments is limited and the enforcement of human rights remains significantly deficient. The main obstacles to the application of human rights are constraints to: "notification" versus a “request” or “permission”. There is a discrepancy between the Law No 8773 from 23.4.2001 on Non-Profit Organizations, the state organs do not interfere with the activities of non-profit organizations. They are instead supposed to support and encourage the activities of non-profit organizations. A prohibition or limitation of the activities of non-profit organizations is contrary to the law on freedom of association and is largely in line with the guidelines on Freedom of Association of the ODIHR. Although formally respected, the right to freedom of association is legally plausible and leaves space for interpretation. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM OF ASSOCIATION**: The freedom of association is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM OF ASSEMBLY**: The freedom of assembly is guaranteed by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The freedom of assembly also includes the right of every person and every group of persons, whether or not constituted as an organization, to meet peacefully and to assemble for any purpose without previous authorization or a permit. The right to meet is guaranteed by constitutional and legal norms, and is largely in line with the guidelines on Freedom of Peaceful Assembly of the ODIHR. Although formally respected, the right to freedom of assembly is legally plausible and leaves space for interpretation. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM OF INFORMATION**: The freedom of information is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM OF MOVEMENT**: The right of every person to enter, remain, and leave the country is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM OF BELIEF**: The freedom of belief is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM FROM CRIMINAL RESPONSIBILITY**: The freedom from criminal responsibility is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM OF JUSTICE**: The freedom of justice is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM FROM TERRORISM**: The freedom from terrorism is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM FROM OPPRESSION**: The freedom from oppression is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM FROM HUMAN RIGHTS ABUSES**: The freedom from human rights abuses is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM FROM ENVIRONMENTAL PROTECTION**: The freedom from environmental protection is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM FROM WORKING CONDITIONS**: The freedom from working conditions is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM FROM ECONOMIC ACTIVITIES**: The freedom from economic activities is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.

**FREEDOM FROM FOREIGN INVESTMENT**: The freedom from foreign investment is regulated by the Law No 8773 from 23.4.2001 on Non-Profit Organizations. The law on procedure of assembly establishes that a notification is required for public assemblies. The notification is effective for a duration of 20 days. If a non-profit organization does not register to become a legal entity, the association can be dissolved by the administrative body.
FREEDOM OF EXPRESSION: While the Constitution guarantees freedom of expression, the recent “Anti-Defamation Legislation” proposed by the government represents regress in this aspect. In 2019, the government has, without prior consultation with the media, vowed to pass two laws44 that can lead to a greater amount of self-censorship in the media landscape already causing restrictions.45 This so-called anti-defamation package imposes mandatory registration for all online media and the establishment of a censorship body that reviews “defamation” in online media. One measure empowers a state administrative body (the Audio-Visual Media Authority, or AMA), instead of the court to regulate the content of online media outlets. What makes this particularly precarious situation is the fact that board members of AMA are nominated and dismissed on the discretion of political parties. On top of that, a part of the AMA’s Complaints Council, is warranted with the power to remove online content or impose fines in cases of defamed news in an almost discretionary manner. In line with the proposed amendments, the government has recently attempted to block foreign news stations through the AMA.46 Civil society activists, independent media, HRDs and several international organisations have made efforts to convince the government to withdraw the measures, as they will further tighten the control of the state over the online media, construct media freedom and restrict freedom of expression.47 Regardless of these arguments, the government is pushing forward the legislation, claiming that the “anti-defamation campaign” will discipline online media and fake news and defamation.

LIBEL/Slander LAWS48: The Law permits private parties to file defamation lawsuits against journalists and obtain financial compensation up to ALL 3 million (EUR 25,333) upon insults or defamatory information. In comparison, the average monthly salary in Albania is ALL 51,531 (EUR 440),49 meaning that the fines can be as much as a 5-year salary. Thus, journalists are not only convicted with criminal charges, but also obligated to pay an excessive amount of money – both of the actions undermine their freedom of expression. The Albanian legislation that is in place provides for the protection from defamation and the mechanism to address defamatory content. However, there is no need for new legal regulations specific to the media, as there is no need to attribute the competences to AMA that otherwise belong to the court, since AMA is an administrative body, members of which are chosen by the parliament.

As it is evident from the analysis of the legal framework in Albania, several legal provisions and restrictive legislative acts that have been introduced over the past few years50 have been limiting the capacities of HRDs to fully exercise their rights. The shrinking space for freedom of speech indicates the struggles HRDs are facing to voice their concern. Also, several bureaucratic procedures related to the freedom of association and those pertaining to the freedom forassembly, could potentially serve as an attempt to give HRDs a tight grip over their activism.

There are a few mechanisms for the protection of human rights defenders. These include the Office of the Ombudsman, the Office of the Commissioner for the Protection from Discrimination and the Parliament’s Subcommittee for Human Rights.

The OFFICE OF THE OMBUDSPERSON is the main independent institution in Albania for promoting and enforcing human rights. It has the authority to initiate cases and start an investigation based on the complaints of concerned parties and those pertaining to the freedom forassembly, could potentially serve as an attempt to give HRDs a tight grip over their activism.

The OFFICE OF THE COMMISSIONER FOR THE PROTECTION FROM DISCRIMINATION (CPD) is considered to be the only independent authority responsible for providing effective protection from discrimination and any other form of discrimination, violation of human rights and enforcement of discrimination. The CPD asks the court to impose fines if there is an aggravation of the fines imposed by the CPD. Though the roles of the Ombudsman and the Commissioner have improved over the years, they still lack the capacities for a comprehensive and targeted approach in handling cases of human rights violations.51 The weakness of this is the fact that their decisions are not binding, as they only issue recommendations, which makes them difficult to be implemented.

The SUBCOMMITTEE FOR HUMAN RIGHTS operates under the Parliamentary Committee for Legal Issues, Public Administration and Human Rights at the Parliament of Albania. As of March 2019, the Parliament of Albania passed a resolution in support of the activity of HRDs. Yet, there is in general a low awareness of this resolution and its enforcement capacities.52

41 Interview No 3, Civil Society Representative, 27.8.2019
42 The appointment procedure for AMA members and the activity is affected by the political situation. See http://www.institutemedia.org/Documents/PDF/Albanian%20Media%20Scene%20vs%20European%20Standards.pdf
43 The anti-defamation package has been highly criticized because of the harm penalties (up to suspension of activity) imposed for media outlets that do not comply with the official code of the Audio-Visual Media Authority. Additionally, the media outlet is required to pay the fines before the legal review is exhausted.
44 Article 120 of Criminal Code of the Republic of Albania, 2nd paragraph as changed by Law No 8733 of 24.1.2001
45 Statement on the legislative package of draft laws approved by the Council of Ministers on online media regulation
46 Interview No 12, Civil Society Representative, 9.9.2019; Interview No 7, Civil Society Representative, 14.8.2019; Interview No 20, Civil Society Representative, 23.8.2019
47 Such as the “Anti-defamation Legislation”
48 Interview No 12, Civil Society Representative, 9.8.2019; Interview No 7, Civil Society Representative, 14.8.2019; Interview No 20, Civil Society Representative, 23.8.2019
52 Sights
55 Interview No 4, Civil Society Representative, 13.8.2019
56 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 11, Civil Society Representative, 22.8.2019; Interview No 5, Civil Society Representative, 14.8.2019
57 Interview No 4, Civil Society Representative, 13.8.2019
58 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 11, Civil Society Representative, 22.8.2019; Interview No 5, Civil Society Representative, 14.8.2019
59 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 14, Civil Society Representative, 26.8.2019. For example, the lack of data from local authorities. 60 Therefore, some bureaucratic procedures related to the freedom of association and those pertaining to the freedom forassembly, could potentially serve as an attempt to give HRDs a tight grip over their activism.
56 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 12, Civil Society Representative, 9.9.2019
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57 Interview No 4, Civil Society Representative, 13.8.2019
58 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 5, Civil Society Representative, 14.8.2019
59 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 14, Civil Society Representative, 26.8.2019. For example, the lack of data from local authorities. 60 Therefore, some bureaucratic procedures related to the freedom of association and those pertaining to the freedom forassembly, could potentially serve as an attempt to give HRDs a tight grip over their activism.
56 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 12, Civil Society Representative, 9.9.2019
57 Interview No 4, Civil Society Representative, 13.8.2019
58 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 5, Civil Society Representative, 14.8.2019
59 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 14, Civil Society Representative, 26.8.2019. For example, the lack of data from local authorities. 60 Therefore, some bureaucratic procedures related to the freedom of association and those pertaining to the freedom forassembly, could potentially serve as an attempt to give HRDs a tight grip over their activism.
56 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 12, Civil Society Representative, 9.9.2019
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58 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 5, Civil Society Representative, 14.8.2019
59 Interview No 13, Civil Society Representative, 26.8.2019; Interview No 14, Civil Society Representative, 26.8.2019. For example, the lack of data from local authorities. 60 Therefore, some bureaucratic procedures related to the freedom of association and those pertaining to the freedom forassembly, could potentially serve as an attempt to give HRDs a tight grip over their activism.
The support and cooperation of the government as regards HRDs depends on whether they often criticize the government policies. Public officials are reluctant to accept a higher degree of public criticism and scrutiny from a VHRD when implementing their activities if this damages the image of their own work. The challenges faced by HRDs that criticize the government vary on the type of their work. The forms of restrictions are quite diverse. HRDs from civil society are more likely to face the following restrictions in their everyday work:

- Co-optation through offering alternatives for collaboration to prominent activists or key gatekeepers
- Smear campaigns by government officials and media outlets to undermine the legitimacy of the work of HRDs, so the barriers they are facing when implementing their activities are important signals sent by the officials
- HRDs report instances when individuals hired by public authorities tried to infiltrate protests or manifestations
- Smearing by commenting “trash bins”, is used in the same manner in other cases by high ranking officials. These kinds of negative connotations, which are usually more intense during sensitive moments, for example when a scandal takes place, reflect an increasingly anti-media rhetoric.
- Pressure from donors for cutting the funds or collaboration. Some donor organisations have direct connections with the government, which has often resulted in threats that a project will be subject to a number of restrictions, including funding shortfalls, if it identifies a flaw in government’s activities. This pressure often comes as a result of intimidation (such as cutting the cooperation with the public institutions) that donors receive from the government.19

Women human rights defenders are at a heightened risk, due to their gender and the sensitivity of the issues they moderate their requests. In some cases, their efforts aim at politicising the protest or manipulating the public image of the activity.20 For example, it is argued that attempts have been made to incite violence in order to escalate the situation and create a bigger picture of violent group. These individuals then become negotiators of figures that strive to administer the protest, switch the tension, or aim to deviate or delegitimize the protest by using alternative arguments.21

HRDs report that there are thousands of online “trolls” deployed to smear the work of HRDs by commenting on social media posts. HRDs are a very viable target since they are often critical individuals in the media sphere and do not fear having their voice heard. The “trolls” clearly have an agenda and are probably militants of political parties. As it can be seen in the following example.

In one case, the youth wing of a party in Albania would mobilize its members to comment on the Facebook pages in which the Albanian NGO would have published an article or a post. In other cases, the troll would comment on the social media of an individual or an organisation, or would respond directly by sharing with that person that the troll has a group of people who would flood the social media in a strategic manner with the sole meaning of misleading the public opinion and making people sceptical of the writing’s credibility.22

Environmental activists report that they have experienced various forms of attacks from state authorities, businesses and other anonymous persons.

The fight against the hydropower project in the National Park of Valbona

A series of protests have been organised against the construction of hydropower plants (HPPs) by the consortium of national NGOs Protect the Rivers, international organisations and academics, as well as local citizens. So far, 9 HPPs of Valbona Energy Company have been allegedly cancelled, whereas three HPPs will continue with the construction. The civil society activists opposed the project because they predicted a negative impact on the environment of the national park, its landscape in general, tourism, and natural and cultural heritage. First, the activists requested disclosure of permits and project documents for HPP Valbona from the National Environmental Agency, as they suspected that there was no proper documentation or that violations had taken place to facilitate the HPP approval. Indeed, the National Environmental Agency failed to provide the requested documents. Public consultation is another “hidden weapon” used to prevent the issuing of documentation submitted by concessionaires, as many inhabitants allegedly claimed that the company has falsified their signatures for approving the project (including signatures of deceased persons) and that the public consultation process was not respected. In this context, the NGOs have also asked for the cancellation of permits for the remaining 3 HPPs is still ongoing. Moreover, the NGOs activists claim that the protest has mobilised civilians and activists and led to conflict with local authorities.纽

There have also been instances of the government, private businesses and organised crime networks cooperating to pressure the media, either directly or indirectly and censor investigative articles that report crime and/or corruption. This kind of control is often used by political or economic interests of media owners. Therefore, self-censorship has spread widely among journalists as a way of avoiding threats, smear campaigns or attacks. Generally, there is a strong ‘copy-culture’ in which news outlets avoid reporting threats, smear campaigns or attacks. Generally, there is a strong ‘copy-culture’ in which news outlets avoid reporting crime or corruption. Often, high-profile politicians publicly declare alternative data and facts immediately after their policies have been criticised. These alternative facts are broadcasted on politically biased media, whose reporting is highly influenced by the political and economic interests of their owners. This strong trend of corruption makes Albania vulnerable on the subject of misinformation.23 One interviewee claimed that:

Gender aspects of the challenges and restrictions related to violations and restrictions

The interviewees pointed out the fact that WHRDs are more at risk of being a target of gender-specific violence, such as sexual harassment and sexist hate speech. Although WHRDs have in general been subject to all of these forms of pressure and intimidation, those who work on trafficking issues, gender-based violence and the rights of sex workers and LGBT+ persons are at a higher risk.

For the majority of WHRDs, the threats came mostly from anonymous persons, using either social network platforms or mobile phone lines. WHRDs have been a subject of smear campaigns targeting their work and the organisations where they work. One respondent shares that, after she had had a media conference on gender-based violence, the next day she immediately received dozens of discriminatory messages questioning her professionalism and, even more disturbingly, offensive language and comments on her physical look or attire. This includes, for example, attacks to destroy their well-standing reputation and discredit their work. Another WHRD shares the case of one of her colleagues, who has been the target of a denigrating smear campaign from other media. This was the case of Alice Taylor – a British journalist living in Albania, who was reporting about vote rigging, violence at protests and the government’s links to organised crime and money laundering. She was attacked by the pro-government media (around five online portals), who accused her of being a Russian spy. Moreover, she received online sexual threats by anonymous individuals.

The climate for WHRDs is further aggravated by the patriarchal mentality and the dominant gender stereotypes that shape up to perpetrators on gender roles, which seem to perpetuate various forms of intimidation and hostility against WHRDs. However, it also seems that the active contribution of WHRDs in promotion and protection of human rights challenges these traditional gender norms, which are embedded in the idea that women’s primary role should be restricted to private and domestic spheres.

HRDs report several obstacles in approaching public authorities. It has become near impossible for journalists to contact high-ranking politicians without having close connections with the political elite. Interviewees highlight the challenge of approaching the media reporting themselves, for any instance, a personal PR team offers a fully produced TV item or hands over a finished article that contains only a PR statement. This makes it difficult to do live reporting or to produce a balanced article. Considering that most news come prepared beforehand, press conferences have become scarce.

LGBT+ activists obliged to leave Albania after receiving dozens of death threats – homophobic hate speech

Activists working on LGBT+ rights are more likely to be subject to threats of physical violence, assaults and descrimation than other HRDs.93 It is actually quite common for LGBT+ activists to face discrimination by public authorities. For example, the Ministry of Education has not allowed LGBT+ activists to perform their awareness activities in schools, despite the fact that such activities are foreseen in the National Action Plan against LGBT Discrimination.94 The LGBT+ community seems to be the most perceived community in user-generated comments95 on social media. A declaration made from an LGBT+ activist on the fourth Tirana Gay Pride against homophobia (18 May 2019), produced a wave of inflammatory comments, insults, curses, and threats against the LGBT+ community.96 The office of an LGBT+ NGO has been attacked several times by unidentified assailants.97 Klosti Pindori, an activist and founder of an LGBT+ organisation, has declared that he was forced to flee Albania, after receiving dozens of death threats, including threats on social networks to hang him, to burn him with acid, to vandalise his car and other denigrating messages.98 Activism in this case is particularly difficult for them to provide evidence for discrimination, unless they are in a written form or made by public authorities.99

A widespread concern shared among many activists is that the government is unable to react in a timely fashion and bring the perpetrators of criminal offenses to justice.100 If authorities have knowledge that a human rights violation or abuse has been committed against an HRD, the investigative steps are the same as with any other person who has committed a criminal offence.101 However, HRDs are particularly vulnerable to such actions from other groups, because the threats they receive are linked to their status as human rights defenders. There is no provision in the criminal code for offences committed due to the exercise of a profession such as being a journalist or human rights defender. Moreover, there are no specific provisions on investigating violations committed against HRDs or investigative journalists that are female or self-identifying as LGBT+.102 This is particularly dangerous since the perpetrators go unpunished and the HRDs risk their lives.

Armed assault on the residence of investigative journalist Klodiana Lalà

On 30 August 2018, unidentified persons fired multiple shots with automatic weapons at the home of the investigative journalist Klodiana Lalà’s parents, damaging several walls and windows. Her two young daughters were asleep when the event happened. Although nobody was wounded, the family was particularly distressed. Lalà has been reporting about organised crime and the links between politics and corruption for more than a decade. She suspects the attack was linked to her work as an investigative journalist. Moreover, she has never had any conflicts before. Although nobody was wounded, the family was particularly distressed. The attack was condemned by public authorities and several journalists’ associations in Albania.103

5 Assaults, harassments and restrictions of human rights defenders

Although there have been few reported cases of incidents with human rights defenders, the research has found that the environment in which they carry out their activities is hampered by several legal and institutional shortcomings. Most respondents have stressed the importance of a protective mechanism at the national level, which would investigate violations and restrictions of human rights defenders in a different way than what is currently in place.104 Others have also recognised that the situation of HRDs would improve significantly if the existing regulations were applied and respected fully. The situation is particularly dire for activists working on LGBT+ issues.105 The LGBT+ community and activists continue to face serious forms of discrimination and human rights violations, including verbal and physical attacks by the public and the authorities.106 Since national institutions are not willing to step up, international bodies are often the ones to address their concerns.107 The discrimination against LGBT+ activists is pervasive.

89 Interview No 1, Media representative, 12.8.2019
90 Interview No 2, Civil Society representative, 23.8.2019
91 Interview No 3, Social Worker, 16.8.2019
92 Interview No 13, Civil Society representative, 26.8.2019
93 Interview No 2, Media representative, 16.8.2019; Interview No 1, Media representative, 12.8.2019
94 Interview No 2, Media representative, 16.8.2019; Interview No 1, Media representative, 12.8.2019
95 Interview No 2, Media representative, 16.8.2019; Interview No 1, Media representative, 12.8.2019
96 Interview No 13, Civil Society representative, 26.8.2019
97 Interview No 13, Civil Society representative, 26.8.2019; Interview No 17, Civil Society representative, 3.9.2019;
98 Interview No 20, Civil Society representative, 23.8.2019; Interview No 13, Civil Society representative, 26.8.2019; Interview No 16, Civil Society representative, 23.8.2019
99 Interview No 19, Civil Society representative, 20.9.2019; Interview No 7, Civil Society representative, 14.8.2019; Interview No 20, Civil Society representative, 23.8.2019; Interview No 21, Civil Society representative, 10.9.2019
101 Interview No 13, Civil Society representative, 26.8.2019; Interview No 14, Civil Society representative, 28.8.2019; Interview No 21, Civil Society representative, 10.9.2019
102 Retrieved from https://historia-ime.com/?p=60908
103 User-generated content can include: images, reviews, comments, blog articles, dictionary contributions and video clips.
104 Retrieved from https://www.gazetatema.net/2019/05/18/fotot-parada-e-lgbti-shkembehen-puthje-dhe-perqafime-ne-qender-te-tiranes/ for the fourth Tirana Gay Pride against homophobia (18 May 2019), produced a wave of inflammatory comments, insults, curses, and threats against the LGBT+ community.
105 Interview No 13, Civil Society representative, 26.8.2019
106 Interview No 13, Civil Society representative, 26.8.2019
107 Interview No 17, Civil Society representative, 3.9.2019; Interview No 20, Civil Society representative, 23.8.2019
The most significant challenge to physical safety of HRDs, particularly those working in the media, is the lack of appropriate safeguard measures in the workplace. This implies that journalists are unsafe to carry out their work and are not protected against the harassment or attacks in case they investigate misconducts of an institution or an individual. The second major problem is economic insecurity, as many journalists are not being paid regularly due to not having a valid contract. They are usually reluctant in taking heavy legal action against high-profile individuals who impede their work. They are usually afraid to escalate the conflict so they choose self-censorship instead. If a journalist does not follow his/her employer’s orders or he/she can be very easily fired (Interview No 3, Civil Society representative, 27.8.2019). It is quite common to receive online threats, so we don’t take them into consideration anymore: they are part of our social life now. [...]. I have received both direct and indirect pressure from my employer, who threatened to fire me if I didn’t follow his orders in relation to publication of several articles concerning human rights issues. My colleagues experience the same pressure from their employers. (Interview No 1, Media representative, 12.8.2019)

It is quite common for activists or journalists to get fired because of their work, both in the public and private sector. The absence of a proper labour union for journalists contributes to this precarious situation, as it is difficult for journalists to negotiate about their fictitious labour contracts. Owners of big media outlets constantly communicate with each other about reporting content on their channels. If the journalists do something that is not in their boss’ interest, they risk being fired and blacklisted for advancement in the media labour market.

Investigative journalist Alida Tata – threatened, smeared, fired from her job and blacklisted for advancement in the labour market

Investigative journalist Alida Tata was dismissed from work in a private television channel, after she had investigated alleged links between public authorities and a recycling plant in the Sharrës landfill in Tirana, where a young worker died in 2016. Tata was fired from Al News a few hours after she contacted the public officials for comments. (Interview No 3, Civil Society representative, 27.8.2019). Three years after being fired, she was blacklisted in the labour market and has not been able to find a job in the mainstream media, despite being a fit candidate. She has consistently received job offers from small media outlets. The attackers targeted her 15 years of tenure as well, causing her to seek exile in Sweden. Although she had the TV station for illegal dismissal and overdue salaries, she never returned to journalism. She won the case in 2017, but the court dismissed her claim that she was fired because of the investigations. Her female employee had died at the same time two years later. Alida finally managed to get a closed-door parliamentary investigation, but she was soon persecuted by a smear campaign from pro-government journalists questioning her professionalism. (Interview No 6, Civil Society representative, 13.8.2019)

In fact, those who speak out may be subjected to various forms of pressure coming either from public officials or other anonymous persons, such as in the following example:

On the one hand, [...], I have received pressure from powerful and high-ranking officials who were begging me to leave out the case. It was quite common to receive threatening phone calls, which became almost a norm for me. The situation gets even worse considering that bringing a case to the court is so time-consuming, which is not something that they know is an economic crime. Besides, there is some pressure from the business side as well. Once I received even a death threat, but I didn’t want to report it because the guy apologised and the case was solved internally through an agreement. This kind of intimidation did not have any direct effect on me. I am continuing my battle. (Interview No 6, Civil Society representative, 13.8.2019)

Journalists are reluctant to take cases to court because of the length of preparation. In one instance (defamation charges in the case of Ginij Gjoni), the verdict came after four and a half years, when it had already lost its effectiveness. Journalists often face strong resistance when bringing a case to court. There were many instances where journalists had not been ready to quickly dismiss by prosecutors. There have been cases where the government instituted changes to the legal framework in order to block or, even worse, harass and silence any HRDs’ opposition.

The “V” Case – The government used legal restriction to harass and silence HRDs’ opposition

The so-called “V” project was first introduced in April 2016 as a modern landmark. During excavations, the contracted company found relics of Roman and Ottoman fortifications. HRDs working on environmental issues complained to the responsible authorities to stop the works, but they did not receive any responses. On the theory of continuous debates, HRDs received intimidations, psychological pressures and, in some cases, even death threats to push back and stop the court trials. However, the HRDs proceeded with their lawsuit against this illegal act. The municipality appealed the case to the Administrative Appeals Court. In the meantime, in June 2016, the government issued a new law, which stipulates that only specialised institutions are eligible to file a lawsuit if there is any construction against the law.126 Taking into consideration the new provisions, the 2nd level court issued a decision to deter the jurisdiction of the NGOs to file a complaint. In the end, the NGO’s right to file a claim or request suspicion was not eligible anymore. Almost 2 years after this, the construction had continued and the archaeological site is now covered with concrete. In order to make their requests legally eligible, the NGOs established a new specialised institution to file the new law. Now, the case has been sent to the Higher Instance Court for further assessment in favor of the NGOs.127

However, the most significant flaw in the justice system128 that obstructs the work of HRDs and journalists is the lack of protection of journalistic sources. If a journalist publishes a controversial article based on a confidential testimony, he or she may be forced by the court to disclose that individual’s name. Anyone can take a journalist to court by accusing the journalist for fraud, which forces the journalist to reveal the anonymous source.129 This loophole discourages journalists to use anonymous sources and demotivates potential sources to speak up about confidential information as it could place them at risk:

There have been cases when we have been asked by the court to discuss personal issues related to confidential statements of our informants. The court has the right to ask you for a name or whatever information, and you are required by law to declare it. The system should change in order to ensure that confidentiality of the sources should always be taken into consideration, so that they do not hold any responsibility for the content of the article. Although HRDs should always be asked to witness, they should be treated differently from other citizens concerning the questioning process. (Interview No 21, Civil Society representative, 10.9.2019)

Another interviewee has stated that it was quite common for her as a WHRD protecting the rights of the LGBTI+ community to receive denigrating messages and threats of sexual violence via social media. She reports instances of several homophobic reactions, such as homophobic Facebook groups composed mostly of young men and pandering to the discourses of homophobia. The homophobic reactions display anxiety about and hate against the LGBTI+ community, which confirms the predominantly misogynistic and heterosexist national values that place heterosexuality and heteronormativity as a dominant norm in the Albanian society.

Moreover, attacks targeting family members of WHRDs are often used as an effective deterrent against their future activism. One respondent reveals that one of the female colleagues had to leave her job because of the constant threats she had received against her family. She eventually requested political asylum outside Albania because of this.130 Such gender-based attacks undermine the physical and psychological safety of WHRDs, who struggle with the fear that perpetrators will soon retaliate against them. Impunity for such attacks is further exacerbated by the fact that there are no gender-sensitive protection mechanisms for WHRs.

Gender aspects of the challenges in relation to assaults, harassments and restrictions of HRDs

Threats of violence and intimidation target not only personal lives of WHRDs, but their families and organisations as well. One interviewee has shared that she received intimidation and death threats on her phone while she was assisting a victim of domestic violence. She believes that the threats were made from the victim’s ex-husband, but she also connected this threat with the prosecutor’s office, because she did not want to make it a public case. It would have been too risky to disclose such information.

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6. CONCLUSIONS AND RECOMMENDATIONS

In Albania, human rights defenders should enjoy special protection and concessions, considering the risks they face while protecting human rights and democracy in their line of duty. The analysis has found that different methods are used to pressure and harass HRDs, including online trolling, harassment and smearing campaigns. Authorities use trolls for shaping the public opinion, for example by calling journalists as ‘trash’ or “trash bombs”. Public smearing campaigns are also common among HRDs. At the same time, persons waiting for months’ worth of their salaries are scarce, easily exploited and less likely to speak up. As a result, there is a lot of self-censorship on the part of the HRDs and journalists in Albania, which comes as a result of pressure from high-profile politicians through trolls, restrictive editorial policy and overall distrust in the justice system. Public officials are more likely to use co-option as a form of pressure, such as offering a job in public administration in exchange for silence, or intimidating activists for breaking institutional collaboration or funding. They are less likely to support the work of independent journalists, especially when they criticise the government. Moreover, there are direct attacks, including judicial harassment, from high-profile public authorities, who personally harass journalists, threatening them to take certain actions. While the current legal framework allows for civil society actors to operate freely without any unwarranted state interference in their governance structures or activities, the state authorities’ interference to either ban or, in several instances, criminalise protests as well as to use subtle forms of pressure against human rights defenders might be interpreted as an indirect form of state intervention on the right to be organised and participate in a peaceful assembly. Though the cases do not necessarily encompass all the violations and harassment faced by various groups of human rights defenders in Albania, they highlight some of the key challenges and restrictions at the national level.

Human rights defenders are less likely to bring a case or a violation to court for several reasons. Firstly, the justice system is highly politicised and it is under persistent political pressure. Also, the level of trust is considerably low in the judiciary reform was considered by some HRDs as a milestone in the advancement of the rule of law, many HRDs still have a pessimistic approach and lack the trust in justice. In several cases, reported incidents against human rights activists have not been investigated with appropriate due diligence and perpetrators have not been held accountable. Reports indicate instances where perpetrators of human rights violations have not been criminally sanctioned. Sometimes, the cases were dropped because of prosecutors’ lack of evidence to prove that the assaults had taken place because a HRD or a journalist exercised their duty. The failure to investigate and prosecute allegations of ill-treatment and misconduct effectively and efficiently continues to contribute to a climate of fear and impunity concerning the cases of human rights violations. Secondly, bringing a case to court can often be counterproductive, as it might potentially jeopardise more than the life of an HRD, since in some cases the perpetrators are not punished and confidential information held by prosecutors is made available to third parties. There is a general lack of trust in how the courts operate. Therefore, human rights defenders would most likely refrain from filing a complaint against perpetrators. Use of social networks to mediate a conflict is observed in some cases. Thirdly, although the law guarantees access to justice to all individuals, in practice, the system of free legal aid is still not completely suitable for individuals without financial resources. Fourthly, lengthy judicial procedures impose upon an individual’s right to have cases adjudicated in a timely manner. In one case, the decision was issued almost four and a half years later, when it had already lost its effectiveness. Fifthly, due to political pressure and prosecutors’ fear of retribution, they tend to avoid investigations against high ranking public officials (deformation charges in the case of Gjin Gjim). And finally, the greatest concern is that the judiciary is ensnared in a high level of corruption and political pressure, which undermines the independence and integrity of these institutions. Prosecutors fail to open investigations into alleged cases of human rights violations or, oftentimes, such cases are dismissed, probably due to limited resources, infrastructure or human resources.

The existing mechanisms for prevention and protection against and prosecution of various forms of violations against human rights defenders are not efficient and their enforcement is quite weak. The findings suggest there is much room for improvement in providing adequate protection mechanisms for human rights defenders.

**Recommendations**

**Public authorities**

- Set up an effective protection programme for human rights defenders at risk, particularly for WHRDs and LGBTI+ HRDs, who face serious threats, by granting temporary and immediate protection while their risk situation is being assessed.
- The Subcommission for Human Rights at the Parliament of Albania should serve as a focal point for public deliberation and reaching of solutions for addressing the needs of human rights defenders. It should encourage the development of standardised and periodic reporting methodology on human rights defenders, and launch an action plan addressing their concerns.
- The Criminal Code of Albania should be amended by including provisions that would effectively protect human rights defenders from being harassed because they exercise their duty/activity. As such, human rights defenders should fall under special target category of “at risk groups” and threats of violence against human rights defenders should be considered as an aggravating circumstance in the perpetration of offences.
- The legal framework for assemblies should be amended to clearly and standardise notification procedures, including spontaneous assemblies and counter-assemblies, and provide guidance to appeal and redress decisions regarding restrictions of assemblies.
- Improved methods of media should be ensured by including media representatives and other relevant stakeholders in the consultation process for the “anti-defamation package”. Also, the government should consider provisions that would ensure full compliance with international standards on freedom of expression and media self-regulation.
- Human rights defenders should be given priority when drafting policies and legislation on HRDs and their role should be enhanced by putting in place efficient mechanisms for cooperation at the central and local level.
- The role of the Commissioner for Protection from Discrimination and Ombudsman should be strengthened so as to enable them to closely monitor and systematically examine complaints and violations against human rights defenders, and overall make them more proactive in addressing human rights violations.
- The legal and institutional frameworks should be improved, and awareness of non-discrimination and protection of WHRDs and LGBTI+ HRDs increased. The Law on Protection from Discrimination requires amendments to clearly address the issue of shifting the burden of proof, especially in matters of gender-based and gender identity discrimination.
- Protection of HRDs from harassment, criminalisation and arbitrary arrest and detention should be ensured. HRDs should be granted special procedural safeguards or authorisation, such as not being subject to criminal or administrative sanctions when they are asked to witness in court proceedings, or protection of confidentiality of sources of information when they are obliged by the court to disclose the source of their information. This implies that human rights defenders should be granted protection against coercive tactics, including judicial harassment, to ensure that they can perform their work without fear. Effectiveness, transparency and sensitisation of law enforcement bodies and judiciary should be increased in order to enable them to carry out prompt investigations, prosecute and punish perpetrators through the full extent of the law. A national protection mechanism should be established within the existing structures (either the Ombudsman or the Commissioner), which would handle complaints related to various forms of violations committed against human rights defenders, and at the same time monitor the situation of human rights defenders.
- A more enabling environment should be created for NGOs by introducing a simplified and decentralised NGO registration procedure that excludes court procedures, thus easing fiscal treatment barriers and by removing the provision that obligates NGOs to have at least one permanent full-time employee.

**Media**

- Capacities of human rights defenders and journalists should be increased by adopting a more proactive approach in covering issues and articles that include human rights concerns.
- Media outlets should adopt more efficient self-regulation mechanisms to address appropriately ethical issues and curb hate speech, for example by regularly filtering out user-generated comments.
- Journalist syndicates should be established in order to protect the labour rights of journalists.
The independence and professionalism of AMA should be strengthened by limiting political interference and pressure during the election procedures of its members. Public transparency and accountability of this body should be enhanced.

Human rights defenders

- A national HRDs network should be enhanced in order to strengthen and promote the role of HRDs. The network could also serve as a key focal point for coordinating and enhancing all the efforts aimed at protecting them.
- Stronger demands should be made to improve the overall framework regarding human rights legal drafting process and policy making consultations with HRDs. Amendments to the Law No 146/2014 on Notification and Public Consultation should be proposed in order to put in place a legally binding mechanism that would ensure more meaningful and consistent participation of HRDs in policy- and decision-making processes.
- Cooperation of HRDs with relevant parliamentary bodies and their position in the work of relevant parliamentary bodies should be strengthened.
- Public awareness on the protection of human rights should be increased.

International community

- An active role in promoting and protecting human rights through periodic monitoring and reporting of such cases should be maintained. The EC Progress Report could provide information on the situation of human rights defenders, including the progress made on protection measures, especially with regards to WHRDs and LGBTI+ HRDs.
- The Albanian government should be encouraged to create an enabling environment for human rights defenders, including amongst others a more proactive involvement of NGOs in the policy-making process and establishing effective mechanisms to redress, in a timely manner, human rights violations.
- Technical and financial capacities of civil society organisations should be strengthened, particularly in programmes concerning human rights defenders.
- Capacity-building activities with experts and other relevant stakeholders should be organised in order to understand and address the claims of human rights defenders on a number of topics.
Human Rights Defenders in the Western Balkans

Bosnia and Herzegovina
EXECUTIVE SUMMARY

Although in general, there is a discourse of agreement on the importance of human rights - the legislative framework on human rights and on the protection of minorities is in place in Bosnia and Herzegovina and the European Convention on Human Rights is enshrined in BiH Constitution/Article IV of the Dayton Peace Accords, in practice the situation is not satisfactory. The position of HRDs is deteriorating. Violence, hate speech and harassments, both physical and psychological, continue to be a part of the lives of human rights defenders. In a context where rule of law is weak and corruption is widespread, impunity against human rights defenders thrives. Human rights defenders, including journalists, are threatened because of their work and are under growing pressure from the government and general population, which sometimes shows hostility towards their work.

This proposes recommendations for improving the conditions in which human rights defenders work. The need for political will as a basic precondition for improving the conditions for human rights work is underlined. There is a noticeable implementation gap in relation to the existing legislation. There is a build-up of a climate in which HRDs are presented as enemies of the government, notably the entity level governments, which sometimes shows hostility towards their work.

In addition to the aforementioned, we conducted semi-structured interviews with HRDs. These were fifteen interviews with HRDs – persons from NGOs, activists and journalists, out of which four journalists and eleven HRDs from the NGOs. Semi-structured interviews were conducted with HRDs who work in different areas in Bosnia and Herzegovina.

2. GENERAL CONTEXT ISSUES

The country consists of two entities, the Federation of Bosnia and Herzegovina (the Federation) and the Republika Srpska (RS). The Federation is further sub-divided into ten cantons each with their own government. Furthermore, the Brčko District, which was disputed between the two entities in the aftermath of the 1992-1995 war, was established as an autonomous condominium in 1999 following an arbitration process led by the international community.

Bosnia and Herzegovina has been facing many challenges that have impacted on the protection of the human rights of BiH citizens. Some of these include disrespect for the judgments of the European Court of Human Rights, the issue of freedom of assembly, threats and attacks on journalists and the media, a fragmented legal framework guaranteeing women’s human rights, non-compliance with international documents, and others.

Although human rights defenders in BiH generally feel free in their work, the ones who work more at the local level feel less free to perform their activities due to discrimination, exposure to pressure from both the institutions and the citizens. All interviewed HRDs stated that they were in some way subjected to threats in their work. But impediments, such as hate speech, pressure, smearing campaigns and harassments are more likely to occur among specific categories of human rights defenders (e.g. LGBT+) and journalists. These impediments are mostly coming from unknown individuals and usually on social media. Legal provisions guaranteeing freedom of expression are in place, but governmental respect for this right remains poor. Political pressures, censorship and economic insecurity are commonplace for most journalists in BiH.

The rights of journalists in BiH have been violated more and more frequently in recent years, and journalists themselves are very little aware of their rights and the ways in which they can be protected, making them additionally sensitive and vulnerable to pressure and manipulation. The pressures that journalists face in their work most often come from politicians in power (about 38 percent). In 2012 there were about 20 cases of violations of different rights of journalists in BiH, including physical attacks and threats, labour disputes, mobbing, political pressures. That number has increased to 56 cases in 2018.

Although, the legislative framework on human rights and on the protection of minorities is in place in Bosnia and Herzegovina, and although in general, there is a discourse of agreement on the importance of human rights, in practice the situation is not satisfactory. The position of HRDs is deteriorating. Violence, hate speech and harassments, both physical and psychological, continue to be a part of the lives of human rights defenders. In a context where rule of law is weak and corruption is widespread, the impunity of the attack and pressures against HRDs thrive.

Human rights defenders, including journalists, are threatened because of their work and are under growing pressure from the government and general population, which sometimes shows hostility towards their work. The Human Rights Watch report noted a shrinking space for civil engagement, including by posing restrictions of relevance for the right to protest and by instituting rules for over-policing and under-policing peaceful assembly. In addition, the officials in RS threats to put back in the procedure the law regulating the work of NGOs from 2015.

1. INTRODUCTION

This report addresses the position of human rights defenders (HRDs) in Bosnia and Herzegovina. It analyses the relevant legal framework in relation to the work of human rights defenders, violations and restrictions of human rights defenders’ civil and political rights, assaults, harassments and restrictions of human rights defenders, as well as gender aspects of the identified challenges and restrictions.

A starting point for this research was the 1998 UN Declaration on the Right and Responsibility of Individuals, Groups and Organisations of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (HRDs Declaration) which reaffirmed existing rights, already enshrined in other international documents but has grounded them in a human rights defenders (HRDs) context. According to Article 1 of the HRDs Declaration: “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.” For the purposes of this report, we have adopted the understanding of “human rights defenders” put forward by Article 1 of the HRDs Declaration. Additionally, the research puts additional focus on women human rights defenders (WHRDs), i.e. on women who individually or in association with others act or protect the human rights, including the gender aspect of the rights and the gender equality issues.

In addition to the aforementioned, we conducted semi-structured interviews with HRDs. These were fifteen interviews with HRDs – persons from NGOs, activists and journalists, out of which four journalists and eleven HRDs from the NGOs. Semi-structured interviews were conducted with HRDs who work in different areas in Bosnia and Herzegovina.
3. LEGAL FRAMEWORK

The country has ratified all major European and international human rights instruments, most of which are included in the Constitution. The European Convention on Human Rights (ECHR) and its Protocols are directly applicable within the domestic legal order and enjoy supremacy over other laws, though not over the Constitution, which remains the supreme rule of the country. This is the result of the Constitution's institutional structure as regards core matters. There are no comprehensive data on the direct enforcement of international human rights treaties by courts. Bosnia and Herzegovina still needs to implement the 128 accepted recommendations from the 2014 UN Universal Periodic Review (UPR). Additional 207 recommendations emerged from the November 2018 UPR. This report provides information and recommendations on: the impacts of economic reforms on economic, social and cultural rights; shrinking space for activism and increase in repressive measures towards human rights defenders, activists and civil society in general; and violations of the rights of migrants and asylum seekers. Since the 2014 UPR, there has been an increase in the armament of law-enforcement agencies and militarised responses to peaceful protests organised by citizens, unions and other civil society organisations. This submission shows how the increase in the use of repressive measures against the citizens of the country, exemplified through brutal police force used against women peaceful protesters in Krupčica and targeted action against individuals organised around the group “Justice for David” represents a blatant breach of the right to liberty and security of persons, right to administration of justice, including impunity and rule of law and freedom of expression and peaceful assembly. The Constitution of Bosnia and Herzegovina, international treaties or conventions signed by BiH, and laws, govern the rights of each individual in Bosnia and Herzegovina. The Preamble to the Constitution of BiH, states the determination of the people of Bosnia and Herzegovina to promote and uphold the international humanitarian law in BiH and the commitment to follow the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments. Article II of the BiH Constitution proclaims that Bosnia and Herzegovina and the two Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. It also states that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other laws. All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms without discrimination based on sex, race, colour, language, religion, political and other affiliation, national or social origin, national minority, property, birth or other status.

More specifically for HDRCs, Annex 6 of the Constitution relates to the Human Rights Agreement, which guarantees to all persons in BiH the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, as well as other international agreements specifically listed in the Annex to this Article. These rights and freedoms include: the right to life; the right not to be subjected to torture, inhuman or degrading treatment or punishment; the right of a person not to be held in slavery or servitude or to perform forced or compulsory labour; the right to liberty and security of person; the right to a fair trial in civil and criminal cases, and other rights related to criminal proceedings; the right to privacy and family life, inviolability of home and correspondence; freedom of thought, conscience and religion; freedom of expression; freedom of peaceful assembly and freedom of association with others; the right to marry and to have a family; the right to freedom of movement; the right to freedom of movement and residing abroad; protection and promotion of human rights is emphasized. The UN Commission on Human Rights, the OSCE, the UN High Commissioner for Human Rights and other non-governmental or regional human rights missions and organisations are urged to closely monitor the human rights situation in BiH, including setting up local offices and sending observers, rapporteurs and other relevant persons, and the obligation to provide them with effective and complete assistance, access and facilities is underlined.

The 2003 Law on Gender Equality in BiH and the 2009 Anti-Discrimination Law regulate the prohibition of discrimination of LGBTI persons. The latter – the Anti-Discrimination Law, offers comprehensive protection against discrimination in all aspects of public life, including education, employment, healthcare, provision of services, etc. With the 2016 amendments on the entity level (in Federation of BiH they were implemented in 2016, while in the RS in 2013), sexual orientation and gender identity have finally been accurately formulated and “sex characteristics” have been added to the list of protected characteristics. Although there is an obligation to harmonise all laws with the Anti-Discrimination Law, many laws at the state, entity and cantonal level do not include sexual orientation, gender identity and/or sex characteristics as the grounds protected from discrimination. The Sarajevo Open Centre report notes an uneven personal scope across the fields of protection. Namely, the list of grounds protected in labour and employment, and social and health insurance laws is more restrictive than the list contained in the Anti-Discrimination Law of BiH.

When it comes to legislation that regulates freedom of assembly, the right to freedom of assembly is regulated by the Constitution of BiH, entity and cantonal constitutions, Statute of Brčko District, as well as laws on the level of entity – RS, cantonal laws and Brčko District law. Bosnia and Herzegovina has eleven ministries of Internal Affairs that oversee the implementation of twelve pieces of legislation in place (one canton works based on a draft). This is the reflection of country’s complex post-war power sharing arrangement. The laws stipulate that municipality or city acts will determine the exact places of assembly. These laws also allow the police to terminate the protests if the organisers failed to announce them to authorized persons earlier and on time.

**Table 1: Laws on Public Assembly and Public Peace and Order in BiH**

<table>
<thead>
<tr>
<th>ENTITY/DISTRICT/CANTON</th>
<th>LAW ON PUBLIC ASSEMBLY</th>
<th>LAW ON PUBLIC PEACE AND ORDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Una-Sana Canton</td>
<td>2010</td>
<td>2010</td>
</tr>
<tr>
<td>Posavina Canton</td>
<td>Part of Peace and Order Law from 2016</td>
<td>2016</td>
</tr>
<tr>
<td>Zenica-Dobo Canton</td>
<td>New law in urgent procedure</td>
<td>Amendments 2017</td>
</tr>
<tr>
<td>Bosna Podrinje Canton</td>
<td>s/a</td>
<td></td>
</tr>
<tr>
<td>Srednja-Bosna Canton</td>
<td>2000 (Draft law – not available to public)</td>
<td></td>
</tr>
<tr>
<td>Herzegovina – Neretva Canton</td>
<td>2005</td>
<td></td>
</tr>
<tr>
<td>Zapadna - Herzegovina Canton</td>
<td>2015</td>
<td>2009</td>
</tr>
<tr>
<td>Canton 10 (Hercegovacko-bosanska Iupanija)</td>
<td>2014</td>
<td>2007</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>2015</td>
</tr>
</tbody>
</table>

**FEDERATION BIH**

**BRČKO DISTRICT**

2012 2009

Source: Bavičić E., Monitoring the Right to Free Assembly, 2019.

In April 2017, the Federal Ministry of Internal Affairs has initiated a working group relating to the adoption of the new law that would regulate peaceful assemblies in this entity. The initiative is seen as positive, as it would simplify procedures regarding the assemblies, and result in three laws overall, for two entities andinternational, in contrast to the current 11 laws. However, the analysis of the pre-draft shows that the intention of this initiative is to restrict...
freedom of assembly in this entity, and to decrease the responsibilities of the police and the Ministry of Internal Affairs for regulating the right, by placing unjustifiable requirements to the organisers and designated leaders of the assemblies. 17

Media is well regulated in the legislation of Bosnia and Herzegovina. Constitution of BiH guarantees freedom of expression, and laws 18 that specifically regulate the work of media outlets have been adopted.

The main domestic mechanisms for the protection of human rights are: the BiH Ombudsman Institution, the BiH Ministry of Human Rights and Refugees, committees and commissions dealing with human rights issues, established by the BiH Parliamentary Assembly and the entity and bi-ethnic and Brčko District assemblies. The International Commission of Human Rights Ombudsmans of BiH is the main non-judicial institution for the protection of human rights. 19 Its mandate covers a wide range of issues, including the fight against discrimination, social rights and treatment in defence. Although having received substantial support from the international community, including the Council of Europe, the Institution still faces serious challenges. For the most part, its recommendations stay unimplemented and its mandate remains unclear to the wider public. The Ombudsman is composed of three members representing three constituent peoples (Serb, Bosniak, Croat) and three members appointed by the state institutions and mandated for the term of 3 years, respectively. The Institution shall not preclude the possibility of appointing the Ombudsman from the “Others”. Ombudsmans are based in Sarajevo, Mostar and Banja Luka. Aside from the Ombudsman, the Constitutional Court is the highest judicial instance for the protection of human rights in the country. Within the state administration system, special bodies have been formed, whose role is to further promote and improve the human rights protection system, such as the Council for Children, the Agency for Gender Equality and two Gender Centres (RS and FBiH), the Commission on Relations with Religious Communities. National Minority Councils have been set up at the BiH Parliamentary Assembly as advisory bodies. The institutions of BiH also give support to the Inter-religious Council, which establishes inter-religious dialogue between the largest religious groups in BiH.

4. VIOLATIONS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS’ CIVIL AND POLITICO RIGHTS

Although the country has ratified the relevant international conventions and has stipulated the fundamental freedoms in its Constitution, the interviewed HRDs report some challenges in implementation of these mechanisms in the work of HRDs. This section aims to present the main restrictions on civil and political rights of HRDs in Bosnia and Herzegovina. It presents the issues reported by the interviewed HRDs.

Freedom of assembly, association and the right to protest

Despite the legislation in place, there are clear tendencies to restrict the freedom of peaceful assembly. The rights to freedom of peaceful assembly and freedom of association in Bosnia and Herzegovina are regulated and guaranteed by the legal framework: the Constitution of Bosnia and Herzegovina 20 and constitutions of both entities – the FBiH and RS, the state representing districts, 21 and laws on public assemblies, laws in national minorities and laws on public order and police. These attempts have followed the increase in numbers of assemblies organised, in particular in local communities. The state authorities support the work and activities of HRDs when they do not threaten the state security. HRDs that work more at the local level feel less free to perform their activities due to discrimination, exposure to pressure from both the institutions and the citizens, and limited access to institutions. 22 In addition, while freedom to participate in a peaceful assembly is an inalienable right, it can be limited in certain circumstances, as clearly provided by Article 21 of the International Covenant on Civil and Political Rights. Among other limitations, States can restrict freedoms to assembly when it is deemed necessary in a democratic society. 23 All of the aforementioned laws on public assemblies stipulate that public gathering of citizens is any organised gathering of citizens held in a place designated for that purpose (public meetings) and that these are held in order to publicly express political, social, and other beliefs and interests. The right to peaceful assembly, both in FBiH, District Brčko and RS, can be restricted in order to protect the constitutional order, public health, as well as the freedom and rights of others, 24 including "publicmorality" in RS. Spontaneous assemblies are sometimes not recognised in all laws. Thus, in the cases of peaceful assemblies organised by Women of Kršća and the Justice for David there was a disproportionate use of violence by the police.

First BiH Pride March 2019 - "Ima izazov" 25

Coordination team of the first Sarajevo Pride announced the event five months in advance. A team of fifteen activists carried out dissemination, communication, and worked on cultivating trust among the (potential) participants. 

Freedom of opinion and expression

In practice, the HRDs have divergent and rather complex views when it comes to the freedom of opinion and expression, although freedom of expression, including media freedom is guaranteed by the Constitution and by the law. On the one side, the interviewed HRDs (NGOs) claimed they felt very free in their work, since they were able to choose the topics that concerned them the most and express their views. Some refer to the society that allocates this freedom: “We are independent in our work because our organisation is funded by international organisations and we are not exposed to political or other influence as much as our colleagues in the media. A lot depends on funding which is media is heavily captured in the system as it is in the state of BiH, as well as in the RS and NGOs.” In addition, freedom of the media is restricted because it is often politically influenced, causing journalists to self-censor their work and their profession. 26 The interviewees state that political and financial pressure on the media has increased, by being witnessed by a large number of attacks on the media by politicians as well as allegations of corruption among the media. This has been a constant problem during the previous period in mostly the RS. Increasingly, journalists justly violate justice against journalists. 27 According to the research by BH Journalists, as many as 21% of BiH citizens justly violate justice against journalists.


29 Human Rights Defenders in the Western Balkans: Bosnia and Herzegovina

31 Interview No. 2, Civil Society representative (30 August 2019)

32 Interview No. 3, Media representative (6 September 2019)

34The 2018-2019 period was marked by explosions of violence against LGBTIQ people in the country; the focus of this report is on those incidents.


36 Interview No. 2, Civil Society representative (30 August 2019)

37 Interview No. 3, Media representative (6 September 2019)

38 Interview No. 3, Media representative (6 September 2019)


40 Interview No. 3, Media representative (6 September 2019)

41 Interview No. 3, Media representative (6 September 2019)

42 Interview No. 3, Media representative (6 September 2019)

43 Interview No. 3, Media representative (6 September 2019)

44 Interview No. 3, Media representative (6 September 2019)

45 Interview No. 3, Media representative (6 September 2019)

46 Interview No. 3, Media representative (6 September 2019)

47 Interview No. 3, Media representative (6 September 2019)

48 Interview No. 3, Media representative (6 September 2019)

49 Interview No. 3, Media representative (6 September 2019)

50 Interview No. 3, Media representative (6 September 2019)

51 Interview No. 3, Media representative (6 September 2019)

52 Interview No. 3, Media representative (6 September 2019)

53 Interview No. 3, Media representative (6 September 2019)
Freedom of the Media

In August 2018, BN TV journalist43 Vladimir Kovačević was attacked in Banja Luka after covering a protest over the unfolding of the murders of 41 transgender persons in BiH. The journalist was hospitalized, and the attack was being investigated by police as an attempted murder. In response to the attack, the public and other journalists organised protest walks demanding better safety and protection standards for journalists.44

The “BH Journalists” association’s free media help line recorded 58 cases of violation of journalists’ rights in 2018, including 6 cases of physical assault, 17 threats and 9 cases of political pressure. By the end of October 2019, a total of 48 cases of violation of journalists’ rights and media freedoms was registered. One case of assault on a journalist reporting on the “Justice for David” demonstrations in Banja Luka is under investigation as attempted murder. On two occasions, a high-level political leader verbally attacked independent journalists in public. In 2018, the Ministry of Interior’s ombudsman’s office received nine complaints. The EC noted the lack of progress in 2018 regarding the investigation and prosecution of past attacks against journalists, and no convictions.45

Some of the media are restrained because of entangled relations with their owners, who are either a company or an individual affiliated with a particular political party, and they also depend on the will of the editors and advertisers. Another challenge is that fellow journalists do not take seriously the journalists dealing with human rights because they are perceived as an easy target. The situation is the same within media that support LGBTI+ organizations.

Gender aspects of the challenges and restrictions in relation to violations and restrictions

In spite of the aforementioned legislative framework regarding gender equality, both domestic and international practice show a grim picture. Although gender equality mechanisms are in place and there is a Gender Equality Agency which is in cooperation with the entity level Gender Centres, there are many things on paper only, as well as a significant implementation gap. In addition, women remain underrepresented in politics and public life.46

There are different risks and challenges facing women and LGBTI+ HDs. These include: the lack of sensitisation on diversity in different levels of development in the institutions, fear, no one recognises service providers as an important factor (free legal aid) – no donors for these services.

In particular, the commitment of women to the protection of human rights is often misunderstood by the family, given the traditional perception of the role of women in family and society. It is considered that a woman should take care of the family and thereby neglect her rights.47 The risk to which a human rights defender is exposed is that her rights have been lost, and the interviewee when it comes to her family life, where the support of parents, spouse or children is often lacking, as well as understanding and support from the society.48

Me and my colleagues are exposed to specific threats, including sexually explicit libel campaigns, threats (direct or indirect even to family members, mostly on social media), threats of sexual assault, threats of posting explicit messages or images, public questioning of womanhood, appearance or sexuality, and public expression of gender – we are often recognized in society as feminists, but this is viewed on the negative side because the public does not want to know the definition of feminism.49

Pressures, insults, threats - Martina Mlinarević Sopća, a writer

Martina Mlinarević Sopća shared on her Facebook profile the horrible, terrifying threats and insults she gets every day. She even escaped to Sarajevo, leaving Široki Brijeg where she lives with her daughter. She has been under direct and indirect pressure from the governing political structures in Herzegovina for a long time now, as well as from the civilian and religious structures in this part of BiH because of her critical public appearances, columns, engagements on social networks. The pressures have the form of complete lynching, organised boycotts, and systemic threats to her personally and to her family. Her books have been withdrawn from public municipal libraries. Moreover, in numerous shops in Siroki Brijeg, vendors boycott her and her entire family and do not want to sell them even the most basic food items.

Every third LGBTI+ person in Bosnia and Herzegovina has experienced discrimination. However, it is worth remembering that only a small number of LGBTI+ persons out themselves to a wider circle of people. The percentage of 38% of LGBTI+ people who have experienced some form of discrimination could therefore be attributed to the fact that LGBTI+ persons generally conceal their identity.

The high percentage of transgender persons who have experienced discrimination is particularly alarming: about 2/3 of transgender respondents claim they have experienced some form of discrimination, which only confirms the particularly vulnerable status of this group and the high level of transphobia in the society. Considering the visibility of gender expression, as opposed to sexual orientation, the higher numbers come as no surprise.46

Transgender Day of Visibility

In mid-March 2018, the Sarajevo Open Centre sent a request to the Centar Municipality, seeking permission to hold a public event on the square in front of the BBI Centre. The Municipality required the applicants to obtain permission from the Ministry of Interior of Sarajevo Canton. Representatives of the BBI Centre responded in an email, saying they could not grant permission for the activity because of a larger event already booked for that day and because they could not “grant permission for such events on the street that require additional security for both additional reasons and for fear of agitation”. The Municipality then sent the BBI Centre to explain how it conducted the risk assessment, since the Law on Public Assembly of Sarajevo Canton stipulates that the risk assessment should be carried out by the Ministry of Interior of Sarajevo Canton. The Law also stipulates that the organisers are responsible for hiring private security. Representatives of the BBI Centre responded that they were “trying to make the best decision regarding the capacity of the square, demand, content and other factors”, and failed to give any specific information on how the risk assessment had been conducted.

It should be noted that the Sarajevo Open Centre had already organised an event in front of the BBI Centre with the support of the Ministry of the Interior of Sarajevo Canton, without any security concerns or problems whatsoever. After receiving a rejection from the BBI Centre, the Sarajevo Open Centre filed the same request to hold the event on the Susan Sonat Square in front of the National Theatre. We followed the same procedure, first contacting the Centar Municipality and then the National Theatre. In their response, the National Theatre claimed they issued “permission only for cultural and artistic events” and that “the historic building of the National Theatre is a national monument”, adding that they could not “give permission for events that require special security measures.”

5. ASSAULTS, HARASSMENTS AND RESTRICTIONS ON HUMAN RIGHTS DEFENDERS

Findings from the interviews show that there are assaults, harassments and restrictions placed against human rights defenders in BiH. The HDs report numerous challenges when working in the country and the most challenging issues are the threats and pressure to use permissions, rights and others. We shall summarise these here.47

The right to be protected

As already mentioned a few times above, social media are becoming the most frequent channel for the assaults and harassments of the HDs, as most of the latter received threats in that manner. Moreover, the HDs, including journalists, have reported receiving threats via emails and phone calls, they, or they have underlined that media smear campaigns are becoming a rather popular method used by the authorities against the HDs. The pressures from the authorities or persons linked to them are often mentioned and these are even “softer” compared to the unknown persons who sometimes send threats via social media. At certain events, it even happens that if the moderators are persons belonging to specific categories, they could be exposed to verbal abuse and subsequently they may have threats and insults emailed to them.48

Z Journalists suffer a great deal during the field research process. “When you investigate systemic corruption […] and then threats come (‘I’ll kill you, destroy you …’). Messages on social networks are full of insults and threats are increasingly present.”

Justice for David

“The police legitimized me four times during the assembly of the ‘Justice for David’ group. I know that’s their legitimate right, but this was not in terms of identification but intimidation and interference in my work as a journalist. The first three times they only asked about my name and ID, but the fourth time they threatened me with arrest and misdemeanour charges. When they saw my ID they told me to put it back in my pocket and claimed that my colleague and I did not have ID. While recording the video that was being taken at the case, the Ombudsman and the Association of Journalists’ responded, but nothing happened.”

43 Sarajevo Open Centre recorded seven cases of discrimination in 2017, almost double compared to the previous year (four cases). Five out of seven recorded cases were cases of discrimination on the grounds of gender identity, i.e. against transgender persons. Two cases involved discrimination in the area of education, two were about discrimination in health care, one about discrimination in the media and public administration. Two-thirds of transgender respondents have experienced violence. Of this number, 60.7% of transgender respondents have experienced some form of discrimination, while 59.9% of respondents suffered verbal transphobic abuse. The fact that 10 out of 10 transgender respondents experienced sexual abuse is particularly alarming. Source: 2018 Pink Report - Annual Report on the State of Human Rights of LGBTI+ Persons in Bosnia and Herzegovina. 44 “BH Journalists” association’s free media help line recorded 58 cases of violation of journalists’ rights in 2018, including 6 cases of physical assault, 17 threats and 9 cases of political pressure. 45 The identified violations are limited to the scope of the conducted interviews with the HDs and by no means do they reflect the whole spectrum of the challenges and restrictions experienced by human rights defenders in BiH. The HDs report numerous challenges when working in the country and the most challenging issues are the threats and pressure to use permissions, rights and others. 46 Interview No. 5, Media representative (11 September 2019). 47 Interview No. 6, Civil Society representative (13 September 2019). 48 Interview No. 4, Media representative (15 September 2019).

Human Rights Defenders in the Western Balkans Bosnia and Herzegovina
There are no laws that specifically regulate online space, but the general view is that the laws that regulate the economic sustainability, but also for their independence and ability to fight the economic and political pressures. There is no differentiated approach to investigation by police or other institution according to the victim's profile; the police often dismiss hate crimes against LGBTI+ people and failing to act in a way that they describe to me what they would do to me. According to the interviewees who have reported personal threats or physical assaults to the police, the prosecution is generally very inefficient. The perpetrators almost never get identified. The ones who do get identified go through the hearings procedure, but this is often delayed because investigations and investigative steps are often not equally effective when violations of human rights defenders by the state and non-state actors occur - the perpetrators are rarely punished, the process is long and “on-going”, no information is provided, and most often, the victim forgets and gives up, and authorities are often hoping that this will happen.48 All interviewees, however, have had positive and professional cooperation with the police, i.e. the operational part of the police.

“We had a situation where we were being followed by some cars and harassed, but we could not prove such things, all because we are an organisation that monitors the work of the justice sector by monitoring hate crimes [proceedings], and then I have to emphasize that we had good cooperation with the police [...] [and they were supportive]. In situations where we work on issues such as anti-discrimination, we come across obstacles, i.e. residents who are not allowed by their moral or religious principles to accept, for example, representatives of the LGBTI+ population. Also, the very framework in which NGO works is not tailored to NGO because they are viewed as business entities, because many do not understand the concept of NGO. 49

There are no state statistics on the attacks against journalists related to their professional activities because these attacks are neither characterised nor registered differently from any other type of attack on citizens. One of the Ombudspersons has made a positive step through their first report and recommendations aimed at improving the level of journalists’ safety in Bosnia and Herzegovina and recommended bringing an attack on journalist into the criminal laws as a special criminal offense. There is a clear need for better understanding of the role of the media in a democratic society, not only for reasons of economic sustainability, but also for their independence and ability to fight the economic and political pressures. There is an intention aimed at protecting a journalist seeking to treat the attack on journalists as attack on officials, and it has been launched simultaneously in both BiH entities. In the Federation of Bosnia and Herzegovina as an initiative, and in the Republika Srpska as a draft law.50

The right to communicate with international bodies

The interviewed HRDs did not report any obstacles or challenges when communicating with international bodies. In some cases, the report from the international bodies was crucial in some cases. Namely, the gender-related threats, political and institutional pressure, the HRDs reported that they had communicated with organisations such as the OSCE, while some had been put under protection from physical assaults by foreign organisations.

Gender aspects of the challenges in relations to assaults, harassments and restrictions of HRDs

Women journalists are a particular risk group and are confronted with a spectrum of gender-based violence, including threats through the Internet, physical and psychological abuse. Such attacks represent a major challenge, not only in terms of the right to express public opinion, but also as an impact on basic democratic values and human rights. If it happened to me because I’m a woman to send me rape threats on social media prior to a women that they describe to me “women’s things”. If I see a child begging for money on the street, I tend to call the police, who just come and chase him away. They never act in a way to call a social worker, and when I warn them, they argue with me or tell me that the website doesn’t work that way. But they also attack me, asking if I was sane, if I have better things to do, but often they give me compliments and start crying.51

Pressure - just because I am a woman?

The police were pressuring Milica Pralica, the organiser of the 8th of March march in Banja Luka. She was interrogated after the police insisted she stopped the assembly she co-organised with Branko Ćuliburk. In addition to her, stewards were interrogated too, and pushed to blame her for not having vests with “steward” signs on them. In addition, Gordana Katana was publicly insulted during a press conference by Milorad Dodik, while he was president of RS. When asked about the developments in his party, she submitted a report to the Prosecution of the RS about the media attack, and was later summoned for giving an interview in a programme about violence against journalists. The police were pressuring Milica Pralica, the organiser of the 8th of March march in Banja Luka. She was interrogated after the police insisted she stopped the assembly she co-organised with Branko Ćuliburk. In addition to her, stewards were interrogated too, and pushed to blame her for not having vests with “steward” signs on them. When asked about the developments in his party, she submitted a report to the Prosecution of the RS about the media attack, and was later summoned for giving an interview in a programme about violence against journalists. 49

Sexual Orientation and Gender Identity

Between January and September 2018, Sarajevo Open Center, a lesbian, gay, bisexual, transgender, and intersex (LGBT+) and women’s rights group recorded 27 hate-motivated incidents against LGBTI+ people, including 10 involving domestic violence, and 138 cases of hate speech, mostly online. Five cases were reported to police, one of which was referred to a prosecutor. In a notable development, RS amended its criminal law to include an offence of public incitement to violence and hatred based on sex, sexual orientation, and gender identity.46 Despite the fact that one of the leading political parties in the Federation BiH announced the same-sex marriages in 2018, the working group for this law has not yet been formed and the government of this entity is still in its technical mandate. According to the HRDs, politicians in Bosnia and Herzegovina still do not publicly discuss LGBTI+ rights and concerns, police often dismiss hate crimes against LGBTI+ people and acquiring permits for LGBTI+ events. Therefore, they also did not discuss trans issues. Hence, violence and attacks persist. HRDs reported that they faced interruptions by “extremists” who threatened with death to the participants and were ready to use force over an annual queer event. The police was watering down the threats and disregarding their seriousness – “come on, it’s not that”, one of them was told.52

50 Interview No. 6, Media representative (12 September 2019)
51 Interview No. 3, Media representative (6 September 2019)
52 Interview No. 1, Civil Society representative (30.08.2019.); Interview No. 10, Civil Society representative (13 September 2019)
53 Interview No. 2, Media representative (11 September 2019)
54 Interview No. 4, Civil Society representative (13 September 2019)
55 Interview No. 5, Civil Society representative (14 September 2019)
56 Interview No. 6, Civil Society representative (13 September 2019)
57 Interview No. 1, Civil Society representative (20.06.2019.); Interview No. 10, Civil Society representative (13 September 2019)
58 World Report 2018: Bosnia and Herzegovina (Human Rights Watch)
59 Interview No. 14, Civil Society representative (17 September 2019)
6. CONCLUSIONS AND RECOMMENDATIONS

This focused on the position of HRDs and WHRDs in BiH in the last five years. It has shown that despite having an advanced legal framework related to human rights, the HRDs are getting more vulnerable and constrained.

On freedom of assembly, the state authorities endorse the work and activities of HRDs and support peaceful gatherings when these are not perceived as harmful to the politicians in the government. There are clear tendencies to restrict the freedom of peaceful assembly by using various tactics to dissuade the organisers from holding manifestations, such as the latest proposed legal changes in Republika Srpska, which has made it more difficult to obtain permission for public assemblies. The current law is not aligned with international standards either, and its implementation became more strict in this entity.

In practice, HRDs have divergent and rather complex views when it comes to the right to freedom of opinion and expression. Freedom of the media is restricted by political influence, and self-censorship by journalists is perceived as a massive phenomenon.

When it comes to gender aspects, according to most of HRDs, the dominant patriarchal context is still very present in the country.

HRDs’ experience various types of physical and verbal violence, including attempt of murder, sexual harassment, hate and discriminatory speech. In most cases, the police did not prevent the activities and work of the HRDs, some of the latter even stated they had the support of the police. Several of them stated that they had received a misdemeanour warrant, but the investigation and prosecution against the perpetrators regarding the attacks against HRDs is slow and inefficient.

Based on the findings presented in this, the following measures are recommended:

**National authorities**

- Consider improvements of the protection for human rights defenders based on the international standards in this area, among other by introducing a separate legal category for HRDs. Use international standards to define concrete criteria on who exactly is an HRD.
- The state should provide equal and effective access to justice, provide the means that will be able to systematically offer solutions and enable compliance with the international conventions the state has signed, but very often forgotten. More effective implementation of the free legal aid laws, which will consider the specialised NGOs that provide legal aid as part of the system entitled to funding is needed.
- Strengthen the role of the Ombudsman to closely monitor and systematically examine complaints and violations against human rights defenders.
- Ensure more effective implementation of the standards set in the practice of the European Court of Human Rights by the national courts, including on defamation suits by politicians against journalists.
- Ensure adequate protection of journalists through changes of the criminal legislation in Bosnia and Herzegovina - to ensure the necessary support for the proposals in both entities.
- Resolve the issue of inefficient financing of public services and prevent political influence in the public service.
- Impunity of the attacks against HRDs should be condemned and tackled. Every threat should be treated seriously, investigation should be conducted and the perpetrator should be brought to trial.
- Improve cooperation with HRDs, including by putting an end to the practice of treating and portraying HRDs as enemies.
- Assembly organisers and participants should not be considered responsible (or held liable) for the unlawful conduct of others; eliminate obstacles and restrictions on freedom of assembly and freedom of expression. Ensure that domestic law pertaining to freedom of assembly is compliant with international human rights standards for freedom of assembly and freedom of expression.
- Training for dealing with vulnerable groups should become a part of official training curricula for all government institutions; mandatory training for government officials and police officers in order to educate them about specific groups of human rights defenders, with particular emphasis on members of the LGBTI+ community.
- The state should allow equal and effective access to justice, among other by offering systematic solutions and respect for the international conventions to which the country is a state party.
- Abide by its international obligations to prevent, protect and promote the freedom of assembly for all citizens of BiH, while paying particular attention to groups whose freedom of assembly was particularly violated in the past.

**International community**

- Insist that the state adopts and follows the adopted protocols and provide special protection to human rights defenders; in a way so as their rights, access to justice and access to funding is fully ensured and their independence unharmed.
- Maintain an active role in promoting and protecting human rights and strengthen technical and financial capacities of civil society organisations, particularly supporting long-term programs concerning human rights defenders.
- Advocate for a more proactive involvement of NGOs in the policy-making process and establishing effective mechanisms.
- Have serious and ongoing consultations with NGOs regarding EU accession process and human rights developments in the country.

**Human rights defenders**

- HRDs should step up their efforts towards informing the public about their work, and how it affects the everyday lives of all citizens, and towards raising awareness of the importance of respect for human rights.
- Better networking of HRDs in the country, working together on advocating in order to be more involved in the policy making and establishing effective mechanisms when it comes to human rights, as well as to address and reverse the negative trend where HRDs are presented as enemies of the state.
- Presenting joint initiatives to the government can create space for the government to respond more effectively.

**Media**

- Better networking of media, working together on advocating the changes of the criminal legislation in Bosnia and Herzegovina (both entities) – to ensure the necessary support for the proposals in both entities.
- Support the work of HRDs as well as journalist who work in the field of human rights and follow Ethical Code for journalists and support other journalists and HRDs by, among other, refraining from spreading hate and discriminatory speech.
Human Rights Defenders in the Western Balkans

Kosovo
EXECUTIVE SUMMARY

This report outlines the violations and restrictions that human rights defenders face in the Republic of Kosovo (Kosovo). It analyses their civil and political rights, such as the right to freedom of assembly, association and expression, and the right to protest, the right to freedom of opinion and expression as well as gender aspects of the challenges and restrictions in relation to these violations and restrictions. It analyses and outlines assaults, harassments and restrictions in relation to human rights defenders. It also presents gender aspects of the challenges and restrictions in relation to these assaults, harassments and restrictions.

According to the research, since Kosovo is not a member state of international organizations and institutions protecting, promoting and ensuring human rights, it is not directly supervised by international human rights bodies. Hence, there is no specialized institution tasked with protecting or processing claims regarding violations of the rights of human rights defenders. The challenges that human rights defenders face are mostly motivated by the predominant social, cultural or religious norms, attitudes and values nourished in the country. The human rights defenders mostly affected by these norms are those engaged in the field of gender equality, gender-based violence and the rights of LGBT+ community. Moreover, attacks, threats, physical and psychological assaults or intimidations reported to the state authorities are often neglected, disregarded or not investigated properly thus establishing a practice of impunity among all perpetrators. Journalists feel independent and free to express their opinions and thoughts but do point out their dependency on institutions in obtaining official documents and the fact that they are constantly being under threat that they might be sued for defamation and insult. Media are still being used to propagate hate speech and fake news towards human rights defenders in the country. Moreover, although the constitutional and legal framework provides for the protection and promotion of human rights by means of domestic rule of law institutions and an independent judiciary, human rights defenders do not feel supported or protected by the state authorities. In addition, they do not blindly trust the rule of law institutions due to the high level of corruption and political pressure reported to be present in Kosovo’s rule of law institutions.

Finally, in order to improve the current situation of human rights defenders in the country, this report offers numerous recommendations to the national authorities, media, human rights defenders and international community. There must be a way for Kosovo citizens to be able to file applications to the European Court of Human Rights (ECHR). The Declaration on Human Rights Defenders should be included in the list of the directly applicable international instruments in Article 22 of the Constitution of Kosovo that would further recognize, support and protect the human rights defenders in the context of their work. Moreover, Criminal Code should be supplemented with provisions ensuring that the proceedings shall take into consideration if a possible motive for an attack on a person is conducted because of their human rights work. The State Prosecutor and Kosovo courts must sanction the use of media platforms for fake news, hate speech and assaults on human rights defenders. Human Rights Defenders must raise public awareness on their role through public campaigns, debates and media platforms. In order to increase state transparency and accountability, all state authorities must comply with the Law No.06/L-081 on Access to Public Documents and must increase state transparency and accountability, all state authorities must comply with the Law No.06/L-081 on Access to Public Documents and must promote and strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels. In addition, we refer to Women Human Rights Defenders (WHRDs) using a definition which we modified in accordance with the Office of the High Commissioner for Human Rights (OHCHR). To be precise, in the case of WHRDs we refer to women who, individually or in association with others, act to promote or protect human rights, including women’s rights and gender equality issues. Because of the similarities of the situations they face, the text will be considered so as to include men and non-binary human rights defenders working on gender equality issues.

Our findings and recommendations are based on the analyses of primary and secondary data, collected via desk research and interviewing. We conducted fifteen interviews with human rights defenders active in gender equality, environmental issues, minority issues (Roma, Ashkali and Egyptian rights), LGBT+ issues, data protection, war crimes, freedom of speech and free legal aid, and journalists. We also analysed legal and policy documents, and draw from additional existing literature (such as grey literature, media and in Kosovo human rights bodies). We first discuss the issues of relevance in relation to the general context, followed by the analysis of the legal framework regarding human rights defenders in Kosovo. We then present the findings regarding the violations and restrictions faced by human rights defenders working on gender equality and other aspects of human rights. Journalists and WHRDs are not well covered in Kosovo due to the social, political and dominant cultural norms in the country. The climate for human rights defenders’ work varies depending on the field of their work. Namely, while the majority of HRDs report to be feeling free to do their human rights work, this barely is the case of those working on gender equality, violence against women, rights of LGBT+ persons and freedom of expression. As explained by the interviewed HRDs, the social, political and dominant cultural norms in Kosovo have created a patriarchal system in which active work in these fields often encounters institutional resistance. This is further exacerbated by the cultivated climate of impunity. The weak justice system allows for impunity of all perpetrators and wrongdoers violating human rights and fundamental freedoms in the country. Many cases of threats or assaults towards human rights defenders have been reported to the police but no investigation and prosecution took place. The police also tends not to update the victims on the procedural developments in their cases, which is considered as one of the main problems by the interviewed HRDs. According to the interviewed human rights defenders, threats or assaults reported to the police are considered as ordinary reported threats.

1 Interview No.1, Civil Society Representative, (08.08.2019); Interview No.2, Civil Society Representative, (21.08.2019).
2 Interview No.2, Civil Society Representative, (08.08.2019).
3 Interview No.1, Civil Society Representative, (08.08.2019); Interview No.2, Civil Society Representative, (21.08.2019).
4 Interview No.2, Civil Society Representative, (21.08.2019).
5 Interview No.3, Civil Society Representative, (08.08.2019).
6 Interview No.5, Civil Society Representative, (29.08.2019).
8 Interview No.8, Civil Society Representative, (28.08.2019). Interview No.9, Civil Society Representative, (29.08.2019).
9 Interview No.1, Civil Society Representative, (08.08.2019).
10 Interview No.6, Civil Society Representative, (30.08.2019).
11 Interview No.10, Volunteer, (29.08.2019).
12 Interview No.5, Civil Society Representative, (29.08.2019).
13 Interview No.7, Media Representative, (27.08.2019).
14 Interview No.10, Media Representative, (29.08.2019).
15 Interview No.9, Civil Society Representative, (28.08.2019).
16 Interview No.10, Media Representative, (25.08.2019).
17 Interview No.11, Civil Society Representative, (28.08.2019).
18 Interview No.10, Media Representative, (25.08.2019).
19 Interview No.6, Civil Society Representative, (28.08.2019).
20 Interview No.6, Civil Society Representative, (28.08.2019).
21 Interview No.5, Civil Society Representative, (29.08.2019).
22 Interview No.10, Media Representative, (29.08.2019).
23 Interview No.1, Civil Society Representative, (28.08.2019).
24 Interview No.1, Civil Society Representative, (28.08.2019).
25 Interview No.2, Civil Society Representative, (28.08.2019).
26 Interview No.5, Civil Society Representative, (29.08.2019).
27 Interview No.10, Media Representative, (29.08.2019).
28 Interview No.9, Civil Society Representative, (28.08.2019).
29 Interview No.10, Media Representative, (25.08.2019).
30 Interview No.9, Civil Society Representative, (28.08.2019).
31 Interview No.10, Media Representative, (23.08.2019).
32 Interview No.6, Civil Society Representative, (30.08.2019).
33 Interview No.2, Civil Society Representative, (27.08.2019).
34 Interview No.10, Civil Society Representative, (28.08.2019).
35 Interview No.1, Civil Society Representative, (28.08.2019).
36 Interview No.1, Civil Society Representative, (29.08.2019).
37 Interview No.5, Civil Society Representative, (29.08.2019).
38 Interview No.10, Media Representative, (29.08.2019).
39 Interview No.6, Civil Society Representative, (28.08.2019).
40 Interview No.3, Civil Society Representative, (26.08.2019).
41 Interview No.5, Civil Society Representative, (08.08.2019).
42 Interview No.1, Civil Society Representative, (08.08.2019).
Kosovo is not directly supervised by international human rights bodies. This directly and adversely affects the situation of HRDs in the country. On the one hand, Kosovo is not a member state of the United Nations (UN) and does not report to the UN as a member state. Hence, Kosovo does not provide reports on the fulfillment of its human rights obligations to the major treaty bodies and monitoring mechanisms, such as the Universal Periodic Review (UPR). Because of this, Kosovo citizens do not have the possibility to use the treaty bodies’ individual or collective applications procedures. However, the Secretary General reports on the implementation of the United Nations Internationally Administered Mission in Kosovo (UNMIK) in the Security Council. In these reports, the role of law and human rights have a special section following the Resolution 1244 provision mandating the protection and promotion of human rights in Kosovo and later on, Kosovo’s legislation. In addition, Kosovo is not a member state of the Council of Europe and therefore its citizens cannot submit applications to the European Court of Human Rights (ECtHR) either. This also prevents those human rights defenders who work on assisting with legal aid and legal services provision, as it closes one of the most important institutions available to all other citizens in Europe – the ECtHR.

On the other hand, the domestication of the international treaties provided for by Article 22 of the Constitution of Kosovo directly guarantees the protection and promotion of human rights and fundamental freedoms in Kosovo. Article 22 of Kosovo’s Constitution explicitly states that the ECtHR case law in Kosovo must be considered to be the law of Kosovo. 19 Hence, Kosovo does not provide reports on the fulfilment of its human rights obligations to the major treaty bodies and monitoring mechanisms, such as the Universal Periodic Review (UPR). However, the framework is not adjusted in any way to the specific needs of HRDs. There are a few exceptions however, as will be mentioned below. Kosovo’s legislation offers a satisfactory legal framework and fundamental freedoms not being protected and promoted on a satisfactory level. 18

### 3. LEGAL FRAMEWORK

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Generally, there is a legal basis for the fundamental rights in Kosovo. Kosovo’s legislation has been established in accordance with the constitutional human rights provisions. The right to be protected, the right to freedom of association and communication, the right to access and communication with international bodies and the right to protest. There is no case reported by the interviewed HRDs in Kosovo where an international body has denied communicating with them. Neither has there been any stoppage of protest or an unsupported one by public authorities of the country.

However, the legal framework is not adjusted to the specific needs of HRDs. There are a few exceptions where such adjustments are made when it comes to journalists. For example, the Association of Journalists of Kosovo (AGK) issued an opinion on the Regulation 1520/2016 on the Security Council Resolution 1244 which provided a framework for the regulation of violence against journalists, the tightening of the criminal offense of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention against Torture. In Kosovo, there is no special approach as regards them. In other words, the approach of the police is not adjusted to the specific needs of HRDs. There are a few exceptions however, as will be mentioned below. Kosovo’s legislation offers a satisfactory legal framework and fundamental freedoms not being protected and promoted on a satisfactory level. 18

Kosovo reported in 2018 that the Court of First Instance in Pristina appointed a judge as a coordinator of the court to deal with cases of media and journalists. Also, the State Prosecution appointed a National Coordinator for cases of enforcement of international law in addition to local prosecutors who will deal exclusively with the cases of HRDs. The Criminal Code of Kosovo lists no special procedures for enforcing protection of human rights defenders when a criminal offense or another violation or obstruction is committed while they practise their professions. Such crimes which do not fall under the ordinary law yet need to be punished as criminal offenses. The fact that they were conducted against an HRD is not taken into consideration. 20

Finally, the Law on the Protection from Discrimination (the Anti-Discrimination Law) is also important for human rights defenders. Kosovo has established a legal framework for prevention and combating discrimination based on nationality or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, property, country of origin, family or marital status, age, political or any other status, covering, origin, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment. 21 The Anti-Discrimination Law provides a framework to protect all groups from any act or omission of all state and local institutions, natural and legal persons, public and private sector, who violate, violate or may violate the rights of any person or natural and legal entities in all areas of life. Thus, the law provides for a wide personal and material scope of protection against discrimination in Kosovo.

As for the institutional framework tasked with implementation of these laws, there are several institutions of relevance. However, none of them has explicit competence of dealing with the rights of HRDs. First of all, the judiciary is composed of institutions that exercise judicial authority in Kosovo such as the Supreme Court and subordinate courts, the Constitutional Court and an independent prosecutorial institution. 22 Secondly, the Kosovo police is the policing law enforcement agency. Kosovo’s Constitution sets forth the role and competencies of the Ombudsperson as to monitor and protect human rights and freedoms of legal and natural persons from unlawful and irregular actions or inactions of the public authorities.

### 4. VIOLATIONS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS’ CIVIL AND POLITICAL RIGHTS

This section presents the findings 20 on violations and restrictions on civil and political rights of HRDs in Kosovo. It relies mainly on data from the interviews conducted with human rights defenders.

Kosovo’s legislation offers a satisfactory legal framework 23 when it comes to the freedom of assembly and association. 24 There is no recorded official systematic practice of direct violations of these rights by the authorities. The reactions by the state authorities on cases of violations by individuals and non-state actors have not been satisfactory, though. The Pristina Pride Parade was organized for the second time in October 2018. 25 During that period, there was a notable rise in hate speech. While the state authorities respected the right to assembly and association of the LGBT+ community and provided protection, there was inadequate investigation and response on the cases of threats which LGBT+ activists reported to the police, including those of hate speech.

There have been no practices of sudden fiscal control or other forms of control by the authorities in relation to individuals or entities working on human rights or of confiscation and destruction of working materials by the authorities. 26

Hate speech suffered by transman activist

The Association of LGBT Rights, received 150 threatening messages on social media and through phone calls. When he reported these cases to the police, they requested him to select the 10 most serious cases and to report them. Even though the police had all the relevant information, he was never called for a progress meeting they made the investigation and is not aware of any charges being raised in relation to any of these cases. Moreover, the gravity of the situation was underestimated by the Kosovo police, which commented that such situations are not dangerous.

23 Assembly of Kosovo, Law No. 05/L-021 on the Protection from Discrimination, available at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924
24 Assembly of Kosovo, Law No. 03/L-18 on Public Institutions, available at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2764; Law No.03/L-18 on Public Institutions.
25 Assembly of Kosovo, Law No. 03/L-18 on Public Institutions, available at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2764; Law No.03/L-18 on Public Institutions.
26 Assembly of Kosovo, Law No. 03/L-18 on Public Institutions, available at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2764; Law No.03/L-18 on Public Institutions.
authorities. None of the interviewees’ work is funded by the state, thus there were no reports or experience with cutting of funds or financing by the state. There have been, however, such practices by other actors, notably by a foreign government which has diplomatic representation and funds various civil society activities in Kosovo. This happened due to her work which opposed the implementation of a project in Kosovo which was otherwise endorsed by that foreign government. This case exemplifies the downsides of opaque policies against not only public authorities, but also potential private persons of the NGO’s activities.50

Non-official religious groups in Kosovo present a challenge and a problem when it comes to the freedom of assembly, religious freedom and equality and violence against women. Almost all interviewed human rights defenders who work on these issues have received threats, have been harassed or at least known someone who has been attacked because of their work.51 These impediments are more frequent in cases of organized protests, protests, public appearances in the media, and are done via social media platforms, phone calls and emails, but, there were also cases of physical violence.52 These cases highlight the challenges and restrictions imposed by unknown and politically motivated people are very common for HRDs working in the field of human rights. HRDs have also been alleged to serve for the political support. HRDs have also reported many instances of being insulted and personal attacks by unknown people on their social media.

Right to freedom of opinion and expression

The current legal framework provides extensive protection of the right to freedom of opinion and expression. At the same time, the regulation of the activities of media in Kosovo is centralized and is generally regulated by specific laws. However, because of the implementation gap, the interviewees reported feeling neither free nor restricted, and perception is especially heightened among journalists.

Despite the legal framework and the pluralistic and lively media environment, threats and attacks against journalists still continue to arise. In 2017, 24 cases of threats and attacks against journalists were reported. In 2018 there were 16 such cases.53 It is yet to be seen whether these cases will be promptly investigated, prosecuted and tried in the courts.

The biggest challenge identified by our interviewees – a journalist and an HRD working on media rights, was the lack of access to information, which affects their entire work on human rights and impedes their right to freedom of opinion and expression. 41

HRDs and journalists by limiting them on only approaching a specific problem in a general rather than a substantial manner. 44

While there is a law against defamation and insult46

The case of Sevdije Ahmeti, a women’s rights and human rights activist, is the only case where a criminal procedure was filed against a human rights defender in response to their work.54

In the case of Sevdije Ahmeti, criminal charges were raised against a woman human rights defender as a response to her human rights work.55 During the time she was indicted, she was working with survivors of sexual violence that took place during the Kosovo war. Most of the interviewed human rights defenders who worked with Sevdije Ahmeti stated that the investigation was politically motivated as a response to her human rights work. So far, this remains the only case where a criminal procedure was filed against a human rights defender in response to their human rights work. According to the interviewed HRDs and journalists, this is the reason why they are being very careful in expressing thoughts and opinions considering the threatening environment they work in.

Another issue stressed by our interviewees is related to the media platforms and the right to freedom of opinion and expression, and that is the use of online portals for fake news and their use to insult and increase hate speech against HRDs in the country. Fake news is an increasing problem in the country. Many newly opened online platforms have been alleged to be serving for the political support. HRDs have also reported many instances of being insulted by unknown people on their social media.

Gender aspects of the challenges and restrictions in relation to violations and restrictions

The dominant social, cultural or religious norms, attitudes and values in Kosovo negatively affect the work of HRDs in the country. More specifically, these norms directly affect the work of HRDs engaged in the field of gender equality, gender-based violence and the rights of the LGBT+ community. Even though the Anti-Discrimination Law prohibits any kind of discrimination based on an open-ended list of discrimination grounds, including gender, gender identity and sexual orientation, a negative approach is carried out by the authorities towards investigating violations committed against HRDs and LGBT+. The gender aspects of the challenges and restrictions that these two groups are facing are usually encountered whenever they have to deal with the police – the first state authority to which an HRD being threatened reports his or her case.

Moreover, the challenges that WHRDs are facing in their human rights work are not posed only by the state authorities but also by private entities. The gender aspects comes into play in many work environments and is present in their human rights work. WHRDs have pointed out that due to the social and cultural norms in the region and due to harassment, both working on human rights in the Balkans and working with male colleagues can be challenging. According to the interviewees, people from the Balkans try to justify themselves and their behaviour by invoking the claim of a ‘Balkan culture’, in which these behaviours would fall under the (now outlawed) harassment or sexual harassment.56

This has been attributed to the social norms in the country but moreover to the lack of awareness and training of, inter alio, public officials in how to handle victims and what kind of approach to use according to different profiles of victims.57

In addition, the gender aspects come into play not only in relation to WHRDS, but also when HRDs working on the especially the ones working as journalists, and while defamation and insult were decriminalised and remain a civil liability only, the risk of lawsuits remains, as well as the climate which encourages a practice of self-censorship. The level of pressure by the authorities depends on the level of criticism that their journalism and HRD’s are to present. In some cases this can lead to legal procedures against them.58 Considering that the rule of law institutions and the justice system in Kosovo are considered to be under political influence, the human rights defenders are always threatened with legal procedures whenever they engage in criticizing political representatives or state authorities.

Prosecution by unknown and politically motivated people on their social media.

Activist’s funding support discontinued

On 29 January 2019, the name of an HRD was taken off a list of fellowship awards, awarded and financed by a foreign government which has diplomatic representation and funds various civil society activities in Kosovo. This happened due to her work which opposed the implementation of a project in Kosovo which was otherwise endorsed by that foreign government. This case exemplifies the downsides of opaque policies against not only public authorities, but also potential private persons of the NGO’s activities.50

35 Interview No.1, Civil Society Representative, (08.08.2018); Interview No.7, Civil Society Representative, (23.08.2019); Interview No.4, Civil Society Representative, (22.08.2019); Interview No.3, HRD, (22.08.2019); Interview No.2, Civil Society Representative, (22.08.2019); Interview No.8, Media Representative, (19.08.2019).
36 Interview No.1, Media Representative, (23.08.2019).
37 Law No.02/L-65 against Defamation; Law No. 03/L-215 on Access to Public Documents; Law No.04/L-065 on Copyright and Related Rights; Law No.04/L-137 on the Protection of Journalism Sources; Law No.04-L-044 on the Independent Media Commission; Law No.04/L-046 on Radio Television on Non-official Religious Groups in Kosovo
38 Law No.02/L-65 against Defamation and Insult; Law No. 03/L-215 on Access to Public Documents; Law No.04/L-065 on Copyright and Related Rights; Law No.04/L-137 on the Protection of Journalism Sources; Law No.04-L-044 on the Independent Media Commission; Law No.04/L-046 on Radio Television on Non-official Religious Groups in Kosovo
39 Interview No.7, Civil Society Representative, (23.08.2019); Interview No.4, Civil Society Representative, (23.08.2019).
40 Interview No.10, Media Representative, (29.08.2019); Interview No.1, Civil Society Representative, (08.08.2019); Interview No.5, Civil Society Representative, (22.08.2019); Interview No.10, Media Representative, (22.08.2019).
41 Assembly of Kosovo, Law No.02/L-65 Civil Law Against Defamation And Insult, available at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2503
42 Ibid.
43 Interview No.1, Civil Society Representative, (19.08.2019); Interview No.13, Media Representative, (19.08.2019); Interview No.14, Media Representative, (22.08.2019); Interview No.10, Media Representative, (22.08.2019).
44 Interview No.10, Media Representative, (29.08.2019).
45 This situation was illustrated with the lawsuit against Organization for Democracy, Anti-Corruption and Human Rights (ODIH), which the Anti-Corruption Agency which sued for defamation. According to the former director of the Anti-Corruption Agency, COHUS in one of its publications stated that the Agency, in declaring the assets of public officials in June 2011, had not published the businesses of the seven MPs of the Kosovo Assembly that were members of the Anti-Corruption Committee and were accused of corruption. The COHUS filed a lawsuit against the “Balkan culture’ , when in fact these behaviours would fall under (the now outlawed) harassment or sexual harassment.56
50 Interview No.1, Civil Society Representative, (08.08.2019); Interview No.7, Civil Society Representative, (23.08.2019); Interview No.4, Civil Society Representative, (23.08.2019).
51 Interview No.10, Media Representative, (29.08.2019); Interview No.1, Civil Society Representative, (08.08.2019); Interview No.5, Civil Society Representative, (22.08.2019); Interview No.10, Media Representative, (22.08.2019).
52 This has been attributed to the social norms in the country but moreover to the lack of awareness and training of, inter alio, public officials in how to handle victims and what kind of approach to use according to different profiles of victims.
53 Interview No.1, Civil Society Representative, (22.08.2019); Interview No.2, Civil Society Representative, (22.08.2019); Interview No.3, HRD, (22.08.2019); Interview No.8, Media Representative, (19.08.2019).
54 Interview No.10, Media Representative, (29.08.2019).
55 Interview No.1, Civil Society Representative, (08.08.2019); Interview No.7, Civil Society Representative, (23.08.2019); Interview No.4, Civil Society Representative, (22.08.2019); Interview No.3, HRD, (22.08.2019); Interview No.8, Media Representative, (19.08.2019).
56 This situation was illustrated with the lawsuit against Organization for Democracy,Anti-Corruption and Human Rights (ODIH), which the Anti-Corruption Agency which sued for defamation. According to the former director of the Anti-Corruption Agency, COHUS in one of its publications stated that the Agency, in declaring the assets of public officials in June 2011, had not published the businesses of the seven MPs of the Kosovo Assembly that were members of the Anti-Corruption Committee and were accused of corruption. The COHUS filed a lawsuit against the
The right of LGBT+ community are faced with restrictions of their human rights.

**Discrimination in access to goods and services for the LGBT+ HRDs**

An NGO working on the rights of the LGBT+ community based in Pristina has been thrown out of their office by the property owner due to their field of work. According to one of the employees of the NGO, right after their landlord understood that they work on the rights of the LGBT+ community and that some of the HRDs working there identify themselves as transmen, he immediately asked them to leave his property. This case clearly reflects the prejudices related to the LGBT+ community and the effect that social and cultural norms have in the country.54

5. ASSAULTS, HARASSMENTS AND RESTRICTIONS TOWARDS HUMAN RIGHTS DEFENDERS

This section presents the findings on assaults, harassments and restrictions of the right to be protected, the right to access and communicate with international bodies, the right to develop and discuss new ideas in the area of human rights, the right to access funding and the gender aspects of the challenges and restrictions in relation to these assaults, harassments and restrictions of human rights defenders in Kosovo. Like the previous section, this section as well largely relies on the issues emphasised by the interviewed HRDs.

The right to be protected

Kosovo’s legal framework does not foresee any kind of specialised institution tasked with protecting or processing claims regarding violations of rights specifically of HRDs. This is done via institutions with general competences for processing assaults, harassments and restrictions in relation to human rights, such as the police, the state prosecutor, courts and the Ombudsperson. They offer HRDs the same protection as to all other citizens in Kosovo. Any criminal offense or violation or obstruction committed against them while they exercise their professional duties are considered as general criminal offenses. The fact that they were conducted against an HRD is not taken into consideration.55

**Public assault of a WHRD and state’s inaction**

One of our interviewed WHRDs was threatened in public by an unknown person right after a protest against domestic violence. She was threatened in the centre of Pristina where many citizens were present. While she was crossing the road, a car stopped, and the driver started yelling at her for her work against domestic violence and threatened to kill her. Right after the incident, she reported the case to the Kosovo police. But, no action ensued. She never heard back from the police station and she was never notified if there were any procedural developments in relation to her case. The police was completely silent and did not take any further actions on identifying the perpetrator and on initiating legal proceedings against him.56

The right to an effective remedy

As already mentioned, no reported case has been properly investigated and no punishments have been instituted to state or non-state actors that have conducted violations or abuses of rights and freedoms of HRDs. This impunity has been attributed to the overall weak performance of the rule of law institutions in Kosovo. Although Kosovo’s legislation sets out the right to an effective remedy, due to the lack of a functioning justice system, this right is widely violated. The backlog of cases in the courts, the lack of urgency in procedures on cases of violations committed against HRDs and the lack of recognition of HRDs as a special category in Kosovo’s legislation all contribute to the further watering down of this right.

In order to specify the mechanism providing for an effective remedy, one must know that every defendant that has been acquitted with a final verdict of the court is entitled to a legal remedy in Kosovo. In order to do so they must apply to the Kosovo Judicial Council. However, the Kosovo Judicial Council has foreseen a very limited budget/amount for this sector which cannot cover all those who have been acquitted and have asked for judicial review.57

The right to access and communicate with international bodies

The right of HRDs to access and communicate with international bodies is not available to HRDs from Kosovo. Kosovo’s legal framework does not foresee any kind of specialised institution tasked with protecting or processing claims regarding violations of rights specifically of HRDs. This is done via institutions with general competences for processing assaults, harassments and restrictions in relation to human rights, such as the police, the state prosecutor, courts and the Ombudsperson. They offer HRDs the same protection as to all other citizens in Kosovo. Any criminal offense or violation or obstruction committed against them while they exercise their professional duties are considered as general criminal offenses. The fact that they were conducted against an HRD is not taken into consideration.58

54 Interview No. 5, Civil Society Representative, (21.08.2019).
55 It is important to note that the sources used in the report do not represent a comprehensive overview of violations, but are a collection of findings arrived at with the applied research methodology.
56 Interview No. 2, Civil Society Representative, (19.08.2019);
57 Interview No. 6, Civil Society Representative, (18.08.2019);
58 Interview No. 11, Media Representative, (19.08.2019).

The right to develop and discuss new ideas in the area of human rights

HRDs in Kosovo consider that they can exercise their right to discuss and develop new ideas in the areas of human rights. However, since most of them rely on donor support, they could face challenges in developing and discussing new ideas in the area of human rights if these do not fit with the donors’ programmes. In addition, the economic situation in Kosovo is very weak and does not offer a stable environment. Therefore, HRDs often face financial challenges on their way of developing and discussing new ideas.59

The right to access funding

The right to access funding by civil society organisations in Kosovo is regulated by the Law on Freedom of Association in Non-Governmental Organizations, which provides for an extensive way for funding NGOs.60 The lack of funding poses a significant challenge for the interviewed HRDs working as individuals because they are not financially supported by anyone, which affects their work on human rights. All interviewed HRDs mentioned the fact that their dependency on donor funds affect their work. Most of the time the donors decide on the fields where most of the NGOs will be active by setting priorities or themes for awarding the grants and funds, thus also indirectly shaping the work plans of HRDs.

Gender aspects of the challenges and restrictions in relation to assaults, harassments and restrictions

When LGBT+ HRDs report to the authorities a criminal offense or violation or obstruction committed against them, the Kosovo’s police does not take them seriously in most cases, does not carry out proper investigation procedures and does not inform them of the developments on their case. Moreover, there is no case nor precedent where effective investigations have been conducted and the defenders committing the criminal offenses or other violations or obstructions against HRDs in Kosovo have been punished. The reasons identified for this sort of impunity are mostly attributed to the weak justice system of Kosovo. Due to the established impunity practice, one cannot conclude if there are any gender aspects or challenges and restrictions that HRDs face when exercising their right to an effective remedy. When it comes to access and communication with international bodies, there have been no reported challenges based on gender considering the fact that the main problem on exercising this right is the country’s internationally contested independence.

59 Interview No. 10, Media Representative, (29.08.2019).
60 Assembly of Kosovo, Law No. 06.0-044 on Freedom of Association in Non-Governmental Organizations, available at: https://gazik-iks.gov.net/AcclDetail.aspx?ActID=2764
61 Interview No. 7, Civil Society Representative, (23.08.2019).
6. CONCLUSIONS AND RECOMMENDATIONS

Kosovo remains outside of the human rights framework provided by the CoE and the UN because it is not a member state of either of the organisations. Due to this fact, Kosovo citizens, including HRDs, do not have legal standing to file complaints to the ECtHR. This directly affects HRDs’ human rights and fundamental freedoms and their human rights work since they cannot seek protection neither for themselves nor for the potential victims of human rights violations to whom they may be assisting.

The incorporation of international treaties in the Constitution and laws has provided for certain protection and promotion of human rights and fundamental freedoms at the national level. Yet, these are general provisions which are not adjusted to accommodate for the particularities of HRDs’ claims. Due to the lack of a legal provision mandating the protection of HRDs specifically, the state authorities, such as the police, do not react to the violations and assaults taken against HRDs any differently than in the case of any other citizen in Kosovo, meaning they completely ignore the fact that the motive behind the assault was their work on human rights.

In addition to missing access to international human rights mechanisms for the protection of human rights and the missing legal recognition and protection of HRDs, the human rights defenders in Kosovo are facing many challenges and restrictions upon which gender is one of the reasons. The dominant social, cultural or religious norms, attitudes and values have been affecting the work of HRDs, especially of those engaged in the field of gender equality, gender-based violence, the rights of the LGBTI+ community.

There is no law such as the media law in Kosovo and Kosovo’s media activity is generally regulated by specific laws.62 The legal framework such as the Law against Defamation and Insult, the Law on Access to Public Documents, Copyright Law, Law on the Protection of Journalistic Resources, Law on the Protection of Whistle-blowers etc.63 offer an extensive framework for the protection of the right to freedom of opinion and expression. But due to the fact that Kosovo authorities acted promptly in implementing the legislation, the HRDs feel neither free nor restricted when doing their work. There are cases where media is used for insult and defamation and assault HRDs. Moreover, unidentified people use media to threaten HRDs, regardless of their field of human rights work.

Although international donors are present in Kosovo and NGOs are mostly supported and financed by them, there are numerous HRDs who work individually and do not have access to funds. This situation affects their ability to conduct human rights work. Moreover, HRDs’ dependency on donor support affects their agenda, i.e. the field where they engage, since donors set the priorities and themes.

To this end, we recommend the following:

National authorities

- National authorities should take all measures to ensure proper implementation of the human rights legislation ensuring they work in a supportive environment which is free from attacks and reprisals.
- The Declaration on Human Rights Defenders should be included in the list of the directly applicable international instruments in Article 22 of the Constitution of Kosovo that would further recognize, support and protect the human rights defenders in the context of their work. The judiciary, the police and the institution of the Ombudsperson should apply international human rights standards in cases of threats and attacks against human rights defenders in line with the right to effective legal protection enshrined in the Constitution.

and further deliberated in legislation in force.
- The police, state prosecutor and the judiciary should have a more transparent and inclusive approach with all human rights defenders for cases reported to the authorities. Human rights defenders should be provided information regarding their cases. The Academy of Justice in cooperation with the Kosovo Judicial Council, the Kosovo Prosecutorial Council and Kosovo’s police should include a specialized training on human rights standards and mechanisms, including ECtHR.
- Institutions should take effective measures to properly implement the Law on Access to Public Documents, ensure greater transparency and accountability and enable citizens to exercise their right to information. This would increase state transparency and accountability.
- The Kosovo police, the State Prosecutor and the courts must take concrete actions to improve the cooperation and flow of information.

State Prosecutor and Kosovo courts

- When implementing the Criminal Code of Kosovo, justice institutions must respect the international human rights standards directly applicable in Kosovo, specified in Article 22 of the Constitution of Kosovo.
- Justice institutions must ensure that cases of threats and attacks against journalists and all human rights defenders are promptly investigated, prosecuted and tried by courts.
- Justice institutions must end the practice of impunity amongst perpetrators violating, assaulting and restricting civil rights of human rights defenders by taking meritorious verdicts when trying all cases in a timely manner.
- State Prosecutor must investigate all online platforms and other media suspected for dissemination of fake news, hate speech or assault on human rights defenders.
- Kosovo courts must show zero tolerance to further use of online portals as platforms for fake news, hate speech or for assault on human rights defenders by timely trying all such reported cases.

Ombudsperson

- The Ombudsperson should take additional measures to monitor the actions taken by enforcement institutions and judiciary in cases of attacks and threats against human rights defenders and ensure that the processes are in line with the legislation in force.

Media

- The media, and particularly the Press Council of Kosovo should undertake a more proactive approach in raising awareness on prevention and harm of fake news and hate speech against human rights defenders.

Human rights defenders

- Human rights defenders should document and report proactively cases of threats and attacks against human rights defenders.
- Human rights defenders must report all cases of fake news, hate speech and assaults to the Press Council for breach of the Code of Ethics and further on they must start procedures before Kosovo courts.
- Human rights defenders should increase public awareness on their role through public campaigns, debates and media platforms.

International community

- The international community in Kosovo should continuously and proactively support and consult HRDs, and share information with them.
- The international community in Kosovo should continue to strengthen technical and financial capacities of human rights defenders.
- The international community in Kosovo should emphasize the state obligations for enabling the free exercise and protection of fundamental rights and freedoms and prevent any violation of these rights.
- In order for Kosovo human rights defenders to enjoy international protection of their human rights and for Kosovo institutions to be under direct international supervision, the United Nations must seek a solution for Kosovo to report on its actions regarding the improvement of human rights situation in the country and the fulfilment of its human rights obligations, especially within the framework of the UPR process, as other states in the region do.
- In order to improve the environment for human rights defenders in Kosovo and for human rights defenders to enjoy international protection, the Council of Europe must seek a solution for Kosovo citizens to be able to file applications to the ECtHR.

62 Kihal.net, Ligi pr media / paraqishten (Law on Media unecessary), 7 July 2018, https://www.kihal.net/vetehnica/33864/ligi-pr-media-i-paraqishten/
63 Kihal.net, Ligj pr media / paraqishten (Law on Media unnecessary), 7 July 2018, https://www.kihal.net/vetehnica/33864/ligj-pr-media-i-paraqishten/
Human Rights Defenders in the Western Balkans

Montenegro
EXECUTIVE SUMMARY

This report assesses the legal and institutional framework as well as the political, social and material circumstances in which human rights defenders (HRDs) work in Montenegro. The HRDs in Montenegro have been facing various challenges in pursuing the rights of their clients and in seeking broader policy changes. These challenges are further aggravated by the fact that their status is not legally recognised. As a consequence, HRDs do not have an easier access to the institutions that could facilitate their work, nor do they enjoy institutional protection in cases of threats or pressures from political or societal actors.

Montenegro has been negotiating EU accession for seven years already, which has greatly improved the alignment of its legislation with the EU acquis, often bringing in the best international standards and practices. However, implementation of the legislation and the establishment of institutions capable of promoting and protecting human rights still remains a challenge. In addition, the general lack of understanding of the contemporary notion of human rights, as well as traditionalism, prejudices and stereotypes present in the Montenegrin society continue to be the source of discrimination against women and marginalized groups. This makes the HRDs’ work even more challenging.

Alongside the other Western Balkan countries,1 Montenegro is sometimes referred to as a captured state. A peculiar feature of its political landscape is the fact that it has been ruled by the same party for the past three decades. In that context, it is both unsurprising and worrying that the perception of high occurrence of political affiliation discrimination has been on the rise.2 This especially affects the HRDs who, by the nature of their work, often confront the authorities, and often get discredited because they are perceived as their political opponents. This makes the mobilisation of political will crucial in achieving a change in the official discourse about HRDs being stigmatised as the enemies of the society and of the state, to recognizing that their work contributes to a better society for all.

To achieve this, the main responsibility lies with the authorities, who must establish a meaningful dialogue with HRDs. Furthermore, to achieve adequate recognition and effectiveness of their work, more work should be done by the HRDs themselves, as well as by the media and the international community.

1. INTRODUCTION

This report is a part of a regional research analysing the challenges and restrictions faced by human rights defenders (HRDs) in the Western Balkans. The report focuses on Montenegro, and includes an assessment of the legal framework as regards the work of HRDs, with an emphasis on violations, assaults, harassment, and other breaches of the human rights defenders’ civil and political rights; institutional obstacles to their work; gender aspects of the identified challenges and restrictions and recommendations for improving the conditions in which HRDs work.

The report relies on a body of international standards for assessing the position of human rights defenders. The focus is on the 1998 UN Declaration on the Right and Responsibility of Individuals, Groups and Organisations of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders).

Within this report, the term human rights defender (HRD) refers to anyone who acts individually and/or in association with others to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels. Moreover, the term women human rights defenders (WHRDs) refers to women who, individually or in association with others, act to promote or protect human rights, including women’s rights and gender equality issues, and because of the similarities of the situations that they face, the term will also include men and non-binary human rights defenders working on gender equality issues.

The report assesses the position of human rights defenders in Montenegro through the analysis of the relevant international and national legislation, reports and documents, as well as through the views and experiences of HRDs collected via semi-structured interviews3 conducted in August and September 2019.

2. GENERAL CONTEXT

Overall, the environment in which the HRDs – journalists, activists and those working for non- governmental organisations (NGOs) in general operate in Montenegro has significantly deteriorated in recent years. At the end of 2017 and particularly throughout 2018 the country witnessed a wave of illegal dismissals of critically oriented representatives of NGOs from various bodies that monitor the work of public institutions. This ‘cleansing’ had two negative consequences. Namely, in medium or small sized bodies, the dismissal of such bodies was sent to all critically oriented persons although the existing laws guarantee independence and pluralism of representation.4 The dismissals were enacted by a vote in the Parliament. It is important to remember, though, that in this period the Parliament consisted entirely of representatives of the ruling majority, as the opposition was boycotting the work of the Parliament due to prior political decisions. Some of those who were dismissed filed complaints in the court, but many could not even have their cases heard, as the Supreme Court pre-emptively produced a ‘legal instruction’ warning judges not to admit these cases arguing that the courts should not question the decisions of the Parliament. This was strongly disputed by legal experts and NGOs and attracted the attention of the European Commission as it constitutes an annulment of the constitutionally prescribed balance of powers and leads to legal uncertainty and violation of the rights of citizens who could be illegally dismissed by the Parliament for exercising their freedom to express an opinion different from that of the ruling majority.

Meanwhile, the deterioration of media freedoms continued. Between 2014 and 2018, 31 cases of attacks on journalists, their property and property of the media outlets were officially registered. None of the cases of physical attacks on journalists, including the 2004 murder of the Editor in Chief of the daily Dan, Đuško Jovanović, were adequately processed and resolved. Recently, a number of high government officials publicly admitted that the case of Jovanović’s murder and the case of the attempted murder of the journalist of weekly Monitor, Tufik Softić, will most probably never be resolved due to the misconduct in the course of investigations. Meanwhile, there is no public record that such misconduct was ever investigated, or that anybody was held accountable for it.5


3 Interview No. 1, Media Representative, 28/08/2019 and No. 10, Civil Society Representative, 3/09/2019

4 Interview No. 1, Media Representative, 28/08/2019 and No. 10, Civil Society Representative, 3/09/2019

5 The list of Montenegrin journalists and media persons who were subjected to intimidation and threats is not exhaustive and includes at least 14 cases of dismissals and discrediting from the TV, radio, newspaper and internet media. From the Anti-corruption Agency Council and the Donor Network for Human Rights in Montenegro, as well as from the Centre for Civic Education and the Anti-Corruption Agency Council.

Furthermore, in mid-2018, the ruling party effectively took over the public broadcaster after a series of politically motivated and illegal removals of non-partisan management members, including Director of Television Montenegro (TV CG) Vladan Mikić, Director of TV CG and Editor in Chief of TV CG, Aleksandar Mirković, despite the warnings and protests coming from the EU, the US and other international and national actors. This instantly led to a considerable change in the tone and content of the public broadcasting service, especially critical of the opposition, is now predominately in service of the executive government and basically closed to all genuinely critical voices, including the voices of HRDs.

Soft censorship – discretionary and non-transparent investments by the Government into media via advertising and other service and aid contracts continued to distort the media market, with predictable impact on media professionalism and investigative reporting. This issue is still not legally regulated, while the new draft law on media (currently in procedure) ought to address the issue of public spending on media.

Meanwhile, pro-government media launched a number of smear campaigns against the most vocal and critically oriented leaders of the civil society, with active participation of the officials of the ruling party and the Government. Though this often-employed misogynist rhetoric at times could be interpreted as intentionally designed to provoke the acciones of the instruments, and the victims were forced to seek justice in courts. This was a very difficult period for HRDs, as well as for the critical NGO sector in general. However, rather than confusing the public, these smear campaigns seem to have alerted them to the importance of these independent voices. Public opinion polls conducted in 2015 have shown a high level of trust in NGOs – higher than in the Government. Criticism by the international actors, as well as the realisation that public attacks did nothing to silence the most vocal critics were probably the reason why authorities eventually abandoned these campaigns. Nevertheless, the refusal of authorities to cooperate with NGOs and HRDs is clear, as evidenced by limited consultation mechanisms, refusal to take on board recommendations for legal or policy changes, failure to make information available to requests for free access to information, and instability of public sources of finance for non-governmental entities.

A number of provisions under the Law on Criminal Procedure leave plenty of discretion to the authorities in the use of certain legal tools to harass critically oriented activists. Any suspicion of criminal activity is sufficient to allow the prosecutors to order intrusive measures of data collection and surveillance, including obtaining phone lists, arrest, detention, hearing, house search, measures of security, etc., in the absence of such measures, the “suspicion” of the prosecution, according to our interlocutors, frequently uses them to investigate even minor suspected misdemeanors. This also lowers the level of the judiciary and creates an atmosphere in which citizens do not feel protected.

Despite the overall support for and trust in the NGOs, the general public opinion is characterized by a traditionalist mindset that makes the work on the protection of the rights marginalized groups more and more challenging. Thus, 71% of the citizens think that country should be led by a strong leader who will follow, 68% think that woman’s most important role in the society is to be a good wife and mother, whereas 31% think that marriages between members of different nationalities pose a threat to national integrity. Moreover, the vast majority of citizens – over four-fifths, believes that political discrimination exists in Montenegro based on perception, knowledge or personal experience. According to a number of HRDs, the general environment is still not conducive to the promotion and protection of LGBT+ rights. “We have cultural homophobia, institutional homophobia, homophobic attacks from the church and now also have homophobia being spread by the Parliament, which is prepastorous... Lastely we have a display of hostilities by different political parties, in which the LGBT+ members are either flouted or left out from the legal underpinning our rights, direct opposition from even minority parties which are a part of the ruling coalition, or direct smear campaign from the Democratic Front”, said an HRD advocating for the improvement of LGBT+ rights.

Women in Montenegro own just 4% of the houses, 8% of land and 14% of vacation houses. The lack of property ownership diminishes their chances for professional development and independence, often making them reluctant to report violence or leave the environment in which they suffer violence.

3. LEGAL FRAMEWORK

The Constitution of Montenegro prescribes that ratified and published international agreements and conventions of international law constitute an integral part of Montenegrin law and take precedence over the national legislation where their provisions happen to differ. The Constitution also contains provisions that mirror provisions from the UN Human Rights Defenders Declaration of 1998, expressing the right to be protected against discrimination. The most recently effective remedy (Articles 20, 32), the right to freedom of opinion and expression (Articles 46, 47), the right to freedom of assembly (Article 32), the right to freedom of association (Article 53), the right to access and communicate with international bodies (Article 56), the right to protest (Articles 46, 47, 76) and the right to access funding (Article 53).

Since its declaration of independence on 3 June 2006, Montenegro has become a party to a large number of international agreements and conventions. After acquiring membership in the respective international organisations, Montenegro filed successor statements for a set of conventions of the United Nations (UN), Council of Europe (CoE), International Labour Organization (ILO), etc. Active cooperation was also established within the Organisation for Security and Cooperation in Europe (OSCE) in the area of protection of human rights and fundamental freedoms, as well as in the promotion of the rule of law and further democratisation of the society. Montenegro is currently a member of the UN Human Rights Council.

The last Universal Periodic Review (UPR) of Montenegro yielded 169 recommendations, 159 of which were recommended by international organisations. Five recommendations were particularly praised by the US, the EU, the UN and other international organisations, including SMEs in Montenegro. This instantly led to a considerable change in the tone and content of the public broadcasting service, especially critical of the opposition, and basically closed to all genuinely critical voices, including the voices of HRDs.

Traditional roles and patriarchal views still discourage women in many fields of activity, including employment and representation in social and political life, especially at higher decision-making positions. This also leads to discriminatory practices which are reflected in the relatively high percentage of gender-selective abortions and powerful social pressure on women to classify inheritance on behalf of a male member of the family. This context is specifically difficult for WHRDS which find little public support for their work. The WHRDS we interviewed also complained of the strong negative impact of smear campaigns and repeated attacks against them. These attacks against WHRDS are not only harmful to minorities and women in general, but also make it more difficult to advocate for the human rights of these groups.

Citizens of Montenegro have the option to file a submission to the European Court of Human Rights (ECHR) in Strasbourg and they use it. In most cases, HRDs are instrumental in making the applicants submit successful complaints on the issue of discrimination.

1 International Centre for Civil Liberty (ICCL), Centre for Development of NGOs (CDNGO), and Centre for Monitoring and Research (CEMI), “Montenegro between reform leader and reform simulacrum”, March 2018, p. 10. Available at: http://media.cgo-cce.org/2018/03/Montenegro-simulacrum.pdf.


5 Interview No. 12, Civil Society Representative, 4/09/2019

6 Interview No. 10, Civil Society Representative, 3/09/2019


8 Interview No. 15, National Human Rights Institution, 3/09/2019

9 Interview No. 12, Civil Society Representative, 4/09/2019

10 Interview No. 13, Civil Society Representative, 5/09/2019

11 Centre for Crises Education, Human Rights Education Montenegro, 2019


13 Interview No. 12, Civil Society Representative, 4/09/2019

14 Ministry for Human and Minority Rights of Montenegro, “Action Plan for Achieving Gender Equality” (APAGE) 2017-2021, with the implementation program.


16 Interview No. 16, Civil Society Representative, 5/09/2019


Human Rights Defenders in the Western Balkans

Montenegro

In opening accession negotiations with Montenegro, the EU began with Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) to ensure maximum attention to be paid to the adaptation of national legislation concerning human rights, as well as the strengthening of institutions in charge of protecting these rights. As a consequence, the legal framework currently in place is largely adequate. The implementation of this framework and the proper functioning of responsible institutions still remain the greatest challenges.

The institutions and bodies in charge of promoting and protecting human rights in Montenegro can be independent or be a part of one of the branches of government: legislative, executive or judicial. The independent institutions are the Constitutional Court, Protector of Human Rights and Freedoms of Montenegro (Ombudsperson) and Agency for Personal Data Protection and Free Access to Information. Within the legislative branch there are the Parliamentary Committee on Human Rights and Freedoms and Gender Equality Committee, which directly deal with human rights, but it is important to note that this is also a cross cutting issue for several more committees. The judicial part is represented by courts and prosecution, whereas within the executive part the main body is the Ministry for Human and Minority Rights, as well as the governmental department for shaping policies concerning the protection of human rights and freedoms and the prohibition of discrimination. Also, there are several working bodies for monitoring and supervision of the implementation of policies for the protection and fulfilment of human rights and freedoms. These are: Social Council, Rule of Law Council, Council for Care of People with Disabilities, etc. Montenegrin Government used to have Anti-Discrimination Council (it ceased to exist in 2016).

This well-developed institutional system, however, suffers from the influence of party politics, and is therefore not effective in providing adequate protection of the rights of all citizens. Even the independent institutions have demonstrated a clear bias: in all cases in which the applicants seriously challenged the independence of political decision-makers, the Constitutional Court gave support to the ruling structures and their decisions. In other cases, conflicts between different legal instances have undermined the authority of the Constitutional Court and the predictability of decisions. There have been cases in which the Constitutional Court had overturned a decision of the Supreme Court only to have the Supreme Court confirm its decision in the repeat procedure, in open defiance of the Constitutional Court. Overall, the efficiency and transparency of the judiciary remains a problem that is frequently emphasised by both the international and the national stakeholders. “It is a widespread belief that judiciary is not independent, but under undue political influence and certainly there are cases in which this affects the proceedings, especially in cases of attacks on HRDs, if the authorities see that HRD as an enemy.”

The Ombudsperson is continuously improving their performance in the protection of human rights. However, the Ombudsperson rarely acts proactively, they only react very rarely ex officio in public to prevent or limit certain human rights violations. HRDs complain that the institutions are not fully respecting the Ombudsperson’s recommendations, but also see space for the Ombudsperson to underpin the protection issues.21 The Agency for Personal Data Protection and Free Access to Information ought to have a more proactive role in addressing the “silence of administration”, i.e. failure to make access to information of public interest available to the public, but this option has been eliminated with the last revision of the Law on Free Access to Information. The HRDs are also warning of the absence of proper data that is necessary to monitor different forms of discrimination, which also makes it difficult to assess the effect of existing policies and suggest improvements.22 They all feel that there is no reaction even when the provide evidence that certain institutions are failing to function properly. Importantly, some note that HRDs dealing with minority groups and direct provision of services to victims of human rights violations (e.g. LGBTI youth and victims of domestic violence) are more likely to find themselves personally under threat by members of victims’ or perpetrators’ family or friends, because “Montenegro is small and the social stigma is strong.”

Freedom of assembly

In 2017, the Ministry of Interior tried to forbid public gatherings in front of state institutions, but a concerted action of HRDs and civil society organisations managed to get this ruling repealed being a systemic violation of the right to freedom of assembly.23 The number of public gatherings increased and the number of those forbidden decreased. In 2018, there were 518 peaceful public gatherings, of which the police forbade seven and registered six public gatherings that were not announced in advance. The Montenegrin police and prosecution bodies failed to hold all perpetrators and those who ordered their actions accountable for the special August 2015 police torture case.24

In 2015, the Constitutional Court confirmed in three decisions that the investigation was ineffective,25 26 27 but the prosecution delayed raising new charges and the Police Directorate took no steps to internally sanction those responsible for the use of force, and completely failed to cooperate with the prosecution during the course of the investigations. One case is pending within the European Court for Human Rights.

According to the HRDs, fundamentally there are no real obstacles to the freedom of assembly. “However, the pressures are informal and people are aware of that and consequently they are reluctant to participate. For example, you can easily get a phone call, someone sends you a text message about the protest so there is no chance that the protest takes place. The authorities informed us beforehand.”

In 2018, the first steps were taken to put into practice the decision to introduce video surveillance in public places in several big municipalities, such as the Capital City of Podgorica, Nikšić, Bar, Budva, Kotor and Herceg Novi. This has been criticised as unnecessary interference into human rights, especially the freedom of assembly, as well as the fact that it is aimed at as a means for authorities to launch investigations into potential criminal acts and misdemeanours taking place in these spaces. The Ministry of Interior continued with the installations, expending considerable financial resources, even though

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4. VIOLATIONS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS’ CIVIL AND POLITICAL RIGHTS

The findings below do not represent a comprehensive collection of violations, but rather instances and situations identified through our research and interviews with HRDs – journalists, activists and NGO representatives from different fields. These cases have been selected to illustrate the challenges HRDs in Montenegro regularly face, including challenges stemming from the failure of responsible institutions to function properly.

The HRDs and journalists in Montenegro have divided opinions when it comes to their perceptions of freedom to express themselves or to report freely, and they vary from neither free nor restricted to very free. Journalists single out censorship as a major form of restriction in their work,28 29 30 and worry about the presence of self-censorship, which is a response to the fear of losing their job or of becoming subjects to harassment and threats. Some of them also point to the fact that their informants also practice self-censorship. They are rarely willing to share information with journalists. They are also concerned about the problems of administrative silence, bureaucracy, and difficulty of getting access to information. “We have a restricted access to data and interlocutors, especially when data are related to the allocation of public money, then getting officials to respond to our requests, etc.”

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they did not obtain the necessary authorisation from the Agency for Free Access to Information and Data Protection. This represents additional soft pressure measure to HRDs, and contributes to an overall climate of mistrust and fear which is detrimental for the work of HRDs.

**Freedom of association**

There are no formal obstacles to the freedom of association within the existing constitutional and legal framework and none of the HRDs reported any problems in this respect. However, it should be noted that in 2018 and 2019, some large and influential NGOs funded from abroad have been allegedly linked with George Soros, even though his foundation has not had an office in Montenegro for over a decade. Interpreting any association with George Soros as negative and using it as a means of discrediting NGOs is a strategy that has been present in the region since the 1990s but has never been widespread in Montenegro. In 2018 and 2019, however, the opposition coalition Democratic Front, which includes conservative and nationalist forces, has increasingly resorted to such rhetoric.

At the same time, smear campaigns led by the authorities in the pro-government media, labelled NGOs as ‘enemies of the state’ for their attempts to raise the red flag regarding the situation in Montenegro in their communication with the EC and other EU institutions, and the representatives of EU member states. Critically oriented NGOs were blamed for “trying to stop the accession negotiations” simply for trying to raise awareness of the problems and the lack of political will for Europeanisation on the Montenegrin side.

HRDs have been reporting of being subjected to ad-hoc financial and tax audits, which can sometimes take up significant resources from their work. For instance, in the last several years, Montenegro is introducing a legislation from which the Government, as Contracting Authority on behalf of the EU, allocates a part of the EU funds to NGOs. Beneficiaries from NGOs, known for the autonomous work, reported extensive and frequent on spot controls which are not applied with the EU funded projects but only by the Delegation in the country. Tax authorities who have the responsibility to perform controls, but this is done without any selection criteria and unevenly, resulting with some of the NGOs being inspected several times and the others not.

**Freedom of opinion and expression**

The freedom of expression is guaranteed by the Constitution and national legislation. Nevertheless, both HRDs and journalists note that freedom of expression is threatened in practice by the state’s failures to prosecute attacks on journalists and the media. This includes outright failure to identify the perpetrators, as well as the tendency to formulate the charges in such a way as to lead to low sentences or a shorter statute of limitations. The journalists consistently feel that some attackers have the protection of the authorities and feel threatened even by passing insinuations that they should stop the research or not publish their findings.

With amendments to the Law on State Symbols and the Statehood Day of Montenegro, the Government introduced certain restrictions on the freedom of opinion and expression, for example by prescribing sanctions for those who do not stand up during the anthem. Given that the motive behind this amendment was political, i.e. particularly targeting members of political movements and associations who have practiced such behaviour before, the amendment was accompanied by heated discussions on the proper balance between freedom of expression and legal certainty.

Generally speaking, HRDs and journalists agree that undue political influence on institutions, especially by the ruling political party, remains a major constraint. Such influence is exercised in order to secure the protection of the party and is contrary to the public interest and to the principle of accountability. Together with excessive bureaucracy, practice of administrative silence and overall lack of transparency, it can be difficult for HRDs to perform their work freely and effectively.

**Impunity for attacks on journalists**

Journalists further note that they exercise self-censorship in order to protect themselves from the negative public opinion, especially when it comes to human rights marginalized groups. “As journalists we face limitations created by the conservative outlook of the society which is not ready to accept some stories. Recently, a few days after the publication of an interview with a transgenders man, this person was violently attacked. So, you are put in a situation where you are reluctant to do such interviews because you are worried that both your interviewee and you yourself can be attacked. We are limited by the society and consumers of the reactions of the audience. But meanwhile somebody’s problems are not being solved.”

Comments on the news websites and social media remain the major space for attacks and hate speech. In 2018, a further “chilling effect” on the media came with the attempted murder of Olivera Lakić, journalist of daily Vjesni. Lakić was already physically attacked before and received threats in the wake of her stories which investigated cigarette smuggling. Despite the promises by the authorities and a strong investigation interest by the international community, the perpetrators were not brought to justice. The case remains unresolved.

**Gender aspects of the challenges and restrictions faced by HRDs**

All challenges faced by HRDs apply equally to WHRDs. In addition to this, however, WHRDs are also facing an environment which still does not recognize women as equal. Consequently, WHRDs are more likely to suffer attacks both for their work as WHRDs and as members of their gender, as evidenced by intense misogyny that characterized the recent smear campaigns against some WHRDs. These are also led by the pro-government media aiming to discredit their integrity and image in public, which is very important for effective work of WHRDs.

Montenegro was amongst the first countries to ratify the Istanbul Convention, but this has had little impact in practice when it comes to combating violence against women. Women still suffer due to the lack of accountability of the civil servants who fail to implement the law with due diligence. Such
practices are reflected in the policy of soft sanctions for family and gender-based violence, low levels of authorized protection for the victims and impunity for the perpetrators of violence. All of this undermines the efforts of WHRDs and reduces women’s access to justice. Implementation of the final conclusion of the CEDAW from July 2017 and October 2018 recommendation of GREVIO, the expert body for the monitoring of Istanbul convention, still represent a challenge.44

WHRDs say that the implementation of bylaws, such as the 2018 Protocol on preventing, acting and protecting of women from domestic violence and gender-based violence, is not done thoroughly. While there are no available statistics on the application of surveillance measures, HRDs widely believe that many among them are under surveillance and that such measures are deployed not only to investigate misconduct but also to collect information on the ‘critics of the government’. In at least one case, court verdict has confirmed this suspicion. More complaints are being investigated, as legal representatives of some media outlets, who had been instrumental in calling attention to the flaws in the police investigations into violence against journalists, discovered that they too have been put under surveillance, apparently in an effort to gather incriminating evidence that could be used to silence them. Meanwhile, the latest available report on the effects of these measures, submitted by the Ministry of Justice to the Parliamentary Committee for political system, judiciary and public administration in June 2015, found these measures to be fairly ineffective in obtaining evidence of actual criminal activity. 53

Still, the prosecution raised charges against only a very small percentage of persons that were under surveillance, with the aim of continuing to silence them 51 52

The right to effective remedy
In seeking effective remedy, as well as in their daily work, HRDs often face obstacles in obtaining the necessary documents due to delays or complete failure of institutions to fulfill their duties under the Law on Free Access to Information. The HRDs that we interviewed also pointed out that the Agency for Personal Data Protection and Free Access to Information is in a deadlock as it takes years for it to decide on their complaints, thus further violating legal deadlines and leaving HRDs and others without effective redress. More worryingly, the failure of institutions to act also extends to lack of effective prosecution of the attacks on journalists and media property. Similarly, slow and incompetent response was noted with regards to threats sent to the prominent HRDs. Far from being mere negligence, failure to act in these cases is a political statement, which sends the message that not all are equal before the law and that the laws do not protect all citizens.

HRDs’ influence and integrity
“After I openly criticised the institutions in charge on my Facebook profile and urged for assistance, they finally helped two elderly homeless persons. Immediately, the Centre for Social Work, the Ministry of Health, urgent medical aid, etc. got involved and they were hospitalised even though they did not have health insurance.”

This is especially common with WHRDs who deal with violence, rights of women and children, etc. WHRDs testify that they noted different and better outcomes of the court processes that they monitored. 

HRDs also point out the threat of emerging pro-government NGOs (so-called GONGOs), and the growing pressure by the authorities or persons linked to the authorities to silence them.

The problem of inconsistency in the implementation of sanctions is also recognised. Also, the sanctions for many forms of violations of human rights, even when applied, are too mild. In general, this contributes to the widespread culture of impunity of human rights violators.

Pressures by the authorities or persons linked to the authorities are often mentioned, although these are usually ‘softer’ compared to the pressures coming from anonymous persons who sometimes send threats via social media. In general, security risks persist, especially for HRDs working on LGBT+ persons, investigative journalists or highly vocal and critical actors.
The right to access and communicate with international bodies

In principle, there are no obstacles in access and communication with international bodies but the HRDs and civil society organisations that have the greatest impact in shaping the reports of these bodies, due to their long-standing reputation in the country, are also the ones that become targets of pro-government smear campaigns. Hence, raising awareness of the problems in Montenegro abroad is linked to negative consequences inside the country. In situations when domestic institutions act as gatekeepers, some HRDs report that their access to forums where their opinion could be heard by international representatives is restricted. For example, one HRD shared the experience of applying for the task of monitoring the implementation of the Istanbul Convention, which was to be conducted nationally by an expert body and reported to the UN. She is one of the best experts in this field, with extensive experience. She was told that her involvement would amount to obstruction, and her application was set aside.63

The right to access funding

A considerable number of donors have left Montenegro in recent years, and this constitutes a major limitation to the effectiveness of HRDs’ work, especially for those who are just getting involved or who are based outside the capital city. It also negatively impacts the flexibility of large NGOs and makes it more difficult for new NGOs to be established.

Membership fees and voluntary contributions from individuals or private entities, even though provided for in the Law on Non-Governmental Organisations, remain very rare in practice. In 2018, the Government introduced a decentralised funding system, within which ministries have their own budget and set funding priorities. In that manner, some EUR 3.3 mil were allocated to support 245 projects, with additional EUR 850,000 as co-financing for EU funded projects.62 This is mainly directed to support government’s policies and not actually favourable for HRDs and in addition this refers primarily to small-scale projects.

According to the HRDs, ad hoc financial audits have been used as a mechanism to put pressure on critically oriented NGOs.63 There are no reliable reports on the number of these controls. In a system as politicised and deeply captured by the party as the Montenegrin one, the fight to defend human rights is often interpreted as a political attack on these institutions and individuals, and they react “through the misuse of the institutions and pressures”.64

Discrimination in the distribution of funding

“Due to the views that I and the organisation I am leading expressed publicly, the organisation was deprived of access to the resources that remained available to other organisations for a long time. We felt direct consequences of our critical stance. The outcome is the fact that for 18 years we have been renting our offices and are the only organisation of people with disabilities in the country that was not provided an office by the state”.65

Gender aspects of the challenges in relation to assaults, harassment and restrictions of HRDs

The lack of education in the area of human rights, as well as of ethical and professional principles can also represent limitations to the work of HRDs, especially to WHRDs working on LGBTI issues, as well as to WHRDs working on gender-based crimes and hate speech and are not interested in learning about them. They also find that HRDs and civil society organisations are based outside the capital city. It also negatively impacts the flexibility of large NGOs and makes it more difficult for new NGOs to be established.

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Hate crime and hate speech cases based on gender and gender identity are starting to be processed. But WHRDs believe that representatives of public institutions are not familiar with specificities of gender-based crimes and hate speech and are not interested in learning about them. They also find that HRDs and civil society organisations are based outside the capital city. It also negatively impacts the flexibility of large NGOs and makes it more difficult for new NGOs to be established.

In addition to the general challenges to the right to access funding that all HRDs face, WHRDs face additional obstacles. The state is not allocating financial resources for support to specialised services for women and children that had experienced gender-based violence and domestic violence, and this is also not among the priorities of international donors. Thus, WHRDs and the NGOs they work for are constantly fighting for survival, and the support and services they offer remain confined to the larger cities and the central region of the country.

62 Interview No. 6, Civil Society Representative, 4/09/2019
63 Interview No. 9, Civil Society Representative, 4/09/2019
64 Interview No. 12, Civil Society Representative, 4/09/2019
65 Interview No. 13, Civil Society Representative, 10/09/2019
66 Interview No. 2, Civil Society Representative, 28/08/2019
67 Interview No. 3, Civil Society Representative, 28/08/2019
68 Interview No. 4, Civil Society Representative, 29/08/2019
69 Interview No. 5, Civil Society Representative, 29/08/2019
70 Interview No. 11, Civil Society Representative, 10/09/2019

No feedback or action upon reported threats

Threats to women are still not taken seriously enough. Recently, one WHRD received a threat which was directed both to her and to the organisation in which she works, because of her domestic violence protection work. This threat was reported to the police with request for priority as the person issuing the threat was already known as someone with a record of domestic violence. No response was provided to the WHRD.63

A similar experience was reported by a high-profile NGO activist who reported death threats in May 2018 and never got any response from the police on actions undertaken to investigate and sanction the person who sent her threats. Another WHRD filed charges for hate speech via the Internet and a few days after her charges were rejected, while a very similar report of Internet-based hate speech against a high governmental official happening around the same time was processed in the completely opposite manner.68
6. CONCLUSIONS AND RECOMMENDATIONS

Ensuring full enjoyment of human rights of all citizens is still a challenge in Montenegro. Significant progress has been made in setting up the legal framework for the protection of human rights, but there is still no political will to prioritize human rights and to place public interest above political party interests. Consequently, if political authorities concluded that support for certain rights would not endanger their position, progress could be made relatively quickly. This is the case, for example, with the rights of LGBTI+ persons, where the situation is considerably better than it was just five years ago. The authorities have provided support for the organisation of Pride, facilitated better legislation, more effective response of the institutions to fight homophobia and transphobia, etc. LGBTI+ activists have expressed satisfaction with the police protection activities. This is also a good example of the positive influence of the accession negotiations, in which the rights of LGBTI+ have been discussed as part of Chapter 23 (Judiciary and Fundamental Rights). Gender equality issues still remain not properly addressed.

No progress has been made on freedom of media and safety of journalists, despite the efforts of various stakeholders. While measures are being taken to ensure that the funds are allocated through a transparent process that allows enough time for all participants to submit applications, and is based on clear criteria and a robust system of evaluations, in order to provide accountability in the spending of taxpayers’ money through third-party contracts. Furthermore, the Government should also revise the way it conceptualizes the priorities of its funding programmes, which are currently too narrowly defined. While keeping them aligned with its own strategies and action plans, a part of the funding should be allocated for the protection of human rights and improvement of the rule of law more broadly, instead of focusing on very narrow, and sometimes very technical aspects of these issues, as is the case at the moment. This is to ensure that issues that might not be considered as priorities by the current administration, but for which there is a clear need and demand in the society can also be addressed. Related to this, the Government should also consider including more large grants in its schemes, most of which are currently focused on very small allocations related to narrow objectives. This would both decrease the administrative burden for the supervising authorities, and allow for actions with a meaningful scale.

Institutions and public agencies whose mandate includes cooperation with HRDs must safeguard the fact that they are included in the decision-making and policy shapings processes in a genuine and not only token manner. This would not only enable that their agenda is more inclusive, but also allow them to benefit from the substantial accumulated expertise of HRDs.

The Prosecutor’s Office and the Police Department must prioritise investigations of the attacks on journalists and media property, especially those cases that are approaching the statute of limitation. In view of the demonstrated reluctance of the national authorities to effectively pursue these investigations, the possibility of involving independent experts in these investigations should be explored.

The Prosecutor’s Office should ensure uniform application of criteria and practices for prosecuting attacking hate and speech in order to avoid different approaches to similar cases, especially when it comes to HRDs. This would raise public trust in the institution of Prosecutor’s Office, but also encourage HRDs to cooperate more directly with the Prosecutor’s Office, instead of investing effort to “wake them up” into action by raising complaints in the media.

Public sector bodies should be more proactive in publishing information and open to requests for free access to information. This would limit space for misconduct and raise public trust in the institution of Public Access to Information. Furthermore, the Agency for Personal Data Protection and Free Access to Information should be more effective in addressing complaints against institutions that fail to comply with the legal requirement to answer requests for information in due time, as its current performance casts its mission into doubt.

Authorities in charge of the public education reform should be systematically including human rights education into the formal curriculum to ensure broad acceptance of human rights and familiarity with the mechanisms for their protection. This would raise public trust in the institution of education, but also support HRDs’ actions. Furthermore, the Agency for Personal Data Protection and Free Access to Information should be more effective in addressing complaints against institutions that fail to comply with the legal requirement to answer requests for information in due time, as its current performance casts its mission into doubt.

HRDs also note that institutions are reluctant to acknowledge their work, even where their contribution and expertise is indisputable, which also means that they are trying to avoid including HRDs in institutional activities or in advisory bodies. WHRDS report that even institutions which are supposed to protect victims of domestic violence have obstructed some of the court and other proceedings that they have initiated. They also point to the cases in which they received full public and rhetorical support, but not actual help in the follow-up proceedings.

Based on the research results, we make the following recommendations:

### National authorities

- The public officials must stop depicting HRDs as enemies of the state for merely exercising their right to express a dissenting opinion. By doing this, they would ease the existing tensions in the relations between the authorities and HRDs, which is also the precondition for the establishment of the much-needed dialogue and cooperation to rectify regulatory and institutional failures identified in this report.
- The Government should revise its funding programmes and ensure that the funds are allocated through a transparent process that allows enough time to all participants to submit applications, and is based on clear criteria and a robust system of evaluations, in order to provide accountability in the spending of taxpayers’ money through third-party contracts. Furthermore, the Government should also revise the way it conceptualizes the priorities of its funding programmes, which are currently too narrowly defined. While keeping them aligned with its own strategies and action plans, a part of the funding should be allocated for the protection of human rights and improvement of the rule of law more broadly, instead of focusing on very narrow, and sometimes very technical aspects of these issues, as is the case at the moment. This is to ensure that issues that might not be considered as priorities by the current administration, but for which there is a clear need and demand in the society can also be addressed. Related to this, the Government should also consider including more large grants in its schemes, most of which are currently focused on very small allocations related to narrow objectives. This would both decrease the administrative burden for the supervising authorities, and allow for actions with a meaningful scale.
- The Government should cooperate more with one another, including on the promotion of public dialogue on the position and potential of HRDs, as the interviews have indicated current levels of cooperation to be insufficient. This would strengthen linkages and trust between them and further contribute to the raising of public awareness of their work.
- HRDs should better coordinate the initiatives that aim at policy changes in order to achieve broader support of other actors within the civil society, the media, etc. and thus not only mobilize more effective support for their initiatives, but also build consensus about the necessity and importance of their work.
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Media

- Ensure effective coverage of the issues of public interests that objectively present the work of HRDs instead of focusing on sensationalist stories and clickbaiting. This would contribute to raising the awareness of the complexity of their work but also to disseminating successful stories of HRDs which can be motivating for other stakeholders.
- Strengthen self-regulatory mechanisms in order to limit unprofessional reporting, especially non-sensitive vocabulary towards minorities, hate speech or fake news in all forms.
- Cultivate closer relations with HRDs. This would not only secure the journalists’ access to credible sources, but also provide them with a way to learn more about human rights and the way to report about them in a sensitive manner.
- Be consistent in covering cases of human rights violations, ensuring adequate follow-up, and build up the capacities of journalists to cover this area. This will substantially raise the quality of their reporting as well as contribute to the process of sensitizing the country’s population in regard to human rights. Furthermore, it would also highlight deficiencies within the institutional framework and mobilise support for HRDs’ advocacy actions.

International community

- Continue to provide and increase political, technical and financial support for HRDs and resist the pressures by authorities to withdraw support. International support remains essential to HRDs in the conditions where public funds and institutions are very far from providing an alternative. Public support of HRDs by the international actors also represents a significant factor of HRDs’ safety, continuity of their work, which is crucial for all beneficiaries of their actions, and providing an enabling environment for their advocacy actions.
- Be aware of the reversibility of reforms in the domain of human rights and the rule of law, as well as the gap between formal alignment and practice, and place Montenegro back to priority funding areas. This would contribute to the much needed support for HRDs to implement actions for which there is a demonstrated social need, and which are not included in the government’s programmes, and thus help mitigate some of the regression taking place in a number of areas.
- Meet regularly with HRDs when visiting the country in the official capacity and make the information from these meetings available to the public. This will signal to the authorities that the international community considers HRDs to be an important element of the national system for the protection of human rights and facilitate their acceptance as partners.
- The EU should use the mechanisms available within the accession process more proactively and effectively in order to ensure that Montenegrin authorities work comprehensively towards building a functional system based on the rule of law, ensuring a better environment for the work of HRDs and contributing to the building of the culture of human rights.
Human Rights Defenders in the Western Balkans

North Macedonia
EXECUTIVE SUMMARY

The legal framework and the accompanying mechanisms of relevance for the work of human rights defenders (HRDs) are in place, but significant challenges remain regarding the implementation of the laws. HRDs had reported the lack of awareness of the state institutions concerning the concept of human rights, lack of capacities for implementation of the laws in terms of relevant protocols for dealing with delicate situations and lack of sensibility for HRDs, their work and their target groups. The term human rights defender does not exist in the national legislation. There is no special mechanism for their protection. HRDs also report limitations in the exercise of the freedom of assembly, right to protest, freedom of access to information, and the freedom of opinion and expression.

The seriousness of the hate speech and hate crime is not widely recognised by the judicial institutions and the police. The institutions lack a system of monitoring of hate speech on social media, which leaves the bulk of the hate speech unsanctioned. Death threats and other threats are not processed accordingly and the HRDs are left to fend for themselves in these situations. Some HRDs reported being under protection from international organisations due to present danger to their lives.

HRDs reported physical attacks and attacks on their private property. On several occasions, the LGBTI Support Centre in Skopje was damaged and HRD's office was robbed. Even several years after, the attackers of the LGBTI Support Centre in Skopje are not yet identified.

Women human rights defenders (WHRDs) report numerous cases of sexual harassment and threats of sexual violence and rape. Lesbian WHRD faced challenges in the exercise of the freedom of assembly. The WHRDs face physical assaults during feminist events. The relevant institutions do not seriously consider the crimes that are committed against women, disregarding also the phenomenon of femicide. WHRD also face challenges in relation to pregnancy leave. Society's perception of gender roles on occasions devalues the work of the WHRD.

All of the above-stated challenges are aggravated by the inconsistent rule of law. This affects every HRDs case individually and their human rights work in general. Because of this, we propose a set of recommendations directed to the national authorities, the media, human rights defenders, and the international community.

1. INTRODUCTION

The work of human rights defenders (HRDs) is undoubtedly challenging, demanding and delicate in every corner of the world. However, in a developing country such as North Macedonia, which has experienced great socio-economic challenges, ethnic tensions, discrimination, paternalism, and environmental and political instability, it is particularly challenging. HRDs have reported the lack of awareness of the state about the concept of human rights, lack of capacities for implementation of the laws in terms of relevant protocols for dealing with delicate situations and lack of sensitivity for HRDs, their work and their target groups. The term human rights defender does not exist in the national legislation. There is no special mechanism for their protection. HRDs also report limitations in the exercise of the freedom of assembly, right to protest, freedom of access to information, and the freedom of opinion and expression.

The seriousness of the hate speech and hate crime is not widely recognised by the judicial institutions and the police. The institutions lack a system of monitoring of hate speech on social media, which leaves the bulk of the hate speech unsanctioned. Death threats and other threats are not processed accordingly and the HRDs are left to fend for themselves in these situations. Some HRDs reported being under protection from international organisations due to present danger to their lives.

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Women human rights defenders (WHRDs) report numerous cases of sexual harassment and threats of sexual violence and rape. Lesbian WHRD faced challenges in the exercise of the freedom of assembly. The WHRDs face physical assaults during feminist events. The relevant institutions do not seriously consider the crimes that are committed against women, disregarding also the phenomenon of femicide. WHRD also face challenges in relation to pregnancy leave. Society's perception of gender roles on occasions devalues the work of the WHRD.

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2. GENERAL CONTEXT ISSUES

HRDs in North Macedonia face great challenges related to the exercise of their civil and political rights. The HRDs that we interviewed reported having faced harassment, assaults, threats and other forms of pressure in relation to their human rights work. They were either personally threatened, or threats were made to their families or close friends. Working in an unsafe and unpredictable environment greatly impacts the personal life and the family lives of the HRDs, and it impacts their work and motivation to continue doing it. The general issues which the country has with the rule of law adversely impact HRDs as well, especially by manifested low capacities of enforcement and judicial institutions.

The environment for human rights work is challenging and in general not very understanding of the work of HRDs. Namely, the WHRDs are constantly faced with hate speech and discrediting on social media which peaked in the period 2016-2017. At the same time, the then governing party launched the so-called “desorosisation” process which targeted, inter alia, HRDs, escalating into life-threatening situations. Funeral wreaths were sent to journalists, people were assaulted in public places, and extraordinary financial controls on a large scale were used by the authorities to apply pressure.

In February 2015, the leader of the (then) opposition revealed that about 20,000 citizens were illegally wiretapped, including around 100 journalists and activists. The wiretapping scandal is one of the biggest scandals and large-scale violations of human rights in the history of the country since 1991. It was a result of a spark that led to the largest protests for human rights and the rule of law in the country, which broke out in 2015 under the banner of “Proteststram” (Eng. I protest) and in 2016 as “Sarena revolucija” (Eng. Colourful revolution).

After the election of the new Government in May 2017, the HRDs working environment has slightly improved. But...
HRDs still face issues due to systemic weaknesses and shortcomings with the implementation of the laws. HRDs reports of threats and attacks are not followed through, investigations are not thorough, and hate speech on social media is sanctioned on the basis of the laws. HRDs face sexual insults, threats and challenges during and after pregnancy rooted in warp, non-sensitized employers and many other manifestations of the entrenched patriarchy.

Prior to May 2017, during the rule of Gruevski and the ‘suspension of democracy’49 alive in other places in the world,1 the mushrooming of GONGOs (government organised NGOs) started hand in hand with the birth and strengthening of a conservative religious movement. As in other places in the world, they are a tool for the state: they are well organised and well paid. The HRDs and especially of NGOs working on human rights, and they are connected with global religious foundations or associations.50 The UN Working Group on Discrimination against Women and Girls51 warned about the fact that this movement particularly concerning gender equality and women’s rights and women’s empowered.52 At the national level, the strength of this movement was demonstrated in the way it acted in support of the government agenda for restricting the right on abortion and redefinition of gender relations. HRDs, as a part of this agenda cannot penetrate with the new government. For now, it is maintained through religious conservative actors. This was visible in the counter-Pride march, organised by the ‘Sojuz za život’ (Eng. Union for Life) - presented as ‘an informal association of NGOs, informal groups working towards conservation of traditional family and marriage’.53 Thus, it remains an important contextual issue for gender equality.

In the interviews with the HRDs, additional issues arose outside of the two main frames that we have focused on (specifically, the violations and restrictions of civil and political rights, and the assaults harms and restrictions of HRDs). These issues concern the general context and include: social security issues, consultation mechanisms (without access to information), and very limited resources. We will discuss these here in turn. Firstly, according to our interviewees, the context is marked by social insecurity. While this is an issue for many

32  the
25 Acceded by succession on 18 January 1994
22 Interview No.15, Civil society representative, 06.09.2019, Interview No.12, Civil society representative, 29.08.2019.
23 Interview No.14, Civil society representative, 23.08.2019, Interview No.7, Civil society representative, 26.08.2019.
34 Entered into force on the 10th of April 1997
32  the
31  the
20 The international bodies have been monitoring the implementation of these documents. One of the latest such reports is the Report of the Working Group on the 28th of July 2019.29 The government, in the Report of the United Nations High Commissioner for Human Rights report of 2017, explicitly states: ‘We have worked towards the establishment of a legal framework for the protection of human rights defenders. These efforts have resulted in the adoption of the law on free access to information in 2019’.30
30 Macedonia’s situation was mentioned as a case study in the 2014 Report of the Working Group on the Implementation of the UN Convention on the Rights of the Child 31
22 Interview No.15, Civil society representative, 06.09.2019, Interview No.12, Civil society representative, 29.08.2019.
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31 For example: David Fabre, Multinational Corporations and Human Rights: Obligations, Challenges and Solutions (Rowman & Littlefield International 2017); Mieke Verloo (ed), Varieties of Opposition to Gender Equality in Europe (Routledge, Taylor & Francis Group 2018). 8 This global trend has been heavily discussed, including from the perspective of South-East Europe. See, for example: David Fabre, Multinational Corporations and Human Rights: Obligations, Challenges and Solutions (Rowman & Littlefield International 2017); Mieke Verloo (ed), Varieties of Opposition to Gender Equality in Europe (Routledge, Taylor & Francis Group 2018).
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to freedom of association, right to communicate with international bodies, the right to freedom of opinion and expression, right to protest, right to develop and discuss new ideas in the area of human rights, right to an effective remedy in case of violations, right to funding and other financial resources. The constitutional provisions and the laws such as the Law on Associations and Foundations, the Law on Prevention and Protection Against Discrimination and the Law on Equal Opportunities for Women and Men, as the basis for equal treatment; the Law on Public Assembly providing for facilitation of the right to freedom of assembly and the right to protest; the Law on Protection of Personal Information, the Law on Civil Procedure, the Law on Whistleblowers and other relevant laws.  

Although the relevant legal framework may be in place, the implementation is lacking. This is coupled with the low efficiency of the work of the institutions. Our findings show that the interviewed HRDs agree that the main issues and challenges in their work are the efficiency of the institutions and the implementation of the laws. To address these, some of the representatives of the NGOs helped certain institutions develop protocols on how to deal with certain categories of people or groups in their everyday work, but this was done mainly in order to help their target groups, and not themselves.

Asked whether there is need for explicit recognition of the status of HRDs under the law, most of the respondents stated that such a category is not needed. What would greatly help with creating a much more suitable and environment for human rights work is that the laws in place are implemented and that the institutions would have the capacity to enforce these laws.

The legal framework related to protection and prevention is applicable for each citizen equally and is in line with the general international standards. In most cases, the HRDs in their work turn to the CPPD and the Ombudsperson. The HRDs can use the CPPD to file claims on discrimination based on the grounds stipulated within the Law on Prevention and Protection from Discrimination. On the basis of the claims, the Commission can initiate procedure to ascertain discrimination in the cases and this can be later used as a proof of discrimination in the court procedures. The Commission does not have a reputation of a professional institution, rather the HRDs see it as a body with politically appointed commissioners which makes it biased and dependent on the parties. The reputation of the Commission plummeted when, in the processing of the asylum claim of the runaway former Prime Minister Nikola Gruevski in Hungary, one of the key evidence for granting him asylum was the Commission’s Opinion from November 5, 2018. In this highly disputed Opinion, the Commission found that Gruevski was subjected to direct discrimination on grounds of personal and social status in the area of justice and administration. In addition, six months after the new Law on Prevention and Protection from Discrimination was adopted, the new commissioners are still not elected, even though the public call ended four months ago. Since the mandate of the old commission ended three months after the entry into force of the new law, at the moment of writing, there is no functioning equality body.

The Ombudsperson has wide spectrum of competences relevant to the work of the HRDs. The institution protects and promotes the exercise of human rights and HRD’s file claims when their rights are violated by the institutions. Namely, the Ombudsperson, based on the Law on the Ombudsperson can get an insight of the procedures conducted by the institutions which are of concern to the party concerned. Therefore, the Ombudsperson can check the legality of the procedures which have been carried out, assess the individual case and point out the mistakes of the institutions. The Ombudsperson’s reputation at the interviewed HRDs is much better than the Commission’s; the institution is generally perceived as a professional body. According to the Ombudsperson’s report, in 2018, the institution Ombudsperson processed 4,482 applications in total, out of which 3,458 applications submitted by 3,654 applicants were new. Most of the applications were lodged against violations of rights by public servants and institutions, i.e. 1,374 (39.7%), then applications against violations of rights by the central authorities 1,140 (32.78%) and 345 (9.98%) lodged against violations committed by local authorities.

43 Assembly of the Republic of North Macedonia (n 36).

44 Assembly of the Republic of North Macedonia (n 37).

45 Law on Whistleblowers (Article 3).

46 Although, it would be good to introduce it as an aggravating circumstance in cases of violations, restrictions or attacks to HRD’s work.

47 Law on Whistleblowers (Article 3).

48 Law on Whistleblowers (Article 3).

49 Law on Whistleblowers (Article 3).

50 Law on Whistleblowers (Article 3).


52 Assembly of the Republic of North Macedonia (n 36).

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54 Assembly of the Republic of North Macedonia (n 36).

55 Law on Whistleblowers (Article 3).

56 Law on Whistleblowers (Article 3).

57 Law on Whistleblowers (Article 3).

58 Law on Whistleblowers (Article 3).

59 ibid Чл.4.


62 These include national and regional roads, railways, overcrossings, but more controversially for the national context - the seats of the Parliament and the

63 Article 384 and 385 of the Criminal Code which provide legal ground for this criminalisation remain a key obstacle.

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65 Assembly of the Republic of North Macedonia; “Standing Inquiry Committee for the Protection of Civilian Freedoms and Rights” – a formal Parliamentary body, the “Women’ MPs Club” and the inter-parliamentary group for LGBTI –informal Parliamentary body. The amendments are somewhat controversial and potentially in contradiction to the Constitution.

66 Third, it expands the list of prohibited items from drugs, alcohol and weapons, to also include any means for covering the face, the head and other making it difficult to identify the persons.

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The Parliament has a Standing Inquiry Committee for the Protection of Civil Freedoms and Rights. This body considers issues regarding general questions, proposals and opinions concerning the implementation of the provisions of the Constitutional laws and the relevant international laws, such as the Law on Associations and Foundations, the Law on Prevention and Protection Against Discrimination and the Law on Equal Opportunities for Women and Men, as the basis for equal treatment; the Law on Public Assembly providing for facilitation of the right to freedom of assembly and the right to protest; the Law on Protection of Personal Information, the Law on Civil Procedure, the Law on Whistleblowers and other relevant laws. The Parliament can serve as a basis for initiating a procedure for accountability of public office-holders. Generally, over the years this body has been largely inactive on human rights issues. Violent incidents on these issues can largely contribute to resolving the HRDs challenges. In addition to these, there are also the “Commission on Equal Opportunities of Women and Men” – a formal Parliamentary body, the “Women’ MPs Club” and the inter-parliamentary group for LGBTI –informal Parliamentary bodies. These formal and informal parliamentary bodies can serve as entry points for opening discussions in the Parliament on HRDs, including WHRDs and HRDs working on LGBTI+ issues.

The key institutions for protection are the police and the judicial institutions i.e. the courts and public prosecution. As one HRD states: “If you have a well-established prosecution and judiciary, you don’t need other safeguards for the protection of human rights.” While these can be considered as generally in line with international standards, some serious obstacles remain. A key obstacle is what has been labelled as ‘criminalisation of protests (meaning) the police can detain any participant that is part of an assembly that committed a crime, under the basis for criminal charges ‘participating in a crowd that prevents an official in performing an official duty’ and ‘participation in a crowd that commits a crime’.” Articles 384 and 385 of the Criminal Code which provide legal ground for this criminalisation remain in force. This has been criticised by the EC, stating that “no new legal safeguards were introduced regarding the provision on ‘participation in a crowd which commits a crime’ during the process of amendments to the Criminal Code.”

The freedom of assembly and the right to protest is guaranteed by the Constitution and the Law on Public Gatherings. For example, it is not obligatory to seek approval or to announce a protest unless the organiser assesses that there would be security risks, and in this case the announcement serves to notify the police for undertaking security measures. Yet, under the law, the organisers are responsible for the safety of the people and the safety in public places, and they are to organise either private security or pay the police for the operative costs.

In October 2019, the Government proposed amendments to the Law on Public Gatherings which is currently in parliamentary procedure. The amendments are somewhat controversial and potentially in contradiction to the Constitution. Initially, the changes redefine public gatherings on the basis of the number of persons, extending the current number of persons from 20 to 100 persons. However, it significantly expands the list of prohibited items, drugs, alcohol and weapons, to also include any means for covering the face, the head and other making it difficult to identify the persons. Other controversial novelty is the level of the burden placed on the organisers of the assembly in terms of maintaining order and responsibility for the damages, which also include having to hand over persons to the police.

While these while can be considered as generally in line with international standards, some serious obstacles remain. A key obstacle is what has been labelled as ‘criminalisation of protests (meaning) the police can detain any participant that is part of an assembly that committed a crime, under the basis for criminal charges ‘participating in a crowd that prevents an official in performing an official duty’ and ‘participation in a crowd that commits a crime’.” Articles 384 and 385 of the Criminal Code which provide legal ground for this criminalisation remain in force. This has been criticised by the EC, stating that “no new legal safeguards were introduced regarding the provision on ‘participation in a crowd which commits a crime’ during the process of amendments to the Criminal Code.”
The interviewed HRDs reported that in general there are no serious challenges in exercising this freedom. None reported issues with announcing a protest, as a procedure. But the interviews reveal that challenges have occurred during the protests. The HRD that reported issues were intercepted by the police on certain occasions due to security risks.

Removing the HRDs instead of the perpetrators

“We asked for an event permit, ‘(Name of event undisclosed)’. And how wonderful that event was. Many lesbians that we have never met before, came, we didn’t know of them, they brought food, made...”

Some HRDs that work in the field of journalism raised an issue, which arises from the lack of regulation by the authorities. Some HRDs who work in the field of journalism reported that they feel neither free nor restricted in exercising their freedom of opinion and expression. Therefore, the state and lack of self-regulation by the online media. According to one of the HRDs we talked to, it results in unfair competition between the journalists who work in the traditional media and those journalists who own news web portals. The dichotomy does not clash with the need to ensure a certain level of freedom of expression. As the freedom of expression can also be limited when an HRD would publicly express an opinion which would receive disapproval from public authorities. The HRDs would then face threats, public discrediting on social media, public attacks and would attract lynch mobs. The feeling of ‘not being restricted’ is due to fearlessness of the HRDs to raise and work on human rights issues during any government, yet also due to the more favourable climate under the current Government. However, it should be added that some interviewees pointed out that over many ties between HRDs and persons in the government, based on kinship or clientelism, and fresh memories from the repressive past (prior to May 2017), have fostered in criticism and a practice of self-censorship.

Self-censorship

One HRD who works as a journalist feels self-restricted to express his thoughts in fear that his criticism of the current Government can aid the main opposition (former ruling) conservative party to come back to power. This party comeback would mean repeating the history of many restrictions and violation of the Constitution. This is not perceived as the loss of political affiliation to a certain party, but as fear of helping the “bigger evil overcome the lesser evil.”

Some HRDs who work in the field of journalism raised an issue, which arises from the lack of regulation by the state and lack of self-regulation by the online media. According to one of the HRDs we talked to, it results in unfair competition between the journalists who work in the traditional media and those journalists who own news web portals. The dichotomy does not clash with the need to ensure a certain level of freedom of expression. As the freedom of expression can also be limited when an HRD would publicly express an opinion which would receive disapproval from public authorities. The HRDs would then face threats, public discrediting on social media, public attacks and would attract lynch mobs. The feeling of ‘not being restricted’ is due to fearlessness of the HRDs to raise and work on human rights issues during any government, yet also due to the more favourable climate under the current Government. However, it should be added that some interviewees pointed out that over many ties between HRDs and persons in the government, based on kinship or clientelism, and fresh memories from the repressive past (prior to May 2017), have fostered in criticism and a practice of self-censorship.

The HRDs that work in the field of association reported that the party would fight for the “desorosisation” process, as this is a process...
Gender aspects of the challenges and restrictions in relation to violations and restrictions

The already discussed that violations and restrictions of the civil and political rights are also applicable to women HRDs. For example, the reported violations and restrictions concern, predominantly from WHRDs, such as regarding the freedom of assembly. In these cases, the violations of the freedom of assembly of lesbians come to the front as a particular strand. For both, the restrictions took place a) at the event location. In one case, instead of removing the perpetrators, the police instructed the WHRDs to leave.

WHRD work is additionally burdened by “the attitudes and values” in the society, and also by “everyday micro-injustices” for dealing with prevention and protection of HRDs. One interviewee pointed out that, if the country is under a regime restrictions, and the specific position of WHRDs in relation to this. They emphasise that the position of each HRD is not the same, even among WHRDs. An interviewee highlighted the importance of any intervention in the protection of WHRDs. The offices advised him to work not in the community, but a lesbian, feminist, with a disability already adds more grounds for insecurity and endangerment. These nuances are not taken into consideration by the institutions, when WHRDs approach them on matters related to their human rights work.

5. ASSAULTS, HARASSMENTS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS

HRDs report assaults, harassments and restrictions, as well as numerous challenges. But the most challenging issues, which are systemically and publicly underpinning the threats, are the threats on a daily basis. We discuss the right to be protected, the right to an effective remedy, the right to access to information and communication with international bodies, and the right to access funding. Finally, we highlight the gender aspects of the assaults, harassment and restrictions, and the specific position of WHRDs in relation to this.

The right to be protected

North Macedonia does not have a special mechanism devoted to the protection of HRDs. The category ‘human rights defender’ is also not recognised within the legislation. For some interviewees, recognising such a separate category would be a complicated process in terms of defining who can be an HRD and what makes a person a HRD.96

Violations and restrictions

In North Macedonia, there are “very deep stereotypes and stigmatization and systematic abuses against particular different groups, and when you have such opposition from the state, it is normal that the human rights job is more difficult to exercise.” The dominant gender norms shape the gender roles perceptions which, in turn, can devalue the work of WHRDs.

These gender norms impact the attitudes of HRDs themselves; so, as one interviewee had shared, she experienced discrimination by her colleagues in relation to her activism and the fact she is a mother.94 Other HRDs reported that they have faced obstacles from raising LGBTI issues in larger protests, even when the concept of the protest was such that a different social issue was raised at each protest. Our interviewee explained about one such situation when they had to struggle with another group to get a banner with a sign “Silence=Death” at a protest in order to mark the day against transphobia, homophobia and biphobia. They were told they can carry the banner, but it has to be placed somewhere in the back. Our interviewee disagreed with this, saying “at this anti-regime protest we have to fight for all issues, we cannot prioritise, all oppressions are equal.”93

WHRDs also indicate the importance of taking into consideration the intersectional elements in the lived experiences of WHRDs. They emphasise that the position of each HRD is not the same, even among WHRDs. One interviewee highlighted the importance of any intervention in the protection of WHRDs. The offices advised him to work not in the community, but in the camps because “the feminists, especially those that do not belong to the majority community” have been facing specific challenges. “Just as discrimination is intersectional and comes in multiple layers, it is the same with the feminists. […] But a lesbian, feminist, with a disability already adds more grounds for insecurity and endangerment.” These nuances are not taken into consideration by the institutions, when WHRDs approach them on matters related to their human rights work.

The only viable “mechanism” were some actions and the support from international organisations. One HRD reports: “At a time when we had [financial] controls and it was extremely dangerous for us, the OSCE called me every week to talk and ask me if something was happening. As for other mechanisms, there is not such a mechanism in Macedonia.”95

In terms of assaults, the reported assaults by the HRDs can be divided into physical and verbal assaults/harassment. One HRD reported a physical assault during the local elections in one of the municipalities in Skopje. She did not want to initiate a formal procedure against her attacker due to lack of trust in the police system. In time, she was also a victim of verbal threats and her office was vandalised on several occasions.91 Some years back, damage to property was also reported in relation to the organised attacks on the LGBTI Support Centre in Skopje, in 2013 and 2014, respectively, of which the greatest case of physical assault on an HRD was in June 2019.90

The public prosecution and the police did not identify the attackers for the 2013 and 2014 cases, while for the case in 2019 the attacker was identified and sanctioned. Some HRDs reported cases of breaking into their cars and stealing their laptops. In these cases the police were unable to find the perpetrators, the possible motives for stealing the laptops is to steal the information from the HRDs.92

The police do not react to death threats

One particular case that made an impact on the life of an HRD was when anonymous death threats against himself, his family and his property were received over a short period of time. The HRD reported the threats to the police department in Skopje where they were addressed directly.90 Another interviewee shared that she considered that “the feminists, especially those that do not belong to the majority community” have been facing specific challenges. “Just as discrimination is intersectional and comes in multiple layers, it is the same with the feminists. […] But a lesbian, feminist, with a disability already adds more grounds for insecurity and endangerment.”

There are also other reports of death threats to journalists by criminal and high-level politicians. The threats are not only targeted towards the HRDs, but also towards their families, friends and property. As mentioned before, a journalist reported being placed under protection by an international organisation because of danger related to her investigating a story on illegal international arms trade.93

There are reports of public discrediting of HRDs, who are affiliated with or working in NGOs. Many HRDs reported verbal insults and challenges, which they subjected to discussing social media on the basis of false information. This can be related to the fact that the HRDs are helping migrants, because they are a LGBT+ person, or even because they are stating facts that do not suit the views of any given political party. This sometimes turns into hate speech. While hate speech is a crime in its own right, it can also turn to hate speech. This fact is not properly addressed by the institutions, including the Public Prosecution. This office, which based on the Criminal Code, should or ought to prosecute hate crimes. Even though some HRDs reported cases of hate speech to the Public Prosecutors Office, the prosecutors are not interested to act in processing the cases, and neglect their seriousness. They deal with hate speech as a motive but only once it had reached a criminal act.98

Previous instances of threats and hate attacks on journalists and public figures whose political attitude was opposite from the political parties in power. More recently, the hate speech was on the rise in relation to the ‘name change referendum’ and to the Skopje Pride. The issue is especially relevant on social networks. Still, the victims of hate crimes based on sexual orientation and gender identity have not felt confident to report it to the competent institutions due to history of impunity and inaction by the institutions, or inappropriate identification.

HRDs are also victims of discrimination, which is seen in the increase of attacks on human rights defenders. In Skopje, in June 2019, an HRD, who works as a journalist was under protection for four months by the Organized Crime and Corruption Reporting Project because her life was in danger in relation to an investigation she was undertaking.94

90 Interview No.10, Civil society representative, 26.08.2019.
91 Interview No.11, Civil society representative, 26.08.2019.
92 Interview No.11, Civil society representative, 26.08.2019.
93 Interview No.11, Civil society representative, 26.08.2019.
94 Interview No.11, Civil society representative, 26.08.2019.
95 Interview No.11, Civil society representative, 26.08.2019.
96 Interview No.11, Civil society representative, 26.08.2019.
97 Interview No.9, Civil society representative, 23.08.2019.
98 Interview No.10, Civil society representative, 26.08.2019.
The right to effective remedy

The legal framework foresees legal remedies for prevention and protection from various challenges related to the HRDs and their work. As discussed thus far, their effectiveness is disputable. Some of the HRDs have not reported the personal threats or physical assaults to the police. Those who reported their cases to the police have not seen effective results. As mentioned before regarding the cases reported, the attackers on the LGBTI Support Centre were not apprehended. In some cases, it is not clear if perpetrators were apprehended or if the cases were closed. The HRDs reported that they have communicated with police inspectors, but they are not taken seriously.

Systemic intersectional discrimination

The interviewed HRDs did not report any obstacles or challenges when communicating with international bodies. Namely, they have communicated with international organisations, as previously mentioned.

The right to access funding

The funding and establishing of NGOs is regulated by the Law on Associations and Foundations. In addition to other procedures and key elements, the law stipulates the funding of the NGOs which can be accomplished by membership fees, charity contributions, voluntary contributions, donations, gifts (in cash, goods, property rights), endowment funds, savings, savings accounts, activities rents, as well as investment income, dividends, interest, loans and other income in accordance with the law and the statute of the organisations.

The right to access and communicate with international bodies

The interviewed HRDs do not report any obstacles when dealing with HRDs. The capacities for dealing with hate speech and hate crime must be strengthened. These technologies should be tailored keeping in mind the particular personal characteristics or statuses of the HRDs such as disability, gender, also being sensitive to cases where these characteristics or statuses are at play simultaneously, when they combine or intersect, as in the cases of women HRDs with disabilities.

There is systemic discrimination, systemic crime, especially when it comes to people with disabilities. When we as human rights defenders are victims the state usually covers it up (the cases), using loopholes in the existing legislation. The hate crime towards people with disabilities is not recognised.

Gender aspects of the challenges in relation to assaults, harassments and restrictions of HRDs

Almost every WHRD who was interviewed faced challenges in their work in terms of sexual harassment and threats of sexual violence and rape at least once, while the men did not report such challenges. Incidence of sexual harassment and violence is much higher against women than against men. One of the interviewees working in the field of investigative journalism received rape threats over an extended period of time by high public officials, including owners of large companies. Other HRDs reported threats and aggressive attacks by young men when they organised feminist events. These attacks were organized exclusively by ‘4chan alt-right’ groups and boys and men who are 12 to 20 years old. It is to be believed that these groups are additionally motivated by a right-oriented extremist narratives.

There are reports from WHRDs that the crime motivated against women are not taken seriously by the police. Namely, femicide is not recognized in the National Criminal Code but it is related to the hate crime which is prosecuted ex officio. The issue arises when neither the police nor the public prosecutor recognize the hate crimes against WHRDs. In addition, neither the processing nor the penalties reflect the particularly aggravating circumstances in these cases, and thus do not discourage future potential attackers. In the time of ‘desorosisation’ as explained above, many WHRDs were publicly discredited for doing their job. They were mocked on social media and one WHRD even reported that the police were looking for her at her home address. They are also frequently subject to public discrediting.

There is not a single prosecuted case for hate crime based on gender, gender identity or sexual orientation. Also, the representatives of the institutions are neither sensitised nor familiar with the particularities of these characteristics, nor modalities they should use to adjust their actions, including the police. Part of the issue lies in education and training of the police; as one interviewee underlined, the curricula at the Police Academy itself is full of homophobic and transphobic content. Transwomen face additional obstacles, since transpersons are openly humiliated and even thrown away from police stations when they want to report a crime.

Finally, although all HRDs reported issues in securing funding for their activities, the prevailing gender norms result in a higher degree of scrutiny being applied to women. As one of our interviewees had said: “Our organisation is predominantly female, and one of the challenges which we constantly face when we negotiate with donors, or another step, is that they look differently at women; you need to prove that you can do better than if you were a man.” Another interviewee highlighted that WHRDs and the organisations working on gender equality in general have been punished aside and receive less and less funds from both domestic and foreign donors. This is a worrying trend which has already been noted in other research on WHRDs.

110 Interview No.2, Civil society representative, 21.08.2019.
111 Interview No.5, Civil society representative, 21.08.2019.
112 Interview No.6, Civil society representative, 21.08.2019.
113 Interview No.7, Civil society representative, 21.08.2019.
114 Interview No.8, Civil society representative, 22.08.2019.
115 Interview No.9, Civil society representative, 22.08.2019.
116 Interview No.10, Civil society representative, 26.08.2019.
117 Interview No.11, Civil society representative, 26.08.2019.
118 Interview No.12, Civil society representative, 29.08.2019.
119 Interview No.13, Civil society representative, 29.08.2019.
120 Interview No.14, Civil society representative, 30.08.2019.
121 Interview No.15, Civil society representative, 30.08.2019.
122 Interview No.16, Civil society representative, 30.08.2019.
123 Interview No.17, Civil society representative, 30.08.2019.
124 Interview No.18, Civil society representative, 30.08.2019.
125 Interview No.19, Civil society representative, 30.08.2019.
126 Interview No.20, Civil society representative, 30.08.2019.
127 Interview No.21, Civil society representative, 30.08.2019.
128 Interview No.22, Civil society representative, 30.08.2019.
129 Interview No.23, Civil society representative, 30.08.2019.
130 Interview No.24, Civil society representative, 30.08.2019.
131 Interview No.25, Civil society representative, 30.08.2019.
132 Interview No.26, Civil society representative, 30.08.2019.
133 Interview No.27, Civil society representative, 30.08.2019.
134 Interview No.28, Civil society representative, 30.08.2019.
135 Interview No.29, Civil society representative, 30.08.2019.
136 Interview No.30, Civil society representative, 30.08.2019.
Human Rights Defenders in the Western Balkans

North Macedonia

6. CONCLUSIONS AND RECOMMENDATIONS

The legal framework of relevance for HRDs is largely in place. While some obstacles remain in the legal texts themselves, as a main obstacle HRDs identify the implementation of the laws. We have presented the cases where the legal framework was either disregarded or was not taken into consideration, or where certain damaging practices have been developed, at the expense of the rights of HRDs. This affects women disproportionately more. In addition, the actions of the state towards HRDs that work with LGBTI issues or LGBT+ persons themselves is degrading and humiliating, and their experiences and violations against them are written off or noted but then ignored. All of this has resulted in a worrying climate of impunity which damages HRDs work on several levels, inter alia, by encouraging self-censorship and tailoring of the human rights agenda. In addition, the human rights defacing and humiliating, and their experiences and violations against them are written off or noted but then ignored. All of this has resulted in a worrying climate of impunity which damages HRDs work on several levels, inter alia, by encouraging self-censorship and tailoring of the human rights agenda. In addition, the human rights agenda is greatly dictated by available funding, so the recent trend in retraction of funds for organisations that work with gender equality and women’s rights is especially worrying.

National authorities

Law enforcement

The police and especially the public prosecution must strengthen their capacities to enforce the existing laws and mechanism and to increase the awareness of hate speech on social media. The public prosecution should play a more proactive role in tackling hate speech on social media.

Hate speech must be prosecuted ex officio. The capacities of the existing Unit for Cybercrime within the Department of Central Police Services136 for identifying and locating the perpetrators, should be used to this end.

The police should act more proactively regarding hate speech on social media, also by enhancing its monitoring capacities in accordance with the international standards.

Death threats, sexual harassment, threats to sexual violence and rape, and other threats the HRDs receive through the social media, telephone, middle-men, private messages and similar, should be treated seriously, urgently and thoroughly.

The practice of seeking adjustments from the HRDs, at the expense of their human rights and their human rights work, instead of going after the perpetrators, must be stopped. The HRDs should not be asked to adjust to the conditions set by the environment. Also, the institutions should address every assault made against HRDs. The capacities of the police must be strengthened regarding the procedures to organize and maintain the security of the assemblies, ability to protect the attendees and to maintain safety for every citizen during the assemblies while not restricting the freedom of assembly. The police should establish communication mechanism with the organizers of the assemblies in order to tackle each challenge or issue arisen prior and during the assembly in a timely manner.

The training programs for the police to work with HRDs should be developed, and it should be included in the teaching curricula of the Police Academy.

Protocols should be developed for the institutions to deal with situations where HRDs were attacked or have received threats or where they have been subject to hate speech. These should be adjusted for when providing services to WHRDs, to LGBTI HRDs, and HRDs who belong to marginalised categories.

Femicide should be recognised in the Criminal Code as a separate crime. The capacities of the police and the judicial institutions must be strengthened in order to deal with this pervasive incidence.

Fees for remuneration to the police for handling security as public assemblies should be abolished.

Education and information

Human rights education should feature more prominently in the training programs for the public administration, especially for those institutions which deal with HRDs most often. This will enhance the knowledge of the institutions’ representatives in their relevant working areas.

The access to information should be adjusted to secure consistent implementation and timely provision of the requested information at the earliest possible deadline.

The institutions and the government must take preventive action towards the issue of HRDs in general, also by enhancing human rights education efforts and calibrating their own procedures, measures and services to be more proactive, rather than reactive.

National human rights institutions

The CPPD and the Ombudsperson should pay special attention in its human rights monitoring efforts to the cases related to HRDs and WHRDs.

The NHRI in the country – the CPPD, the Ombudsperson and the KOMSPI, should work towards increasing their overall transparency and work on initiating and enhancing efforts for cooperation with HRDs. Organising regular meetings or hosting “Forums of HRDs” together with HRDs, where they can inform each other and the public about their work regarding the climate for conducting human rights work in the country, discuss relevant current or future importance, and make recommendations to the government. This will work towards gaining and retaining the trust of HRDs and fostering a climate of cooperation.

The Parliamentary bodies – the Standing Inquiry Committee on Human Rights and the Commission on Equal Opportunities of Women and Men should step up efforts regarding the rights and the position of HRDs. These efforts can be directed towards convening sessions on HRDs at regular intervals where the parliamentary bodies will invite the HRDs, NHRI’s and other relevant stakeholders to discuss specific issues regarding the HRDs situation in the country. The sessions can also be convened as joint sessions of the two working bodies if it fits the thematic focus. This would contribute to a more proactive approach in terms of establishing the exercise of human rights and equality between women and men and providing recommendations to the stakeholders.

The CPPD and the Ombudsperson, as institutions which have equality mandate, should vest joint efforts to fight stereotypes and prejudice which damage HRDs and their work and the society at large.

The country must elect the new commissioners of the CPPD in order to enable protection and prevention from discrimination and enable implementation of the new law.

Human rights defenders

HRD should regularly report all cases of violations that they have been involved in and the cases where their targets groups have been involved in. This would contribute to raising the awareness of the challenges faced by the HRDs and their target groups, which would further more contribute to developing certain policies or measures to address these issues.

HRDs should seek to diversify their sources of funding, among other, by seeking out more sustainable sources. They should also demand diversification and transparency to public funding for the purposes of conducting human rights activities.

HRDs who work with NGOs should themselves work on informing the public about their work, and should do it having in mind the various generations among the audience. They should diversify the communication channels and increase the direct communication with the citizens.

The CPPD and the NHRI137 should jointly organize “Forums of HRDs”. These events will serve as a platform for them to inform each other and the public about their work regarding the environment for conducting human rights work in the country, discuss relevant current or future importance, and make recommendations towards the government. This will work towards gaining and retaining the trust of HRDs and fostering a climate of cooperation.

97/17, and 248/2018).


137 In this report, most of the HRD dealt with the CPPD, the Ombudsperson and the KOMSPI, but here under NHRI, aside from these three, see also include the Directorate for the Protection of Personal Data.
Media

- The media should lead the way in a debate on the regulation of the work of online media, especially news web-portals.
- The media can contribute towards a better understanding of the HRDs work by promoting stories on the work, impact and the results of the HRDs contribution to their target groups and also about the systemic weaknesses.
- The media should use human rights approach as an underlying principle of their reporting. This will substantially raise the reporting standards of the journalists and will contribute to the process of sensitizing the country’s population in regard to human rights. In addition, it will also raise the awareness of the challenges and violation of human rights faced by specific categories of groups in the country.

International community

The European Commission should consider including the position of HRDs as a regular feature in the “Political Criteria” of its Annual Progress Report.

The donors should:

- Increase the overall funding allocated to support the work of HRDs, by also making sure that the current trend of decreased funding for gender equality and women’s organisations is reversed, and that the rising needs of investigative journalists and HRDs working in grass-root NGOs are taken into consideration.
- Consider establishing a new or support the existing protection or alert mechanism for HRDs which can be activated when the national institutions are failing to fulfill their human rights and HRD obligations.
- Program funds that will support the organisation of the “Forums of HRDs” which is mentioned in the recommendations section for National human rights institutions and the recommendations for Human Rights Defenders.
Human Rights Defenders in the Western Balkans

Serbia
EXECUTIVE SUMMARY

This report addresses the position of human rights defenders (HRDs) and women human rights defenders (WHRDs) in Serbia. It analyses the relevant legal framework, international and national, which removes or installs challenges and restrictions for the work of HRDs/WHRDs in Serbia. Moreover, it maps violations and restrictions of HRDs’ civil and political rights; assaults, harassments and restrictions the HRDs face; and analyses gender aspects of the identified challenges and restrictions.

The position of HRDs in Serbia is deteriorating, despite some positive developments related to judicial practice and the creation of institutional support mechanisms. Capturing of the state by the executive branch of power and its supporting structures is having a major impact on the activities and position of HRDs. Both domestic and international environment have been unfavourable to HRDs: at the state level, HRDs are under growing pressure from the government and the public, whereas the international support the current government enjoys is negatively affecting their mission.

This report sets recommendations on how to improve the HRDs situation. Their success is dependent on the political will of the most powerful state decision-makers who should confront the retrograde and nationalistic elements in the society; encourage the responsible institutions to fully implement the existing legislation; and enable public endorsement of HRDs through the media. The national authorities should immediately stop portraying HRDs as the enemies of the state and denouncing their work publicly. Instead, they should engage in a dialogue about the role and potential of the HRDs in an evidence-based manner. Such efforts should go hand-in-hand with raising awareness of the general population on the importance of respecting human rights by highlighting the achievements of the HRDs for the democratisation of the society.

1. INTRODUCTION

The 1980 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (HRD Declaration) has reaffirmed the existing rights already enshrined in other international documents by grounding them in the context of human rights defenders (HRD).1 For the purposes of this report, the understanding of ‘human rights defenders’ was adopted as put forward by Article 1 of the HRD Declaration, which specifies that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.”

Here the report also conceptually distinguishes between HRDs and women human rights defenders (WHRDs), as the latter refers to women who, individually or in association with others, act to promote or protect human rights, including women’s rights and gender equality issues.2 Because of the similarities of the situations that they face, this term will also include men and non-binary human rights defenders working on gender equality issues.

This report addresses the position of HRDs and WHRDs in Serbia. It analyses the relevant legal framework, international and national, which remove or install challenges and restrictions for the work of HRDs/WHRDs in Serbia. Moreover, it maps violations and restrictions of HRDs’ civil and political rights; assaults, harassments and restrictions faced by HRDs; and analyses gender aspects of the identified challenges and restrictions. To this end, HRDs/WHRDs were interviewed3, legal and policy documents were analysed, and the existing literature was considered.

2. GENERAL CONTEXT ISSUES

The picture of the general context in Serbia, seen through the eyes of the HRDs who were interviewed for the purposes of this brief, is rather stark. According to them, despite some positive developments related to judicial practice and the creation of institutional support mechanisms, the position of HRDs in Serbia has been deteriorating. Both domestic and international environment have played against the work HRDs in the last five years. At home, the interviewees point out that the state authorities have been increasingly undermining the work of HRDs through various pressure mechanisms. Unlike the 1990s, when police brutality was the major means of confrontation with the HRDs, nowadays the tactics have become more subtle – they include, among others, controlled media, recently fashioned governmental support for institutional closure, reluctant cooperation and obstruction of the state apparatus on the intelligence services, and turning a blind eye to HRDs’ requests for information. The government has taken advantage of its controlled media machinery and right-wing associations against the HRDs, portraying them as enemies of the state. This has, as a result, contributed to a negative public perception of the civil society and the HRDs in particular. In addition, the prosecution and the judiciary are under considerable pressure from the executive branch of power to act in accordance with the executive’s directives, which is limiting the HRDs’ access to justice. Overall, capturing of the state by the executive and its supporting structures is having a major impact on the activities and position of HRDs.

At the international level, the interviewees agree that various representatives of the EU and the Western countries have been praising the current government, despite negative track record on the rule of law and democratic performance. This has negatively affected the work and the mission of the HRDs. Every time the state representatives get compliments for their results from their Western counterparts, HRDs find it more difficult to sensitise the general population on the importance of respecting human rights by highlighting the achievements of the HRDs for the democratisation of the society.

Overall, the international context, instead of acting in favour of HRDs, rather contributes to creating an atmosphere in which human rights infringements are taken as a normality in the Serbian society. It is, therefore, unsurprising, that the European Commission’s annual country report on Serbia warns that the scope for political influence remains a concern, whilst adding that no progress has been made to ensure freedom of media.4 It also adds that civil society organisations and human rights defenders continue to work in an environment where the Government is discouraging criticism, and the authorities are making negative statements on the civil society, which are echoed by the tabloid media.5 In such an environment, the Commission rightfully notes there is an increasing number of physical attacks and attacks against the property of journalists. In that respect, it is suggested that Serbia needs to categorise these actions as criminal or as other types of offences and ensure appropriate investigation and adjudication.

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2 The proposed definition of WHRDs was modified on grounds of the one offered by the Office of the High Commissioner for Human Rights (OHCHR).
3 Sixteen interviews were conducted, with four journalists and twelve HRDs/WHRDs active in gender equality, environmental issues, minority issues, LGBTIQ issues, data protection, war crimes, freedom of speech and free legal aid. Nine interviewees are women, six men and one transgender.
5 Ibid., p.6.
6 Ibid., p.25.
S

Serbia's legal framework is generally conducive to the promotion and protection of human rights, as it is largely based on international standards on human rights. It is shaped as an integral part of the Charter of Fundamental Rights and Freedoms (the Constitution) and is a candidate country to the EU, all of which oblige it to promote and improve human rights standards. Such circumstances make room for the Serbian civil society and human rights defenders to focus on defending human rights by standing for anti-discrimination, human rights for women, LGBTI+, minorities, people with disabilities, anti-trafficking, human rights education, legal aid, youth education, and other.

International Human Rights Framework is an important aspect that allows for human rights protection in Serbia. As Serbia is a state party to most international instruments and treaties, there is a solid legal basis for their protection. According to Serbia’s Constitution (Article 16(2)), the generally accepted rules of international law and ratified international treaties are an integral part of the national legal system and are to be applied directly. The key treaties are based on Serbia’s membership in the UN and the Council of Europe, whose treaties it normally signs and ratifies. Furthermore, the Constitution from September 2006 contains a broad catalogue of human rights. It lays out Fundamental Principles, Human Rights and Freedoms, and the Rights of Persons Belonging to National Minorities. It stipulates that the attainment of level of human and minority rights may not be lowered, while adding that the human and minority rights’ protection may be restricted by the law if the Constitutional Court determines that the law infringes the purpose for which the law was passed, to the extent necessary and without encroaching upon the substance of the relevant guaranteed right (Article 20). When it comes to discrimination, the Constitution prohibits all direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability (Article 21). At the moment, Serbia is in the process of constitutional reform, as part of its EU accession process and it is foreseen that it will strengthen the protection of human rights.

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Serbia is a state party to most international instruments and treaties, there is a solid legal basis for their protection. According to Serbia’s Constitution (Article 16(2)), the generally accepted rules of international law and ratified international treaties are an integral part of the national legal system and are to be applied directly. The key treaties are based on Serbia’s membership in the UN and the Council of Europe, whose treaties it normally signs and ratifies. Furthermore, the Constitution from September 2006 contains a broad catalogue of human rights. It lays out Fundamental Principles, Human Rights and Freedoms, and the Rights of Persons Belonging to National Minorities. It stipulates that the attainment of level of human and minority rights may not be lowered, while adding that the human and minority rights’ protection may be restricted by the law if the Constitutional Court determines that the law infringes the purpose for which the law was passed, to the extent necessary and without encroaching upon the substance of the relevant guaranteed right (Article 20). When it comes to discrimination, the Constitution prohibits all direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability (Article 21). At the moment, Serbia is in the process of constitutional reform, as part of its EU accession process and it is foreseen that it will strengthen the protection of human rights.

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4. VIOLATIONS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS’ CIVIL AND POLITICAL RIGHTS

The presented accounts and the analysis of the situation in Serbia in terms of violations and restrictions of HRDs civil and political rights in the last five years is not a comprehensive collection of violations, but only of those which were reported by the interviewees or which the research team managed to identify via the internal methodology.32

Freedom of assembly and the right to protest

The right to peaceful assembly is regulated by the Law on Public Gatherings.33 Interviewees agree that this right is generally respected in Serbia; however, they point out the provisions that were introduced with the new law in 2016 are compounding this freedom, or can be broadly interpreted so as to restrict public gatherings. For example, the Law envisages that the gathering must be announced to the police at least five days in advance,34 while in the previous law the deadline was 48 hours. Furthermore, the authorities have on several occasions refused to give permission for gatherings, especially for a reason that could be in the interests of the authorities. Interviewees mentioned several examples of gathering restrictions or prohibitions, mostly in connection with politically sensitive topics. This happened to the Youth Initiative for Human Rights and Civic Initiatives in 2015, when they wanted to commemorate 20 years of Srebrenica massacre. Despite the ban, the organisation held the gathering the day after the announced date. Eventually, this case was brought before the Constitutional Court, which declared that the ban of this gathering was unconstitutional.35

When it comes to the right of spontaneous gathering, according to Article 13(4) of the mentioned Law, there is no obligation to notify assembly in case of a spontaneous peaceful assembly, without the organisers, as an immediate reaction to a specific event, upon the event, held outdoors or indoors, in order to express opinions and attitudes regarding the generated event. The same article adds that spontaneous peaceful gathering shall not be considered as spontaneous gathering if some natural or legal person can be marked as the organizer.

Deliberate misinterpretation of the Law on Public Gatherings

Some want that the existing Law can be misused when it comes to spontaneous gatherings.36 A “spontaneous” gathering was held in front of the Roma bakery in Barča, during which the attendees expressed outrage over the racist treatment of the employees of the bakery by the police.37 After this incident, the gathering was prohibited by the authorities, which led to a discussion on how to regulate such gatherings, especially in smaller Serbian towns. So far, two local organisers have been beaten, while large number of participants received threats of being fired from work for supporting the protests.38

The interviewees notice the change in government tactics when it comes to peaceful manifestations. Namely, the interviewees notice the change in government tactics when it comes to peaceful manifestations. Namely, the authorities no longer tend to forbid the gatherings, as it was the case in the 1990s, but instead employ various mechanisms for determining the organisers and their cause. The examples include the permission of counter-manifestations organised by right-wing elements, or complete dehumanisation and denigration of HRDs’ manifestations and work via government-sponsored media. These actors use defamation, hate speech and false information as means of confrontation with HRDs and WHRDs.39 By tolerating such actions, through silence and non-conviction of the perpetrators (see part 3 of the report), the state is sending a dangerous message to the society, the

While the protest period coincides with the organisation of “1 in 5 million” anti-government protests across Serbia, which are happening almost every week since late autumn 2018.39 While the protests themselves have not been banned, the police have been present in a peaceful atmosphere, their organisers have been under constant pressure and threats, especially in smaller Serbian towns. So far, two local organisers have been beaten, while large number of participants received threats of being fired from work for supporting the protests.39

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34 Law on Public Gatherings, OGlRS, No. 8, 10/2016.


36 Law on Public Gatherings, OGlRS, No. 8, 10/2016.

37 “Newspaper accounts of the event: ‘Roma bakery workers beaten by the police’”, the Daily Telegraph, 23 August 2018.

38 “Roma Bakery Protests: The police benefited from the situation”, the Daily Telegraph, 23 August 2018. The police even resigned to ban gatherings, while the lines for organiser are high, and the right to gather is fully warranted. With regards to the spontaneous gatherings, YUCOM adds that gatherings that take place in a spontaneous manner and that are not explicitly encouraged by some public figures or groups who are clearly organisations that can be identified, should not be considered as spontaneous, according to the OSCE standards. For this reason, YUCOM argues that the part which regulates spontaneous gatherings should be further clarified. “YUCOM believes that Public Gatherings should be amended so that all groups which wish to organise a public gathering should be allowed to do so, as far as the purpose is not deemed illegal or dangerous, and that the authorities should not be able to prohibit or ban gatherings simply because they take place in a spontaneous manner.”

39 “Police account the Local Vanguard as “very dangerous””, the Daily Telegraph, 23 August 2018. The police even resigned to ban gatherings, while the lines for organiser are high, and the right to gather is fully warranted. With regards to the spontaneous gatherings, YUCOM adds that gatherings that take place in a spontaneous manner and that are not explicitly encouraged by some public figures or groups who are clearly organisations that can be identified, should not be considered as spontaneous, according to the OSCE standards. For this reason, YUCOM argues that the part which regulates spontaneous gatherings should be further clarified. “YUCOM believes that Public Gatherings should be amended so that all groups which wish to organise a public gathering should be allowed to do so, as far as the purpose is not deemed illegal or dangerous, and that the authorities should not be able to prohibit or ban gatherings simply because they take place in a spontaneous manner.”
in the last couple of years. State authorities massively refuse to provide the information they are entitled to by the Law on Free Access to Information of Public Importance, even in the cases when they are due to react. For example, the financial Office for High-Tech Criminal refuses to process documented technical assaults; the State Prosecutor’s Office in a domestic violence case is unable to understand in substance the work and mission of WHRDs and those protecting transgender persons. In addition, the political landscape is unfavourable – political opinion in Serbia has neither reconstructed the influence nor overcome patriarchal forces in their own backyards, which is an additionally aggravating factor. As an example, members of NGO “Impuls” from Tuzin in South-Western Serbia organised the Festival of Women’s Friendship. They were exposed to online threats by religious fundamentalists and were kicked out of a restaurant because “shameful people” were expected to enter.43 WHRDs interviewee research are core-protesting written threats for rape and sexual violence – for example, on the occasion of organising the March Against Fascism, for which no one was held responsible.

Furthermore, in April 2019, one right-wing organisation filed a petition to introduce a new law on non-governmental organisations in Serbia, similar to the one in Russia, to control foreign funds. This petition targets six prominent SRBian WHRDs, who in the past have been many times characterised as foreign agents and enemies of the state by the government-influenced media.

In terms of legal framework, the state is systemically discriminating LGBTI+ population by refraining to adopt the legislation it has been committed to. Namely, it breaches the Council of Europe’s recommendations in relation to transgender persons, by enforcing a medical approach to legal gender recognition and denying the principle of self-determination. Feminicide is not considered as a distinct criminal offence in Serbia, and a distinction is not made between murders of women as not prosecuted as different category under the Criminal Code of Serbia.44 Also, no single case was prosecuted for a hate crime based on gender. Investigations against WHRDs are inefficient and influenced by the smear campaign and anachronistic patriarchal values. For example, one of them was attacked by a group of individuals with war crimes filed several criminal charges against individuals for threats and hate speech pronounced against her on social media; nevertheless, the state authorities have abstained from undertaking any action. She believes the dominant public discourse on HRDs when performing verbal attacks.

The interviewees agree that the pressures they receive from the state authorities and individuals represent one of the main obstacles to their work. The individuals, the media, GONGOs and the state representatives as part of the intimidation tactics, or indirectly motivated by the dominant anti-HRD narrative nurtured by the state authorities and translated into the society through government-controlled and sponsored media. Physical attacks include the raids of apartments; attempts of murder by burning of a house (see textbox below); harassment, especially for WHRDs; verbal attacks come in the form of hate and discriminatory speech via government-owned tabloids and through social media networks, or by spreading false information, both by the individuals, the media, GONGOs and the state representatives. The interlocutors believe that the unknown individuals are instructed by the dominant public discourse on HRDs when performing verbal attacks.

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Struggles of a Woman Human Rights Defender

In Serbia, the case of Marija Lukić caught the widespread attention of the media and the wider public. In Autumn 2019, the investigative journalist publicly spoke out and accused her boss, the Mayor of Brus and a member of the ruling Serbian Progressive Party, for repeated sexual misconduct against her. Even though six other women joined her in charging the municipality president, only her case stood in court.

Stigmatisation of the WHRD is a common phenomenon observed across Serbia, inspired by the #MeToo movement, and a person who has even won the 2019 “Winning Freedom Award”. Her case is, however, still far from over.45 Despite resigning from the position of the deputy mayor on the initiative of the mayor himself, Lukić has changed her job to a position as a municipal councilor, while the court case went through many obstacles and prolongations.46 Furthermore, the accused managed to gather public support in his municipality, including the women employed in the public sector, who organised manifestations in his support. "Marija Lukić is a symbol of fight against gender-based violence in Serbia, while the reaction of the state and of the society is illustrative for understanding the position of WHRDs."47

5. ASSAULTS, HARASSMENTS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS

The HRDs report numerous challenges when working in the country and the most challenging issues are the threats and public discredit they receive, sometimes on a daily basis. The identified violations are limited to the scope of the conducted interviews with the HRDs and by no mean they reflect the whole spectrum of the current situation in Serbia.

The right to be protected

As already explained in the Legal framework section, the term “human rights defender” is not explicitly recognised in the Serbian legal system, but the Article 387[1] of the Criminal Code (under the title “Racial and Other Discrimination”) does suggest that a penalty shall be imposed on whoever persecutes or incites others due to their commitment for equality of people.48 Despite numerous appeals submitted by NGOs based on this article, no conviction has been made yet.49 All interviewees agree that the major problem relating to legal safeguards of HRDs relates to the absence of legal certainty, i.e. flawed implementation of the existing legislation, together with unfavourable socio-political context (as discussed in the section on General context issues). Two interviewees suggested that the legal framework should be amended so as to recognise specifically the category of human rights defender, given their vulnerable position and particular role in a semi-democratic society.50

The interviewed HRDs have faced various types of assaults, physical and verbal. In most cases, physical attacks are performed by unidentified individuals, who are, in the opinion of the interviewees, either directly sent by the state representatives as part of the intimidation tactics, or indirectly motivated by the dominant anti-HRD narrative nurtured by the state authorities and translated into the society through government-controlled and sponsored media.

An Attempted Murder of an Investigative Journalist

The case of Milan Jovanović caught a special attention of the wider public, as he was an investigative journalist whose house was put on fire. Later on, there was an attempted armed break into his apartment, thus further endangering his life and undermining his ability to conduct his investigative activities. It turned out that the president of the municipality Grecka and a member of the ruling Serbian Progressive Party was the one who ordered the execution of the previously mentioned offences. Despite his arrest, the case continued to spike controversy.51

The key issue remained that the prosecutor charged the accused under a charge for “causing a general threat to public order” rather than inciting the murder of Jovanović.52 In addition, it appears that the whole trial is being obstructed, as it has been postponed a few times, and it is still ongoing.53 Jovanović has warned that the judiciary system of Serbia is under the control of the ruling party.54 An epilogue is still to be seen.

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Government pressure, as such, arrives in different forms:

- Sudden fiscal controls and inspections, with the aim to find evidence on inconsistencies in the work of HRDS, were experienced by several interviewed HRDs. “At one moment, 14 fiscal inspectors were working on our case, but could not find anything.”55

60 Interview No. 14: media representative, 12.9.2019.
64 Interview No. 14: media representative, 12.9.2019.
Sudden cancelling of participation at events organised by HRDs, such as consultation meetings, trainings, public discussions. 54

However, the interviewees believe they are under surveillance by the state intelligence service, including telephone tapping.

One interviewee experienced indirect pressure by requesting from the NGO the endorsement for the publication in exchange for signing the memorandum of cooperation. 55

Some interviewees stress façade public consultation process on important legal pieces as a form of government pressure. In some cases, the HRDs received information on the public consultation on the same day it took place; in other cases, they were not invited to take part at all. Such situation disables the HRDs from performing their duties diligently.

In one of the reported situations, the NGO received information about a serious threat to the director shortly before the event. Instead of being supported by the state, the prosecution refused to pursue the process of beating the executive director. This incident was sufficient to employ violence, in which some human rights defenders were hospitalised.

According to the most of the interviewees, the government supports the work of HRD “only to the extent which serves its PR purposes.” 56

The state officials do not necessarily refuse to attend and address the public events in which the NGO is present or to organise workshops and conferences. However, as far as their official appearance, there is no follow-up – the authorities neither apply recommendations listed in the reports of the HRDs, nor fulfill their promises expressed during these public events. 57

Some interviewees underlined that cooperation efforts remain very superficial, including that the government provides funding and other support as quid pro quo and not for genuine cooperation reasons. 58

Repealed Harassments of an NGO

Executive Director Policy paper has been vocal about the negative trend of politization of the security services in Serbia, whilst adding that this trend has significantly worsened in recent years. 59

Such criticism was accompanied by continuous harsh reactions by the Ministry of Interior of Serbia. Notably, in 2016, the Interior Minister State Secretary has defamed a BCBP researcher for “undermining the country’s security system,” whereas another party member of the ruling Serbian Progressive Party accused the BCBP of “working under the direction of foreign services.” 60

After receiving threats, in 2018, there was a break in an apartment of the executive director of the BCBP. Although the case was immediately reported to the police, the perpetrators were never identified. 61 Threatening messages continued to take place even in 2019. So far, adequate actions by the authorities for ensuring a safe environment for BCBP’s work is still lacking. BCBP warns that in an atmosphere where almost everyone who critically monitors the work of state institutions is being considered as an enemy of the state, it is unsurprising that such threats continue to take place. 62

The right to effective remedy

According to the interviewees who have reported the personal threats or physical assaults to the police, the investigations are generally very deficient, as the perpetrators are almost never identified. The ones who do get identified go through the hearing procedure, but this is the process ends – no one gets convicted. All interlocutors stress that they have had positive and professional cooperation with the police officers. As a rule, the investigations are being stopped on the political level, more precisely by the cabinet of the Minister of Interior. Moreover, the interviewees point to the State Prosecutorial Office as the “bottleneck” of the system. The prosecution and the judges are not treating the fear from the executive branch of power, which prevents them from performing their duties diligently.

Interviewees agree that the Serbian legal framework lacks provisions which would allow differentiated approach to particular groups of HRDs. In other words, the Criminal Law treats in the same manner the victims of rape and the victims of threats. “Only in our organization, we documented more than 200 cases of discrimination against LGBTI+ population, which is a small number compared to the overall scope of attacks. No one was ever held responsible for the attacks against LGBTI+ population. We have a gay prime minister and zero convictions – what a paradox, what a pinkwashing.”

When it comes to the attacks on the journalists, the legal framework plays against their favourite. The investigative journalists are practically disabled to sue the (government-sponsored) media who are attacking them, because the police and the prosecution are not ready to take action. Not only these investigative journalists, but also human rights defenders who are not treated as a form of attack. The basis for the complaint is emotional distress, whereas the group itself does not have an emotion, the legal interpretation says. “As long as the tabloids write CHS [the investigative journalist association] are bastards, we cannot file a complaint. This is extremely frustrating and unfair.”

An Attempt to Interrupt a Festival Promoting Multiculturalism

The civil society has put continuous efforts to build bridges between the Serbian and Albanian communities. A festival was the first attempt to bring together “dober dan” (translates as “good day” both in Albanian and Serbian languages), organised by nongovernmental organisations from Serbia and Kosovo each year since 2014. Such efforts, however, faced sharp criticism by political parties and right-wing movements. In 2019, the situation escalated when a flaming torch was thrown into the venue where the events were taking place. A large number of police officers were required to prevent the clash. 65

As nobody was arrested or prosecuted, the organisers of the festival considered this action to be a symbolic attack against the festival. Instead of being supported by the state, the prosecution refused to pursue the process of beating the activists. Later on, it was the human rights defenders who were charged for violating “the law on public peace and order.” The Belgrade Misdemeanour Appellate Court has confirmed the verdict which required the human rights defenders to pay a fine. The Youth Initiative criticised the President of Serbia and the Interior Minister for openly defending Sijjvančanin and for condemning the Youth Initiative, while the prosecutors and the court only followed suit. “On a personal level, it is terrifying when the highest state officials read your personal data which is being live streamed on national broadcast TV stations. Second, it created a narrative of us being enemies, where all forms of cooperation depending on the government are being cut-off, where no one wants to communicate with you anymore. And third, it is appalling that the court used the exact formulations from the mentioned press conference in its verdict.”

An assault on human rights defenders

In 2017, nine members of Youth Initiative were physically assaulted at an event organised by the ruling Serbian Progressive Party. It was a popular festival, which was intended to promote reconciliation of the two societies.

An Attempt to Interrupt a Festival Promoting Multiculturalism.

Several public figures and NGOs have argued that the festival is indeed promoting reconciliation of the two communities. This festival was one of the most frequently stated forms of pressure.

On the positive side, in 2016, the Ministry of Interior, State Prosecutorial Office and seven media associations signed the Agreement on cooperation and measures to enhance the safety of journalists, as part of the obligations envisaged by the Action Plan for Chapter 23 in the framework of EU-Serbia accession negotiations. The Agreement also envisaged the formation of the Permanent group for the safety of the journalists, composed of the representatives of the signatory entities. Despite the establishment of this mechanism, the number of attacks on journalists is increasing, even though some positive steps have been undertaken. 66 This illustrates the domains of this mechanism and suggests that the political will is a crucial element for the protection of the journalists from attacks. 67

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63 Interview No. 6: op.cit.
64 Interview No. 1: media representative, 13.3.2019.
66 “”Initiative: Festival “Miređita, dobar dan!” will be held,” 2018, available at: https://www.danas.rs/drustvo/initijativa-festival-miredita-dobar-dan-bice-odrzan/
67 Interview No. 6: op.cit.
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70 “On a personal level, it is terrifying when the highest state officials read your personal data which is being live streamed on national broadcast TV stations. Second, it created a narrative of us being enemies, where all forms of cooperation depending on the government are being cut-off, where no one wants to communicate with you anymore. And third, it is appalling that the court used the exact formulations from the mentioned press conference in its verdict.”
One of our interviewees added that crimes are followed by the state officials targeting the HRDs: “Actions of this kind downplay the importance of arrest of the executioners. I am therefore interested in the people responsible for creating such atmosphere and who repeatedly come up with things for which they need to answer for. Such messages are made with an intention to discourage people. More importantly, they do this in order to send an important message that an attack on journalists of any kind, whether it is physical, whether on the Internet, or other, that it will be unpunished.”

The right to communicate with international bodies

Notwithstanding the impact of the general context issues, in particular, the frustration with the position of the international community with regard to Serbia’s democratic performance and evident backsliding, the interviewed HRDs did not report any obstacles or challenges when communicating with international bodies. In fact, one interviewee claimed the support from the international bodies, such as the OSCE and CRD, was crucial in preventing the state authorities from arresting them with no single ground. At the same time, public labels such as “traitors” and “foreign mercenaries”, that HRDs receive systematically, are perceived as a form of indirect pressure when communicating with the international bodies.

The right to access to funding

The right to access funding is regulated in the Law on Associations. Projects funded by the government in general represent a minor portion of sources of funding by the Serbian NGOs, which is also the case with the interviewed HRDs. Only few enjoyed small government funding in their work. However, many notice a trend of closure of the state also in terms of funding support, which is illustrated by the following cases.

NGO “Stanište” dealing with environmental issues from VlSaac applied for the call for proposals announced by the Ministry of Agriculture. They filed a complaint following the announcement of the results, claiming that 10 out of 23 grantees have a problematic record and did not fulfil the propositions of the call. “Several days after filing a complaint, an official from the minister’s cabinet called me from a hidden number, to ask me if I could speak to the state secretary. He asked me if we could reach a gentlemen’s agreement, where they ask us to withdraw the complaint, in exchange of support for the next call. We told him we plea for fair conditions and competition, after which a rather unpleasant five-min conversation took place. I have taken the conversation and entire context, in which a state official is offering me a corruptive affair, as a threat to my organisation. Our project was not successful at the competition,” 2014, available at: http://rs.n1info.com/Vesti/a17136/Vulin-optuzio-NVO-da-kriminalizuju-konkurs.html

The same politician publicly threatened the Women in Black commission with arrest if they did not obey his will. A state minister convinced a parliamentarian, convicted war criminal and leader of the far-right Serbian radical party, who called for the rape of Brankica Janković, the Commissioner for Protection of Equality in 2019. 79 80

In addition to this case, there have been cases of dubious redistribution of funds by the state and instances of lack of public accountability for the redistribution. 81

Gender aspects of the challenges and restrictions in relation to assaults, harassments and restrictions HRDs

In Serbia, Women Human Rights Defenders’ work takes place in an environment, which is, according to the 2019 report on Serbia by the UN Committee on the Elimination of Discrimination against Women, characterised by “increased instances of anti-gender discourse in the public domain and a public backlash in the perception of gender-equality; misogynistic statements that are expressed in the media and also by high-ranking politicians, religious leaders and academics with impunity.” 76

Twitter is increasingly becoming a tool for Serbian politicians to make threats and other appalling abuses to their political and other public opponents. One sinister example is Vojislav Šešelj, a parliamentarian, convicted war criminal and leader of the far-right Serbian radical party, who called for the rape of Brankica Janković, the Commissioner for Protection of Equality in 2019. 77

All WHRDs reported, on the one side, noticed decrease of interest on gender issues from the traditional donors (i.e. the developed countries, EU, USAID, etc.), while on the other side the state is directly discouraging their work, by shrinking the space for public consultations, and through ineffective policymaking process. Most notably, WHRDs dealing with violence against women, who were traditionally supported by the state to provide support to victims of gender-based violence through SOS phone, no longer receive state funding. Instead, the funding is directed to a newly created, state-owned entity. Such a turn of events is perceived as irrational waste of resources by WHRDs, in which both the victims (i.e. women who suffered violence) and the former service providers (i.e. the WHRD NGOs) are damaged.

WHRDs have faced challenges solely based on their gender. Almost all female interviewees faced hate speech and were threatened with rape, whereas all WHRDs, both male and female, were threatened with rape. A group of interviewed WHRDs faced anonymous threat containing the message “Either you leave Serbia, or you will no longer exist”. The prosecution generally does not threat such formulations as death threats.

While all HRDs face challenges with regard to funding, the position of WHRDs in this respect is particularly vulnerable. All WHRDs reported, on the one side, noticed decrease of interest on gender issues from the traditional donors (i.e. the developed countries, EU, USAID, etc.), while on the other side the state is directly discouraging their work, by shrinking the space for public consultations, and through ineffective policymaking process. Most notably, WHRDs dealing with violence against women, who were traditionally supported by the state to provide support to victims of gender-based violence through SOS phone, no longer receive state funding. Instead, the funding is directed to a newly created, state-owned entity. Such a turn of events is perceived as irrational waste of resources by WHRDs, in which both the victims (i.e. women who suffered violence) and the former service providers (i.e. the WHRD NGOs) are damaged.
6. CONCLUSIONS AND RECOMMENDATIONS

This report addressed the position of HRDs and WHRDs in Serbia in the last five years. It has shown that despite the advanced legal framework related to human rights, HRDs are progressively getting more vulnerable. Improving the legislation in the upcoming period without the implementation of the existing one in the first place seems obsolete.

The research has shown that HRDs are constrained when promoting or protecting fundamental rights. In terms of the freedom of assembly, the authorities ban gatherings of HRDs due to security treats (although state is obliged to protect them), but do allow gatherings that are calling for violence; in addition, they use various tactics to dissuade the organisers from holding manifestations. One of them are the latest legal changes, which make it more difficult to obtain permission for public gatherings. When it comes to the freedom of association, the appearance of GONGOs and their growing influence on the society is undermining the work of HRDs. In addition, there are signs that even international actors, which are traditionally supportive of HRDs, are also endorsing the GONGOs for their ability to work with the state, which gives them additional legitimacy. This is seen as an extremely dangerous and worrying trend. The freedom of expression and association is limited due to the state ignorance or unwillingness to cooperate and even communicate with HRDs, unavailability of information and lack of readiness by the state authorities to provide data of public importance. Self-censorship by the journalists is perceived as a massive phenomenon. Gender aspects play an important role when speaking about these freedoms, given the dominant patriarchal context, often unfavourable to women’s emancipation.

When it comes to assaults and harassments, the list is long. HRDs experience various types of physical and verbal violence, including attempt of murder, robbery of the apartment, sexual harassment, hate and discriminatory speech. In performing their activities, they feel pressure from the government in the following forms: fiscal controls; surveillance and phone tapping; public threats from the state representatives; offers to adhere to the ruling party in exchange of support for work; institutional closure, i.e. prevention from working with state institutions in case of providing assistance to vulnerable groups (victims of family violence, trafficking, refugees); non-inclusive and non-transparent policymaking; denial to access information of public importance; and sudden cancelation of participation at the conferences, meetings, workshops. The investigation and prosecution against the perpetrators of attacks to HRDs is slow, and inefficient. No conviction was ever made against the individuals who harassed or used hate crime against HRDs. While most interlocutors have had positive experience with the police, they believe that the prosecution is the bottleneck of the system. Furthermore, the political endorsement to prosecute cases is missing, given that in practice, the cabinet of the Ministry of Interior plays the greatest decision-making role. Finally, access to justice to HRDs is limited due to the domination of executive power over the judiciary, which is missing, given that in practice, the cabinet of the Ministry of Interior plays the greatest decision-making role.

Based on the findings presented in this report, the following measures are recommended:

National authorities

Realisation of the following recommendations is exclusively dependant on the political will of the main state decision-makers to confront the retrograde and nationalistic elements in the society, encourage the responsible institutions to fully implement the existing legislation and provide public endorsement to HRDs.

▶ To immediately stop portraying HRDs as the enemies of the state and denouncing their work publicly. Instead, engage in the dialogue about HRDs in evidence-based manner and raise awareness of the general population on the importance of the respect of human rights by highlighting the achievements of the HRDs for the democratisation of the society.
▶ To consider introducing distinct legal solutions for HRDs, for the sake of providing them adequate status, protection and enabling the people to exercise their duties without pressure. That piece of legislation should define concrete criteria on who exactly is the HRD – experience and track record in protecting human rights would be the most important criteria.
▶ To improve the existing legislation when it comes to obtaining permit for organising protests. Instead of a five-day deadline, the previous legal solution which stipulated that the deadline for announcing the manifestation is 48 hours before the planned event, should be reinstalled.

International community

▶ To promote HRDs as partners in the reformative processes in the country and to provide them with moral support.
▶ To take advantage of the opportunities given in the framework of the EU accession process better. EU officials are giving legitimacy to the current authorities and make the work of HRDs more difficult. EU accession process and required reforms in Chapter 23, if applied as it stands declaratively, can make the work of HRDs more effective.

Human rights defenders

▶ Once the domestic and international environment becomes more favourable, raise awareness of the general public on its contribution to the society and particular groups by promoting their work and how these actions affect the everyday lives of the citizens.
▶ Be open and transparent in their work. Provide information on their websites about the sources of funding and the manner these organisations are run and organised, bearing in mind public misconceptions and misinformation about these topics.
▶ Include citizens/their constituencies more into the work/plans of the organisations and inform the citizens regularly about their vulnerable position. More information should be fed to the international community as well. Possible forums include the National Convention for the EU for Chapter 23 in the framework of the EU accession process; Joint Consultative Committee within the European Economic and Social Committee; Association of Judges for Democracy and Freedom (MEDEL); and others.

Mainstream media outlets

▶ Immediately start respecting the media laws and work in accordance with the journalistic code of ethics, in order to stop spreading fake news, hate and discriminatory speech directed against HRDs. Instead, promote their work and hold their work accountable in an evidence-based manner, by reporting on the impact their activities have on society and individuals.
HUMANS RIGHTS DEFENDERS IN THE WESTERN BALKANS