



# 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 extent 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.

## Human Rights Defenders in the Western Balkans

# Albania

## 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” 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 Ombudsperson 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. High levels of corruption, political pressure and intimidation still continue to overshadow their independence and undermine the judiciary’s authority.

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 for human rights defenders. An important step is to put in place effective protection mechanisms for human rights defenders at risk, as well as to increase effectiveness, transparency and sensitisation of the law enforcement bodies, and for the judiciary to carry out prompt investigations, to prosecute and punish perpetrators who attack human rights defenders. Further efforts need to be made in terms of encouraging a more proactive involvement of independent media, international community and civil society in raising awareness, strengthening and promoting the role of HRDs.

# ALBANIA

## 1. INTRODUCTION

The government should guarantee fundamental freedoms and protection of human rights by all means, as enshrined in the Constitution of Albania, domestic laws and international standards.<sup>1</sup> Violations of human rights represent a serious threat to the basic principles of a democratic society and human rights defenders (HRDs) are increasingly exposed to imminent threats and attacks due to the exercise of their work. This report provides an overview of existing challenges and restrictions faced by HRDs in Albania in the last five years taking into account major national and international standards concerning human rights defenders.

A human rights defender is anyone that acts individually and/or in association with others, to promote and strive for the protection and realisation of human rights and fundamental freedoms at the national and international level.<sup>2</sup> This research investigates only human rights defenders from the civil society, including civil society organisations, media, individual activists and journalists. More specifically, it draws on 22 face-to-face, semi-structured interviews with human rights defenders active in the field of gender equality, LGBTI+, environment, data protection, free legal aid, Roma and Egyptian communities, children’s rights, the rights of sex workers, persons living with HIV, persons with disabilities, as well as investigative journalists; covering the issues of human rights, corruption, and crime. All interviews were carried out in August-September 2019. The interviewed HRDs were 9 men, 12 women and 1 transgender person. This research does not provide an exhaustive analysis concerning the situation of all groups of HRDs in Albania and the findings should not be generalised.

The first part of this report, which discusses the general context and the regulatory framework concerning human rights defenders in Albania, relies on desk research, including relevant legal provisions, reports from NGOs (Non-for-Profit Organisations), media and UN human rights bodies. The second part, which analyses the violations and restrictions human rights defenders face in terms of their civil and political rights, including assaults, harassment and other forms of abuse, relies mostly on interviews and several case studies representing these cases. In selecting the case studies, various forms of impediments faced by human rights activists in the past five years are described, including written attacks, verbal attacks and physical or psychological threats and attacks. In addition, 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 experiencing a considerable level of restriction in expressing their opinion or reporting news that are critical 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 insufficient funding, lack of capacities and politicisation of their actions. The vast majority of interviewees suggest that the sector of civil society needs to work more to ensure sustainability of their actions and increase their policy and advocacy efforts through evidence-based research.<sup>3</sup> 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 working on the rights of sex workers, are subject to targeted assaults. They are more likely than others to face perpetual psychological violence and anonymous threats of physical assaults. 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.<sup>4</sup> The second group, Women Human Rights Defenders (WHRDs),<sup>5</sup> 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 competent authorities or they withdraw their referrals because of the fear of retribution.<sup>6</sup> The third group, HRDs working with Roma/Egyptian communities, is also a very common target of hate speech. They are subject to various forms of overt discrimination exercised by public figures, TV shows and even journalists.<sup>7</sup> Finally, HRDs working on environmental issues have been facing a lot of pressure from business investors and associates. These can be either anonymous or blatant threats, aimed to protect the interests of third parties. Often these businesses and investors are supported by the government, which creates even more pressure for those speaking up against environmental crimes.<sup>8</sup>

<sup>1</sup> Explained in more detail in the legal framework section.

<sup>2</sup> Article 1, UN Declaration on Human Rights Defenders.

<sup>3</sup> Interview No 3, Civil Society Representative, 27.8.2019; Interview No 7, Civil Society Representative, 14.8.2019

<sup>4</sup> Interview No 8, Civil Society Representative, 14.8.2019; Interview No 19, Civil Society Representative, 20.9.2019; Interview No 16, Civil Society Representative, 3.9.2019; Interview No 9, Civil Society Representative, 18.9.2019; Interview No 20, Civil Society Representative, 23.8.2019.

<sup>5</sup> By 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, and, because of the similarities of the situations they face, the term will be considered to also include men and non-binary human rights defenders working on gender equality issues.

<sup>6</sup> Interview No 17, Civil Society Representative, 3.9.2019; Interview No 14, Civil Society Representative, 26.8.2019; Interview No 13, Civil Society Representative, 26.8.2019; Interview No 16, Civil Society Representative, 3.9.2019.

<sup>7</sup> Interview No 4, Civil Society Representative, 13.8.2019; Interview No 10, Civil Society Representative, 18.9.2019

<sup>8</sup> Interview No 11, Civil Society Representative, 22.8.2019; Interview No 6, Civil Society Representative, 13.9.2019; Interview No 5, Civil Society Representative, 14.8.2019

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:

- ▶ Scarcity in funds considerably obstructs the work of human rights defenders.<sup>9</sup>
- ▶ Lack of public awareness is a serious problem in the Albanian context. With many socio-economic challenges to deal with, the general public does not view topics such as environment or violation of human rights as crucial.<sup>10</sup>
- ▶ Social norms and patriarchal mentality perpetuate various forms of violence.<sup>11</sup>
- ▶ The ownership of media dictates what journalists are eligible to report, based on their business and political interests.
- ▶ The government has used legal restriction to harass and silence the opposition from NGOs/HRDs<sup>12</sup> and media.
- ▶ Currently, legal loopholes are causing difficulties in gathering evidence of threats and discrimination.<sup>13</sup> There have been several cases when the Commissioner 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; and the fear that perpetrators might soon retaliate is always present. Moreover, issuing fines for using discriminatory language can have the opposite effect of inciting more hate speech.<sup>14</sup> Discrimination cases 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 33(1)). 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’.<sup>15</sup> Instead, it is the Code of Administrative Procedure that explicitly provides for the reverse of the burden of proof in matters of discrimination.<sup>16</sup>
- ▶ Authorities do not have appropriate knowledge to understand and address the claims of human rights defenders in a number of subjects. For example, in terms of environmental issues, prosecutors and judges often do not know how to investigate an environmental crime. Moreover, Albania does not have a certified or accredited lab to run such investigations, which makes it extremely difficult for civil society to prove that an environmental crime took place.<sup>17</sup>
- ▶ There is no consistency and cooperation in the consultation processes for the development of policies and legislation related to the protection of human rights. Moreover, the consultation processes fall short of a participatory and inclusive approach.<sup>18</sup>

### 3. LEGAL FRAMEWORK

Albania is a state party to all main UN human rights treaties and has made significant progress to ratify the major international human rights conventions such as: European Convention on Human Rights,<sup>19</sup> Convention on the Rights of the Child,<sup>20</sup> European Social Charter,<sup>21</sup> Convention on the Elimination of All Forms of Discrimination against Women,<sup>22</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,<sup>23</sup> International Covenant on Civil and Political Rights,<sup>24</sup> International Covenant on Economic, Social and Cultural Rights,<sup>25</sup> International Convention on the Elimination of All Forms of Racial Discrimination,<sup>26</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>27</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>28</sup> All the international human rights documents ratified in line with the Constitution are transposed into the national legislation.

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

<sup>9</sup> Interview No 20, Civil Society Representative, 23.8.2019; Interview No 13, Civil Society Representative, 26.8.2019

<sup>10</sup> Interview No 6, Civil Society Representative, 13.9.2019; Interview No 11, Civil Society Representative, 22.8.2019; Interview No 16, Civil Society Representative, 3.9.2019;

<sup>11</sup> Interview No 22, Civil Society Representative, 29.8.2019; Interview No 16, Civil Society Representative, 3.9.2019; Interview No 13, Civil Society Representative, 26.8.2019; Interview No 19, Civil Society Representative, 20.9.2019;

<sup>12</sup> Interview No 6, Civil Society Representative, 13.8.2019

<sup>13</sup> Article 33 of the Law No 10 221 from 4.2.2010 on Protection from Discrimination, setting up procedures for submission and verification of complaints.

<sup>14</sup> Interview No 10, Civil Society Representative, 18.8.2019; Interview No 4, Civil Society Representative, 13.8.2019; Interview No 15, Civil Society Representative, 27.8.2019; Interview No 18, Media Representative, 8.9.2019; Interview No 20, Civil Society Representative, 23.8.2019; Interview No 16, Civil Society Representative, 3.9.2019; Interview No 19, Civil Society Representative, 20.9.2019;

<sup>15</sup> See <https://www.equalitylaw.eu/downloads/4958-albania-country-report-non-discrimination-2019-pdf-985-kb>

<sup>16</sup> Albania, Code of Administrative Procedure, Law 44/2015, approved by the Assembly of the Republic of Albania on 30.4.2015, entered into force on 28.5.2016

<sup>17</sup> Interview No 6, Civil Society Representative, 13.9.2019; Interview No 11, Civil Society Representative, 22.8.2019; Interview No 5, Civil Society Representative, 14.8.2019

<sup>18</sup> Interview No 13, Civil Society Representative, 26.8.2019

<sup>19</sup> Ratified on 2 October 1996

<sup>20</sup> Ratified on 27 February 1992

<sup>21</sup> Albania ratified the revised European Social Charter on 14.11.2002 and has accepted 64 of the revised Charter's 98 paragraphs. It has not signed the collective complaints protocol.

<sup>22</sup> Ratified on 11 May 1994

<sup>23</sup> Ratified on 23 June 2003

<sup>24</sup> Ratified on 4 October 1991

<sup>25</sup> Ratified on 4 October 1991

<sup>26</sup> Ratified on 11 May 1994

<sup>27</sup> Ratified on 11 May 1994

<sup>28</sup> Ratified on 1 October 2003

insufficient. Efforts have been made to ensure that the obligations arising from international human rights law are transposed into national legislation. In April 2010 the EU Heads of Mission to Albania adopted the “Local Strategy for the Implementation of the EU Guidelines on Human Rights Defenders”.<sup>29</sup> Moreover, in 2019, Albania approved the UN Declaration on Human Rights Defenders.<sup>30</sup> Albania is yet to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the International Convention on Economic, Social and Cultural Rights.<sup>31</sup>

The Albanian Constitution guarantees fundamental human rights and freedoms, including the right to life (Article 21), the right to liberty (Articles 27-28), freedom of assembly (Article 47), freedom of association (Article 46), freedom of opinion and expression (Articles 22-23), freedom from discrimination (Article 18), and the right to a fair and public trial (Article 42). The Albanian Constitution is the highest law in the country, and it stipulates that all international agreements ratified by laws take precedence over domestic laws that may be incompatible with them.<sup>32</sup>

**FREEDOM OF ASSOCIATION:** The Constitution provides for freedom of association, which is generally upheld in practice. Although the Law recognizes the right of every natural person and legal entity, either local or foreign, to establish a non-profit organization or be a member of it,<sup>33</sup> the centralized registration process at the Tirana District Court is lengthy, complicated and expensive. Also, other processes, such as the change of office representative, change of office address, changes in the board of the organisation etc. have to be undergone through the Tirana Court. On the one hand, this is an unnecessary burden for the court, which has to play the role of a registry office. On the other hand, this can have a discouraging effect on non-profits, especially when it concerns a grassroots organization with limited capacities. The second obstacle relates to the obligation of NGOs to have one full-time paid employee in order to register with the tax authorities, according to the provisions stipulated in the fiscal registration requirements. This requirement is excessively burdensome as new non-profits are often not yet able to pay a full-time employee. Lastly, NGOs carrying out economic activities are subject to the same fiscal requirements as private businesses. Thus, the restraining fiscal regime governing the non-profit sector continues to impede further the development and sustainability of this sector.<sup>34</sup> In general, the Law has a discouraging effect on HRDs and limits full and free exercise of their freedom of association.

**FREEDOM OF ASSEMBLY:** The freedom of assembly is regulated by the Law No 8773 from 23.4.2001 on Assemblies,<sup>35</sup> and is largely in line with the guidelines on Freedom of Peaceful Assembly of the ODHHR. Although formally respected, in practice the right to organize peaceful assemblies and participate in them has several obstacles. Demonstrations by civic groups have generally been peaceful, but reports have shown various forms of state intervention in the right to be organized peacefully.<sup>36</sup> In several instances, the authorities have either refused or dispersed a rally, made attempts to evacuate protesters from the gathering place or prohibited and sanctioned rallies – both in the administrative and criminal sense.<sup>37</sup> Although the Law provides for the possibility of spontaneous assembly, there were several instances in which the police intervened against spontaneous protests that did not have permits. Moreover, there is no clear distinction between what the Law refers to as a “notification”, versus a “request” or “permission”. There is a discrepancy between the Law No 8773 from 23.4.2001 on Assembly, which only provides for notification procedures, without prior permission and, on the other hand, the Albanian Constitution, which stipulates that the organisation of or participation in illegal manifestations constitute a criminal contravention. As such, reports indicate that criminal proceedings issued against human rights activists participating in assemblies are not legally plausible and leave space for interpretation.<sup>38</sup> Finally, the Law does not address the right for counter-assemblies. Though this right is generally upheld in practice, the shortcomings of the Law could potentially point to the repressive and shrinking civic space for HRDs.

**GOVERNMENT INFLUENCE ON NGOS' ACTIVITIES:** The current legal framework<sup>39</sup> NGOs to operate independently of government influence and interest. In accordance with Article 7 of the Law No 8788 from 7.5.2001 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 activity of non-profit organizations is performed only in the cases and the manner specified by the law. Pursuant to Article 44 of the Law No 8788 from 7.5.2001 on Non-Profit Organizations as amended, the court may decide on the dissolution of an NGO upon the request of the competent state organ in cases when a) the activity of the non-profit organization comes into conflict with the Constitution; b) the NGO performs illegal activity; c) the NGO was not established according to the requirements of the Law; d) the NGO has gone bankrupt according to the law of bankruptcy. Moreover, Article 25 of the abovementioned Law stipulates the option for redress against the decision of the judge rejecting the application by appealing to the Court of Appeals of Tirana.

<sup>29</sup> Retrieved from [http://eeas.europa.eu/archives/delegations/albania/documents/eu\\_albania/local\\_strategy\\_hrd\\_sq.pdf](http://eeas.europa.eu/archives/delegations/albania/documents/eu_albania/local_strategy_hrd_sq.pdf)

<sup>30</sup> Official Gazette No 31 from 13.3.2019, Retrieved from <http://qbz.gov.al/eli/rezolute/2019/03/05/368>

<sup>31</sup> UN, ‘Multilateral Treaties Deposited with the Secretary-General’ United Nations Treaty Collection, <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en>

<sup>32</sup> Article 122, Constitution of the Republic of Albania.

<sup>33</sup> Law No 8788 of 7.5.2001 on Non-Profit Organisations, as amended

<sup>34</sup> Retrieved from <https://partnersalbania.org/publication/monitoring-matrix-on-enabling-environment-for-civil-society-development-country-report-for-albania-2/>

<sup>35</sup> Law No 7895 of 27.1.1995 on the Penal Code of the Republic of Albania and Law No 108/2014 on the State Policy, as amended.

<sup>36</sup> Retrieved from <http://ecnl.org/wp-content/uploads/2017/12/ECNL-FoPA-Albania-2017.pdf>

<sup>37</sup> Ibid. Partners Albania, 2018

<sup>38</sup> Albanian Helsinki Committee, Examples of Handled Cases, related to Resolution of Human Rights Defenders.

<sup>39</sup> Article 7 of Law No 8788 of 7.5.2001 on Non-Profit Organisations

**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 laws<sup>40</sup> that can lead to a greater amount of self-censorship in the media landscape already causing restrictions.<sup>41</sup> 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. The proposed amendments empower 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 a 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, the Complaints Council, is warranted with the power to remove online content or impose administrative 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.<sup>42,43</sup> Civil society activists, independent media, HRDs and several international organisations have made efforts to convince the government to withdraw these bills, as they will further tighten the control over the online media, obstruct media freedom and restrict freedom of expression.<sup>44</sup> Regardless of these arguments, the government is pushing forward the legislation, claiming that the “anti-defamation campaign” will discipline online media and fight fake news and defamation.

**LIBEL/SLANDER LAWS<sup>45</sup>:** 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 420),<sup>46</sup> 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 already in place provides for the protection from defamation and the mechanism to address defamation is the court. Therefore, 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.

Thus, 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 years<sup>47</sup> 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 for assembly, could potentially serve as an attempt to give HRDs a tighter grip over their activism.

There are a few mechanisms for the protection of human rights defenders. These include the Office of the Ombudsperson, 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 or on its own initiative. However, the Office of the Ombudsperson is not empowered to enforce decisions, but rather to act as a human rights monitoring and protecting mechanism, and to issue recommendations to state institutions and actors, including the Parliament. Thus, it is more reactive than proactive.<sup>48</sup>

**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 conduct that encourages discrimination. The CPD asks the court for execution procedures regarding the fines imposed by the CPD. Though the roles of the Ombudsperson 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. One of the main reasons for 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.<sup>49</sup>

40 Law No 9918 on Electronic Communications in the Republic of Albania and No 97/2013 on Audio Visual Media in the Republic of Albania

41 Retrieved from <https://freedomhouse.org/report/freedom-world/2019/albania>

42 The appointment procedure for AMA members and its 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 harsh penalties (up to suspension of activity) it imposes for media outlets that do not comply with the regulations. Additionally, the media outlet is required to pay the fines before the legal review is exhausted.

44 Statement on the legislative package of draft laws approved by the Council of Ministers on online media regulation

45 Article 120 of Criminal Code of the Republic of Albania, 2nd paragraph as changed by Law No 8733 of 24.1.2001

46 Retrieved from <http://www.instat.gov.al/en/themes/labour-market-and-education/wages/publications/2019/wage-statistics-q1-2019/>

47 Such as the “Anti-Defamation Legislation”

48 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

49 Retrieved from <https://www.parlament.al/Files/Procesverbale/20190704140414Procesverbal,%20dat%20C3%AB%2013.05.2019.pdf>; Interview No 20, Civil Society Representative, 23.8.2019

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

Although the work of HRDs is not visibly restricted by the state authorities, undue pressure is occasionally and indirectly exercised. This is particularly obvious in regard to the freedom of assembly. The law and the Constitution prohibit arbitrary arrest and detention, and the government has generally upheld the right to free assembly. Notification procedures on whether a protest is eligible to take place are quite vague and ambiguous. Since the law does not provide for spontaneous protests, permissions are often denied as a scare tactic to pressure and deter activists.<sup>50</sup> There are several instances of protesters and organisers being accompanied to and interrogated in police detention facilities. Therefore, legislative vagueness and legal loopholes for holding an unauthorized assembly may potentially be exploited to detain or criminalize human rights defenders.

### *The banned protest of activists against alleged police brutality that resulted in the death of a young Romani man in detention at a police facility in Korça*

On the 15<sup>th</sup> of May 2019, a young Romani man lost his life during his stay in detention in a police facility in Korça. His family alleged that he died due to police ill-treatment and abuse, claiming that they had photos evidencing the use of violence over his body. Later, the Korça Prosecution Office stated that the police did not use violence, claiming the young man died due to a lung disease. The prosecutors pressed charges against three police officers, alleged for not providing first aid that resulted in the death of the youngster.<sup>51</sup> The Ombudsperson’s Office concluded that there was not enough evidence to prove the allegations or press charges.<sup>52</sup> NGO activists staged a protest march in front of the Ministry of Interior, demanding relevant authorities to investigate the case and put a stop to impunity.<sup>53</sup> The Albanian police refused to grant permission for the protest in the last moment, so the activists had to hold the protest as an emergency press conference, instead of a protest. There are allegations that several activists were accompanied to the police station and questioned, after being accused for participating in illegal demonstrations.<sup>54</sup>

Some activists have reported that the police has initiated criminal proceedings against protesters on the grounds of ‘organising and participating in illegal meetings and demonstrations’,<sup>55</sup> which is considered a criminal offense.<sup>56</sup> This kind of intimidation further exacerbates the psychological pressure on activists. This concern is expressed by the following interviewee:

*The main problem I face regarding assemblies is the excessive bureaucracy when requesting permission to hold a protest. This is a very tricky situation since too much bureaucracy means delaying the protest. This leads to the protest being held at a time during which the subject topic is not as ‘hot’, thus making the demonstration less effective. Sometimes, as an HRD you are willing to join the cause, but then you find out that the police failed to grant permission to the organisers, so you find yourself in police detentions being interrogated by police officials. (Interview No 12, Civil Society Representative, 9.9.2019)*

Many HRDs claim that they do not believe that protesting is an effective advocacy tool for their cause. They assume that due to scrutiny, protests are more likely to isolate the issue and aggravate the situation than to make a positive contribution.<sup>57</sup> Even if protesting could make a positive contribution, activists do not choose to organise a protest because they are scared, they lack financial resources or they feel threatened to demonstrate against government policies.<sup>58</sup>

The Law on the Right to Information is not implemented properly, as HRDs find it extremely difficult to access information, particularly data concerning sensitive human rights issues from public institutions.<sup>59</sup> Excessive bureaucracy and the lack of transparency is omnipresent, especially from local authorities.<sup>60</sup> Therefore, some HRDs have either used their own social network to receive information through informal channels<sup>61</sup> or proceeded with the court in cases when access to information was denied despite several requests.<sup>62</sup>

50 Interview No 21, Civil Society Representative, 10.9.2019; Interview No 3, Civil Society Representative, 27.8.2019; Interview No 11, Civil Society Representative, 22.8.2019.

51 Albanian Helsinki Committee. Report on the Situation of Respect for Human Rights and Freedoms in Albania for 2018

52 Ibid.

53 Retrieved from <https://opinion.al/protesta-per-vdekjen-e-enea-ftoit-xhafa-te-jape-sqarime-duam-drejttesi/>

54 Retrieved from <http://www.tiranatimes.com/?p=137212>; Interview No 4, Civil Society Representative, 13.8.2019

55 Interview No 3, Civil Society Representative, 27.8.2019

56 Article 262 of Criminal Code of Albania stipulates that organizing the assembly of people in squares and places of public passage without prior permission by the competent authority according to the specific provisions or when organizers breach the conditions provided in the request for permission constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment.

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 public authorities concerning the case of Romani man who lost his life during his stay in detention in a police facility in Korça (case No 1) or in the case of an HRD from media, the lack of data when investigating crime and corruption among state/political officials.

60 Interview No 15, Civil Society Representative, 27.8.2019; Interview No 12, Civil Society Representative, 9.9.2019; Interview No 14, Civil Society Representative, 26.8.2019; Interview No 21, Civil Society Representative, 10.9.2019

61 Interview No 7, Civil Society Representative, 14.8.2019; Interview No 12, Civil Society Representative, 9.9.2019; Interview No 1, Media Representative, 12.8.2019

62 Interview No 5, Civil Society Representative, 14.8.2019

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 HRDs, so the barriers they are facing when implementing their activities are important signals sent by the officials to counterbalance their level of criticism.<sup>63</sup> Pressure usually does not come directly from the authorities, but it is channelled through their representatives that can be political activists.<sup>64</sup> On the contrary, if HRDs are pro-government and in favour of their policies and interests, public authorities are quite supportive of their work.<sup>65</sup> The challenges faced by HRDs that criticise 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 of the community, by directly or indirectly influencing them. Though at first sight this might seem as a subtle way to control the flow of information, it is actually an effective mitigation measure aimed at silencing those who speak out. This type of pressure is often used by public authorities as an effort to induce protesters' withdrawal from their cause, for example when private companies connected to government officials want to diminish the number of objections against their investments.<sup>66</sup>
- ▶ Smearing campaigns by government officials and media outlets to undermine the legitimacy of the work of HRDs and divert attention from the topics raised by civil society. The central and local government often assume that civil society organizations are established with the purpose of profiting from the available funds.<sup>67</sup> Therefore, the political elite has used denigrating and insulting language that labels HRDs as politicised thieves, aggressors, low-level people with no integrity, or lacking intellectual capacity to understand the long-term positive outcomes of government initiatives. Offensive and degrading language against journalists, such as calling them "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. This is a form of pressure used to obscure defenders' claims, to undermine their public reputation as well as to demotivate HRDs and to deter them from continuing their activism.<sup>68</sup>
- ▶ 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 fund shortage, 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.<sup>69</sup>

Women human rights defenders are at a heightened risk, due to their gender and the sensitivity of the issues they are working on.<sup>70</sup> The following case describes some of the main challenges faced by them:

### Life-threatening phone calls and slander charges against women human rights defenders

On the 8<sup>th</sup> of March 2019, civil society activists organised a demonstration to break the silence against the unprecedented levels of violence against women in Albania. NGO activists demanded the government to take immediate actions against gender-based violence. Protestors, all dressed in black, sat down to symbolize the societal and institutional passive response to the phenomenon, and in solidarity with the women who lost their lives due to gender-based violence.<sup>71</sup> Though it was considered a peaceful protest with no particular threat to protesters' safety, there are allegations that the NGO activists who attended the protest had received verbal threats from public officials. The threats varied from cutting funds to ending future collaboration, unless the activists stopped the protest.<sup>72</sup>

Moreover, activists working on women's rights seem to be more subjected to life-threatening messages from perpetrators of violence.<sup>73</sup> The director of women's shelter, B.P. admits that she had personally received threatening phone calls from anonymous persons. She reported receiving death threats from the abusive partner of one of the victims she was assisting, a known businessman in her area. She has been the target of a smear campaign in media, libelling her as a pimp that kidnaps the children of victims she helps and selling off the businessman's wife. The article also claimed that she had ordered the children to be killed and her organisation was smeared as a disguised brothel.<sup>74</sup> She did not make any further attempts to report the case to the respective authorities, since she was afraid that further media attention regarding the case would endanger the lives of victims.

**HRDs report instances when individuals hired by public authorities tried to infiltrate protests or manifestations with the goal of creating a division inside the group, or to influence the group or the focus point of the protest to**

63 Interview No 9, Civil Society Representative, 18.9.2019; Interview No 7, Civil Society Representative, 14.8.2019

64 Interview No 18, Media Representative, 8.9.2019

65 Interview No 9, Civil Society Representative, 18.9.2019; Interview No 16, Civil Society Representative, 3.9.2019;

66 Interview No 11, Civil Society Representative, 22.8.2019

67 Interview No 14, Civil Society Representative, 26.8.2019; Interview No 12, Civil Society Representative, 9.9.2019; Interview No 6, Civil Society Representative, 13.8.2019

68 Interview No 17, Civil Society Representative, 3.9.2019; Interview No 11, Civil Society Representative, 22.8.2019

69 Interview No 09, Civil Society Representative, 18.8.2019; Interview No 13, Civil Society Representative, 26.8.2019; Interview No 3, Civil Society Representative, 27.8.2019; Interview No 9, Civil Society Representative, 18.9.2019; Interview No 13, Civil Society Representative, 26.8.2019; Interview No 17, Civil Society Representative, 3.9.2019; Interview No 6, Civil Society Representative, 13.8.2019

70 Interview No 14, Civil Society Representative, 26.8.2019; Interview No 13, Civil Society Representative, 26.8.2019; Interview No 17, Civil Society Representative, 3.9.2019

71 Retrieved from <http://thebalkanista.com/2019/03/04/protestors-in-black-set-to-demonstrate-%E2%80%8B8Bon-international-womens-day-in-tirana/>

72 Interview No 13 with human rights defender, 26 August 2019; Interview No 9, Civil Society Representative, 18.9.2019

73 Interview No 14 with human rights defender, 26 August 2019

74 Retrieved from <https://kvinnatilkvinna.org/wp-content/uploads/2018/10/10-Femdefenders-the-hatred-against-women-ENG.pdf>

moderate their requests. In some cases, their efforts aim at politicising the protest or manipulating the public image of the activity.<sup>75</sup> For example, it is argued that attempts have been made to incite violence in order to escalate a protest and create an image of a violent group. These individuals then become negotiators or leading figures that strive to administer the protest, switch the tension, or aim to deviate or delegitimize the protest by using alternative arguments.<sup>76</sup>

**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 most probably militants of political parties or paid by them, as it can be seen in the following example.<sup>77</sup>

*In one case, the youth wing of a party in Albania would mobilize its members to comment on exact phrases in posts which would have a political nature. About 6 messages were shared to about 300 people who would flood the social media in a strategic manner with the sole goal of misleading the public opinion and making people sceptical of the writing's credibility.<sup>78</sup>*

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, scientists and academia, 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 water flow.<sup>79</sup> Firstly, 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 documents.<sup>80</sup> Public consultation is another 'hot topic' of debate over the validity of documentation submitted by concessionaires, as many inhabitants allegedly claim that the company has falsified their signatures for approving the project (including signatures of deceased persons) and that the public consultation process with the local communities has been inadequate and ineffective. During these protests, two activists were detained by the police.<sup>81</sup> Subsequently, the activists have not been granted permission to take photos and videos near the area of construction.<sup>82</sup> Moreover, the NGO activists claim that local authorities labelled them as 'anti-development' or 'anti-Albanian'. The activists and community members who opposed the HPPs reported instances of alleged harassment from both local state authorities and company actors, such as: arrests or threats of arrests, threats of being fired from their jobs, selective prosecutions of activists, judicial harassment<sup>83</sup>, anonymous threats, and smear campaigns that undermined familial and communal relationships,<sup>84</sup> frequent financial inspections and criminal prosecution.<sup>85</sup> The battle for the cancellation of permits for the remaining 3 HPPs is still ongoing. However, the lack of functioning courts has undermined their legal battles. They have filed documents for several parallel cases in administrative, civil and criminal courts as many of the cases might ultimately end up blocked in higher (non-functional) Albanian courts.

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.<sup>86</sup> On top of that, the independence of the Albanian media is often undermined by the political or economic interests of media owners. Therefore, self-censorship has widespread among journalists as a way of avoiding threats, smear campaigns or attacks. Generally, there is a strong 'copy-culture' in which news outlets copy each other's reporting. But when a topic is more sensitive or critical, news stories can be entirely ignored. This happens especially with **publications that discuss human rights**.<sup>87</sup> Often, high-profile politicians publicly declare **alternative data and facts** immediately after their policies have been criticised. These alternative facts get broadcasted on politically biased media, whose reporting is highly influenced by the political and economic interests of their owners. This strong culture of propaganda makes Albania vulnerable on the subject of misinformation and spreading of fake news.<sup>88</sup> One interviewee claimed that:

75 Interview No 3, Civil Society representative, 27.8.2019; Interview No 6, Civil Society representative, 13.8.2019

76 Interview No 2, Media representative, 16.8.2019

77 Interview No 17, Civil Society representative, 3.9.2019; Interview No 3, Civil Society representative, 27.8.2019; Interview No 2, Media representative, 16.8.2019; Interview No 16, Civil Society representative, 3.9.2019;

78 Interview No 2, Media representative, 16.8.2019

79 Retrieved from [http://www.ecoalbania.org/wp-content/uploads/2017/04/Water\\_conflict\\_study-2017-1.pdf](http://www.ecoalbania.org/wp-content/uploads/2017/04/Water_conflict_study-2017-1.pdf)

80 Ibid.

81 Retrieved from <https://www.reporter.al/lufta-per-zemren-blu-te-alpeve-shqiptare/>

82 Interview with NGOs activist on environment issues

83 The term is understood as the application of unwarranted legal and administrative proceedings or any other forms of misuse of administrative and judicial authority, including arbitrary and abusive application of legislation with the purpose or effect of obstructing or stigmatizing human rights work.

Retrieved from <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders?download=true>

84 Retrieved from [https://www.americanbar.org/groups/human\\_rights/reports/communities-under-pressure-albania-june-2019/](https://www.americanbar.org/groups/human_rights/reports/communities-under-pressure-albania-june-2019/)

85 Retrieved from <https://citizens-channel.com/2019/06/20/ndertimi-i-hec-eve-ne-valbone-banoret-e-tropojes-nen-kercenime-te-vazhdueshme/>

86 Interview No 1, Media representative, 12.8.2019; Interview No 2, Media representative, 16.8.2019

87 Interview No 3, Civil Society representative, 27.8.2019; Interview No 17, Civil Society representative, 3.9.2019

88 Interview No 2, Media representative, 16.8.2019

*The media environment in Albania is very biased and it becomes a real problem as they ignore, transform or replicate your arguments when there is not a real need. For example, three days after our organisation published an article about the negative effects of the incinerators, the Prime Minister's personal media outlet broadcasted a meeting between the ministers in which the positive effects of such facilities were discussed. In a few words, they are not really calling us out as liars, but they are trying to grab the public opinion and reshape it according to their interests. This brings us to another tactic used by most politicians, which is using alternative facts immediately after certain reports denounce their policies (Interview No 2, Media representative, 16.8.2019)*

**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 many instances of authorities preparing the media reporting themselves. For example, a personal PR team delivers 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.<sup>89</sup>

## 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.<sup>90</sup> 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 LGBTI+ 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.<sup>91</sup> In other instances, WHRDs report that central government authorities have tried to silence their activism by labelling them as 'enemies', and threatening that they would stop collaborating and would place further restrictions that would limit their access to funding and donor networks.<sup>92</sup>

The vast majority of interviewees reveal that WHRDs working in media are more likely to experience online harassment than their male colleagues.<sup>93</sup> Once they publish an article on a specific sensitive topic, they are subjected to online intimidation, offensive comments and derogatory sexist language. This includes, for example, attacks to destroy their well-standing reputation and discredit their work.<sup>94</sup> 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.<sup>95</sup>

The climate for WHRDs is further aggravated by the patriarchal mentality and the dominant gender stereotypes that shape public perceptions on gender roles,<sup>96</sup> 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.

WHRDs report that they have faced multiple discriminations, on grounds of both their gender and their specific personal status – their activism. As such, they are in a more disadvantaged position, compared to HRDs in general.<sup>97</sup> As is evident in this report, there is no legal provision in place to exercise due diligence in preventing, punishing and redressing gender-based attacks. Therefore, in the absence of appropriate protective measures, sometimes WHRDs choose to keep the situation "under control", instead of "breaking the silence" and putting at risk both their lives and the lives of others.

<sup>89</sup> Interview No 1, Media representative, 12.8.2019

<sup>90</sup> Interview No 2, Media representative, 16.8.2019; Interview No 17, Civil Society representative, 3.9.2019; Interview No 13, Civil Society representative, 26.8.2019

<sup>91</sup> Interview No 17, Civil Society representative, 3.9.2019

<sup>92</sup> Interview No 13, Civil Society representative, 26.8.2019

<sup>93</sup> Interview No 2, Media representative, 16.8.2019; Interview No 1, Media representative, 12.8.2019

<sup>94</sup> Interview No 2, Media representative, 16.8.2019; For example, Desada Metaj, a senior female journalist has been subject to online trolling and intimidation for over a year after reporting on a drug trafficking case. See <https://mappingmediafreedom.org/index.php/country-profiles/albania/>

<sup>95</sup> Interview No 2, Media representative, 16.8.2019

<sup>96</sup> This reflects the traditional gender order in the Albanian society, whereby women are to assume domestic and caretaking roles, whereas men are to be the breadwinners and heads of their households.

<sup>97</sup> Interview No 13, Civil Society representative, 26.8.2019; Interview No 17, Civil Society representative, 3.9.2019;

## 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.<sup>98</sup> 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 LGBTI+ issues.<sup>99</sup> The LGBTI+ 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.<sup>100</sup> Since national institutions are not willing to step up, international bodies are often the ones to address their concerns.<sup>101</sup> The discrimination against LGBTI+ activists is pervasive.

### *LGBTI+ activist obligated to leave Albania after receiving dozens of death threats – homophobic hate speech*

*Activists working on LGBTI+ rights are more likely to be subject to threats of physical violence, assaults and death threats than other HRDs. It is actually quite common for LGBTI+ activists to face various forms of covert discrimination by public authorities. For example, the Ministry of Education has not allowed LGBTI+ activists to perform their awareness activities in schools, despite the fact that such activities are foreseen in the National Action Plan against LGBT Discrimination.<sup>102</sup> The LGBTI+ community seems to be the most persecuted community in user-generated comments<sup>103</sup> on social media. A declaration made from an LGBTI+ activist on the fourth Tirana Gay Pride against homophobia (18 May 2019), produced a wave of inflammatory comments, insults, curses, and threats against the LGBTI+ community.<sup>104</sup> The office of an LGBTI+ NGO has been attacked several times by unidentified assailants.<sup>105</sup> Kristi Pinderi, an activist and founder of an LGBTI+ 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.<sup>106</sup> Activists claim that it is particularly difficult for them to provide evidence for discrimination, unless they are in a written form or are made by public authorities.<sup>107</sup>*

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.<sup>108</sup> 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 perpetrator who would have committed a criminal offence.<sup>109</sup> However, HRDs are at higher risks compared to 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 an HRD. Moreover, there are no specific considerations when investigating violations committed against HRDs or investigative journalists that are female or self-identifying as LGBTI+.<sup>110</sup> This is particularly dangerous since the perpetrators go unpunished and the HRDs risk their lives.

### *Armed assault on the residence of investigative journalist Klodiana Lala*

*On 30 August 2018, unidentified persons fired multiple shots with automatic weapons at the home of the investigative journalist Klodiana Lala's parents, damaging several walls and windows. Her two young daughters were asleep inside the house when the event happened. Although nobody was injured, the family was quite distressed. Lala 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, since she and her family had never had any conflicts before. Local authorities are investigating the motive behind the assault, but nearly a year later, no one has been identified or arrested. The attack was condemned by public authorities and several journalists' associations in Albania.<sup>111</sup>*

<sup>98</sup> Interview No 16, Civil Society representative, 3.9.2019;

<sup>99</sup> 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

<sup>100</sup> Interview No 20, Civil Society representative, 23.8.2019; Interview No 13, Civil Society representative, 26.8.2019; Interview No 16, Civil Society representative, 3.9.2019;

<sup>101</sup> Interview No 19, Civil Society representative, 20.9.2019; Interview No 12, Civil Society representative, 9.9.2019; Interview No 20, Civil Society representative, 23.8.2019; Interview No 14, Civil Society representative, 26.8.2019; Interview No 16, Civil Society representative, 3.9.2019;

<sup>102</sup> Retrieved from <https://historia-ime.com/?p=60908>

<sup>103</sup> User-generated content can include: images, reviews, comments, blog articles, dictionary contributions and video clips.

<sup>104</sup> Retrieved from <https://www.gazetama.net/2019/05/18/fotot-parada-e-lgbti-shkembeh-puthje-dhe-perqafime-ne-gender-te-tiranes/>

<sup>105</sup> Retrieved from <https://www.botasot.info/tirana-shqiperia/740632/digjet-streha-e-lgbt-ne-tirane/>

<sup>106</sup> Retrieved from <http://shekulli.com.al/u-largova-nga-shqiperia-kercenuan-se-varnin-e-digjnin-acid/>

<sup>107</sup> Interview No 19, Civil Society representative, 20.9.2019; Interview No 16, Civil Society representative, 3.9.2019; Interview No 20, Civil Society representative, 23.8.2019

<sup>108</sup> Interview No 13, Civil Society representative, 26.8.2019

<sup>109</sup> As stipulated in the Criminal Procedure Code of the Republic of Albania (1995, amended 2017). Interview No 21, Civil Society representative, 10.9.2019

<sup>110</sup> Interview No 20, Civil Society representative, 23.8.2019; Interview No 19, Civil Society representative, 20.9.2019

<sup>111</sup> Retrieved from <https://al.usembassy.gov/wp-content/uploads/sites/140/2019-English-HRR.pdf>



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 a journalist investigates 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. **Journalists' wages are delayed** with the intention of keeping them "captive" and making them develop a sense of self-censorship.<sup>112</sup> There are private TV channels that have not been paying their staff for several months at a time. The following examples describe some of the daily challenges affecting human rights defenders:

*Journalists 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 doesn't follow his/her employer's orders than 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 and censorship 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 sectors. 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.<sup>113</sup>

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

*Investigative journalist Alida Tota was dismissed from work in a private television channel, after she had investigated alleged links between public authorities and a recycling plant in the Sharra landfill in Tirana, where a juvenile worker died in 2016. Tota was fired from A1 News TV a few hours after she contacted the public officials for comments.<sup>114</sup> 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 anonymous death threats. The attackers targeted her 13-year-old son as well, causing her to seek exile in Sweden. Although she sued 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 investigation<sup>115</sup>. After a female employee had died at the same dump 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.<sup>116</sup>*

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 x case<sup>117</sup>, 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, since there is little knowledge on environmental crime. Besides pressure from government institutions, there have been interventions from private businesses as well. Once I even received a death threat, but I didn't want to report it because the guy apologised and the case was solved internally through an intermediary. This kind of intimidation did not have any discouraging 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 procedures. In one instance (defamation charges in the case of Gjini Gjoni),<sup>118</sup> 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 when journalists had had strong cases that were quickly dismissed by prosecutors.<sup>119</sup> 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 contacted the responsible authorities to stop the works, but they did not receive any response. During their 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<sup>120</sup> proceeded with their lawsuit against the local government and the respective central government institutions. Legal provisions of the law<sup>121</sup> allowed NGOs to initiate an administrative case in the First Instance Administrative Court. The verdict was suspension of works, on the basis of the fact that the project violated the archaeological site. Soon after that, the municipality appealed the case to the Administrative Appeals Court. In the meantime, in June 2018, the government issued a new law,<sup>122</sup> which stipulates that only specialised institutions are eligible to file a lawsuit if there is any construction against the law.<sup>123</sup> Taking into consideration the new provisions, the 2nd level court issued a decision<sup>124</sup> that the case was not under the jurisdiction of the NGOs. With this interpretation, the right of NGOs to claim or request suspension 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 (to issue lawsuits) the HRDs established a new specialised institution, as per the requirements of the new law. Now, the case has been sent to the Higher Instance Court for further assessment in foundation.<sup>125</sup>*

However, the most significant flaw in the justice system<sup>126</sup> 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.<sup>127</sup> 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 in which 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 declarations made by HRDs should be carefully reviewed, so that they do not hold criminal responsibility. 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)*

### **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 was discouraged to proceed further 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.<sup>128</sup>

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 pages calling for (sexual) violence.<sup>129</sup> 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.<sup>130</sup> 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 WHRDs.

<sup>120</sup> Legal representatives of several NGOs working on environmental issues

<sup>121</sup> Based on Article 28(3) of the previous Law No 9048 of 7.4.2003 on Cultural Heritage.

<sup>122</sup> Article 81 point 1 of the Law No 27/2018 on Cultural Heritage and Museums

<sup>123</sup> Which means that only specialised institutions that have in their jurisdiction archaeological and cultural heritage issues could issue lawsuits

<sup>124</sup> Administrative Appeals Court

<sup>125</sup> Interview No 6, Civil Society representative, 13.8.2019

<sup>126</sup> Judicial reform is one of the EU's main requests in order for Albania to start the accession negotiations. This reform has been ongoing since 2016.

Despite the positive impact it is expected to have on the justice system in Albania in the long run, the country has been without a functioning Supreme Court and Constitutional Court for more than one year. This happened due to resignations and a vetting process that removed some of the sitting judges.

Therefore, the reform has to some extent impeded access to justice, particularly by vulnerable groups and human rights defenders.

<sup>127</sup> Interview No 1, Media representative, 12.8.2019; Interview No 2, Media representative, 16.8.2019

<sup>128</sup> Interview No 17, Civil Society representative, 3.9.2019

<sup>129</sup> Interview No 19, Civil Society representative, 20.9.2019

<sup>130</sup> Interview No 1, Media representative, 12.8.2019;

<sup>112</sup> Interview No 3, Civil Society representative, 27.8.2019; Interview No 2, Media representative, 16.8.2019

<sup>113</sup> Interview No 1, Media representative, 12.8.2019

<sup>114</sup> Retrieved from [https://www.coe.int/en/web/media-freedom/detailalert?p\\_id=sojdashboard\\_WAR\\_coesoportlet\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-3&p\\_p\\_col\\_count=10&sojdashboard\\_WAR\\_coesoportlet\\_alertPK=28370908](https://www.coe.int/en/web/media-freedom/detailalert?p_id=sojdashboard_WAR_coesoportlet_p_lifecycle=0&p_p_col_id=column-3&p_p_col_count=10&sojdashboard_WAR_coesoportlet_alertPK=28370908)

<sup>115</sup> Retrieved from <https://www.reporter.al/gjykata-vendos-pro-gazetares-tota-ne-gjyqin-kunder-televizionit>

<sup>116</sup> Retrieved from [https://rsf.org/sites/default/files/en\\_rapport\\_mafia\\_web\\_0.pdf](https://rsf.org/sites/default/files/en_rapport_mafia_web_0.pdf)

<sup>117</sup> Name of case undisclosed

<sup>118</sup> Retrieved from <https://balkaninsight.com/2018/06/01/tirana-court-dismisses-judge-s-defamation-claim-against-birn-06-01-2018/>

<sup>119</sup> Interview No 2, Media representative, 16.8.2019

## 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 being used to coerce and harass HRDs, including online trolling, harassment and smearing campaigns. Authorities use trolls for shaping the public opinion, for example by calling journalists politicised, unprofessional or “trash bins”. Public smearing campaigns are also common among HRDs. At the same time, persons waiting for months’ worth of their salaries are scared, 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-optation 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<sup>131</sup>, 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,<sup>132</sup> 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 and it appears to have negatively impacted HRDs’ attitudes on the effectiveness and independence of the system. Even though 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 judiciary.<sup>133</sup> 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 when 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 judiciary procedures infringe 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 (defamation charges in the case of Gjin Gjoni).<sup>134</sup> And finally, the greatest concern is that the judiciary

<sup>131</sup> Including criminal charges, civil lawsuits and administrative proceedings.

<sup>132</sup> Article 7 of the Law No 8788 of 7.5.2001 on Non-Profit Organisations

<sup>133</sup> Interview No 17, Civil Society representative, 3.9.2019; Interview No 14, Civil Society representative, 26.8.2019

<sup>134</sup> Retrieved from <https://balkaninsight.com/2018/06/01/tirana-court-dismisses-judge-s-defamation-claim-against-birn-06-01-2018/>

system 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.<sup>135</sup>
- ▶ The Subcommittee 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 breaches, 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 clarify and standardise notification procedures, including spontaneous assemblies and counter-assemblies, and provide guidance to appeal and redress decisions regarding restrictions of assemblies.
- ▶ Independence 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 Ombudsperson 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 different treatment from ordinary citizens.
- ▶ 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 that attack human rights defenders.
- ▶ 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.

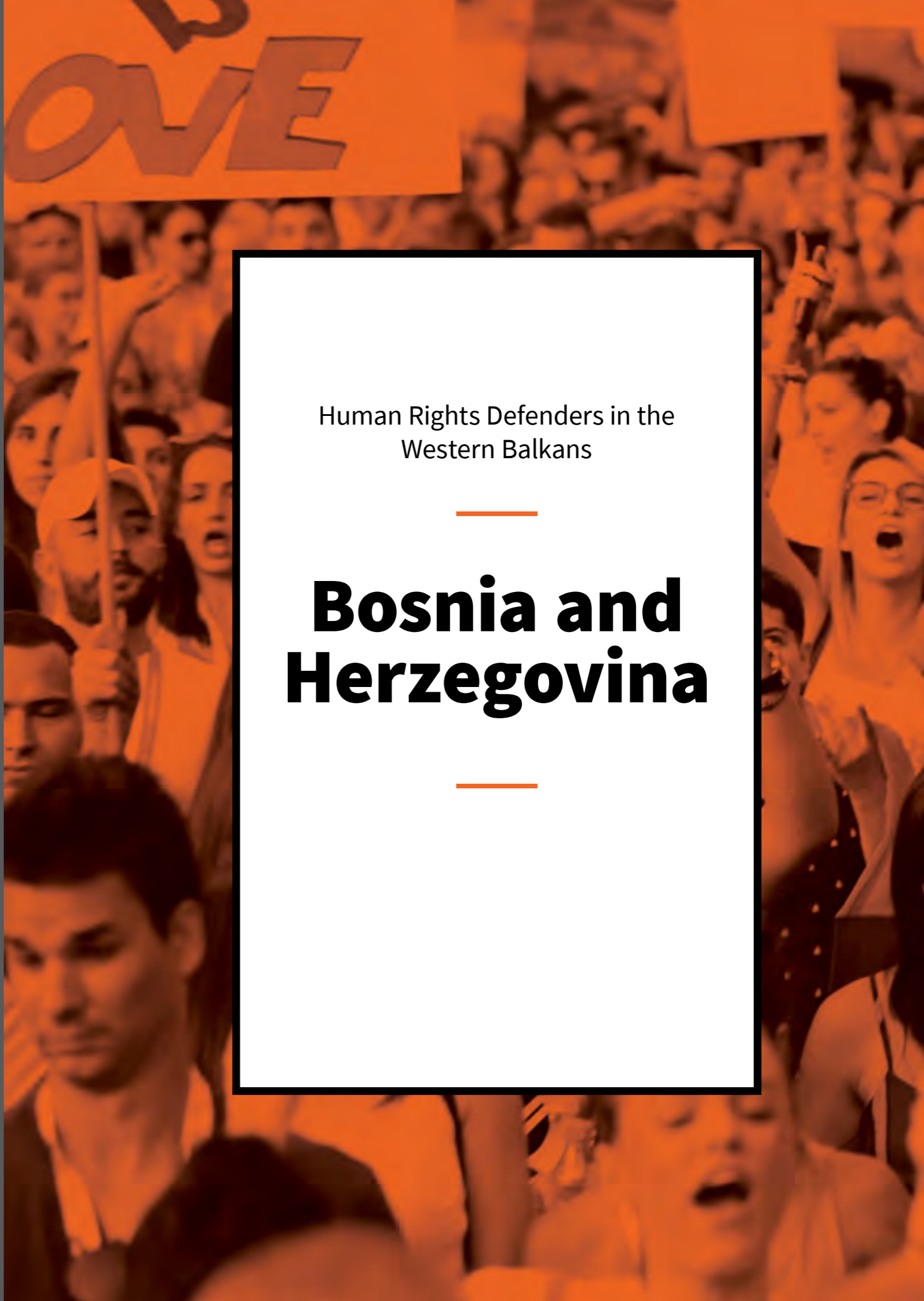
- ▶ The independence and professionalism of AMA should be strengthened by limiting political interference and pressure during the election procedures of its members. Public transparency and accountability of this body should be enhanced.

## 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

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# **Bosnia and Herzegovina**

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## 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 governments, notably the entity level governments, which needs to be addressed and the trend reversed. Improvement of the protection for human rights defenders based on the international standards in this area is needed, among other by introducing a separate legal category for HRDs. 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 which often remain forgotten.

# BOSNIA AND HERZEGOVINA

## 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 Organs 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.<sup>1</sup> 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, 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<sup>2</sup> 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.<sup>3</sup>

## 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. LGBTI+) 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).<sup>4</sup> 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.<sup>5</sup>

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 threaten to put back in the procedure the law regulating the work of NGOs from 2015

“which, if passed by the RS assembly, would allow authorities to categorize NGOs who receive foreign donations as ‘foreign agents’ and monitor their work and income in unwarranted ways that could discourage their independent work.”<sup>6</sup>

Most of the interviewees find that NGOs and media are negatively perceived in BiH<sup>7</sup>. The public still perceives them as ‘foreign agents’. NGOs should work together to improve their public image in the country, but better cooperation between authorities and the NGOs is needed as well. Three of the representatives of NGOs<sup>8</sup> think that NGOs are doing great work on the field and that they are very transparent. They also think that the public has a positive perception towards NGOs, but that they are not aware of the importance of the work that NGOs are doing. The opinion of one of the representatives of journalists is the same, based on the research that they have done, the public opinion is positive.<sup>9</sup>

### 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 has been found to be in breach of the Convention as regards non-discrimination in electoral 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).<sup>10</sup> Additional 207 recommendations emerged from the November 2019 UPR.<sup>11</sup> 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 Kruščica and targeted action against individuals organised around the group “Justice for David” represents a blatant breach of the rights to liberty and security of persons, right to administration of justice, including impunity and rule of law and freedom of expression and peaceful assembly.<sup>12</sup> 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<sup>13</sup>, states the determination to ensure full respect for 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 both 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 of relevance for HRDs, Annex 6 of the BiH Constitution refers 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 Appendix to this Annex. 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 property; the right to education; the right to freedom of movement and housing.

Chapter III of Annex 6 of the Constitution of BiH is dedicated to other organisations dealing with human rights. The obligation to promote and encourage the action of non-governmental and international organisations for the

<sup>6</sup> Human Rights Watch, World Report 2019: Bosnia and Herzegovina (2019).

<sup>7</sup> Interview No. 3, Media representative (6 September 2019); Interview No. 4, Media representative (9 September 2019); Interview No. 5, Media representative (11 September 2019); Interview No. 7, Civil society representative (12 September 2019); Interview No. 8, Civil society representative (13 September 2019); Interview No. 9, Civil society representative (13 September 2019); Interview No. 11, Civil society representative (13 September 2019); Interview No. 13, Civil society representative (16 September 2019).

<sup>8</sup> Interview No. 1, Civil society representative (30 August 2019); Interview No. 14, Civil Society representative (17 September 2019); Interview No. 10, Civil society representative (13 September 2019).

<sup>9</sup> Interview No. 6, Media representative (12 September 2019).

<sup>10</sup> Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union 2019

<sup>11</sup> OHCHR Universal Periodic Review – Bosnia and Herzegovina; <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BAindex.aspx>

<sup>12</sup> Submission to the UN Universal Periodic Review of Bosnia and Herzegovina, 34th session, 2019

<sup>13</sup> [http://www.ccbh.ba/public/download/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_bos.pdf](http://www.ccbh.ba/public/download/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf)

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<sup>14</sup> 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 adopted 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 harmonize 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<sup>15</sup> 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

ENTITY/DISTRICT	CANTON	LAW ON PUBLIC ASSEMBLY	LAW ON PUBLIC PEACE AND ORDER
FEDERATION BiH	Una-Sana Canton	2010	2010
	Posavina Canton	Part of Peace and Order Law from 2016	2016
	Tuzla Canton	2008, Amendments 2015	2001, Amendments 2007
	Zenica-Doboj Canton	New law in urgent procedure	Amendments 2017
	Bosna Podrinje Canton	s/a	-
	Srednja-Bosna Canton	2000 (Draft Law – not available to public)	-
	Hercegovina – Neretva Canton	-	2005
	Zapadna - Hercegovina Canton	2015	2009
	Canton 10 ( <i>Hercegovinačko-bosanska županija</i> )	2014	2007
	Sarajevo Canton	2009, Amendments 2011	2007
REPUBLIKA SRPSKA	-	2008	2015
BRČKO DISTRICT	-	2012	2009

Source: Bavčić 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 law that would regulate peaceful assemblies in this entity.<sup>16</sup> The initiative is seen as positive, as it would simplify procedures regarding the assemblies, and result in three laws overall – for two entities and one district, in contrast to the current 11 laws. However, the analysis of the pre-draft shows that the intention of this initiative is to restrict

<sup>14</sup> The 2009 amendments to the Law on Gender Equality in Bosnia and Herzegovina (“Official Gazette of BiH” No. 102/09) and the revised text of the Law (“Official Gazette of BiH” No. 32/10) brought the law in line with new EU directives and the General recommendations of the UN CEDAW Committee. The text of the Law promotes and clearly defines the terms and obligations of the competent institutions.

<sup>15</sup> Pink Report, 2018, available at: <https://bit.ly/2Psq1Jy>

<sup>16</sup> Law to be found at <http://www.fmup.gov.ba/v2/propisi.php?idkat=1>

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.<sup>17</sup>

Media is well regulated in the legislation of Bosnia and Herzegovina. Constitution of BiH guarantees freedom of expression, and laws<sup>18</sup> 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 committees dealing with human rights issues, established within the BiH Parliamentary Assembly and the entity and Brčko District assemblies. The Institution of Human Rights Ombudsman of BiH is the main non-judicial institution for the protection of human rights.<sup>19</sup> Its mandate covers a wide range of issues, including the fight against discrimination, social rights and ill-treatment in closed institutions. Despite 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 Ombudspersons representing three constituent peoples (Serb, Bosniak, Croat) selected by an *ad hoc* committee and appointed for the term of 6 years by the Parliamentary Assembly of BiH, and voted in by the House of Representatives and the House of Peoples. This means that the process is closely tied to the political parties. The law states that ‘the Ombudspersons shall be appointed from among the three constituent peoples, which shall not preclude the possibility of appointing the Ombudspersons from among the “Others”. Ombudspersons are based in Sarajevo, Mostar and Banja Luka. Aside from the Ombudsperson, 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 Committee on Roma, the Council for Disabled Persons, and 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 four largest religious groups in BiH.

## 4. VIOLATIONS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS’ CIVIL AND POLITICAL 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 when it comes to the work of HRDs. This section aims to present the findings on violations and restrictions on civil and political rights of HRDs in Bosnia and Herzegovina. It presents the issues<sup>20</sup> 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<sup>21</sup> and constitutions of both entities – the FBiH and RS<sup>22</sup>, the Statute of Brčko District<sup>23</sup>, and laws on public assemblies, laws on national minorities and laws on public peace and order. These attempts have followed after 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 hurt the image of politicians or the government.<sup>24</sup> 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.<sup>25</sup> 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 impose restrictions to freedom of assembly when it is deemed

<sup>17</sup> Monitoring Right to Free Assembly Bosnia and Herzegovina, Country Report 2016-2017

<sup>18</sup> “Zakon o komunikacijama Bosne i Hercegovine” (Law on Communications of Bosnia and Herzegovina), “Zakon o Javnom radio – televizijskom sistemu Bosne i Hercegovine” (Law on the Public Broadcasting System of Bosnia and Herzegovina), “Zakon o Javnom radio – televizijskom servisu Bosne i Hercegovine” (Law on the Public Broadcasting Service of Bosnia and Herzegovina), “Zakon o Javnom radio – televizijskom servisu Republike Srpske” (Law on the Public Broadcasting Service of RS), “Zakon o zaštiti od klevete Federacije BiH” (Law on Protection against Defamation of the Federation of BiH), “Zakon o zaštiti od klevete Republike Srpske” (Law on Protection against Defamation of the RS), “Zakon o zaštiti od klevete Brčko Distrikta BiH” (Law on Protection against Defamation of Brčko District of BiH), “Zakon o slobodnom pristupu informacijama BiH” (Law on Freedom of Access to Information in BiH), “Zakon o slobodnom pristupu informacijama FBiH” (Law on Freedom of Access to Information of FBiH), “Zakon o slobodnom pristupu informacijama Republike Srpske” (Law on Freedom of Access to Information of RS), “Izborni zakon BiH” (Election Law of BiH)

<sup>19</sup> Out of the 10 people appointed as Ombudsman since 1996, three were women (of which two in the current term) and seven men. The last selection procedure held in 2017 was open to the participation of civil society.

<sup>20</sup> Please note that the issues presented in this policy brief are not a comprehensive overview of violations, but rather a collection of findings gathered by means of the applied research methodology.

<sup>21</sup> Article II/3e of the Constitution of BiH, available at [http://www.mpr.gov.ba/biblioteka/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_bos.pdf](http://www.mpr.gov.ba/biblioteka/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf)

<sup>22</sup> Articles II and VII, and Annex of the Constitution of FBiH, available at [http://www.ustavnisudfbih.ba/bs/dokumenti/ustav\\_precisceni\\_tekst.pdf](http://www.ustavnisudfbih.ba/bs/dokumenti/ustav_precisceni_tekst.pdf); Article 30, Section II of the Constitution of RS, available at (<http://ndcsarajevo.org/Dokumenti/Ustav%20Republike%20Srpske.pdf>)

<sup>23</sup> Article 1(4), Article 13, and Article 14 of the Statute of Brčko District of Bosnia and Herzegovina, available at (<http://skupstinabd.ba/images/dokumenti/hr/statut-brcko-distrikta.pdf>)

<sup>24</sup> Interview No. 2, Civil Society representative (30 August 2019)

<sup>25</sup> Interview No. 11, Civil society representative (13 August 2019)

necessary in a democratic society<sup>26</sup>. 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 meeting), 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<sup>27</sup>, including “public morality”<sup>28</sup> in RS. Spontaneous assemblies are sometimes not recognised in all laws. Thus, in the cases of peaceful assemblies organised by Women of Kruščica and the Justice for David there was a disproportionate use of violence by the police.

### First BiH Pride March 2019 - “Ima Izać”

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 and cooperation with institutional bodies and law enforcement agencies. However, the organisers had to pay for additional security such as metal fences and concrete blocks.

Before the Pride, members of certain political parties, as well as government officials, pressured organisers not to hold the Pride for security reasons and made similar statements in the media. During that period, attacks on members of the LGBTI+ community also occurred and they were not condemned by all representatives of the authorities, only by some political parties.<sup>29</sup>

The exercise of the freedom of assembly by the LGBTI+ community has a particular history marked by violent repression which has not been followed by appropriate reactions by the state institutions, thus contributing to an overall climate of impunity. It all started in 2008, when the Sarajevo Queer Festival (SQF) – the first public event organised within the Bosnian LGBTI+ community, was assaulted by Wahhabi extremists and far-right ultras. The attack resulted in 15 injured, cancellation of the festival, and an overall climate of oppression spreading throughout the city. The raid was flanked for days by a homophobic campaign by conservative media and politicians, virtually justifying the violence. The law enforcement agencies and judicial bodies demonstrated indifference. The “night of broken glass”, as it was called, had a vast impact on LGBTI+ community, pushing them toward individual invisibility and suppressing efforts for practicing their freedom of assembly. Similar episodes repeated later in Sarajevo. In February 2014, a dozen hooded men broke into the Kriterion cinema, which hosted a queer film festival, and injured people. In 2016, another homophobic attack took place at the Kriterion, when the attackers threatened to use explosives.<sup>30</sup> There is also a milestone Constitutional Court ruling from January 2019, according to which the Canton Sarajevo police has been found guilty for inaction and lack of protection during attacks on Merlinka Festival (2014) and SQF (2009).

All of the interviewed HRDs called the First BiH Pride March a “test” for the country when it comes to the status of civil rights, the protection of freedom of assembly, the credibility of institutions and the reactions of the population. It was the only first regional pride during which no incidents were reported. Another positive example is Tuzla, where, as stated by one human rights defender<sup>31</sup>, city administration finances the organisation of Merlinka Festival, while the Tuzla Open Centre also receives financial support from the city government and the city’s youth council for the events regarding LGBTI+ rights.

### 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 focus of their work and to express their views. Some refer to the source of funding as a precondition for 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 funds and the media are pretty much captured in the system as it is in BiH, just as the state itself is captured 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.”<sup>32</sup> The interviewees state that political and financial pressure on the media has increased, as witnessed by a large number of attacks on the media by politicians as well as alleged wiretapping of journalists. The attacks in the previous period happened mostly in the RS<sup>33</sup>. Increasingly, citizens justify violence against journalists in BiH. According to the research by BH Journalists, as many as 21% of BiH citizens justify violence against journalists.<sup>34</sup>

<sup>26</sup> International Covenant on Civil and Political Rights, entry into force 3 March 1976, Art. 21.

<sup>27</sup> Article 3 of the laws on public assemblies of Sarajevo Canton, Posavina Canton, Canton 10, Tuzla Canton and RS; Article 4 for Una Sana Canton.

<sup>28</sup> Law on Public Assemblies of RS, Article 3.1; (Official Gazette) Official Gazette RS no. 118/08; available at <http://pravnik.ba/wp-content/uploads/2015/03/ZAKON-O-JAVNOM-OKUPLJANJU-RS.pdf>

<sup>29</sup> Interview No. 14, Civil Society representative (17 September 2019)

<sup>30</sup> Alfredo Sasso; Let’s go out. Sarajevo towards its first Pride, available at: <https://bit.ly/32peEG2>

<sup>31</sup> Interview No. 14, Civil Society representative (17 September 2019)

<sup>32</sup> Interview No. 3, Media representative (6 September 2019)

<sup>33</sup> Database available at the website of <https://bhnovinari.ba/bs/>

<sup>34</sup> Interview No. 3, Media representative (6 September 2019)

## Freedom of the Media

In August 2018, BN TV journalist<sup>35</sup> Vladimir Kovačević was attacked in Banja Luka after covering a protest over the failure of authorities to investigate or solve the suspicious death of a 21-year-old man. 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.<sup>36</sup>

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 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.<sup>37</sup>

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 it seems like an easy thing to do. The situation is the same with the interviewees when it comes to a particular story because many interviewees do not want their name to be published, even though they have told their personal story or one to which they are closely related to.<sup>38</sup>

## 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.<sup>39</sup>

There are different risks and challenges facing women and LGBTI+ HRDs. These include: the lack of sensibilisation in the society and in the institutions, different levels of development in the entities, 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 herself and her children.<sup>40</sup> The risk to which a human rights defender is exposed is primarily related to her family life, where the support of parents, spouse or children is often lacking, as well as understanding and support from the society.<sup>41</sup> “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.”<sup>42</sup>

### Pressures, insults, threats - Martina Mlinarević Sopta, a writer

Martina Mlinarević Sopta shares 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 Široki 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

35 Private media house

36 World Report 2019: Bosnia and Herzegovina | Human Rights Watch.

37 Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union 2019

38 Interview No. 5, Media representative (11 September 2019)

39 Interview No. 7, Civil Society representative (12 September 2019)

40 Interview No. 2, Civil Society representative (30 August 2019); Interview No. 3, Media representative (6 September 2019); Interview No. 7, Civil Society representative (12 September 2019)

41 Interview No. 2, Civil Society representative (30 August 2019); Interview No. 3, Media representative (6 September 2019); Interview No. 7, Civil Society representative (12 September 2019); Interview No. 12, Civil Society representative (16 September 2019)

42 Interview No. 7, Civil Society representative (12 September 2019)

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.<sup>43</sup>

### Transgender Day of Visibility in Sarajevo

“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 purpose of the event was to commemorate International Transgender Day of Visibility. Transgender persons are among the most marginalised groups in BiH and our goal was to raise awareness of the problems they face. Since the square belongs in part to the municipality and in part to the BBI Centre, the Municipality requires the applicants to obtain permission from the BBI Centre as well. 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 so-called high risk activities that require additional security for both the building and third parties.” We asked the BBI Centre to explain how it conducted the risk assessment, since the Law on Public Assembly of Sarajevo Canton stipulated 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 Interior of Sarajevo Canton, without any security concerns or any other 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 Sontag 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”.<sup>44</sup>

## 5. ASSAULTS, HARASSMENTS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS

Findings from the interviews show that there are assaults, harassments and restrictions placed against human rights defenders in BiH. 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. We shall summarise these here.<sup>45</sup>

### 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 HRDs, as most of the latter received threats in that manner. Moreover, the HRDs, including journalists, reported threats received via emails and phone calls, or they have underlined that media smear campaigns are becoming a rather popular method used by the authorities against the HRDs. 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.<sup>46</sup>

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.”<sup>47</sup>

### Justice for David

“The police legitimized me four times during the assembly of the “Justice for David” group. I know, that is 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 said to put it back in my pocket and claimed that my colleague and I did not have IDs, although it was clear in the video that we did. We reported the case, the Ombudsman and the Association of Journalists’ responded, but nothing happened.”<sup>48</sup>

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, and one discrimination case was recorded in each of the following areas: employment, the media and public administration. Two-thirds of transgender respondents have experienced violence. Of this number, 66.7% of transgender respondents have been on the receiving end of transphobic comments, while 55.6% of respondents suffered verbal transphobic abuse. The fact that 5 out of 18 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 2018 Pink Report - Annual Report on the State of Human Rights of LGBTI+ Persons in Bosnia and Herzegovina.

45 The identified violations are limited to the scope of the conducted interviews with the HRDs and by no means do they reflect the whole spectrum of the current situation in the country.

46 Interview No. 8, Civil Society representative (13 September 2019)

47 Interview No. 4, Media representative (9 September 2019)

48 Interview No. 5, Media representative (11 September 2019)



There are no laws that specifically regulate online space, but the general view is that the laws that regulate the electronic media are directly applicable to online media as well. The Press Council has expanded its activities to online media, and changed its name to the Council for Press and Online Media. The Code of Ethics of the Council for Press and Online Media<sup>49</sup> makes no distinction in the rights and responsibilities of journalists from these two types of media, but they are all subject to the same code. An additional issue is raised by the fact that online media are only seen as media if they have impressum. However, the Mediacentar's research found that over 200 online media portals do not have this, they do not show who is the owner or the editor.<sup>50</sup>

### *Srđan Šušnica - a series of death threats*

Srđan Šušnica, a local political analyst left Banja Luka after he and his family had received a series of death threats. He was under disciplinary procedure at his job as entity auditor due to the text he had written in 2015 about war crimes committed by the RS military forces, and the pressures were so harsh that he and his family obtained asylum in one of the European countries. He was under Civil Rights Defenders emergency reallocation programme.

“Civil Rights Defenders have been following the case of Srđan Šušnica, who was reallocated through our Emergency program due to serious threats against his life and his family's security. Srđan is a vocal transitional justice advocate acting in this part of Bosnia and Herzegovina. In the course of the past two years, he has received numerous threats for his life. Šušnica believes this to be a reaction to his writing about war crimes from the 1992-1995 war in Bosnia and Herzegovina.”<sup>51</sup>

## The right to access funding

The Mayor openly criticized human rights defenders in Prijedor because their views did not coincide with his political views, thereby further exposing them to risk, and openly cutting off financial resources – grants they could obtain from the City, and seeking criminal proceedings against them.<sup>52</sup>

Another interviewee added the practice of self-censoring in order not to jeopardise further funding: “If we happen to have our work monitored and we were criticizing a particular institution, it will be hard to get a grant associated with that institution, no matter how good we do the job or have a good project. When it comes to sudden financial control, we have not encountered this in our previous work.”<sup>53</sup>

## The right to effective remedy

According to the interviewees who have reported personal threats or physical assaults to the police, the prosecution is generally very inefficient. The persecutors almost never get identified. The ones who do get identified go through the hearings procedure, but this is where the process ends 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.<sup>54</sup> All interlocutors stress that they 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. resistance by some civil servants 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.”<sup>55</sup>

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

49 “Vijeće za štampu u Bosni i Hercegovini” (The Press Council in Bosnia and Herzegovina), Google, Accessed on 03/09/2018 [https://www.vzs.ba/index.php?option=com\\_content&view=article&id=218&Itemid=9](https://www.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9)

50 Available at: <https://bit.ly/2NjGWeR>

51 More at: <https://bit.ly/33eDU1p>

52 Interview No. 11, Civil Society representative (13 September 2019)

53 Interview No. 8, Civil Society representative (13 September 2019)

54 Interview No. 9, Civil Society representative (13 September 2019); Interview No. 12, Civil Society representative (16 September 2019)

55 Interview No. 8, Civil Society representative (13 September 2019)

initiative, and in the Republika Srpska as a draft law.<sup>56</sup>

## The right to communicate with international bodies

The interviewed HRDs did not report any obstacles or challenges when communicating with international bodies. In fact, the support from the international bodies was crucial in some cases. Namely, even under 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.<sup>57</sup> It happened to me because I'm a woman to send me rape threats on social media profiles, in a way that they describe to me what they would do to me.<sup>58</sup>

“When 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 system 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 courting.”<sup>59</sup>

### *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 Čuliburk. 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, as well as the avoidance of a three-year prison sentence and escape from RS by Mile Radišić, Dodik made a series of inappropriate comments about her appearance, the media she worked for and her nationality. This behaviour was met with strong condemnation of media and the Board of Directors of the Association of BH Journalists.

There is no differentiated approach to investigation by police or other institution according to the victim's profile; they do not take into account specific considerations when investigating violations committed against human rights defenders who identify as women or LGBTI+, because the views are that everyone is equal before the law and whatever happens has to be somehow tied to the individual that was subject to the discrimination or violence.<sup>60</sup>

### *Sexual Orientation and Gender Identity*

Between January and September 2018, Sarajevo Open Center, a lesbian, gay, bisexual, transgender, and intersex (LGBTI+) and women's rights group recorded 27 hate-motivated incidents against LGBTI+ people, including 10 involving domestic violence, and 136 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.<sup>61</sup>

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 do 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.<sup>62</sup>

56 Interview No. 6, Media representative (12 September 2019)

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

58 Interview No. 5, Media representative (11 September 2019)

59 Interview No. 5, Media representative (11 September 2019)

60 Interview No. 1, Civil Society representative (30.08.2019); Interview No. 10, Civil Society representative (13 September 2019)

61 World Report 2019: Bosnia and Herzegovina | Human Rights Watch.

62 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

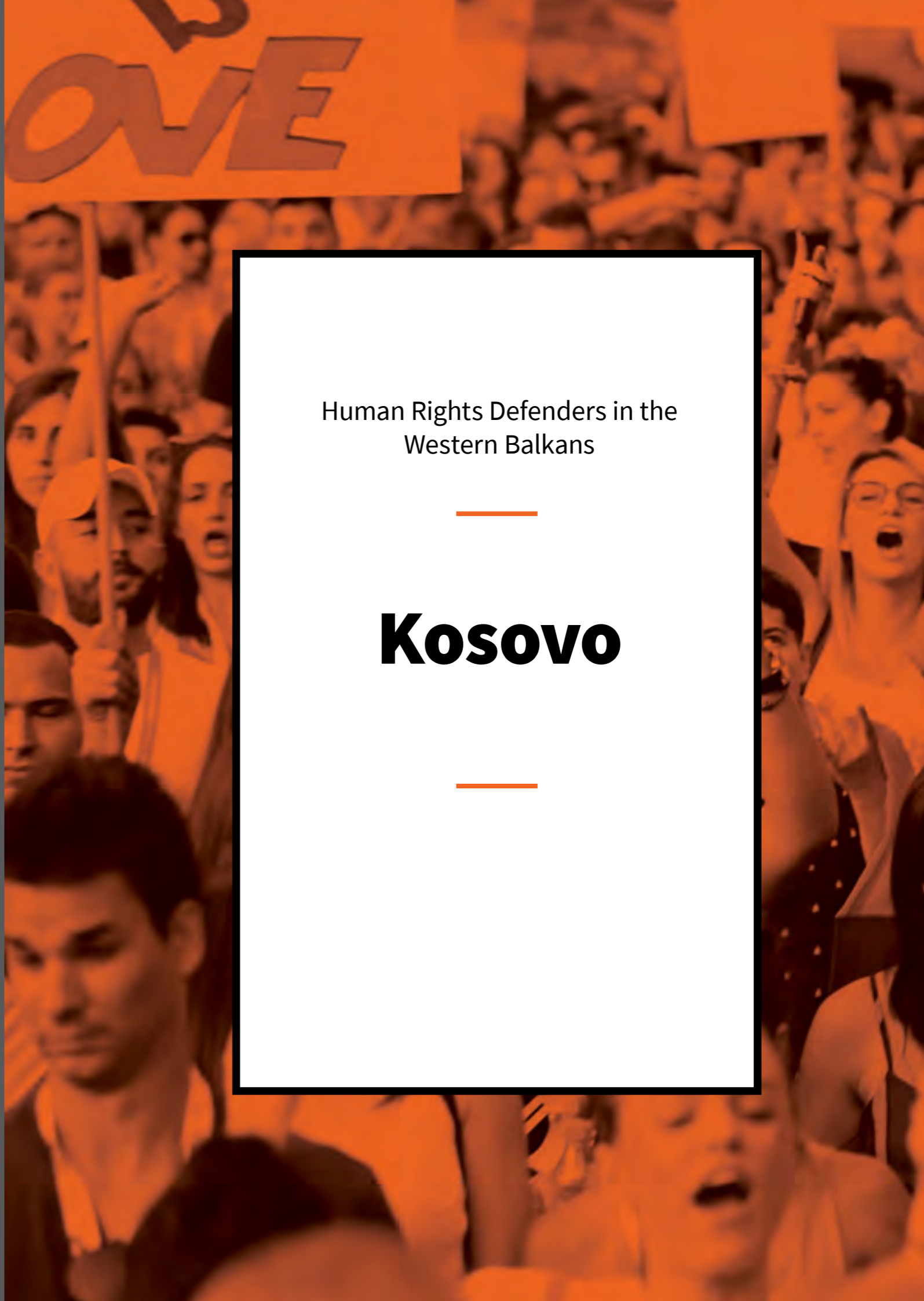
- ▶ Insist that the state adopts and follows the adopted protocols and provide special protection to human rights defenders, in a way so as their rights, access to justice and access to funding is fully ensured and their independence unharmed.
- ▶ Maintain an active role in promoting and protecting human 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 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, all incidents of violations, assaults and restrictions towards Kosovar human rights defenders can only be reported to domestic institutions. As regards the above, Kosovo's legislation offers a satisfactory legal framework on protecting, promoting and advancing human rights for all citizens. However, human rights defenders have been facing many violations and restrictions of their civil and political rights and many assaults and harassments on their course of their work. Firstly, they are not recognized as a special legal category so all the violations and assaults towards them are considered as general criminal offenses. 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 LGBTI+ 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 amongst 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 (ECtHR). 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 respect the right of each citizen to access public documents within the foreseen legal deadlines.

# KOSOVO

## 1. INTRODUCTION

Kosovo has the obligation to protect, promote and advance human rights of all its citizens, including human rights defenders (HRDs). In this report we present the findings on violations and restrictions of civil and political rights of HRDs, as well as on the assaults, harassments and restrictions which occur within the legal framework and in practice. We also present the gender aspects of the identified challenges and restrictions.

We adopted the definition of HRDs from Article 1 of the 1998 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 (UN Declaration on Human Rights Defenders) according to which a human rights defender is everyone who acts individually and/or in association with others, to promote and strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.<sup>1</sup> In addition, we refer to Women Human Rights Defenders (WHRDs) using a definition which we modified in accordance with the one provided for by 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 term 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<sup>2</sup> interviews with human rights defenders active in gender equality,<sup>3</sup> environmental issues,<sup>4</sup> minority issues (Roma, Ashkali and Egyptian rights),<sup>5</sup> LGBTI+ issues,<sup>6</sup> data protection,<sup>7</sup> war crimes,<sup>8</sup> freedom of speech<sup>9</sup> and free legal aid,<sup>10</sup> and journalists.<sup>11</sup> We also analysed legal and policy documents, and draw from additional existing literature (such as grey literature, media and UN 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 of HRDs' civil and political rights, followed by the findings on assaults, harassments and other forms of abuse. We conclude with a summary of findings and a list of recommendations intended for various stakeholders.

## 2. GENERAL CONTEXT ISSUES

Human rights defenders in Kosovo are mostly focused on corruption, access to justice, gender equality, gender-based violence, trial monitoring, rights of minorities, rights of LGBTI+ persons, the rights of persons with disabilities and the rights of persons deprived of their liberty. On the other hand, there are only a few human rights defenders working on environmental issues, data protection and media. Their engagement is based on individual activism in fields such as media and data protection or actions within few NGOs working on environmental issues.<sup>12</sup> Moreover, the issues such as the rights of persons living with HIV or the rights of sex workers 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 LGBTI+ persons and freedom of expression.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> According to the interviewed human rights defenders, threats or assaults reported to the police are considered as ordinary reported threats

<sup>1</sup> 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 (1998), Article 1, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>

<sup>2</sup> When it comes to gender, our interviewees were nine women, five men and one transgender person.

<sup>3</sup> Interview No.1, Civil Society Representative, (08.08.2019); Interview No.2, Civil Society Representative, (21.08.2019), Interview No.3, Civil Society Representative, (26.08.2009); Interview No.4, Civil Society Representative, (28.08.2019).

<sup>4</sup> Interview No.5, Civil Society Representative, (21.08.2019).

<sup>5</sup> Interview No.6, Civil Society Representative, (30.08.2019).

<sup>6</sup> Interview No.7, Civil Society Representative, (23.08.2019).

<sup>7</sup> Interview No.8, Civil Society Representative, (28.08.2019).

<sup>8</sup> Interview No.9, Civil Society Representative, (29.08.2019).

<sup>9</sup> Interview No.10, Media Representative, (29.08.2019).

<sup>10</sup> Interview No.11, Civil Society Representative, (13.08.2019); Interview No.12, Civil Society Representative (28.08.2019).

<sup>11</sup> Interview No.13, Media Representative, (19.08.2019); Interview No.14, Media Representative, (22.08.2019); Interview No.15, Media Representative, (16.08.2019).

<sup>12</sup> Interview No.10, Media Representative, (29.08.2019), Interview No.8, Civil Society Representative, (28.08.2019) and Interview No.5, Civil Society Representative, (21.08.2019).

<sup>13</sup> Interview No.10, Media Representative, (29.08.2019), Interview No.4, Civil Society Representative, (28.08.2019).

<sup>14</sup> Interview No.1, Civil Society Representative, (08.08.2019); Interview No.3, Civil Society Representative, (26.08.2009);

<sup>15</sup> Interview No.1, Civil Society Representative, (08.08.2019);

<sup>16</sup> Interview No.1, Civil Society Representative, (08.08.2019); Interview No.7, Civil Society Representative, (23.08.2019).

and there is no special approach as regards them. In other words, the approach of the police is not adjusted to the nature and the motivations behind the crime, resulting in the police treating these assaults as general criminal offenses. In addition, police's misconduct and their passivity on investigating the reported cases of gender-based violence contributes to women being killed.<sup>17</sup>

This situation is further worsened by the fact that there is no legal provision within Kosovo's legislative framework that recognizes the HRDs as a specific legal category. Even with this omission, the legal framework in force in principle offers good ground for ensuring that human rights and fundamental freedoms of all Kosovo's citizens, including of HRDs, are respected, protected and promoted. However, the low regard for the rule of law, manifested also as the lack of proper implementation of legislation by all state authorities in Kosovo results in human rights and fundamental freedoms not being protected and promoted on a satisfactory level.<sup>18</sup>

### 3. LEGAL FRAMEWORK

**K**osovo 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.<sup>19</sup> 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).<sup>20</sup> 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 Interim Administration Mission in Kosovo (UNMIK)<sup>21</sup> in the Security Council. In these reports, the rule of law and human rights have a special section following the Resolution 1244 provision mandating the protection and promotion of human rights in Kosovo<sup>22</sup> 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.<sup>23</sup> This also prevents those human rights defenders who work on assisting with legal aid and legal services provision, since it closes off 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. The Constitution of the Republic of Kosovo (Kosovo's Constitution) provides for the direct applicability of the European Convention on Human Rights and the European Court of Human Rights (ECtHR) case law in Kosovo making them binding for all Kosovar institutions.<sup>24</sup> Nevertheless, the domesticated international treaties foresee the general protection and promotion of human rights and fundamental freedoms. However, they do not specifically relate them to human rights defenders. So, human rights defenders can approach the domestic institutions as all other citizens, and not in the capacity of human rights defenders since the national law does not recognise them as a specific category. The Optional Protocol to the Convention against 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 on the Elimination of all forms of discrimination against Women are not indicated as directly applicable treaties in Kosovo. Nevertheless, there is a national legal framework on the right to access and communicate 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 stopped protest or an unsupported one by public authorities of the country.

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 assembly and freedom of association, the right to access and communicate with international bodies, the right to freedom of opinion and expression, the right to protest, the right to develop and discuss new ideas, the right to an effective remedy and the right to access funding have all been further regulated in specific laws.

However, the framework is not adjusted in any way 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

17 Radio Evropa e Lire, 'Edhe sa thirrje te humbura', November 15th, 2018, available at: <https://www.evropaelire.org/a/me-shume-se-nje-mije-raste-dhunes-ne-familja-viktima-kryesisht-grate-/29600855.html>

18 Interview No.14, Media Representative, (22.08.2019).

19 United Nations Member States, available at: <https://www.un.org/en/member-states/>

20 Universal Periodic Review (UPR) is a state-driven process under the auspices of the Human Rights Council and is a review of human rights records of all UN member states. UN member states declare what actions they have taken to improve the human rights situation in their countries.

21 In its 4011th meeting, the Security Council of the United Nations adopted the Security Council Resolution 1244 which provided a framework for the resolution of the conflict in Kosovo by authorizing the deployment of an international civilian and military presence that would provide an international transitional administration and security presence that would oversee the return of refugees and the withdrawal of military forces from Kosovo.

22 United Nations Security Council Resolution 1244, available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/990610\\_SCR1244%281999%29.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/990610_SCR1244%281999%29.pdf)

23 Council of Europe Member States, available at: <https://www.coe.int/en/web/about-us/our-member-states>

24 The UNMIK Regulation on the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation) imposed the direct applicability of the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the International Covenant on Civil and Political Rights and the Protocols thereto, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the European Charter for Regional or Minority Languages, Council of Europe's Framework Convention for the Protection of National Minorities. Later on, the direct applicability of these treaties was reaffirmed in the Constitution of the Republic of Kosovo (Constitution of Kosovo) through which Kosovo made the domestication of these international treaties. This means that even though Kosovo was not a signatory state of the treaties, the Constitution of Kosovo made all the treaties binding for Kosovar institutions. The only difference between the UNMIK Regulation and the Constitution of Kosovo is that the UNMIK Regulation provided for the direct applicability of the European Charter for Regional or Minority Languages which is not indicated in the Constitution of Kosovo. On the other hand, the Constitution of Kosovo listed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as directly applicable.

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 journalists in addition to local prosecutors who will deal exclusively with cases of threats against journalists.<sup>25</sup> The Criminal Code of Kosovo does not foresee any legal provisions protecting human rights defenders when a criminal offense or another violation or obstruction is committed while they practise their profession. Such criminal offenses or violations or obstructions committed while they practise their profession are considered to be general criminal offenses. The fact that they were conducted against an HRD is not taken into consideration.<sup>26</sup>

Finally, the Law on the Protection from Discrimination (the Anti-Discrimination Law) is also important for human rights defenders. This law established a general framework for prevention and combating discrimination based on nationality or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment.<sup>27</sup> 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, violated 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.<sup>28</sup> 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

**T**his section presents the findings<sup>29</sup> 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.

#### Right to freedom of assembly, association and the right to protest

Kosovo's legislation offers a satisfactory legal framework<sup>30</sup> when it comes to the freedom of assembly and association.<sup>31</sup> 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.<sup>32</sup> During that period, there was a notable rise in hate speech. While the state authorities respected the right to assembly and association of the LGBTI+ community and provided protection, there was inadequate investigation and response on the cases of threats which LGBTI+ activists reported to the police, including those of hate speech.

#### Hate speech suffered by transman activist

*Right after the Pride Parade, a transman working on LGBTI+ 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 notified of the progress they made with 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 understated by the Kosovo police, which commented that such situations are not dangerous.<sup>33</sup>*

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

25 Association of Journalists of Kosovo, Pristina, 18 June 2018, available at: <http://agk-ks.org/en/basic-court-pristina-appoints-coordinator-journalists-cases/>

26 Interview No.1, Civil Society Representative, (08.08.2019);

27 Assembly of Kosovo, Law No. 05/L-021 on the Protection from Discrimination, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924>

28 There are also the Kosovo Judicial Council (KJC) - the oversight body that aims to ensure the independence and impartiality of the judicial system, and the administration of justice in Kosovo, and the Kosovo Prosecutorial Council (KPC) - which serves the same purpose as the KJC but with prosecutorial institutions.

29 Please note that the issues presented in this report are not a comprehensive overview of violations, but rather a collection of findings collected with the applied research methodology.

30 Assembly of Kosovo, Law No.02/L-123 on Business Organizations, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2585>; Law No.04/L-057 on Freedom of Association in Non-Governmental Organizations, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2764>; Law No.03/L-18 on Public Gatherings, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2633>

31 For example, the Law No.02/L-123 on Business Organizations, the Law No.04/L-057 on Freedom of Association in Non-Governmental Organizations, the Law No.03/L-18 on Public Gatherings, etc

32 European Commission, Kosovo Country report, 2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

33 Interview No.7, Civil Society Representative, (23.08.2019).

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 donor.

### Activist's funding support discontinued

One of the interviewed HRDs reported that her name 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 objecting policies against not only public authorities in Kosovo but also potential and possible donors of the HRDs activities.<sup>34</sup>

Non-official religious groups in Kosovo present a challenge and a problem when it comes to the freedom of assembly and association of the LGBTI+ community, gender 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 know someone who has been attacked because of their work.<sup>35</sup> These impediments are more frequent in cases of organized parades, 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.<sup>36</sup> These cases highlight the challenges and restrictions imposed by social, dominant cultural or religious norms, attitudes and values in Kosovo that directly influence the human rights work of HRDs.

Finally, threats from unknown and politically motivated people are very common in Kosovo towards all HRDs working in the field of human rights. Besides the constant anonymous threats and personal attacks directed to HRDs working on issues of gender equality, gender-based violence and LGBTI+ community, anonymous threats and personal attacks by unknown and politically motivated people are very common for HRDs working in the fields of anticorruption, freedom of expression, free legal aid and trial monitoring. In some cases, families of the HRDs have been exposed and have been subject to these threats.<sup>37</sup>

## Right to freedom of opinion and expression

The current legal framework provides extensive protection of the right to freedom of opinion and expression.<sup>38</sup> At the same time, the regulation of the activities of media in Kosovo is decentralized and is generally regulated by specific laws. However, because of the implementation gap, the interviewees reported feeling neither free nor restricted. This 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.<sup>39</sup> In 2018 there were 16 such cases.<sup>40</sup> 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. There is a law regulating access to public documents, on grounds of which every public institution is obliged to assign units or officers responsible for receiving and conducting initial reviews of applications for access to public documents.<sup>41</sup> Here, it must be mentioned that the Ombudsperson plays a huge role in assisting journalists and NGOs on accessing public documents. According to the law, once the request has been denied or no response has been given, one can request the assistance of the Ombudsperson on accessing public documents.<sup>42</sup> According to our interviewees, the main cause of this problem is the institutional bureaucracy and the violation of the right to access public documents,<sup>43</sup> but also the pursuit of a political agenda via institutions. The lack of official data could also be attributed to the lack of empirical studies in many fields as regards human rights in Kosovo. Also, the lack of data may exist due to the lack of monitoring mechanisms, which, again, adversely affects the work of HRDs and journalists by limiting them on only approaching a specific problem in a general rather than a substantial manner.<sup>44</sup> Another side effect of this lack of access to information is that HRDs, especially journalists, have been reporting a tendency for self-censorship in their work in order to avoid libel and/or defamation charges.<sup>45</sup> While there is a law against defamation and insult<sup>46</sup> which foresees 'a protective mechanism' for human rights defenders,

<sup>34</sup> Interview No.5, Civil Society Representative, (21.08.2019).

<sup>35</sup> Interview No.1, Civil Society Representative, (08.08.2019); Interview No.7, Civil Society Representative, (23.08.2019); Interview No.4, Civil Society Representative, (28.08.2019).

<sup>36</sup> Interview No.1, Civil Society Representative, (08.08.2019);

<sup>37</sup> Interview No.10, Media Representative, (29.08.2019).

<sup>38</sup> 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 Kosovo; LawNo.04/L-043 on Protection of Informants; Criminal Code of the Republic of Kosovo No.04/L-082.

<sup>39</sup> European Commission, 'Kosovo' 2018 Report', April 17th, 2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

<sup>40</sup> European Commission, 'Kosovo' 2019 Report, May 29th, 2019, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

<sup>41</sup> Assembly of Kosovo, Law No. 06/L-081 on Access to Public Documents, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505>

<sup>42</sup> Ibid.

<sup>43</sup> Interview No.13, Media Representative, (19.08.2019);

<sup>44</sup> Interview No.13, Media Representative, (19.08.2019);

<sup>45</sup> Interview No.14, Media Representative, (16.08.2019).

<sup>46</sup> 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>

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 critique that they (journalists and HRDs) are to present. In some cases this can lead to legal procedures against them.<sup>47</sup> 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.

### NGO sued for defamation by a state body

This situation was illustrated with the lawsuit against Organization for Democracy, Anti-Corruption and Dignity - ÇOHU! by the Anti-Corruption Agency which sued ÇOHU! for defamation. According to the former director of the Anti-Corruption Agency, ÇOHU! 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. Luckily, the ÇOHU! won the case but during the entire procedure, the HRDs working in ÇOHU! had faced many threats and public insults through social media.<sup>48</sup>

In the case of Sevdije Ahmeti,<sup>49</sup> criminal charges were raised against a woman human rights defender as a response to her human rights work.<sup>50</sup> 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 indictment 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.<sup>51</sup> 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 portals 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.

### WHRD insulted by the owner of an online portal

Four years ago, one of our interviewed WHRD criticized an online portal for being sexist. Two days after, the owner of the online portal used a Facebook status she wrote years ago and tried to use it against her. Moreover, he exposed her family and wrote about their past political activities. This action was considered as a hate call against her and her family due to her critique against sexism which was taken as a personal critique by the owner of the portal. In addition, she reported that the same happened to her colleague as well.

## 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 LGBTI+ 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 WHRDs or LGBTI+ HRDs. 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. The gender aspect comes into play in many work environments when WHRDs are doing 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', when in fact these behaviours would fall under (the now outlawed) harassment or sexual harassment.<sup>52</sup> This has been attributed to the social norms in the country but moreover to the lack of awareness and training of, *inter alia*, public officials in how to handle victims and what kind of approach to use according to different profiles of victims.<sup>53</sup>

In addition, the gender aspects come into play not only in relation to WHRDs, but also when HRDs working on the

<sup>47</sup> Interview No.10, Media Representative, (29.08.2019).

<sup>48</sup> Interview No. 7, Civil Society Representative, (23.08.2019).

<sup>49</sup> Sevdije Ahmeti was a long time women's rights and human rights activist. She was accused for the purposes of obtaining financial benefit, from 2000 to 2005, she embezzled EUR 145.000, which were entrusted to her by various donors. She was found innocent from the first instance but the state prosecutor appealed the decision. While the case was on the Court of Appeals, Sevdije Ahmeti passed away and the case got closed.

<sup>50</sup> Interview No.1, Civil Society Representative, (08.08.2019);

<sup>51</sup> Interview No.15, Media Representative, (16.08.2019); Interview No.13, Media Representative, (19.08.2019); Interview No.14, Media Representative, (22.08.2019); Interview No.10, Media Representative, (29.08.2019).

<sup>52</sup> Interview No.10, Media Representative, (29.08.2019).

<sup>53</sup> Interview No.10, Media Representative, (29.08.2019); Interview No.1, Civil Society Representative, (08.08.2019);

rights of LGBTI+ community are faced with restrictions of their human rights.

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

*An NGO working on the rights of the LGBTI+ 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 LGBTI+ 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 LGBTI+ community and the effect that social and cultural norms have in the country.<sup>54</sup>*

## **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 an effective remedy, 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<sup>55</sup> 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.<sup>56</sup>

### **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.<sup>57</sup>*

### **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 backlogs 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.<sup>58</sup>

### **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. This is the case because of the country's internationally contested independence which prevents Kosovo's membership in both the UN and the CoE. Kosovo's citizens cannot get their cases considered by the ECtHR, thus leaving the national state authorities without direct international supervision. This raises the possibility that the authorities may encroach on human rights more than they would if the ECtHR was an option. On the other hand, civil society organizations and individuals have achieved great cooperation with international bodies when it

comes to conferences, trainings, etc. This right is only challenged when these activities are held or organized by countries which do not recognise Kosovo's independence.

### **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.<sup>59</sup>

### **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.<sup>60</sup> 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 LGBTI+ 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.<sup>61</sup> 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.

<sup>54</sup> Interview No.5, Civil Society Representative, (21.08.2019).

<sup>55</sup> Please note that the issues presented in this report do not represent a comprehensive overview of violations, but are a collection of findings arrived at with the applied research methodology.

<sup>56</sup> Interview No.1, Civil Society Representative, (08.08.2019);

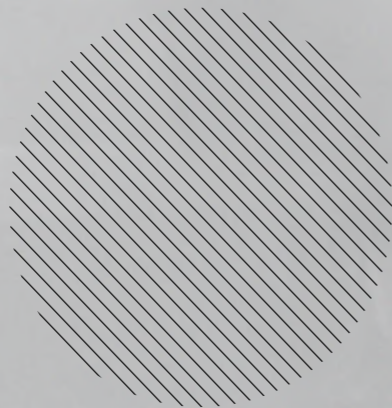
<sup>57</sup> Interview No.1, Civil Society Representative, (08.08.2019).

<sup>58</sup> Interview No.13, Media Representative, (19.08.2019);

<sup>59</sup> Interview No.10, Media Representative, (29.08.2019).

<sup>60</sup> Assembly of Kosovo, Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2764>

<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup> offer an extensive framework for the protection of the right to freedom of opinion and expression. But due to the fact that Kosovo authorities lag on 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 rights enshrined in the Constitution

<sup>62</sup> Koha.net, 'Ligji për media: I panevojshëm (Law on Media: unnecessary)', 7 July 2018, <https://www.koha.net/veshtrime/103684/ligji-per-media-i-panevojshem/>

<sup>63</sup> Koha.net, 'Ligji për media: I panevojshëm (Law on Media: unnecessary)', 7 July 2018, <https://www.koha.net/veshtrime/103684/ligji-per-media-i-panevojshem/>

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

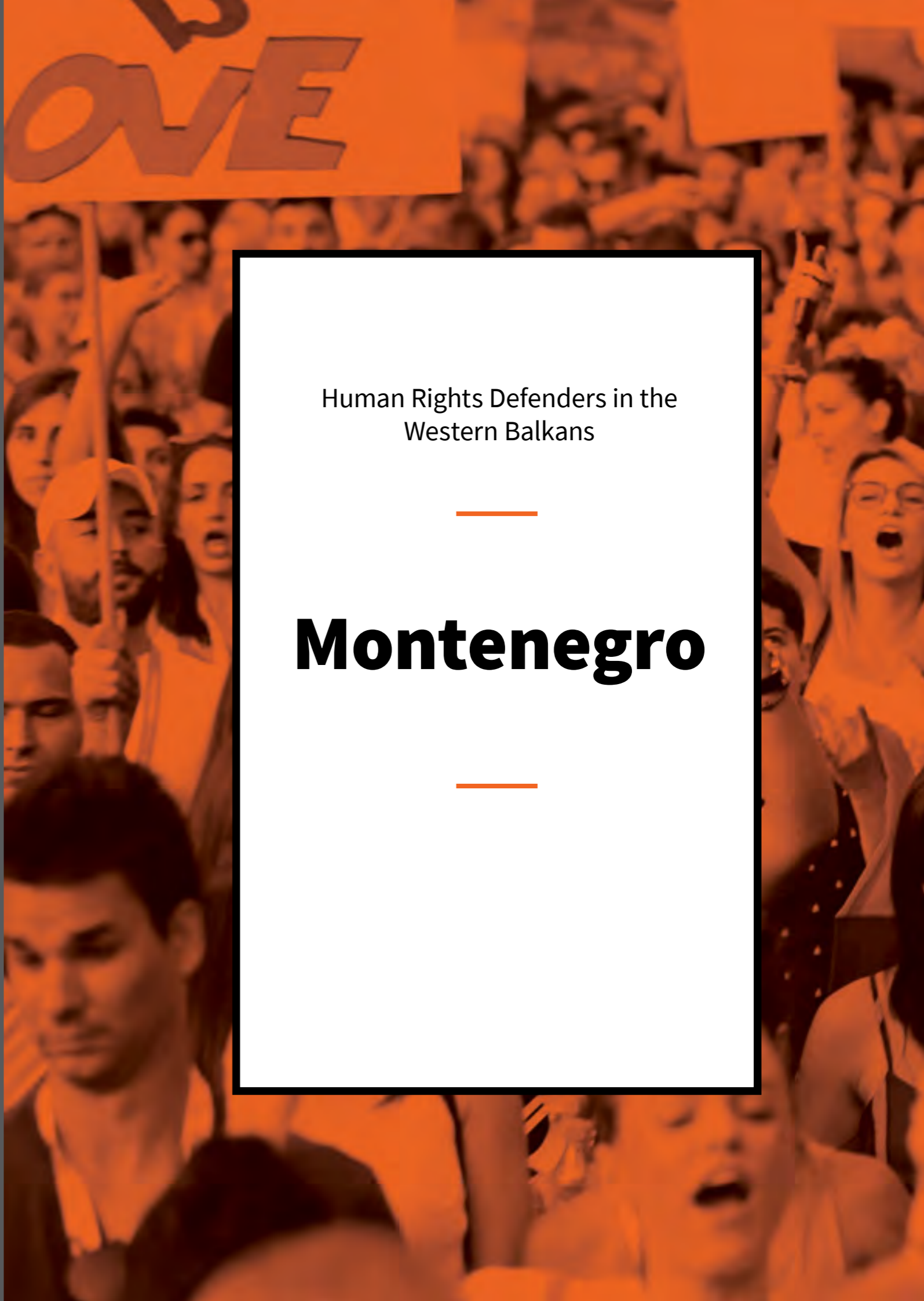
### Human rights defenders

- ▶ 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 Kosovar human rights defenders to enjoy international protection of their human rights and for Kosovar 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.





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,<sup>1</sup> 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.<sup>2</sup> 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.

# MONTENEGRO

<sup>1</sup> European Commission, "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans", February 2018. Available at: [https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf)  
<sup>2</sup> Centre for Civic Education, "Increased perception of political discrimination" MNE, summary of public opinion poll, February 2019. Available at: <http://cgo-cce.org/en/2019/02/28/percepccija-politicke-diskriminacije-sve-izrazenija/#.Xbkl9JNKH0s>

## 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 human rights defenders; mapping of 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 core of it is centred on the 1998 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 (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 interviews<sup>3</sup> conducted in August and September 2019.

## 2. GENERAL CONTEXT

*"The laws are not the obstacle. On the contrary, the legal framework is fairly progressive ... But we do not have adequate enforcement ... Our institutions are using all the powers given to them by the laws on the protection of human rights. We also have some kind of self-censorship within the institutions..."<sup>4</sup> – these few sentences from interviews conducted during the preparation of this report with HRDs vividly summarise the state of human rights protection in Montenegro.*

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 negatives consequences. Namely, these important bodies were left without independent voices who used to ensure that the institutions they monitored functioned in the best public interest. On the other hand, a clear message that they are not welcome to such bodies was sent to all critically oriented persons although the existing laws guarantee independence and pluralism of representation.<sup>5</sup> 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*, Duško 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.<sup>6</sup>

<sup>3</sup> For the purpose of drafting this paper, fourteen interviews were conducted, five out of which are with women and three with LGBTI+.

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

<sup>5</sup> This includes, among others, dismissals of Goran Đurović and Nikola Vukčević from the RTCG Council and Vanja Čalović from the Anti-Corruption Agency Council.

<sup>6</sup> <https://www.vijesti.me/vijesti/drustvo/ne-ocekuje-se-napredak-u-predmetima-ubistva-jovanovica-i-napada-na-softica>, <https://www.slobodnaevropa.org/a/ubistvo-dusko-jovanovic-tuzilac-umor/30171641.html>

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 General of Radio Television Montenegro (*Radio-televizija Crne Gore* – RTCG) Andrijana Kadija, Director of Television Montenegro (TV CG) Vladan Mićunović, 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.<sup>7</sup> This instantly led to a considerable change in the tone and content of the news programme, which is now predominantly in service of the executive government<sup>8</sup> 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, though the new draft media law (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 misogynists' rhetoric at times could be interpreted as incitement to violence, they received no sanction by the institutions, 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 convincing the public, these smear campaigns seem to have alerted them to the importance of these independent voices. Public opinion polls conducted in 2019 have shown a high level of trust in NGOs – higher than in the Government<sup>9</sup>. 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 the 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 or respond to requests for free access to information, and instability of public sources of finance for non-governmental entities.<sup>10</sup>

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 listings, arrest, detention, hearings, house search, measures of secret surveillance, etc. Instead of opting for such measures carefully and proportionally, the prosecution, according to our interlocutors, frequently uses them to investigate even minor suspected misdemeanours<sup>11</sup>. This also lowers the level of trust in 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 whom the people 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.<sup>12</sup> According to a number of HRDs, the general environment is still not conducive to the promotion and protection of LGBTI+ rights. *“We have cultural homophobia, institutional homophobia, attacks from the church and now we also have homophobia being spread by the Parliament, which is preposterous... Lately we have been suffering from abuse by different political parties, in various forms – lack of support for legislation 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 LGBTI+ rights.<sup>13</sup>

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.<sup>14</sup>

<sup>7</sup> [https://eeas.europa.eu/delegations/montenegro/46057/statement-spokesperson-dismissal-management-montenegro-public-broadcaster\\_en](https://eeas.europa.eu/delegations/montenegro/46057/statement-spokesperson-dismissal-management-montenegro-public-broadcaster_en), [https://eeas.europa.eu/delegations/montenegro/46974/dismissal-tvcg-director-micunovic-deteriorates-situation-rtcg\\_en](https://eeas.europa.eu/delegations/montenegro/46974/dismissal-tvcg-director-micunovic-deteriorates-situation-rtcg_en), <https://me.usembassy.gov/wp-content/uploads/sites/250/Human-Rights-Report-for-2018-Montenegro-released-in-March-20191513-KB.pdf> (pg. 9)

<sup>8</sup> <https://www.pcnen.com/portals/2018/11/02/kvalitativna-analiza-emisija-dnevnik-2-tvcg-emitovanih-u-septembru-2018-godine/>

<sup>9</sup> Unfortunately no separate information is available for HRDs, but as they usually operate as members of non-governmental organizations, it can be surmised that this also refers to them.

<sup>10</sup> Institut Alternativa (IA), Centre for Civic Education (CCE), 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-ccc.org/2018/03/Montenegro-simulacrum.pdf> (p.10).

<sup>11</sup> Centre for Civic Education, Human Rights Barometer Montenegro, 2019

<sup>12</sup> Centre for Civic Education, “Increased perception of political discrimination”, February 2019. Available at: [http://cgo-ccc.org/en/2019/02/28/percepција-politické-diskriminacije-sve-izrazenija/#.Xb9H\\_EVKh0s](http://cgo-ccc.org/en/2019/02/28/percepција-politické-diskriminacije-sve-izrazenija/#.Xb9H_EVKh0s)

<sup>13</sup> Interview No. 10, Civil Society Representative, 3/09/2019

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

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 inter alia in the relatively high percentage of gender-selective abortions and powerful social pressure on women to disclaim inheritance on behalf of a male member of the family.<sup>15</sup> This context is specifically difficult for WHRDs which find little public support for their work. The WHRDs we interviewed also complain of the strong negative influence of the church and religious communities in spreading conservative ideas which 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.<sup>16</sup>

### 3. LEGAL FRAMEWORK

The Constitution of Montenegro prescribes that ratified and published international agreements and generally accepted rules of international law constitute an integral part of the country's internal legal order and take precedence over the national legislation where their provisions happen to differ.<sup>17</sup> The Constitution also contains provisions that mirror provisions from the UN Human Rights Defenders Declaration as regards rights such as the right to be protected (Articles 6, 19, 28, 37), the right to an 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.<sup>18</sup> Active cooperation was also established with 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's Human Rights Council.

The last Universal Periodic Review (UPR) of Montenegro yielded 169 recommendations, 159 of which were accepted by Montenegro. Five recommendations were put forward in relation to HRDs. Estonia, Austria, Greece, the USA and the Netherlands all had similar recommendations in relation to thorough, impartial and independent investigation and bringing to justice, in line with international fair trial standards, the perpetrators of attacks against HRDs (especially of journalists and media enterprises), and ensuring their safety.<sup>19</sup> All recommendations were accepted.

Periodic reports were submitted on the implementation of ICCPR, ICESCR, ICCPED, CRPD, CRC, CERD, CEDAW, etc. At the same time, Montenegro displayed significant tardiness in fulfilling its international obligations to submit reports to the UN Committees. This indicates the necessity of raising the awareness of institutions on the significance of these reports, as well as on the establishment of functional mechanisms for timely reporting, which includes all interested parties but also strengthening their capacities to fulfil the undertaken commitments. The process of development of national mechanisms for monitoring the implementation of UN competent bodies' recommendation has started. HRDs have noted that this is not transparent and inclusive process and that they have been facing obstacles in obtaining relevant information regarding this.<sup>20</sup>

When it comes to the Council of Europe, Montenegro is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Montenegro also ratified a great number of other conventions, including the Framework Convention for Protection of National Minorities and the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

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

for 2017-2018”, p. 27, March 2017. Available at: <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=285226&rType=2&file=Action%20Plan%20for%20Achieving%20Gender%20Equality%20APAGE%202017-2021.pdf#20>

<sup>15</sup> NGO Shadow report on the implementation of the Convention on the elimination of all forms of discrimination against women (CEDAW) in Montenegro.

Submitted for the 67th CEDAW Committee Session, 3-21 July 2017, Podgorica, June 2017. Available at: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MNE/INT\\_CEDAW\\_NGO\\_MNE\\_27715\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MNE/INT_CEDAW_NGO_MNE_27715_E.pdf)

<sup>16</sup> Interview No. 12, Civil Society Representative, 4/09/2019

<sup>17</sup> Constitution of Montenegro, Article 9. Official Gazette, No. 1/2007. Available at: <http://www.skupstina.me/index.php/en/ustav-crne-gore>

<sup>18</sup> International Covenant on Civil and Political Rights (including the Optional Protocol to International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty); International Covenant on Economic, Social and Cultural Rights (including Optional Protocol); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (including Optional Protocol); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (including Optional Protocol); Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities (including Optional Protocol); International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; and Optional Protocol to International Covenant on Economic, Social and Cultural Rights; the Convention on the Reduction of Statelessness; 69 conventions of the International Labour Organisation, etc.

<sup>19</sup> United Nations Human Rights Council, “Report of the Working Group on the Universal Periodic Review – Montenegro”, April 2018. Available at: <https://undocs.org/en/A/HRC/38/13>

<sup>20</sup> Interview No. 12, Civil Society Representative, 4/09/2019

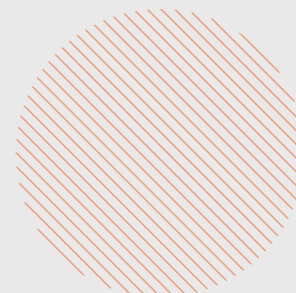
aware of this option and helping them prepare the submission, as well as in communicating the judgement to the public. The enforcement of ECHR verdicts has been rather efficient, and it is clear that Montenegrin institutions hold ECHR in high regard. However, the application of the ECHR case law in the national court practice is still uneven, with a positive tendency but with a lack of (pro)active establishment of accountability for identified violations verified by the ECHR. The fact that lower courts perform better than higher instance courts is a paradox, but could be explained by the fact that lower courts are staffed by younger judges who are more fluent in foreign languages and more willing to learn and apply new practices.

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: 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 central 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 interest 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.”*<sup>21</sup>

The Ombudsperson is continuously improving their performance in the protection of human rights. However, it is evident that the Ombudsperson rarely acts proactively and very rarely exercises pressure 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 undertake advocacy on HRD-relevant issues.<sup>22</sup> 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 by the most recent revision of the Law on Free Access to Information. Also, the HRDs address complaints related to the access to information to the Agency, which, due to persistent under-staffing, takes very long to respond, sometimes even counted in years. This represents a growing challenge to the HRDs’ work.<sup>23</sup>



## 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, but also warn of 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 and are rarely willing to share information with journalists. HRDs are more likely to point out 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.”<sup>24</sup>

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.<sup>25</sup> They all feel that there is no reaction even when they 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”*.<sup>26</sup>

### 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.<sup>27</sup> The number of public gatherings increased and the number of those forbidden decreased. Overall, in 2018, there were 518 peaceful public gatherings, 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 action accountable for the police torture exercised by the special antiterrorist units at the protest in 2015. The Constitutional Court confirmed in three decisions that the investigation was ineffective,<sup>28,29,30</sup> 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, formally 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 instance, you can easily get a permit, but there will be drones, informants sent to collect information on the participants, etc. In addition to this, many people are threatened or feel threatened with losing their jobs if they are seen at the protests. All this has an impact.”*<sup>31</sup>

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, but the authorities defended it as a means of deterrence as well as support for investigation 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

<sup>24</sup> Interview No. 11, Media Representative, 04/09/2019

<sup>25</sup> Interview No. 4, Civil Society Representative, 29/08/2019

<sup>26</sup> Interview No. 12, Civil Society Representative, 4/09/2019

<sup>27</sup> Institut Alternativa, “NGOs against the ban of protest at the boulevard in front of the Parliament – Defending the Constitutional right to peaceful assembly”, May 2017. Available at: <https://institut-alternativa.org/en/ngos-against-the-ban-of-protest-at-the-boulevard-in-front-of-the-parliament-defending-the-constitutional-right-to-peaceful-assembly/>

<sup>28</sup> Decision of the Constitutional Court on the case U-III no. 354/17 of 25 July 2017 concerning the complaint by M. Martinović against the office of the State Prosecutor for failing to act upon his original complaint against the Police Department for torture. Copy of the decision obtained by NGO Human Rights Action via request for free access to information available at (MNE): <http://www.hraction.org/wp-content/uploads/hra-USTAVNI-SUD.pdf>

<sup>29</sup> Human Rights Action, “Martinović case: Decision of the Constitutional Court of Montenegro in case of ineffective investigation of police torture”, 8 November 2017, Available at: <http://www.hraction.org/2017/11/08/8112017-martinovic-case-decision-of-the-constitutional-court-of-montenegro-in-case-of-ineffective-investigation-of-police-torture/?lang=en>

<sup>30</sup> Human Rights Action, “Court confirms two complaints of failure to investigate police torture in the Jewelers’ Street in 2015”, 21 June 2017, Available at (MNE): <http://www.hraction.org/2017/06/21/2162017-usvojena-ustavna-zalba-zbog-neistrazene-policijske-torture-u-ulici-zlatara-2015-godine/>

<sup>31</sup> Interview No. 3, Civil Society Representative, 28/08/2019

<sup>21</sup> Interview No. 5, Civil Society Representative, 29/08/2019

<sup>22</sup> Interview No. 14, Civil Society Representative, 19/09/2019

<sup>23</sup> Interview No. 14, Civil Society Representative, 19/09/2019

they did not obtain the necessary authorisation from the Agency for Free Access to Information and Data Protection.<sup>32</sup> 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, the smear campaigns led by the authorities in the pro-government media, labelled the same 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.<sup>33</sup> 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.<sup>35</sup>

HRDs have been reporting of being subjected to ad-hoc financial and tax audits, which can sometimes take up significant resources from their work.<sup>36</sup> For instance, in the last several years, Montenegro is applying a decentralised system through 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 managed by the EU Delegation in the country. Tax Administration of Montenegro is entitled 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 never. This is considered as part of the soft pressure measures.

*“Many of those pointing to violation of human rights, which is often linked with corruption, are faced with discreditation attempts by the authorities, with the support of the pro-government media,”<sup>37</sup> also represents the almost unanimous conclusion of the interviewed HRDs affiliated to media houses and NGOs.*

## 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 punishments or a shorter statute of limitations. The journalists consequently 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.<sup>38</sup> 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 loyalty to 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

<sup>32</sup> Daily “Dan”, “Ministry of Interior plans to purchase cameras despite the fact that the Agency did not approve installation of video surveillance”, 2 February 2019, Available at (MNE): <https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=682001&datum=2019-02-02>

<sup>33</sup> Rudović, M. “Đukanović again encouraging his supporters to lynch the critics”, Daily “Vijesti” 13 April 2018, Available at (MNE): <https://www.vijesti.me/vijesti/politika/dukanovic-opet-hrabri-pristalice-da-licuju-njegove-kriticare>

<sup>34</sup> Cabinet of the Prime Minister of Montenegro, Public relations Service, “Tivat – Duško Marković and Federica Mogherini: Montenegro making excellent progress towards EU”, 19 April 2018, Available at (MNE): <http://www.predsjednik.gov.me/vijesti/184007/Tivat-Dusko-Markovic-i-Federica-Mogherini-CG-odlicno-napreduje-ka-EU.html>

<sup>35</sup> Muk, S. “Freedom to the people”, Institut Alternativa blog, 10 May 2018. Available at: <https://institut-alternativa.org/en/blog-freedom-to-the-people/>

<sup>36</sup> Interview No. 7, Civil Society Representative, 29/08/2019 and Interview No. 14, Civil Society Representative, 19/09/2019

<sup>37</sup> Interview No. 11, Media Representative, 04/09/2019

<sup>38</sup> News portal “Antena M”, “Fines up to EUR 20 000: Flying the national flag on public holidays and standing up for the anthem to become obligatory”, 4 October 2018. Available at (MNE): <https://www.antenam.net/index.php/politika/95818-kazne-i-do-20-000-eura-isticanje-zastava-na-drzavnim-institucijama-bice-obavezno-kao-i-ustajanje-na-himnu>

impose significant constraints on the work of the HRDs and the media, and on individual citizens’ efforts to access their rights. *„The problem is that institutions are not independent, but party driven, captured by the long rule of a single party and consequently not in service of the citizens or the public, they do not feel it as their obligation to disclose information, to be open... I think that this represents the most serious problem.”<sup>39</sup>*

In addition to some cases of ‘hard’ censorship, the more widespread (‘soft’) censorship is exercised primarily through politicised, discretionary and non-transparent distribution of public money and subsidies to media.<sup>40</sup> The interviewees also noted the relevance of self-censorship. *“Self-censorship is especially present in the pro-government media, as I know from personal experience that there are journalists whose education and professionalism would lead them to report very differently if they were employed by a different media outlet, but they are too afraid to cross their owners or the power centres who control their owners and editors. There are not many job opportunities in Montenegro, especially not on a permanent contract, so they are protecting their jobs and livelihoods.”<sup>41</sup>* It is a common understanding that most journalists are trying to align their views with the internal editorial policy in order to keep their jobs. *“The way the contracts are formulated differs widely: in some media some of the contracts should be illegal under the Labour Law, in others they are not even employment contracts but are service contracts and depend on performance. In the state-owned media there are examples of colleagues being discriminated, humiliated, dismissed, and so on, and all of this together leads to a situation in which journalists have to think carefully about what they are allowed to say, without being directly censored.”<sup>42</sup>*

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 of 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 transgender 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 concerns about the reactions of the audience. But meanwhile somebody’s problems are not being solved.”<sup>43</sup>*

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 *Vijesti*. 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 interest by the international community, the perpetrators were not brought to justice. The case remains unresolved.

### Impunity for attacks on journalists

*“I think that this regime induces type of aggression towards media and journalists who are critical of the regime and the institutions. The institutions are captured by the ruling party, they are not independent, they do not have freedom to investigate these cases but prefer to cover them up because they are afraid to find out where and to whom a professional investigation would lead them...”<sup>44</sup> said one of the interviewees. Another noted that “the majority of threats and attacks on journalists can be traced to someone in the government or in the organised crime, and hence the perpetrators are not sanctioned... The investigations are only simulations enacted in response to the political pressure from the international community and the EC”<sup>45</sup>*

## 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

<sup>39</sup> Interview No. 1, Media Representative, 28/08/2019

<sup>40</sup> Kersevin Smokvina T. et al. “Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards”, Report for the Council of Europe, 29 December 2017. Available at: <https://rm.coe.int/montenegro-media-sector-inquiry-with-the-council-of-europe-and-europea/16807b4dd0>

<sup>41</sup> Interview No. 1, Media Representative, 28/08/2019

<sup>42</sup> Interview No. 11, Media Representative, 4/09/2019

<sup>43</sup> Interview No. 9, Media Representative, 2/09/2019

<sup>44</sup> Interview No. 1, Media Representative, 28/08/2019

<sup>45</sup> Interview No. 11, Media Representative, 04/09/2019

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.<sup>46,47</sup>

WHRDs say that the implementation of bylaws, such as the 2018 Protocol on preventing, acting and protection of women from domestic violence and gender-based violence, is not done thoroughly. Hence, it is not producing visible effects and the institutions are not adequately responding to their interventions, in some cases resulting in repeated offences.

*“Each step was confronted with challenges, starting from those of personal nature, taking the freedom that belongs to you in this society and becoming active, then survival as an activist, always forging together with a small number of other people who are trying to address violence and empower others while they themselves are facing violence on a daily basis ... Add to this the lack of understanding by institutions. And you need to go step by step. The challenges are numerous, time is passing, the justice does not come when people need it and freedom is still a fiction for many of us.”<sup>48</sup>*

## 5. ASSAULTS, HARASSMENTS AND RESTRICTIONS OF HUMAN RIGHTS DEFENDERS

### The right to be protected

The legal system does not recognize HRDs as a specific category nor does it accord them any special protection or facilitated access to institutions in charge of protecting human rights. This is despite the fact that their activity clearly puts them at increased risk of verbal, as well as physical attacks, and that the frequency of such attacks has intensified in the course of 2018 and 2019.

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.<sup>49,50</sup> 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, presumably an attempt to collect incriminating evidence that could be used to silence them<sup>51,52</sup>. 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.<sup>53</sup> The prosecution raised charges against only a very small percentage of persons that had been under surveillance in the reporting period, and even fewer of them resulted in convictions.

The social media are becoming the most frequent channel for the verbal assaults and harassments of the HRDs. Nearly all of them reported receiving threats through social media, but also via emails and phone calls. Many of them tried reporting such cases, but these complaints have almost all been dismissed by the prosecutors who did not find in them evidence of criminal activity or sufficient grounds for raising charges. HRDs note that media smear campaigns have also become a popular method against HRDs. While insulting insinuations and accusations remain common, “fewer and fewer of them are coming directly from state officials but more frequently from people who may be indirectly working for them.”<sup>54</sup>

HRDs also point out the threat of emerging pro-government NGOs (so-called GONGOs), and the growing practice of “granting privileges to the organisation with which the Government wants to work and which are not transparent in their work.”<sup>55</sup>

46 UN Committee on the Elimination of Discrimination against Women (CEDAW), “Concluding observations on the second periodic report of Montenegro”, 21 July 2017. Available at: [https://digitalibrary.un.org/search?f1=author&as=1&sf=title&so=a&rm=&m1=e&p1=UN.%20Committee%20on%20the%20Elimination%20of%20Discrimination%20against%20Women%20\(67th%20sess.%20%202017%20:%20Geneva\)&ln=en](https://digitalibrary.un.org/search?f1=author&as=1&sf=title&so=a&rm=&m1=e&p1=UN.%20Committee%20on%20the%20Elimination%20of%20Discrimination%20against%20Women%20(67th%20sess.%20%202017%20:%20Geneva)&ln=en)

47 Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), “(Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) – Montenegro”. Report for the Council of Europe, 25 October 2018. Available at: <https://rm.coe.int/grevio-report-montenegro/16808e5614>

48 Interview No. 2, Civil society representative, 28/08/2019

49 Daily “Dan”, “Illegal surveillance: Court partially confirms the complaint of MANS employees against the state”. 25 June 2019, Available at (MNE): <https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=701995&datum=2019-06-25>

50 Boričić, M., “Illegal surveillance in the hands of judge Feleč”, daily “Vijesti”, 2 December 2017, Available at (MNE): <https://www.vijesti.me/zabava/nezakonito-prisluškivanje-u-rukama-sutkinje-felec>

51 Radulović, Z., “Anniversary of Milivoj Katnić’s showdown with the competition in court: the trial of Rodić”. Weekly “Monitor”, online edition, 29 June 2018, Available at (MNE): <https://www.monitor.co.me/godinjica-obrauna-milivoja-katnia-sa-konkurencijom-u-sudu-rodiev-proces/>

52 Daily “Dan”, “Investigation against nine inspectors for illegal surveillance”, 27 June 2019, Available at (MNE): <https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&datum=2019-06-27&clanak=702273>

53 Centre for Civic Education, Human Rights Barometer Montenegro, 2019

54 Interview No. 8, Civil Society Representative, 2/09/2019

55 Interview No. 8, Civil Society Representative, 2/09/2019

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 LGBTI+ persons, investigative journalists or highly vocal and critical actors.

### Online assaults

*One WHRD reported that a party activist made a fake Facebook page with her name, labelling her as the “biggest evil in Montenegro”. Despite the fact that over 100 people reported it, Facebook did not consider it a problem. “I leave it be. I know the name of that person, and I know that he is prone to [domestic violence].”<sup>56</sup>*

### 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 fulfil their duties under the Law on Free Access to Information. The HRDs 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 remedy.

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.

*“The independence of the institutions is crucial here. The regulations are OK, there are no problems or limitations in the regulation. But the problem is that the institutions are neither functioning, nor applying these regulations. And if you do not have independent institutions how can you protect human rights? Will you protect solely those who are from the party you belong to? The state needs to stop being a one-party state and become a state as prescribed by the Constitution, in which the rule of law exists. The party state has to be transformed into the one working in the interest of all its citizens, regardless of their political, ideological and national affiliation.”<sup>57</sup>*

Institutions are often not reacting to the requests of citizens to help them access their rights, so they are turning to HRDs, who have built wider influence and integrity through their actions and are sometimes a more effective channel for citizens than institutions.

### 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.”<sup>58</sup>*

*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 and that victims were treated better than in those processes that they did not monitor. In Podgorica, there has not been a single case of a man removed from the family for violent behaviour in the past year. Yet all the while, amidst the failure of legal mechanisms to prosecute and punish domestic violence, the WHRDs were receiving calls to accept in the shelter women with one, two, three, even four children.*

*“We also just had the case of a woman who is working in a private company and she was not paid for months. She is a single mother, does not have a contract, is basically working without any papers. And when I called and said that I will report the employer, he immediately brought her approximately 20% of the overall debt [from the unpaid salaries].”<sup>59</sup>*

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.<sup>60</sup> In general, this contributes to the widespread culture of impunity of human rights violators.

56 Interview No. 3, Civil Society Representative, 28/08/2019

57 Interview No. 1, Media Representative, 28/08/2019

58 Interview No. 7, Civil Society Representative, 29/08/2019

59 Interview No. 3, Civil Society Representative, 28/09/2019

60 Interview No. 4, Civil Society Representative, 29/08/2019

## 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 WHRD 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.<sup>61</sup>

## 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.<sup>62</sup> 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.<sup>63</sup> There are no reliable reports on the number of these controls. In a system as politicised and deeply captured by the parties 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".<sup>64</sup>

### *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"<sup>65</sup>*

## 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, in particular those focusing on transgender persons. They testify that even some of the people who worked in the institutions on such issues exhibited homophobic behaviour, which made it difficult for them to do their job in a professional manner.<sup>66</sup>

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 violence based on gender and gender identity is more likely to go unpunished. WHRDs also warn that online violence and stalking have become big problems, and that although online violence has been finally recognised as a crime, it is still not being prosecuted.<sup>67</sup>

WHRDs are also receiving more sexually based threats. These are mainly anonymous, but sometimes

these are done by the persons whose wives are in the shelter centres and they consider WHRDs to be the ones who are "ruining the base of traditional family values."<sup>68</sup>

### *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.<sup>69</sup>*

*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 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.<sup>70</sup>*

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.

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

62 Government of Montenegro, "Consultations organised for the financing of NGO programmes and projects from the public budget: a year of implementation of the new bylaws". 20 February 2019, Available at (MNE): <http://www.gov.me/pretraga/196418/Odrzane-konsultacije-Finansiranje-projekata-i-programa-NVO-iz-drzavnog-budzeta-Godina-dana-dana-primjene-novih-zakonskih-rjesenja.html>

63 Interview No. 14, Civil Society Representative, 19/09/2019

64 Interview No. 4, Civil Society Representative, 29/08/2019

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. 3, Civil Society Representative, 28/08/2019

69 Interview No. 6, Civil Society Representative, 4/09/2019

70 Interview No. 12, Civil Society Representative, 10/09/2019

## 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. Almost all cases of attacks on journalists or media property remain unresolved, including the most serious ones of murder and attempted murder. The officials admit that they may never be resolved. This increases the sense of personal risk among journalists and activists and can deter them from more active engagement in human rights work.

HRDs including journalists consider that, regardless of the type of their work, the trust in NGOs and media is lower than indicated by public opinion polls. HRDs agree that some individuals in the public institutions are supportive and that their capacities to act have grown over the past years, but also warn that these do not represent the majority. Overall, the relations between authorities and the civil society remain coloured by distrust, resentment and sometimes even tensions, including periodic smear campaigns by the authorities against the HRDs and critically oriented NGOs.

Finally, 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.<sup>71</sup> They also point to the cases in which they received full public and rhetorical support, but not actual help in the follow-up proceedings.

*“I do not think that there are gaps, rather the institutions are not working in the direction provided by the legal framework. We have some sort of self-censorship within the institutions – I will not deal with that if there is no pressure, and if there is pressure, I will try to pretend that I am working... It is like walking without going forward, and the result is that no serious effort is made to identify perpetrators or the ones who ordered the violence.”<sup>72</sup> Another interviewee stressed that “the key to the improvement of the state of affairs is professionalism, and it would be enough if everyone started to work professionally – not interfering with each other’s work, not just holding speeches, but being dedicated and genuinely open-minded.”<sup>73</sup>*

<sup>71</sup> Interview No. 12, Civil Society Representative, 4/09/2019.

<sup>72</sup> Interview No. 1, Media Representative, 28/08/2019

<sup>73</sup> Interview No. 9, Media Representative, 2/09/2019

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.
- ▶ Institutions and public agencies whose mandate includes cooperation with HRDs must safeguard the fact that they are included in the decision-making and policy shaping 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 attacks and hate 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 their work, 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.
- ▶ 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. In this respect, HRDs should be invited to classrooms to directly share their experiences with pupils and students and hence to sensitivise them for the modern concept of human rights.
- ▶ Education about human rights should be made part of the career advancement programmes within the relevant public administration. This would foster the capacities of human rights institutions and enable in-depth dialogue and cooperation with HRDs in pursuing common goals.

### Human rights defenders

- ▶ HRDs 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.
- ▶ HRDs should make sure to use more concrete examples of human rights violations in their communications with the wider public as this has proven to mobilize the public understanding, empathy and support more effectively.
- ▶ HRDs must make sure that their work is transparent by proactively publishing financial reports on their websites. This would pre-empt attempts to discredit their work and protect them against harassment by the authorities disguised as financial auditing.

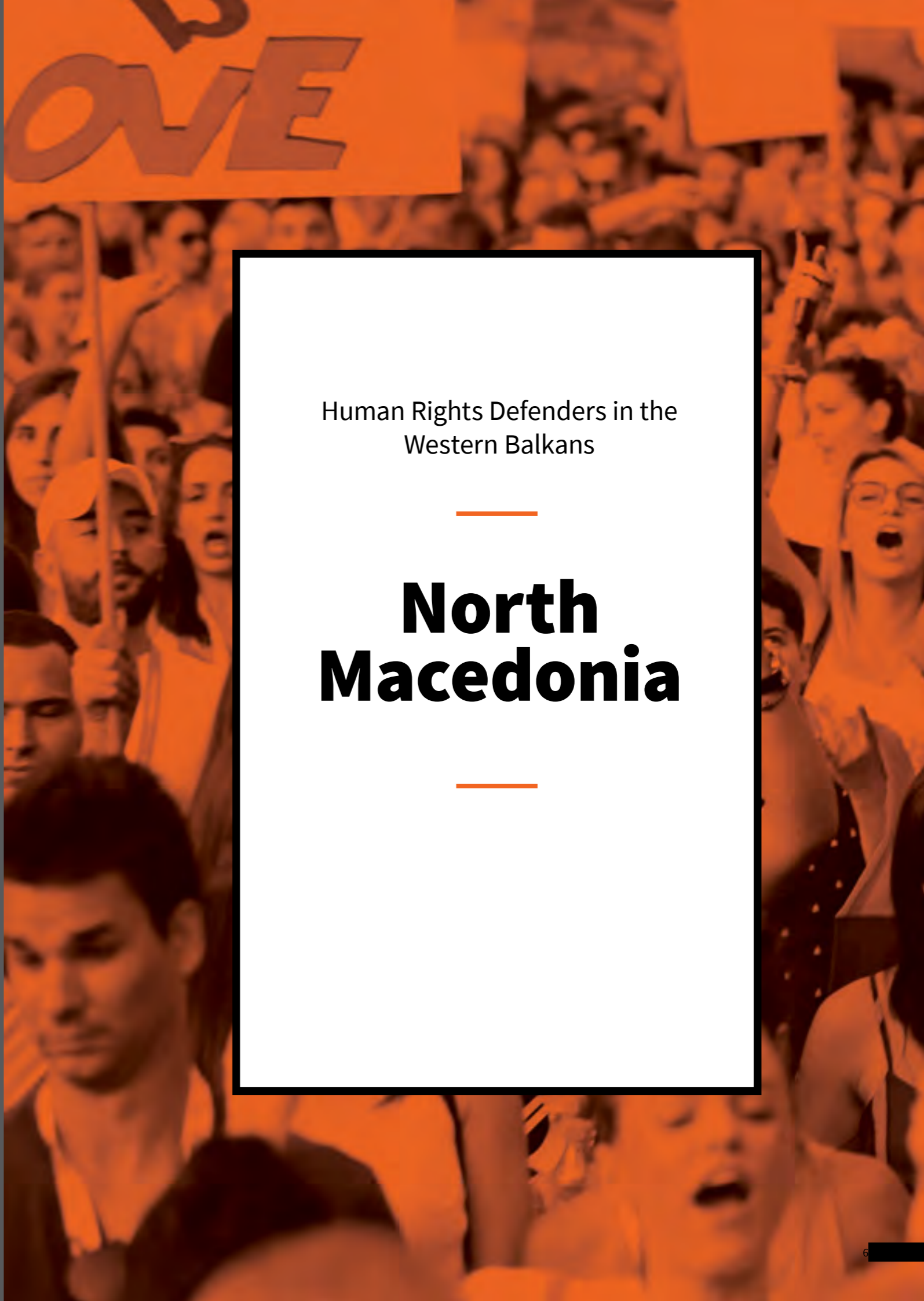


## Media

- ▶ 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, but which find little place in the governments 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.

HRD 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.

# NORTH MACEDONIA

## 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, ableism, patriarchal and heteronormative environment, and has transformed from one system of state regulation to another, these challenges are numerous.

This report presents some of these challenges and proposes solutions for addressing them. It discusses the issues that HRDs and women human rights defenders (WHRDs) face when conducting human rights work in North Macedonia. For this purpose, we conducted sixteen semi-structured interviews with HRDs<sup>1</sup> who are active in gender equality, environmental issues, Roma rights, lesbian, gay, bisexual, trans, intersex and queer (LGBTI+) issues, data protection, freedom of speech, free legal aid, and we also included journalists. We analysed legal and policy documents of relevance for HRDs and drew from additional existing literature (such as grey literature, media and UN human rights bodies).

The research findings are organised into three categories: Legal Framework, Violations and restrictions of human rights defenders' civil and political rights and Assaults, harassments and restrictions of human rights defenders. The presented cases of violations are limited to the scope of the conducted interviews and are not a complete catalogue of violations in the country. Before moving on to this discussion, we present a few important points of relevance for the general context. Among the findings, the reader will notice that many of severe violations of the rights and freedoms of HRDs occurred before May 2017, i.e. before the change of government and in the context of the state capture. However, they are noted here since the human rights obligations rested, rest and will rest upon the state. Thus, we should identify and analyse the violations of the rights and freedoms of HRDs which occurred as a result of the actions or the lack of actions by the state in order to identify weak spots in the legislation and the practices. This can contribute to preventing future violations, but can also help us to deal with the consequences from the state capture of relevance for the work of HRD.

## 2. GENERAL CONTEXT ISSUES

*"...a good portion of the people working in the institutions cannot even understand the concept of human rights. They totally do not understand what they are doing and, in a country with such great social differences, such deep poverty and deeply rooted corruption, we cannot even expect that the subject of human rights will be touched. 70% of the population is struggling for food, they do not have food, let alone to think about media freedom and human rights. Simply, there is no such climate. And it contributes to not being able to find enough allies among citizens to be more effective and better at promoting human rights."<sup>2</sup>*

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 life of the families 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, some of the HRDs are constantly faced with hate speech and discrediting on social media which peaked in the period 2016-2017. At the time, the then governing party launched the so-called "desorosoisation" process<sup>3</sup> 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 some of the ways to apply the 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.<sup>4</sup> The wiretapping scandal is one of the biggest scandals and large-scale violations of human rights in the history of the country since 1991. This was a part of a spark behind the largest protests for human rights and the rule of law in the country, which broke out in 2015 under the banner of 'Protestiram' (Eng. I protest) and in 2016 as 'Šarena revolucija' (Eng. Colourful revolution).

After the election of the new Government in May 2017<sup>5</sup>, the HRDs working environment has slightly improved. But

<sup>1</sup> When it comes to gender, our interviewees were nine women, five men, one non-binary person and one transgender person.

<sup>2</sup> Interview No.4, Media representative, 20.08.2019.

<sup>3</sup> Voice of America, "Desorosoisation" or Clash with the NGO Sector? (26 January 2017) <<https://mk.voanews.com/a/macedonia-politics/3694205.html>> accessed 4 October 2019.

<sup>4</sup> Organization for Security and Co-operation in Europe (OSCE), 'First Transitional Report on the Activities and Cases under the Jurisdiction of the Special Public Prosecutor's Office' (2018) <<https://www.osce.org/mk/mission-to-skopje/391763?download=true>> accessed 30 October 2019.

<sup>5</sup> Assembly of the Republic of Macedonia, 'Session No. 2 of the Assembly of the Republic of Macedonia' (31 May 2017) <<https://www.sobranie.mk/sessiondetails.nspx?sessionDetailsId=59679564-147b-4f50-b8fa-570e972be26d&date=31.5.2017>> accessed 4 October 2019.

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 not sanctioned on the basis of the laws. WHRDs face sexual insults, threats and challenges during and after pregnancy rooted in unapt laws, non-sensitised employers and many other manifestations of the entrenched patriarchy.

- Prior to May 2017, during the rule of Gruevski and the ‘suspension of democracy’<sup>6</sup> alike in other places in the world,<sup>7</sup> the mushrooming of GONGOs (government organised NGOs) started hand in hand with the birth and strengthening of a religious conservative movement. As in other places in the world, they are characterised by the following: they are well organised, mimicking the language and methods of HRDs and especially of NGOs working on human rights, and they are connected with global religious foundations or associations.<sup>8</sup> The UN Working Group on Discrimination against Women and Girls<sup>9</sup> warned against the dangers from this movement particularly concerning gender equality and women’s rights.<sup>10</sup> 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 retraditionalisation of gender relations. However, although this agenda cannot penetrate at the policy tables with the new government for now, it is maintained among 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’.<sup>11</sup> 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 harassments and restrictions of HRDs). These issues concern the general context and include: social security issues, consultation mechanisms (including free 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 citizens of the country, what is particular about HRDs is that many of them work on limited contracts or as freelancers, without pension and health insurance.<sup>12</sup> Being on fixed-term contracts negatively affects their credit rating, which lowers their chances to apply for long-term loans. Over time, this affects their quality of life because they cannot apply, for instance, for housing loans. However, fixed-term contracts disproportionately affect women more. Namely, those WHRDs that work on fixed-term contracts cannot benefit from the country’s services for paid maternity leave because their expenses for health and pension insurance are not covered.<sup>13</sup>

Another issue reported by some of the interviewed HRDs is that sometimes the institutions are not at all considering the HRD systemic proposals and recommendations or are doing it on a very personal basis.<sup>14</sup> Lack of capacities of the institutions and lack of political will contribute to this, but the main issue behind this is the lack of formal rules for consultations.<sup>15</sup> Additional barriers are reported in relation to the free access to information.<sup>16</sup> According to the law,<sup>17</sup> the information should be provided within 30 days of the request. This timeframe was sensible for the institutions, but it was burdening for the HRDs, especially since the practice was that majority of the institutions would provide the information at the very end of the deadline. While this means that in majority of the cases they respected the deadline, for the journalists this makes the access to information untimely, rendering the information outdated and useless.

In the meantime, a new Law on free access to public information<sup>18</sup>, which responds to the criticism of civil society, was adopted and will enter into force on December 1, 2019. According to this law, the timeframe of 30 days period to provide information to the requested party was replaced with a 20-day timeframe. The new law also foresees

6 Ana Miškovska Kajevska, ‘Suspending Democracy, Harming Gender Equality’ in Mieke Verloo (ed), *Varieties of opposition to gender equality in Europe* (Routledge, Taylor & Francis Group 2018).

7 Christina Wassholm, ‘Suffocating the Movement - Shrinking Space for Women’s Rights’ (Kvinna till Kvinna 2018) 18.

8 This global trend has been heavily discussed, including from the perspective of South-East Europe. See, for example: David Paternotte and Roman Kuhar, ‘The Anti-Gender Movement in Comparative Perspective’ in Roman Kuhar and David Paternotte (eds), *Anti-gender Campaigns in Europe: Mobilizing Against Equality* (Rowman & Littlefield International 2017); Mieke Verloo (ed), *Varieties of Opposition to Gender Equality in Europe* (Routledge, Taylor & Francis Group 2018).

9 Former UN Working Group on the Issue of Discrimination against Women in Law and in Practice.

10 UN Working Group on the issue of discrimination against women in law and in practice, ‘Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice’ (2018).

11 Radio Free Europe, ‘Counter-Pride Parade in Skopje’ (29 June 2019) <<https://www.slobodnaevropa.mk/a/30027252.html>> accessed 4 October 2019.

12 The country’s Law on Health Insurance stipulates that in case of unemployment, the beneficiaries of health insurance can be the citizens that are up to 29 years old. Consequently, the HRD that are over 29 years old and work as freelancers do not have national health insurance. Another option is that the HRD cover the costs for health and pension insurance themselves, but this would limit their net income substantially. Source: Закон за здравственото осигурување [Law on Health Insurance] (Official Gazette of the Republic of Macedonia, Nos.25/2000, 34/2000, 96/2000, 50/2001, 11/2002, 31/2003,

84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 98/2008, 6/2009, 67/2009, 50/2010, 156/2010, 53/2011, 26/2012, 16/2013, 91/2013, 187/2013, 43/2014, 44/2014, 97/2014, 112/2014, 113/2014, 188/2014, 20/2015, 61/2015, 98/2015, 129/2015, 150/2015, 154/2015, 192/2015, 217/2015, 27/2016, 37/2016, 120/2016, 142/2016 and 171/2017; Constitutional Court decisions: U-br.85/2000, U-br.173/2000, U-br.37/2001, U-br.60/2006, U-br.40/2007, U-br.167/2006, U-br.45/2006, U-br.199/2008, U-br.109/2009, U-br. 185/2009, U-br.112/2011, Закон за придonesi od zadolžitelno socijalno osiguruvanje [Law on Mandatory Social Security Contributions] Official Gazette of the Republic of Macedonia, No. 142/2008) Закон за доброволно здравствено osiguruvanje [Law on Voluntary Health Insurance] (Official Gazette of the Republic of Macedonia, No. 145/2012). Art.15

13 Interview No.11, Civil society representative, 26.08.2019.

14 Interview No.15, Civil society representative, 06.09.2019, Interview No.7, Civil society representative, 21.08.2019.

15 Interview No.15, Civil society representative, 06.09.2019,

16 Interview No.6, Civil society representative, 20.08.2019, Interview No.1, Media representative, 15.08.2019, Interview No.8, Civil society representative, 22.08.2019, Interview No.4, Media representative, 20.08.2019

17 The country regulates this area with the Law on free access to public information. Закон за слобoden pristap do informacii od javen karakter [Law on Free Access to Public Information] (Official Gazette of the Republic of Macedonia, Nos.13/2006, 86/2008, 6/2010, 42/2014, 148/2015, 55/2016 and 64/2018, Official Gazette of the Republic of North Macedonia, No.98/2019).

18 Закон за sloboden pristap do informacii od javen karakter [Law on Free Access to Public Information] (Official Gazette of the Republic of North Macedonia, No.101/2019).

that the Commission for the Protection of the Right to Free Access to Public Information will be transformed into an Agency for the Protection of the Right to Free Access to Public Information.

HRDs also report that sometimes the institutions (intentionally or unintentionally) disregard the essence of the requested information and choose to provide information that is related, but not essential, to the information requested by the HRDs, and sometimes they do not provide the requested information at all. One such example is the Public Prosecutor’s Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication. When requesting information on one of the safety protocols in use by the institution, the institution refused to answer.<sup>19</sup> Recently, there were alleged information in the media reports that the institutions’ employees have not respected the same safety Protocol for which information was previously requested.<sup>20</sup>

The HRDs also face challenges in the area of labour rights. Namely, many employees in the NGOs work overtime, without regulated parental leave rights, often even working during their leave, on vacation and on weekends and at their homes after regular working hours are over. There is no clear distinction between personal and professional time, which is necessary not only for the well-being of people, but also for performance. “The donor-driven systems are capitalist and there is little regard for the individual and the well-being of those who work there. While the “climate” in the public sector is better, in the private sector it is much worse.”<sup>21</sup>

Finally, HRDs are critical over their own work as well. They highlight issues which arise in their work as a result of the fact that the public is not aware of what it is exactly that they do.<sup>22</sup> They do not have a close enough communication with the citizens in their activities.<sup>23</sup> In terms of the coverage by the media of HRD activities, the interviewees largely focused on the situation prior to June 2017, when the media portrayed the work of NGOs in a negative way and the Government itself presented the NGOs as enemies who only criticize the work of government.<sup>24</sup>

### 3. LEGAL FRAMEWORK

North Macedonia is a state party to all international documents of relevance for HRDs. Namely, the country has ratified the Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>25</sup> International Covenant on Civil and Political Rights (ICCPR),<sup>26</sup> the International Covenant on Economic, Social and Cultural Rights<sup>27</sup> and its Optional Protocol (ICESCR)<sup>28</sup>, the Convention on the Elimination of All Forms of Discrimination against Women<sup>29</sup> with its Optional Protocol,<sup>30</sup> Convention on the Rights of the Child<sup>31</sup>, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>32</sup> the Convention on the Rights of Persons with Disabilities<sup>33</sup> and the European Convention of Human Rights.<sup>34</sup>

The international bodies have been monitoring the implementation of these documents. One of the latest such reports relates to the Universal Periodic Review (UPR). In the Report of the Working Group on the UPR, Austria called for ‘efforts to address all abuses and threats against journalists and improvements in legal, financial and policy frameworks with regard to civil society organizations’.<sup>35</sup>

Under the national legal framework, there is no separate status for HRD that would allow to treat HRD as a specific category. Nevertheless, the country has a legal framework that addresses many of the specific challenges faced by this category.

The stipulations of the UDHR are incorporated within the Constitution. Out of the rights directly relevant for HRDs, the 1991 Constitution and its subsequent amendments<sup>36</sup> cover the right to life, right to freedom of assembly, right

19 Interview No.4, Media representative, 20.08.2019.

20 Kanal 5, ‘A New Scandal in the SPP in Sight: Were They Working without Compliance with Security Protocols?’ (25 September 2019) <<https://kanal5.com.mk/articles/390733/nov-skandal-vo-sjo-na-povidok-se-rabotelo-li-bez-pochituvanje-na-bezbednosnite-protokoli>> accessed 4 October 2019.

21 Interview No.11, Civil society representative, 29.08.2019.

22 Interview No.15, Civil society representative, 06.09.2019, Interview No.12, Civil society representative, 29.08.2019.

23 Interview No.2, Civil society representative, 19.08.2019, Interview No.16, Civil society representative, 26.09.2019.

24 Macedonian Center for International Cooperation (MCIC), ‘Report on the Enabling Environment for Civil Society Development in Macedonia 2017’ (2018) <<https://rcgo.mk/wp-content/uploads/2018/10/izvestaj-za-sledenje-na-ovozmozhuvachkata-okolina-za-razvoj-na-go-vo-Makedonija-vo-2017.pdf>> accessed 30 October 2019.

25 Acceded by succession on 18 January 1994

26 Acceded by succession on 18 January 1994

27 Acceded by succession on 18 January 1994

28 The Optional Protocol was signed on the 14th of August 2013, but it is not ratified it yet.

29 Acceded by succession on 18 January 1994

30 Ratified on 17 Oct 2003

31 Acceded by succession on 2 December 1993

32 Acceded by succession on 12 Dec 1994

33 Ratified on 29 Dec 2011

34 Entered into force on the 10th of April 1997

35 United Nations General Assembly, Human Rights Council - Forty-first session, Agenda item 6 - Universal periodic review, ‘Report of the Working Group on the Universal Periodic Review’ - North Macedonia’ (24 July 2019) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/102/86/PDF/G1910286.pdf?OpenElement>> accessed 30 August 2019. In addition, from the other recommendations by other stakeholders, it was proposed that the country should be recommended that it ensures ‘civil society activists, Human Rights Defenders and journalists [...] with a safe and secure environment in which to carry out their work’ and that the State party should conduct impartial, thorough and effective investigations into all cases of attacks on and harassment and intimidation against them and bring perpetrators of such offences to justice”. Source: United Nations General Assembly, Human Rights Council - Working Group on the Universal Periodic Review, Thirty-second session, ‘Summary of Stakeholders’ Submissions on the Former Yugoslav Republic of Macedonia’ - Report of the Office of the United Nations High Commissioner for Human Rights’ (21 February 2019) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/333/47/PDF/G1833347.pdf?OpenElement>> Accessed 30 August 2019.

36 Assembly of the Republic of North Macedonia, ‘Constitution of the Republic of North Macedonia’ <[https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns\\_article-constitution-of-the-republic-of-north-macedonia.nspx](https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx)> Accessed 30 August 2019.

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 and the right to access to funding. The constitutional provisions are further regulated with comprehensive laws such as the Law on Associations and Foundations<sup>37</sup>, Law on Prevention and Protection Against Discrimination<sup>38</sup> and the Law on Equal Opportunities for Women and Men<sup>39</sup>, as the basis for equal treatment; the Law on Public Assembly<sup>40</sup>; the Law on Prevention and Protection Against Domestic Violence<sup>41</sup>; Law on Protection of Personal Information<sup>42</sup>, the Law on Civil Procedure<sup>43</sup>, Law on Whistleblowers<sup>44</sup> 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 this, some of the representatives of the NGOs helped certain institutions develop protocols on how to deal with certain marginalized groups in their everyday work, but this was done mainly in order to help their target groups, and not themselves.

Asked whether there is a need for explicit recognition of the status of HRDs under the law, most of the respondents stated<sup>45</sup> that such a category is not needed.<sup>46</sup> What would greatly help with creating a much more suitable and better 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<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> In this highly disputed Opinion,<sup>51</sup> 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 composition of the Commission ended three months after the entry into force of the new law, at the moment of writing,<sup>52</sup> there is no functioning equality body.

The Ombudsperson has wide spectrum of competences relevant to the work of the HRDs. The institution promotes and protects the exercise of fundamental human rights and HRDs can file claims when their rights are violated by the institutions. Namely, the Ombudsperson, based on the Law on the Ombudsperson<sup>53</sup> 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 violated the fundamental human rights, assess the individual case and point out the mistakes of the institutions. The Ombudsperson's reputation among 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 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 (39.76%), then applications against violations of rights by the central authorities 1,140 (32.76%) and 345 (9.98%) applications were lodged against violations committed by local authorities.<sup>54</sup>

37 Закон за здруженија и фондации [Law on Associations and Foundations] (Official Gazette of the Republic of Macedonia, Nos.52/2010, 135/2011 and 55/2016).

38 Assembly of the Republic of North Macedonia, 'Decree Promulgating the Law on Prevention and Protection against Discrimination' <<http://www.mtsp.gov.mk/content/pdf/zakoni/2019/27,5-Zakon%20za%20zastita%20od%20diskriminacija.pdf>> accessed 30 August 2019.

39 Закон за еднакви можности на жените и мажите [Law on Equal Opportunities for Women and Men] (Official Gazette of the Republic of Macedonia, Nos.6/2012, 30/2013, 166/2014 and 150/2015).

40 Закон за јавните собири [Law on Public Gatherings] (Official Gazette of the Republic of Macedonia, Nos.Nos.55/95 and 66/07, and Official Gazette of the Republic of North Macedonia, No.06/19).

41 Assembly of the Republic of Macedonia, 'Decree Promulgating the Law on Prevention, Prevention and Protection from Domestic Violence' <<http://www.mtsp.gov.mk/content/pdf/zakoni/Zakon%20za%20prevencija%20semajno.pdf>> accessed 30 August 2019.

42 Закон за заштита на личните податоци [Law on the Protection of Personal Data] 2005 (Official Gazette of the Republic of Macedonia, Nos.7/2005, 103/2008, 124/2008, 124/2010, 135/2011, 43/2014, 153/2015, 99/2016 and 64/2018).

43 Law on Civil Procedure (Official Gazette of the Republic of Macedonia, Nos.79/2005, 110/2008, 83/2009, 116/2010 and 124/2015).

44 Закон за заштита на укажувачи [Law on Whistleblowers Protection] (Official Gazette of the Republic of Macedonia, Nos.196/2015 and 35/18).

45 Interview No.10, Civil society representative, 26.08.2019, Interview No.9, Civil society representative, 23.08.2019.

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 Former Commission for Prevention against Discrimination (CPAD).

48 Assembly of the Republic of North Macedonia (n 39).

49 Interview No.4, Media representative, 20.08.2019.

50 Commission for Protection against Discrimination, 'Opinion No. 0801-295 / 1 of the Commission for Protection against Discrimination Adopted on 05.11.2018'.

51 On the problematic aspects of the Commission's Opinion, see page 70 in: Kotevska B. (2019). Country Report on Measures to Combat Discrimination (Directives 2000/43/EC and 2000/78/EC) – Macedonia 2018. European Network of Legal Experts in Gender and Non-discrimination. Available at: <https://www.equalitylaw.eu/downloads/4968-republic-of-north-macedonia-country-report-non-discrimination-2019-pdf-1-29-mb>

52 Draft concluded October 30, 2019.

53 Закон за народен правобранител [Law on the Ombudsperson] (Official Gazette of the Republic of Macedonia, Nos.60/2003, 114/2009, 181/2016, 189/2016 and 35/2018).

54 Ombudsperson, 'Annual Report on the Level of Ensuring, Respecting, Promoting and Protecting Human Freedoms and Rights, 2018' (Ombudsperson 2019) <<http://ombudsman.mk/upload/Godisni%20izvestai/GI-2017/GI-2018.pdf>>.

The Parliament has a Standing Inquiry Committee for the Protection of Civil Freedoms and Rights.<sup>55</sup> This body considers issues regarding general questions, proposals and opinions concerning the implementation of the provisions of the Constitution of the Republic of Macedonia, laws and other regulations and acts of significance for the realization and protection of civil freedoms and rights. The findings of the Committee can serve as a basis for initiating a procedure for accountability of public office-holders. Generally, over the years this body has been largely silent on HRD issues, thus, public sessions 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 groups. 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 do not need another safeguard."<sup>56</sup> In the case of North Macedonia, this is compounded by the fact that the police and judicial institutions are not very sensitised on the scope of work of the HRDs and their target groups.

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

We focus here on several aspects of the civil and political rights of HRDs: freedom of assembly and the right to protest, freedom of association, and freedom of opinion and expression. We also elaborate on particular issues we identified the WHRDs are facing.

The basic legal framework on the fundamental freedoms of assembly, protest, opinion and expression and other fundamental freedoms is in place. But, the interviewed HRDs have reported challenges in its implementation. We consider these here as well, successively.

### Freedom of assembly

The freedom of assembly and the right to protest is guaranteed by the Constitution<sup>57</sup> and the Law on Public Gatherings.<sup>58</sup> Formally, 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,<sup>59</sup> 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.<sup>60</sup>

In October 2019, the Government proposed amendments to the Law on Public Gatherings<sup>61</sup> which is currently in parliamentary procedure. The amendments are somewhat controversial and potentially in contradiction to the Constitution. Firstly, the changes redefine public gatherings on the basis of the number of citizens present at the gathering, increasing the current number of 20 persons for qualifying something as a gathering, to 50 persons. Second, it significantly expands the list of places where public assembly is not allowed.<sup>62</sup> Third, it expands the list of prohibited items from drugs, alcohol and weapons, to also include any means<sup>63</sup> for covering the face, the head and other making it difficult to identify the persons.<sup>64</sup> 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 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'".<sup>65</sup> 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."<sup>66</sup>

55 Assembly of the Republic of Macedonia, 'Standing Inquiry Committee for the Protection of Citizens' Freedoms and Rights' <[https://sobranie.mk/rabotni-tela-2016-2020-ns\\_article-postojana-anketna-komisija-za-zashtita-na-slobodite-i-pravata-na-gragjaninot-16.nsp](https://sobranie.mk/rabotni-tela-2016-2020-ns_article-postojana-anketna-komisija-za-zashtita-na-slobodite-i-pravata-na-gragjaninot-16.nsp)>.

56 Interview No.10, Civil society representative, 26.08.2019.

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

58 Закон за јавните собири [Law on Public Gatherings] (Official Gazette of the Republic of Macedonia, Nos.55/1995, 19/2006, 66/2007 and 152/2015; Constitutional Court decision U.br. 31/2006).

59 *ibid* Чл.4.

60 Blazhen Maleski, 'Monitoring the Right to Free Assembly - 2017-2018 Republic of Macedonia' (European Center for Not-for-Profit Law and Reactor 2019) 20.

61 Government of North Macedonia, 'Draft-Law Amending the Law on Public Meetings' <<https://www.sobranie.mk/materialdetails.nsp?materialId=4bb3a50a-db10-4fdc-89ef-4caa0d6cb7c6>> accessed 12 November 2019.

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

63 The expansion of the prohibitions to 'means' which cover the face and the head and which obstruct the identification of the person may be subject to narrow interpretation or abuse and result in a disproportionately negative effect on some groups. For example, it can have such negative effect on the freedom of assembly of Muslim women that wear religious insignia which partly or fully covers the face.

64 This is added also as grounds for terminating the assembly.

65 Maleski (n 63) 34. (Original references omitted).

66 European Commission, 'North Macedonia 2019 Report' (2019) 29 <<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>>.

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 interviewees report that challenges have occurred during the protests. The HRD reported that some assemblies were interrupted 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 a picnic. And then four or five delinquents came, and there was a lot of police and the police chased us away due to risk of violence/security risk. Why didn’t they drove away the delinquents, why did they chase us away? They were four of them and we were over 30 people, why didn’t they arrest them?”<sup>67</sup> This case clearly shows the lack of sensibility by the police officers. The lack of an appropriate response in these type of situation leads to further marginalization of already marginalised groups. The 30 persons that gathered on a peaceful event were driven off by 4 or 5 delinquents that day. The counterweight of 5 persons against 30 was enough for the police to claim that there was a security risk for the peaceful assembly instead calling a backup, for example, if they have assessed that the present officers are not enough to maintain the public order.*

Other challenges reported in exercising the freedom of assembly include the limitations to the space of assembly. Namely, in 2015 a regional lesbian forum was organized including a “lesbian and violence against women march” envisaged in the evening on the same day.<sup>68</sup> Even though a certain route for the march was planned and organised by the organiser, the police did not allow the marchers to visit the places planned with the march. They were only allowed to go from one location (GEM club) to the building of the Parliament. While the freedom of assembly was not prohibited, it was certainly restricted and controlled by the enforcement institutions. Similar limitations occurred to other HRDs when the police limited the space of the assembly to one location only, not letting the group to move to another location.<sup>69</sup>

### Police Midnight Raid of a Public Library

*The places for protests were limited during the rule of the previous Government. Throughout the “Colourful Revolution”<sup>70</sup> the police did not allow the protesters to protest in front of the headquarters of VMRO-DPMNE - ruling party at the time, and at certain occasions the protesters were not allowed to protest in front of the Constitutional Court or the Government building. The HRD also reported excessive use of force and arrests during the protests “I protest”, the “Colourful Revolution” and the students’ protests. For example, on May 5, 2015, the police entered a public library after 11 p.m. and applied physical force against the present students because they allegedly participated in the anti-regime protest which took place in front of the Government the same evening, which they had tried to break up. The case was brought to court by the Macedonian Helsinki Committee (MHK), but it was lost. MHK will lodge an application to the European Court for Human Rights as a last instance.*

Some HRDs reported that they felt unsafe and at risk during specific protests due to lack of preventive security measures by the police.<sup>71</sup> Some HRDs reported infiltration of agent-provocateurs that would stimulate the masses and motivate the protest to transform into a violent one, leading to an aftermath of police brutality and, ultimately, create ground for arrests of the original protesters. Some HRDs reported being attacked during protests which they organised by people with opposing opinions while the police did not undertake any measures to secure the protesters from the attackers.

## Freedom of association

The legal framework on freedom of association is in place, and this freedom is being regulated by both the Constitution<sup>72</sup> and the Law on Associations and Foundations.<sup>73</sup> No interviewed HRDs reported violations in this area at present. But they recalled that there had been such pressure in the most recent past.

Namely, a process called “desorosisation” was initiated in 2016 with the aim to discredit all NGOs and HRDs that were critical towards the work of the government at that time.<sup>74</sup> An initiative called “Stop Operation Soros” was not only actively working towards discrediting some of the most prominent HRDs, but it went a step further by

publishing their salary rates. They also accused the HRDs that the negative findings of the European Commission in their Annual Progress Reports were because of the HRD’s reporting. Prior to this initiative, the ruling party at that time, VMRO DPMNE, adopted a proclamation that the party would fight for “the ‘desorosisation’ of the

67 Interview No.12, Civil society representative, 29.08.2019.

68 Libertas, ‘Regional Lesbian Forum “Outsider Sisters” in Skopje Today’ (26 November 2015) <<https://www.libertas.mk/regionalen-lezbejski-forum-sestri-a/>> accessed 4 October 2019.

69 Interview No.14, Civil society representative, 30.08.2019.

70 The “Colorful Revolution” are the protests that started against the former President of the Republic of Macedonia Mr. Gjorgje Ivanov after his controversial decision to abolish the criminal proceedings against the former Prime Minister Mr. Nikola Gruevski and dozens of politicians who were allegedly involved in a wiretapping scandal

71 Interview No.6, Civil society representative, 20.08.2019, Interview No.3, Civil society representative, 20.08.2019.

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

73 Закон за здруженија и фондации [Law on Associations and Foundations].

74 More on this can be found in the Final Report of Monitoring Media Contents on the “Desorosisation” written by “NVO Infocentre”. The report is available at: [http://nvoinfocentar.mk/wp-content/uploads/2018/04/Десоросизација\\_завршна-анализа.pdf](http://nvoinfocentar.mk/wp-content/uploads/2018/04/Десоросизација_завршна-анализа.pdf)

Republic of Macedonia and the strengthening of an independent civil sector that would not be under anyone’s control.”<sup>75</sup> These events led to increased hate speech on social media against HRDs, and physical harassment and death threats were reported by both HRDs and journalists.

The freedom of association was also under the question when the Public Revenue Office and Financial Police and their authority to investigate and “control” the NGOs as legal entities was misused.<sup>76</sup> The joint effort of the “Stop Operation Soros” and the abuse of these institutions created an unsafe environment stimulating auto-censorship and made the work of the HRDs a lot harder and unsecure for them personally and for their families and friends as well.

## Freedom of opinion and expression

The freedom of opinion and expression is stipulated by the Constitution.<sup>77</sup> The HRDs that work in the field of journalism report that they feel neither free nor restricted in exercising their freedom of opinion and expression. The reasons stated refer to the general atmosphere in the country towards freely expressing one’s thoughts, but also the constant threats and pressure that they are exposed to when exercising this right. “And the very opportunity to express yourself freely, which is still a rare privilege here, does not mean that I am allowed to write what I think. So, I feel neither free nor restricted, because there are always pressures, there are threats, it is restricting that those who do not like criticism are constantly trying to limit our resources. So, we have big problems.”<sup>78</sup> 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.<sup>79</sup> 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 overly close 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 a decline in criticism and a practice of self-censorship.<sup>80</sup>

### 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 exercise of fundamental human rights. This is not perceived through the lens of political affiliation to a certain party, but as fear of helping the “bigger evil overcome the lesser evil”.<sup>81</sup>*

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.<sup>82</sup> The latter do not fall under any law in terms of the verification of the accuracy of information so they are much faster in coming out with information. In this regard, it should be clarified that there are also journalists-owners of web-portals that respect the laws and abide by the Journalists’ Code of Macedonia<sup>83</sup>. This means that, by the time that journalists working in traditional media check the accuracy of the information, as obliged by the laws, the public’s opinion is already shaped. ‘The cases of some media outlets, which have a “history of spreading provocative and sometimes fabricated news stories targeting opposition and civil society groups”<sup>84</sup> also by providing the media support for the “desorosisation” process, demonstrate how dangerous this situation can be for HRDs as the lack of legal regulation, in turn, is conducive to grave concentration of power and lack of transparent ownership.

The European Commission in its latest report<sup>85</sup> assesses that the climate for freedom of expression in North Macedonia continued to improve while making progress since last year. In this regard, the political public figures and public officials should demonstrate a higher level of criticism thereby upholding freedom of expression. Displaying a greater degree of tolerance by the public officials for criticism can be also found as a part of the decision of the European Court for Human Rights in Makraduli v. the former Yugoslav Republic of Macedonia.<sup>86</sup>

75 mkd.mk, ‘New Civic Movement, “Stop Operation Soros” (17 January 2017) <<https://www.mkd.mk/makedonija/politika/novo-gragjansko-dvizhenje-stop-operacija-soros/>> accessed 4 October 2019.

76 More on this will be elaborated below in the text under the section Assaults, harassments and restrictions of human rights defenders.

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

78 Interview No.4, Media representative, 20.08.2019.

79 Interview No.11, Civil society representative, 26.08.2019.

80 Interview No.13, Media representative, 29.08.2019.

81 Interview No.1, Media representative, 15.08.2019.

82 Interview No.1, Media representative, 15.08.2019.

83 Council for Media Ethics in Macedonia, ‘Code of Journalists of Macedonia’ (14 November 2001) <<https://semm.mk/pravna-ramka-4/2015-11-01-07-10-08/kodeks/91-kodeks-na-novinarite-na-makedonija/>> accessed 28 October 2019.

84 Investigative Reporting Lab Macedonia, ‘Right-Wing Hungarian Media Moves Into the Balkans’ (4 November 2018) <<https://irl.mk/right-wing-hungarian-media-moves-into-the-balkans/>> Accessed 28 October 2019.

85 European Commission (n 69).

86 ECHR, ‘Case Makraduli v. The Former Yugoslav Republic of Macedonia (Applications Nos.64659/11 and 24133/13)’ <<http://biroescp.gov.mk/wp-content/uploads/2016/12/%D0%9Cakraduli-protiv-Makedonija-19.07.2018.pdf>> accessed 29 October 2019.

## 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 some of them, the reported violations and restrictions came 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 *ad hoc* at the event location. In one case, instead of removing the perpetrators, the police instructed the WHRDs to leave.<sup>87</sup>

WHRD work is additionally burdened by “the attitudes and values”<sup>88</sup> in the society, and also by “everyday micro-aggressions”.<sup>89</sup> In North Macedonia, there are “very deep stereotypes and stigmatization and systemic 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.”<sup>90</sup> 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.<sup>91</sup> Other HRDs reported that they have faced obstacles from raising LGBTI+ issues in larger protests, even when the concept of the protests 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”.<sup>92</sup>

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 highlights that “people who do not fit the dominant non-binary narrative, which is heteronormative and heterosexist, are more exposed to these attacks [...] including the ones by the state] especially by the previous government which wanted to sustain the discourse of a healthy nation, healthy society, whereas the rest of us are the disease which will make the society sick; and we were attacked directly.”<sup>93</sup> Another interviewee shared that she considered that “the feminists, especially those that do not belong to the majority community”<sup>94</sup> 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.”<sup>95</sup> 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, it seems, are the threats and public discrediting they receive, sometimes 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.<sup>96</sup> However, there are different opinions as to whether there should be a special mechanism for protection of HRDs, or whether the positioning and mandate of the existent relevant institutions should be adjusted and the employees sensitised for dealing with prevention and protection of HRDs. One interviewee pointed out that, if the country is under a regime which is at odds with the work of HRDs, it may not be possible to use such special institutions, or even the existing institutions for protection of HRDs because the institutions of the system can be abused by those in power.<sup>97</sup> This was the case with the previous Government.

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, I do not know if they exist.”<sup>98</sup> Another HRD who works as a journalist was under protection for four months by the Organized Crime and Corruption Reporting Project<sup>99</sup> because her life was in danger in relation to an investigation she was undertaking.<sup>100</sup>

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 judicial system at that time. In time, she also was a victim of verbal threats and her office was vandalised on several occasions.<sup>101</sup> 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.<sup>102</sup> The most recent case of physical assault of an HRD was in June 2019 on the day of the first Skopje Pride Parade. 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, and in these cases the police were unable to find the perpetrators. As reported, the possible motives for stealing the laptops is to steal the information from the HRDs.<sup>103</sup> In terms of verbal assault, an HRD that work on rights and protection of transgender children, received many phone calls from parents of transgender children accusing her that she is a member of a sect, payed to recruit young children and to transform them to be transgender.<sup>104</sup>

Many HRDs, especially those who work as journalists/reporters, also report verbal threats, including death threats, both by unknown persons and by high and mid-level government officials. Sometimes the threats are sent personally and sometimes by middleman. In 2017, the “Association of Journalists registered six attacks on journalists, one physical assault, and one death threat, two arbitrary detentions from the police, one case of destruction of journalist’s property, and one case of interrupting photo reporters from reporting on a public event. Compared to the previous year, when there were 18 attacks, the number was reduced by three times.”<sup>105</sup> The issue of impunity for violence against journalists improved in 2018. Namely, two journalists’ attackers were imprisoned and fined<sup>106</sup> for the first time in the past ten years.

### 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 the officers advised him to park his car to another location, take a leave from his workplace and stay at home for a few days while they had not investigated who was threatening the journalist. The identified case clearly shows serious neglect of the police officers in terms of the possible life danger in which the journalist was in, neglect for his freedom of thought because, in a way, the journalist was being pressured, and neglect for his freedom of property which in this case was also in danger. The journalist stayed at home for a few days, missing days of work which also reflected on his psychological condition due to his situation.*

There are also other reports of death threats to journalists by criminals 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.<sup>107</sup>

There are reports of public discrediting of HRDs, who are affiliated with or working in NGOs. Many HRDs reported verbal insults or were subjected to discrediting on 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 LGBTI+ 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 crime. This fact is not properly addressed by the institutions, including the Public Prosecutors Office which, based on the Criminal Code, should *ex officio* prosecute hate speech and 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 resulted in another criminal act.<sup>108</sup> Previous instances of hate crimes include the attacks on the LGBTI Support Centre, 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 visible 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 treatment.<sup>109</sup>

87 Interview No.12, Civil society representative, 29.08.2019.

88 Interview No.11, Civil society representative, 26.08.2019.

89 Interview No.11, Civil society representative, 26.08.2019.

90 Interview No.8, Civil society representative, 22.08.2019.

91 Interview No.11, Civil society representative, 26.08.2019.

92 Interview No.12, Civil society representative, 29.08.2019.

93 Interview No.12, Civil society representative, 29.08.2019.

94 Interview No.11, Civil society representative, 26.08.2019.

95 Interview No.11, Civil society representative, 26.08.2019.

96 Interview No.9, Civil society representative, 23.08.2019.

97 Interview No.10, Civil society representative, 26.08.2019.

98 Interview No.10, Civil society representative, 26.08.2019.

99 Organized Crime and Corruption Reporting Project (OCCRP) is a non-profit media organization providing an investigative reporting platform for the OCCRP Network.

100 Interview No.4, Media representative, 20.08.2019.

101 Interview No.3, Civil society representative, 20.08.2019.

102 Interview No.16, Civil society representative, 26.09.2019, Interview No.10, Civil society representative, 26.08.2019, Interview No.9, Civil society representative, 23.08.2019, Interview No.12, Civil society representative, 29.08.2019.

103 Interview No.14, Civil society representative, 30.08.2019.

104 Interview No.5, Civil society representative, 20.08.2019.

105 Association of Journalists of Macedonia, ‘Indicators on the Level of Media Freedom and Journalists’ Safety in Macedonia’ (2018) <<https://safejournalists.net/wp-content/uploads/2018/12/Indicators-on-the-level-of-media-freedom-and-journalists-safety-in-Macedonia.pdf>> accessed 29 October 2019.

106 civilmedia.mk, ‘The Prison Sentence for the A10n Journalists’ Attacker Is a Message to Future Attackers’ (8 September 2019) <<https://civilmedia.mk/zatvorskata-kazna-za-napagachot-na-novinarite-na-a10n-e-poraka-do-idnite-napagachi/>> accessed 29 October 2019.

107 Interview No.4, Media representative, 20.08.2019.

108 Interview No.9, Civil society representative, 23.08.2019.

109 Helsinki Committee for Human Rights of the Republic of Macedonia, ‘Annual Report for 2018 of the Helsinki Committee for Human Rights of the Republic of Macedonia’ (2019) <[https://mhc.org.mk/wp-content/uploads/2019/09/hkm\\_godishen-izvestaj.pdf](https://mhc.org.mk/wp-content/uploads/2019/09/hkm_godishen-izvestaj.pdf)> accessed 29 October 2019.

87 Interview No.12, Civil society representative, 29.08.2019.

88 Interview No.11, Civil society representative, 26.08.2019.

89 Interview No.11, Civil society representative, 26.08.2019.

90 Interview No.8, Civil society representative, 22.08.2019.

91 Interview No.11, Civil society representative, 26.08.2019.

92 Interview No.12, Civil society representative, 29.08.2019.

93 Interview No.12, Civil society representative, 29.08.2019.

94 Interview No.11, Civil society representative, 26.08.2019.

95 Interview No.11, Civil society representative, 26.08.2019.

96 Interview No.9, Civil society representative, 23.08.2019.

97 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 have not been identified, the Ministry of Interior has not sanctioned the persons that spread hate speech and the (death) threats are not cleared or investigated. This leads to the conclusion that “[...] investigative procedures are ineffective, perpetrators are not apprehended, or if apprehended, the proceedings are delayed and stuck in the judicial system. Physical assaults, as cases that remain unresolved, represent unequal administration of justice”.<sup>110</sup> Consequently, the fact that the perpetrators are unprocessed in the judicial system, creates an environment of impunity, which results in further endorsement and encouragement of attacks on human rights defenders.<sup>111</sup> It will open up opportunities for the crimes to be repeated, but also for progressing from hate speech into hate crime. Altogether, this further contributes to HRDs losing trust in the institutions, which can result in further decline in reporting. One interviewee said: “At the moment there is no protection mechanism, so we are the ones who deal with the problems ourselves, we manage to protect ourselves, and the target group we work with”.<sup>112</sup>

### Systemic intersectional discrimination

*The institution must advance their protocols when dealing with HRDs. The capacities for dealing with hate speech and hate crime must be strengthened. These protocols 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 recognized.”<sup>113</sup>*

## The right to access and communicate with international bodies

The interviewed HRDs did not report any obstacles or challenges when communicating with international bodies. Namely, even under threats, political and institutional pressure, the HRDs reported that they have communicated with international organisations, such as OSCE, and some were put under the protection from physical assaults by international non-governmental organisations, as previously mentioned.

## The right to access funding

The funding and establishing of NGOs is regulated by the Law on Associations and Foundations.<sup>114</sup> 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), endorsements, legacies, profit-making 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 to funding has not been reported to be a challenge in North Macedonia, but the HRDs see the funding as one of the key challenges in their work. This issue is so important that it has basically tailored the human rights agenda<sup>115</sup> in the country since HRDs sometimes have to choose what they will work on the basis of the available funding, and not on priorities which they have identified as needed. For some of the HRDs working as journalists, access to independent funding is also a challenge<sup>116</sup> because it is hard to find a donor that would finance independent investigative journalism. For other interviewees, working in grass-root organisations means a far more difficult path in acquiring funding for their work, compared to other organisations in the civil society sector.

The institutions, especially the new Government, finances NGOs in different areas. Although this development is welcomed, it should be approached with a careful cheer, since it also carries a potential for self-censorship by the HRDs who work in the supported NGOs, out of fear of losing the financial support. Yet, no cutting of funds was reported by the interviewed HRDs.

The main issue reported by the interviewed HRDs in the area of financing are the financial controls conducted in 2016 and 2017. They were exercised in the form of a biased pressure towards HRDs working in NGOs criticizing the then Government. In December 2016, tax authorities began a large-scale financial audit action directed at more than twenty NGOs. The timing coincided with the invitation of the former VMRO-DPMNE Prime Minister and leader Nikola Gruevski for “desorosisation” of the state. The NGOs and 42 opposition members that were critical of government policies led by VMRO-DPMNE were under the investigation of the Public Revenue Office.<sup>117</sup>

<sup>110</sup> Interview No.2, Civil society representative, 19.08.2019

<sup>111</sup> Interview No.5, Civil society representative, 20.08.2019, Interview No.9, Civil society representative, 23.08.2019, Interview No.3, Civil society representative, 20.08.2019, Interview No.10, Civil society representative, 26.08.2019, Interview No.12, Civil society representative, 29.08.2019.

<sup>112</sup> Interview No.3, Civil society representative, 20.08.2019.

<sup>113</sup> Interview No.8, Civil society representative, 22.08.2019.

<sup>114</sup> Закон за здруженија и фондации [Law on Associations and Foundations].

<sup>115</sup> Interview No.11, Civil society representative, 26.08.2019.

<sup>116</sup> Interview No.13, Media representative, 29.08.2019, Interview No.4, Media representative, 20.08.2019.

<sup>117</sup> The US Department of State - Bureau of Democracy, Human Rights, and Labor, ‘Annual Report on the Human Rights Situation in the Republic of Macedonia for 2017’ (2018) <<https://mk.usembassy.gov/wp-content/uploads/sites/249/2017-HUMAN-RIGHTS-REPORT-MKD.pdf>> accessed 29 October 2019.

### Government-exerted pressure via extraordinary financial tax controls

*“.. and with the infamous “desorosization” every morning you wake up to a Public Revenue Office inspector, you hear from other colleagues that there the financial police are present, you are constantly under stress, you would not know if anyone was coming to arrest you or not, I have three kids at home, and that would be catastrophic, fortunately nothing happened. [...] they closed the case against us. I then left the organisation to the colleagues who thought that they should continue with the campaign, but I left the organization.”<sup>118</sup>*

*It is evident that the fiscal controls made negative impact not only on the NGOs where the HRDs worked, but also on their personal lives. Our interviewee reported being under constant stress and fear of being arrested. This fear was aggravated by the fact that she will not be able to look after her children. She also chose to leave the organization which makes the pressure successful from the point of view of those who ordered the financial controls.<sup>119</sup> Another interviewee reported on the scope of the action and that, among other things, its aim was also to slow down their activities.<sup>120</sup>*

## 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.<sup>121</sup> One of the interviewees working in the field of investigative journalism received rape threats over an extended period of time by high-public persons, including owners of large companies.<sup>122</sup> 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.<sup>123</sup>

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*.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup> They are also frequently subject to public discrediting.<sup>127</sup>

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,<sup>128</sup> including the police.<sup>129</sup> 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.<sup>130</sup> Transwomen face additional obstacles, since transpersons are openly humiliated and even thrown away from police stations when they want to report a crime.<sup>131</sup>

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 anyone really, is that they look differently at women; you need to prove that you can do better than if you were a man.”<sup>132</sup> Another interviewee highlighted that WHRDs and the organisations working on gender equality in general have been pushed aside and receive less and less funds from both domestic and foreign donors.<sup>133</sup> This is a worrying trend which has already been noted in other research on WHRDs.<sup>134</sup>

<sup>118</sup> Interview No.7, Civil society representative, 21.08.2019.

<sup>119</sup> Interview No.7, Civil society representative, 21.08.2019.

<sup>120</sup> Interview No.12, Civil society representative, 29.08.2019.

<sup>121</sup> Interview No.02, Civil society representative, 19.08.2019, Interview No.3, Civil society representative, 20.08.2019, Interview No.10, Civil society representative, 26.08.2019, Interview No.11, Civil society representative, 26.08.2019, Interview No.12, Civil society representative, 29.08.2019.

<sup>122</sup> Interview No.4, Media representative, 20.08.2019.

<sup>123</sup> Interview No.11, Civil society representative, 26.08.2019.

<sup>124</sup> Interview No.11, Civil society representative, 26.08.2019.

<sup>125</sup> Interview No.11, Civil society representative, 26.08.2019.

<sup>126</sup> Interview No.10, Civil society representative, 26.08.2019.

<sup>127</sup> Interview No.11, Civil society representative, 26.08.2019, Interview No.14, Civil society representative, 30.08.2019, Interview No.10, Civil society representative, 26.08.2019, Interview No.12, Civil society representative, 29.08.2019, Interview No.16, Civil society representative, 26.09.2019.

<sup>128</sup> Interview No.2, Civil society representative, 19.08.2019, Interview No.1, Media representative, 15.08.2019,

<sup>129</sup> Interview No.12, Civil society representative, 29.08.2019.; Interview No.5, Civil society representative, 20.08.2019.

<sup>130</sup> Interview No.12, Civil society representative, 29.08.2019.

<sup>131</sup> Interview No.5, Civil society representative, 20.08.2019.

<sup>132</sup> Interview No.4, Media representative, 20.08.2019.

<sup>133</sup> Interview No.02, Civil society representative, 19.08.2019.

<sup>134</sup> Wassholm (n 7) 6.



## 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 LGBTI+ 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 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.<sup>135</sup> The capacities of the existing Unit for Cybercrime within the Department of Central Police Services<sup>136</sup> 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

<sup>135</sup> Кривичен Законик [Criminal Code] (Official Gazette of the Republic of Macedonia, Nos.37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14, 132/14, 160/14, 199/14, 196/15, 226/15, 97/17, and 248/2018).

<sup>136</sup> Ministry of Internal Affairs, 'Централни Полициски Служби' [Central Police Forces], <<https://mvr.gov.mk/page/centralni-policiski-sluzhbi>> accessed 4 October 2019.

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 NHRIs 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 issues of current or future importance, and make recommendations for 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, NHRIs 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 furthermore 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 whose work is affiliated 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 HRDs and the NHRIs<sup>137</sup> 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 issues of 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.

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

## Media

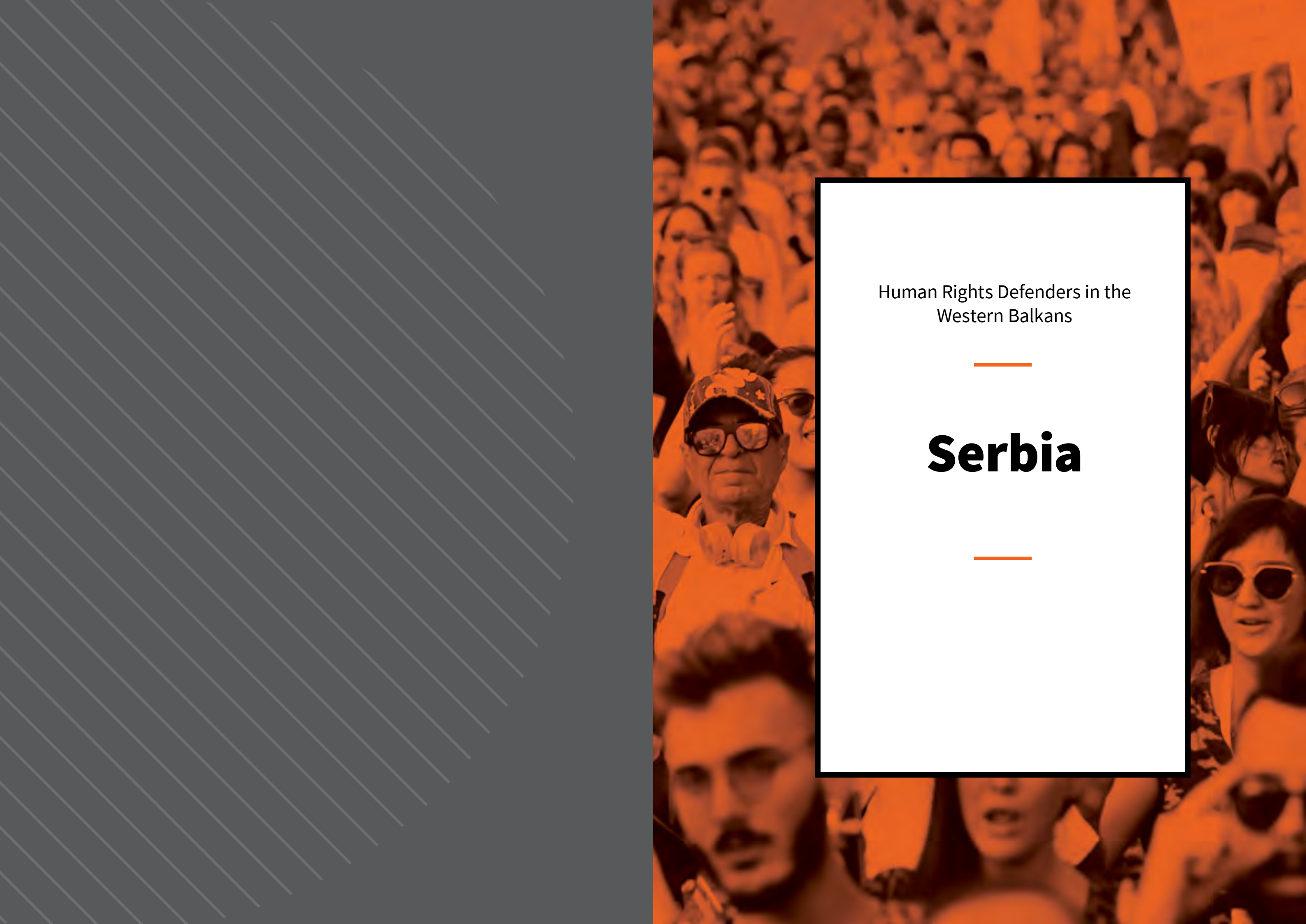
- ▶ The media should lead the way in a debate on the regulation of the work of online media, especially news web-portals.
- ▶ The media can contribute towards a better understanding of the HRDs work by promoting stories on the work, impact and the results of the HRDs contribution to their target groups 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 fulfil 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.

A large crowd of people at a festival, overlaid with a white box containing text. The background is a dense crowd of people, mostly young adults, with some individuals in the foreground more clearly visible. The overall color scheme is dominated by orange and grey tones. The white box is positioned on the right side of the image, containing the title and the word 'Serbia'.

Human Rights Defenders in the  
Western Balkans

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# Serbia

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## 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.

# SERBIA

## 1. INTRODUCTION

The 1998 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).<sup>1</sup> 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.<sup>2</sup> 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 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 faced by HRDs; and analyses gender aspects of the identified challenges and restrictions. To this end, HRDs/WHRDs were interviewed<sup>3</sup>, 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 supported NGOs (GONGOs), reluctant cooperation and institutional closure, reliance 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 traitors of the country, in attempts to discredit them. 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 extent of human rights violations in Serbia.

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

<sup>1</sup> 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 (1998), Article 1, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.as>

<sup>2</sup> The proposed definition of WHRDs was modified on grounds of the one offered by the Office of the High Commissioner for Human Rights (OHCHR).

<sup>3</sup> 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.

<sup>4</sup> European Commission, Serbia Country Report, 2019, p.13, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>

<sup>5</sup> Ibid., p.8.

<sup>6</sup> Ibid., p.25.

Furthermore, the interviewees point out that HRDs are also restricted due to an unfavourable social context. The general population is under considerable influence of government-controlled media, who glorify strongmen and war criminals, promote vulgarity, hate and discriminatory speech, etc. The current government seems uninterested to genuinely stimulate the creation of democratic and pluralistic society, whereas the previous ones have also failed in confronting the legacies of the 1990s.

This leaves the HRDs increasingly dismayed. For example, some HRDs report that they no longer participate in the Pride parade, for which they fought relentlessly for years, since they feel such action would provide legitimacy to the current government. In their views, the support this government lends to the LGBTI+ community is a classic example of *pinkwashing*. HRD actors outside of Belgrade, investigative journalists, and the organisations which deal both with women emancipation and war crimes, seem to be the most vulnerable. The tactics of “exhaustion” employed by the authorities are taking its toll on HRDs – they do not want to fall into the trap of self-victimisation, but instead strive to maintain focus on their original mission and their target groups.

### 3. LEGAL FRAMEWORK

Serbia’s legal framework is generally conducive to the promotion and protection of human rights, as it is largely in line with international standards on human rights. It is shaped by Serbia’s Constitution, as well as by the ratified international human rights instruments and conventions. Serbia is a member of the UN, Council of Europe 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)),<sup>7</sup> 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<sup>8</sup> and the Council of Europe<sup>9</sup>, whose treaties it normally signs and ratifies. Serbia is also subject to the UN’s Universal Periodic Review, and it has even formed a Council for the Monitoring of the Implementation of Recommendations of United Nations Human Rights Mechanisms. Finally, Serbian citizens have the right to file their applications against Serbia with the European Court of Human Rights.

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 attained level of human and minority rights may not be lowered, while adding that the human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary and without encroaching upon the substance of the relevant guaranteed right (Article 20).<sup>10</sup> 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 the human rights framework will be further strengthened. There is no apparent absence of laws that directly affects the ability of the human rights defenders to conduct their activities, nor the laws which proactively restrict them.<sup>11</sup>

There are some issues, however, that are not properly addressed in the Serbian legal system. For instance, the legal framework of Serbia typically does not differentiate between the legal protection of journalists and those of others. One exception is the Article 138(3) of the Serbian Criminal Code, which specifies that whoever endangers the safety of the person engaged in a profession of public importance in the field of information regarding the task he/she is performing, by threat of attack against the life or body of such person or a person close to him/her, shall be punished with imprisonment of six months up to five years. The key issue here, however, is that there are other

types of criminal offences which can be committed against a journalist that remain to be specified by law.<sup>12</sup>

It is also noteworthy to point out that the Serbian legal system does not define what the term “victim” encompasses. According to the Serbian Criminal Procedure Code (Article 2(11)), an injured party is a person whose personal rights or property rights have been violated or endangered by a criminal offense.<sup>13</sup> As this article equates persons whose property and non-property rights have been violated, it stops short from recognising the notion of victim, especially given the particularly vulnerable victims such as rape victims, victims of hate crime or persons who are indirect victims of murder (the family of the killed) and other crimes.<sup>14</sup>

As part of the latest developments, in 2018, in a case of domestic violence against a member of the LGBTI+ population, there was the first criminal conviction that took into account a motive of hatred when imposing a sentence for a crime.<sup>15</sup> This was a landmark case, as it took six years for this to happen, after the *Special circumstances for determination of sentence for hate crime* (Article 54a) was inserted to the Serbian Criminal Code in 2012. It says that if a criminal offence is committed from hate based on race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such circumstance as aggravating except when it is not stipulated as a feature of the criminal offence. Furthermore, there were some legislative attempts to indirectly deteriorate some of the mentioned rights of HRDs. For example, Law on Police adopted in 2016 is said to ‘politicise’ Serbian police forces, as excessive discretionary powers over police is transferred to the Interior Minister.<sup>16</sup> In that sense, the new Law on Police may negatively impact the work of HRDs, as they too depend on the overall quality of the protection and security provided by the police, which is supposed to be unbiased, professional and non-political.

What remains problematic with this court case is that it took four years for the court to finish the process. Other examples of LGBTI+ hate crimes exist in practice, as well-recorded by HRDs, yet justice seems unattainable for these victims.

### Status of Human Rights Defenders

From the international standpoint, Serbia has signed and ratified the UN Declaration on Human Rights Defenders. For this non-binding resolution to take full effect, it is up to the states to voluntarily comply and regulate the status of human rights defenders. In Serbia, however, the national framework on the status of human rights defenders is scarce. Namely, even though the term “human rights defenders” is not explicitly recognised in the Serbian legal system, Article 387(3) of the Criminal Code (under the title “Racial and Other Discrimination”) does specify that a penalty shall be imposed on whoever persecutes organisations or individuals due to their commitment for equality of people.<sup>17</sup> Furthermore, the scope of this article includes only HRDs that work on equality issues, but leaves out all other HRDs. In practice, however, this article has never been applied in the legal system of Serbia, despite the fact that there were a number of cases filed to the courts’ before.

### Discrepancy Between the Legal Framework and Practice

As there is a discrepancy between the legislative framework and the results on the ground, the UN Human Rights Council’s Working Group has issued, in 2018, recommendations in order to improve the existing situation. Namely, it has stressed out, *inter alia*, that the rule of law needs to be strengthened, the independence of the judiciary needs to be ensured, the Office of the Protector of Citizens needs to be strengthened, whilst emphasising the need to put more efforts into fight against discrimination (especially against LGBTI+ persons, Roma, national minorities, persons with disabilities) and prevention of violence against women, domestic violence and violence against children.<sup>18</sup> It is also added that increased efforts are needed to protect human rights defenders and to put an end to the impunity of those who violate their rights.

<sup>7</sup> Serbian Constitution, 2006, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf>

<sup>8</sup> The UN treaties which Serbia has signed and ratified include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Convention on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Declaration on the Right and Responsibility of Individuals, Groups and Social Authorities to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders).

<sup>9</sup> Serbia’s membership to the Council of Europe has produced obligations which stem from the ratification of the European Convention on Human Rights and Fundamental Freedoms (ECHR), the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the Revised European Social Charter, the Framework Convention for the Protection of National Minorities, and the European Charter for Regional and Minority Languages. Out of the Council of Europe conventions, what remains to be ratified is the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations.

<sup>10</sup> Ibid.

<sup>11</sup> Based on the Constitution, in the years after its adoption, Serbia has also adopted laws intended for protection of human rights, such as the Law on Associations, the Law on the Prohibition of Discrimination, the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection, the Law on the Protector of Citizens, the Law on Information Security, the Law on the Anti-Corruption Agency, and the Law on Protection of Whistle-blowers. Serbia has also established national human rights institutions, the Commissioner’s Office for the Protection of Equality, the Ombudsman’s Office, the Anti-Corruption Agency, the Committee on Human and Minority Rights and Gender Equality in the National Assembly, the Council for the Monitoring of the Implementation of Recommendations of UN Human Rights Mechanisms and the Coordination Body for Gender Equality in the Government.

<sup>12</sup> Nedim Sejdinović, “Media freedom and judiciary: manual for judges, prosecutors and lawyers”, Independent Journalists’ Association of Vojvodina, 2019, p.31, available at: [https://gallery.mailchimp.com/d61c3fb89f4d18525f0d69062/files/3987ffda-e3bc-4ee4-b344-a9ca2155a77a/Medijske\\_slobode\\_i\\_pravosudje\\_KON1.pdf](https://gallery.mailchimp.com/d61c3fb89f4d18525f0d69062/files/3987ffda-e3bc-4ee4-b344-a9ca2155a77a/Medijske_slobode_i_pravosudje_KON1.pdf)

<sup>13</sup> Criminal Procedure Code (Official Gazette of RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019), available in Serbian at: [https://www.paragraf.rs/propisi/zakonik\\_o\\_kvivicnom\\_postupku.html](https://www.paragraf.rs/propisi/zakonik_o_kvivicnom_postupku.html)

<sup>14</sup> YUCOM, “Status of a victim in the Criminal procedure code in the Republic of Serbia”, p.10, available at: <http://www.yucom.org.rs/wp-content/uploads/2017/04/YUCOM-Polozaj-zrtve-u-krivicnom-postupku-Srbije.pdf>

<sup>15</sup> <http://www.yucom.org.rs/saopštenje-za-javnost-prva-presuda-za-zlocin-iz-mrznje/>

<sup>16</sup> Balkan Insight, “New Law ‘Politicises’ Serbian Police, Union Says,” 2016, available at: <https://balkaninsight.com/2016/02/02/serbian-new-police-law-securing-political-influence-union-says-02-01-2016/>

<sup>17</sup> BCBP, “Assessment of police integrity in Serbia”, 2016, available at: <http://www.bezbednost.org/All-publications/5963/Assessment-of-police-integrity-in-Serbia.shtml>

<sup>18</sup> Criminal Code (Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005, with added amendments from 31 August and 29 December 2009 and 24 December 2012), available at: [https://www.mpravde.gov.rs/files/CRIMINAL\\_CODE\\_SERBIA](https://www.mpravde.gov.rs/files/CRIMINAL_CODE_SERBIA)

<sup>18</sup> Human Rights Council - Working Group on the Universal Periodic Review, Serbia report - Matrice of recommendations, 2018, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/RSindex.aspx>

## 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.<sup>19</sup>

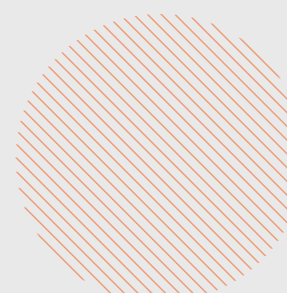
### Freedom of assembly and the right to protest

The right to peaceful assembly is regulated with the Law on Public Gatherings.<sup>20</sup> 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 the public gatherings. For example, the Law envisions that the gathering must be announced to the police at least five days in advance<sup>21</sup>, while in the previous law the deadline was 48 hours. Furthermore, the authorities have on several occasions refused to give permission for organising a manifestation for security reasons, especially when the requests for gatherings concern 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 before the announced date. Eventually, this case was brought before the Constitutional Court, which declared that the ban of this gathering was unconstitutional.<sup>22</sup>

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 assemblies, without the organizers, 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 warn that the existing Law can be misused when it comes to spontaneous gatherings.<sup>23</sup> A “spontaneous” gathering was held in front of the Roma bakery in Borča, during which the attendees expressed their revolt because one of the employees of the bakery posted a picture with his arms crossed on social networks, making an eagle sign, which some in Serbia regard as a sign of the Greater Albania. In addition to abusive songs and slogans, pigs’ heads and stickers were left in the bakery and its owner’s car. The attendees even called for the bakery to close.<sup>24</sup> As one lawyer from YUCOM points out,<sup>25</sup> it was clear that the motive for the gathering was to incite racial, national or religious hatred and intolerance, the police had the authority, based on Article 8 of the Law on Public Assembly, to suspend such kind of spontaneous gathering on the spot, ban it and issue misdemeanour charges.*



The reporting 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.<sup>26</sup> While the protests themselves have not been banned and evolved 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.<sup>27</sup>

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 methods of dissuading and undermining 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. “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

19 Useful sources in this respect include, among others: Civic Initiatives, Three freedoms under the magnifying glass Review of violations of freedom of association, assembly and expression in Serbia from March to July 2019, available at: <https://www.gradjanske.org/wp-content/uploads/2019/08/Three-freedoms-under-the-magnifying-glass.pdf>; Belgrade Centre for Security Studies, Case study: Threats and pressure to the activists and independent journalists in Serbia, 2019, available at: <http://www.bezbednost.org/Sve-publikacije/7030/Studija-slucaja-Pretnje-i-pritisci-na-aktiviste.shtml>; YUCOM, Status of the victim in the Criminal Code of the Republic of Serbia, available at: <http://www.yucom.org.rs/wp-content/uploads/2017/04/YUCOM-Polozaj-zrtve-u-krivicnom-postupku-Srbije.pdf>

20 Law on Public Gatherings, Official Gazette of RS, No. 6/2016

21 Article 12, Law on Public Gatherings, [https://www.paragraf.rs/propisi/zakon\\_o\\_javnom\\_okupljanju.html](https://www.paragraf.rs/propisi/zakon_o_javnom_okupljanju.html)

22 Interview No. 6, civil society representative: 23.08.2019 and interview No. 4, civil society representative, 23.08.2019.

23 YUCOM argues that the Law contradicts the Constitution, as it enables, according to them, the police to have a large discretion to ban gatherings, while the fines for organizers are high, and the right to gather freely is flawed. With regards to the spontaneous gatherings, YUCOM adds that gatherings that are spontaneously invoked, especially via social media where there are no clear organisers who can be held responsible for the security, they should be considered as free and spontaneous, according to the OSCE standards. For this reason, YUCOM argues that the part which regulates spontaneous gatherings needs to be further clarified “YUCOM: Law on Public Gatherings should be amended, it contradicts the Constitution,” 2018, available at: <http://www.yucom.org.rs/yucom-menjati-zakon-o-javnom-okupljanju-suprotan-je-ustavu/>

24 Voice, “Public gatherings as mechanism to counter opponents,” 2019, available at: <http://voice.org.rs/zabrane-javnih-skupova-mehanizam-za-obracun-s-neistomisljenicima/>

25 Ibid.

26 By the time of writing, 44 protests have been held.

27 See, for example: <https://talas.rs/2019/04/03/receno-mi-je-da-biram-izmedu-protesta-i-posla/>, or <http://rs.n1info.com/Vesti/a461163/Organizatori-protesta-1-od-5-miliona-u-Lazarevcu-premesteni-na-manje-placena-mesta-u-Kolubari.html>.

one which tolerates fascism, misogyny and glorifies war criminals. Constant creation of the climate of fear through these subtle tactics is turning out to be much more efficient than the mere prohibition of the manifestations.”<sup>28</sup>

#### *Undermining the Freedom of Assembly*

*In 2019, an organisation from Kraljevo, called Lokalni front (Eng. “The Local Front”), attempted to organise an event under the name “Authoritarianism versus Democracy”. The original intention was to invite a prominent Serbian sociologist and an opponent to the current government Jovo Bakić and discuss the existing shortcomings. The issue is, however, that the local municipality has prevented the event from taking place without providing clear and valid reasons for doing so. According to the Local Front, that was the third time they were being prevented from organising an event in Kraljevo. They argue that they ended up on the government’s blacklist, after they had organised an event on the unresolved case of murder of the Serbian politician from Kosovo Oliver Ivanović.<sup>29</sup>*

### Right to freedom of association

The Serbian legal framework in this area is in line with the European standards and is regulated by the Constitution and the Law on Association.<sup>30</sup> While the interviewees did not point out specifically to any restriction in this domain, many have emphasized the phenomenon of the emergence of GONGOs (governmental-oriented NGOs), as the growing threat to the work and even existence of the genuine NGO sector. Namely, the last several years have seen the mushrooming of new non-governmental actors, without proven expertise or public recognition. These organizations are directly targeting HRDs through placing false information or hate speech in government-controlled media; or through producing material that undermines or falsely presents the work of the authentic NGOs. As such, GONGOs are adding to the negative public perception of the HRDs and exhausting their limited capacities.<sup>31</sup> For example, the recently established association “National Vanguard” has been attacking Belgrade Centre for Security Policy (BCBP) for criticising Serbia’s internal security policy, defending at the same time the declarations of State Intelligence Agency’s representatives in which they accused certain NGOs and media for helping foreign agents to destabilise Serbia. The organisation placed a video on its website in which it attacked BCBP for being “non-patriotic” because of their critics. Furthermore, it misused the materials from BCBP and other targeted media and NGOs, shuffled their content so as to discredit these NGOs and transmit false and negative information about them.<sup>32</sup> The National Convention of the EU (NCEU), a coalition of civil society actors which monitors the Serbian EU accession process, has been under pressure to receive the new members – GONGOs, to the working group dealing with Chapter 23 of accession negotiations (judiciary, anti-corruption, fundamental rights). Participation of such organisations in the NCEU would have damaged the integrity and credibility of NGO sector in Serbia, as their rationale to act as watchdogs and to hold the authorities accountable would have been severely undermined. These new and unknown organisations already took part in public discussions on constitutional amendments, during which they attempted to undermine the criticism voiced by the genuine NGOs and practically to simulate the debate and dialogue.<sup>33</sup>

### Right to freedom of opinion and expression

While the legal framework in Serbia guarantees the right to freedom of expression in accordance with the highest international standards, in practice the HRDs have divergent and rather complex views on this issue. On the one side, investigative journalists and renowned individuals interviewed for this report claimed they feel very free in their work, since they are able to choose the topics they deal with themselves and to express their views therein. At the same time, self-censorship is a massive phenomenon, with the mainstream media suggesting on behalf of the president, the ministers and other officials, that those who write against the current government will be punished. While self-censorship is not a new phenomenon, its scope has widened significantly in the last five years, according to the interviewees. “What differentiates this government from the previous ones is that the president and the politicians call the attacked journalists by their name, which creates additional fear and nuisance.”<sup>34</sup> Such practices additionally contribute to massive self-censorship and destabilise the independence and integrity of journalistic profession.

On the other side, all the interviewees agree that unavailability of state-owned and state-produced data represents a massive issue which limits their freedom of opinion and their mission, in a sense that it constrains them from communicating evidence-based information to the public and keeping the authorities accountable. The state data system, including statistical information, has never been robust, and the authorities were never keen on responding to requests for information.

In fact, the interviewees notice the tendency of additional “closure” of the state institutions to their requests

28 Interview No. 16, civil society representative, 9.9.2019.

29 N1, “Local Front: Kraljevo City Administration will not let us have a panel with Jovo Bakić,” 2019, available at: <http://rs.n1info.com/Vesti/a492919/Lokalni-front-Gradska-uprava-Kraljeva-nam-ne-da-salu-za-tribinu-s-Jovom-Bakicem.html>

30 Official Gazette of RS, No. 51/2009, 99/2011 – other law and 44/2018 – other law.

31 Interview No. 8: civil society representative, 2.9.2019.

32 Interview No. 9: civil society representative, 4.9.2019. Also, see: <http://www.bezbednost.org/Bezbednost/7014/BCBP-napadnut-zbog-zalaganja-za-pravo-na.shtml>

33 Procedure of Constitutional amendments proposal, NGO CRTA, January 2019, pp. 21-22, available at: <https://crt.rs/wp-content/uploads/2019/01/Procedura-predlaganja-ustavnih-amandmana.pdf>

34 Interview No. 15: media representative, 7.9.2019.

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,<sup>35</sup> even in the cases when they are due to react. For example, the Special Prosecutorial Office for High-Tech Criminal refuses to process documented technical assaults; misdemeanour courts are not reactive to the cases launched by the HRDs dealing with freedom of information and personal data protection; state authorities do not abide by the decisions/decrees issued by the Commissioner for Information of Public Importance and Personal Data Protection.<sup>36</sup> With the end of the Commissioner's mandate, in December 2018, however, his absence is already being felt and contributes to the overall climate of institutional closure.

## Gender aspects of the challenges and restrictions

WHRDs point out the negative impact of predominantly male society and the anachronistic values such community embraces as a major impediment in their work. The entrenched patriarchy gives more power to men, so the society 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 option in Serbia has neither deconstructed the influence nor overcome patriarchal forces in their own backyards, which is an additionally aggravating factor.<sup>37</sup>

As an example, members of NGO “Impuls” from Tutin 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 “LGBTI+ people are prohibited from entering”.<sup>38</sup> WHRDs interviewed for this research are constantly facing 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 organizations in Serbia, similar to the one in Russia, to control foreign funds.<sup>39</sup> This petition targets six prominent Serbian 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 legislation it has been committed to. Namely, it breaches the Council of Europe's recommendations in relation to transgender persons, by forcing a medical approach to legal gender recognition and denying the principle of self-determination.<sup>40</sup> Furthermore, femicide is not recognized as a distinctive criminal offence in Serbia, and the murders of women are not persecuted as different category under the Criminal Code of Serbia.<sup>41</sup> Also, no single case was prosecuted for a hate crime based on gender. Investigations against WHRDs are inefficient and influenced by general public context and anachronistic patriarchal values. For example, one interviewed WHRD who also deals 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 main reason for such reaction is due to unfavourable societal context, i.e. unfavourable public attitude towards persons who deal with sensitive topics such as gender rights and war crimes.<sup>42</sup>

### 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 this case, Ms. Lukić 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.*

*Since her case became widely known, Ms. Lukić became a rallying symbol for women 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.<sup>43</sup> Despite resigning from the position of president of the municipality, the accused was reinstated as a member of the municipal council, while the court case went through many obstacles and prolongations.<sup>44</sup> 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.”<sup>45</sup>*

35 Official Gazette of RS, No. 120/2004, 54/2007, 104/2009 and 36/2010.

36 Interview No. 2: civil society representative, 20.8.2019.

37 Interview No.17: civil society representatives, 17.9.2019.

38 Source: internal documentation of Autonomous Women's Centre; <https://luftika.rs/festival-zenskog-prijateljstva-tutin/>

39 [https://www.change.org/p/srpskom-narodu-i-gradjanima-srbije-peticija-za-zakonsko-regulisanje-nvo-koje-se-finansiraju-iz-inostranih-izvora?recruiter=951312686&utm\\_source=share\\_petition&utm\\_medium=twitter&utm\\_campaign=share\\_petition&utm\\_term=psf\\_combo\\_share\\_initial&recruited\\_by\\_id=161d7d20-5bcf-11e9-9285-81108d6c76d0](https://www.change.org/p/srpskom-narodu-i-gradjanima-srbije-peticija-za-zakonsko-regulisanje-nvo-koje-se-finansiraju-iz-inostranih-izvora?recruiter=951312686&utm_source=share_petition&utm_medium=twitter&utm_campaign=share_petition&utm_term=psf_combo_share_initial&recruited_by_id=161d7d20-5bcf-11e9-9285-81108d6c76d0)

40 Interview no 12: civil society representative, 11.9.2019.

41 Vedrana Lacmanović, “Femicide in Serbia: a quest for data, institutional response and media image” in *Anali za istrske in mediteranske študije* (Series Historia et Sociologia, 29, 2019, 1) 49, in Serbian, available at [https://www.zeneprotivnasilja.net/images/pdf/ASHS\\_29-2019-1\\_LACMANOVIC.pdf](https://www.zeneprotivnasilja.net/images/pdf/ASHS_29-2019-1_LACMANOVIC.pdf)

42 Interview No. 14: civil rights representative, 10.9.2019.

43 N1, “Whistle-blower gets Winning Freedom award”, 2019, available at: <http://rs.n1info.com/English/NEWS/a528718/Whistleblower-gets-Winning-Freedom-award.html>

44 N1, “Deposed SNS Mayor gets back on local assembly,” 2019, available at: <http://rs.n1info.com/English/NEWS/a495276/Deposed-SNS-Mayor-gets-back-on-local-assembly.html>

45 Interview No. 16: civil society representative, 16.09.2019.

## 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(3) of the Criminal Code (under the title “Racial and Other Discrimination”) does specify that a penalty shall be imposed on whoever persecutes organisations or individuals due to their commitment for equality of people.<sup>46</sup> Despite numerous appeals submitted by NGOs based on this article, no conviction has been made yet.<sup>47</sup> 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.<sup>48</sup>

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.

Physical attacks include the raids of apartments; attempts of murder by burning of a house (see textbox 3 below); sexual 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.

### 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 Grocka 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.*

*The key issue remained that the prosecutor charged the accused under a charge for “causing a general threat of incitement” rather than inciting the murder of Jovanović.<sup>49</sup> In addition, it appears that the whole trial is being obstructed, as it has been postponed a few times, and it is still ongoing.<sup>50</sup> Jovanović has warned that the judiciary system of Serbia is under the control of the ruling party.<sup>51</sup> An epilogue is still to be seen.*

The interviewees agree that the pressures they receive from the state authorities and individuals represent one of the most important difficulties in their work. “The entire state apparatus is turned against us. They include fiscal and police controls, prosecutors, State Intelligence Service, friends and colleagues who have ties with the ruling party structures. They have unlimited resources, while we, our organisations and our families suffer. Previously, these cases were sporadic, and now you feel you have the entire ruling apparatus and their supporting para-organizations against you. With such methods, the state is hoping to quiet down the HRDs and make them give up from exposing their findings.”<sup>52</sup>

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.”<sup>53</sup>

46 Criminal Code (Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005, with added amendments from 31 August and 29 December 2009 and 24 December 2012), available at: [https://www.mpravde.gov.rs/files/CRIMINAL\\_CODE\\_SERBIA](https://www.mpravde.gov.rs/files/CRIMINAL_CODE_SERBIA)

47 Interview No. 8, op.cit.

48 Interview No. 7: civil society representative, 4.9.2019 and interview no.1: civil society representative, 7.8.2019.

49 Radio Free Europe, “Attack on journalist: arson or attempted murder?”, 2019, available at: <https://www.slobodnaevropa.org/a/napad-novinar-pozar-pokusaj-ubistva/29757518.html>

50 Cenolovka, “Milan Jovanović: I expected obstruction as soon as the accused were released,” 2019, available at: <https://www.cenolovka.rs/pritisci-i-napadi/milan-jovanovic-ocekivao-sam-opstrukciju-cim-su-optuzeni-pusteni-na-slobodu-video/>

51 Voice of America, “Milan Jovanović: courts rule on behalf of the Serbian Progressive Party,” 2019, available at: <https://www.glasamerike.net/a/milan-jovanovic-novinar-intervju/5064256.html>

52 Interview No. 14: media representative, 12.9.2019.

53 Ibid.

- ▶ Sudden cancelling of participation at events organised by HRDs, such as consultation meetings, trainings, public discussions.<sup>54</sup>
- ▶ Most of 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 political party in power, in exchange for signing the memorandum of cooperation.<sup>55</sup>
- ▶ 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 HRDs from fulfilling their mission and shows government's reluctance for inclusive and evidence-based policymaking. This was one of the most frequently stated forms of pressure.
- ▶ Direct prevention from working with the state institutions is a more drastic form of state pressure and institutional closure, increasingly faced by the HRDs who provide direct assistance to vulnerable groups, such as migrants, asylum seekers, victims of human trafficking, and other.
- ▶ Outsourcing of the activities which have been traditionally performed by NGOs with proven expertise, to the newly established state entities. This is the case with the SOS phone for women victims of family violence or the services to the victims of human trafficking. Such developments are irrational since they mean wasting existing resources by not taking advantage of accumulated expertise and experience by these NGOs.
- ▶ Intentional disregard for the requests for information by HRDs (discussed above) and refusal of the state authorities to communicate and cooperate with NGOs and HRDs in general. This was one of the most frequently stated forms of pressure.
- ▶ Other forms of pressure (referenced throughout this report) include smearing and calling HRDs traitors and undermining the HRDs findings by attacking them personally.

According to the most of the interviewees, the government supports the work of HRD “only to the extent which serves its PR purposes.”<sup>56</sup> The state officials do not necessarily refuse to attend and address the public events in which the findings of the HRDs are presented, or to attend workshops and trainings organized by HRDs, but after their official appearance, there is no follow-up – the authorities neither apply recommendations listed in the research of HRDs, nor fulfil their promises expressed during these public events.<sup>57</sup> 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.<sup>58</sup>

### Repeated Harassments of an NGO

*Belgrade Centre for Security Policy (BCBP) has been vocal about the negative trend of politicization of the security services in Serbia, whilst adding that this trend has significantly worsened in recent years.<sup>59</sup> Such criticism was accompanied by continuous harsh reactions by the Ministry of Interior of Serbia. Notably, in 2017, 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 directives of foreign services.”<sup>60</sup> After receiving threats, in 2018, there was a break into an apartment of the executive director of the BCBP. Although the case was immediately reported to the police, the perpetrators were never identified.<sup>61</sup> Threatening messages continued to take place even in 2019. So far, adequate actions by the state to ensure a safe environment for BCBP’s work is still lacking. BCBP warns that in an atmosphere where 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.<sup>62</sup>*

## The right to effective remedy

According to the interviewees who have reported the personal threats or physical assaults to the police, the prosecution is generally very inefficient, as the perpetrators are almost never identified. The ones who do get identified go through the hearing procedure, but this is where 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 act in the atmosphere of fear from the executive branch of power, which prevents them from performing their duties diligently.

<sup>54</sup> Interview No. 9, op.cit.

<sup>55</sup> Interview No. 7, op.cit.

<sup>56</sup> Interview No. 4, op.cit.

<sup>57</sup> Interviews no. 11: civil society representative, 4.11.2019 and interview no. 7, op.cit.

<sup>58</sup> Interview No. 4, op.cit.

<sup>59</sup> BCBP, “EU should react on security services capturing in the region,” 2019, available at: <http://www.bezbednost.org/Vesti-iz-BCBP/7029/EU-treba-da-reaguje-na-zarobljavanje-sluzbi.shtml>

<sup>60</sup> BCBP, “Attacks on BCBP increased,” 2017, available at: <http://www.bezbednost.org/Bezbednost/6558/Pojacavaju-se-napadi-na-BCBP.shtml>

<sup>61</sup> BCBP, “Executive director of BCBP apartment was broken into,” 2018, available at: <http://www.bezbednost.org/Bezbednost/6846/Objen-stan-izvrnsog-direktora-BCBP.shtml>

<sup>62</sup> BCBP, “Threats to BCBP have continued,” 2019, available at: <http://www.bezbednost.org/Bezbednost/6958/Nastavljaju-se-pretnje-BCBPu.shtml>

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 theft. “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*.”<sup>63</sup>

When it comes to the attacks on the journalists, the legal framework plays against their favour. The investigative journalists are practically disabled to sue the (government-sponsored) media who are attacking them, because the complaints against the breach of honour towards a group [investigative journalists in question work in NGOs] 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 *CINS* [the investigative journalist association] *are bastards*, we cannot file a complaint. This is extremely frustrating and unfair.”<sup>64</sup>

### 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 notable example of such efforts was the festival dubbed as “Mirëdita, dobar 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 some political parties and right-wing movements.*

*In 2019, the situation escalated, after an attempted break-in to the festival, with the aim of preventing it from taking place. Not only have participants and guests struggled to enter the festival, but they were holding the festival in a harsh environment. 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 clashes.<sup>65</sup> As nobody was arrested or prosecuted, the organisers criticized the silence of the authorities and the mild public reaction, arguing that such positioning does not contribute to the reconciliation of the two societies.<sup>66</sup> According to the organisers, the police should have prevented the counter-gathering of the right-wing elements, to ensure basic security of the festival’s participants. In fact, they believe the authorities allowed the counter-gathering on purpose, to please the nationalistic-oriented electorate.<sup>67</sup> As such, this reaction reflects the current state attitude towards HRDs and democratic values.*

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.<sup>68</sup> 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.<sup>69</sup>

### 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, where a convicted war criminal, former Yugoslav Army officer Veselin Šljivančanin took part. During his address, the group started whistling and unfold a banner reading “War criminals to shut up so that victims are talked about.”<sup>70</sup> For the participants of the event, this incident was sufficient to employ violence, in which some human rights defenders were hospitalised. 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 Šljivančanin and for condemning the Youth Initiative, while the prosecutors and the court only followed suit.<sup>71</sup> “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 the enemies, where all forms of cooperation depending on the government are being cut-off, where no one wants to communicate with you any longer. Third, it is appalling that the court used the exact formulations from the mentioned press conference in its verdict.”<sup>72</sup>*

<sup>63</sup> Interview No. 3: civil society representative, 21.8.2019.

<sup>64</sup> Interview No. 13: media representative, 10.9.2019.

<sup>65</sup> CIVICUS Monitor, “EU highlights Serbia’s failure to improve civic space,” 2019, available at: <https://monitor.civicus.org/newsfeed/2019/07/08/eu-highlights-serbias-failure-improve-civic-space/>

<sup>66</sup> N1, “Initiative: Festival “Mirëdita, dobar dan!” will be held,” 2018, available at: <https://www.danas.rs/drustvo/inicijativa-festival-miredita-dobar-dan-bice-odrzan/>

<sup>67</sup> Interviews No. 4, op.cit. and No. 6, op.cit.

<sup>68</sup> Nedim Sejdinović, Media freedom and justice, September 2019, p.35 [https://gallery.mailchimp.com/d61c3fb89f4d18525f0d69062/files/3987ffda-e3bc-4ee4-b344-a9ca2155a77a/Medijske\\_slodobe\\_1\\_pravosudje\\_KON1.pdf](https://gallery.mailchimp.com/d61c3fb89f4d18525f0d69062/files/3987ffda-e3bc-4ee4-b344-a9ca2155a77a/Medijske_slodobe_1_pravosudje_KON1.pdf)

<sup>69</sup> Interview No. 14, op.cit.

<sup>70</sup> N1, “Belgrade court confirms verdict against Youth Initiative,” 2019, 2018, available at: <http://rs.n1info.com/English/NEWS/a432016/Court-fines-activists-for-interrupting-war-criminal-s-address-in-Serbia.html>

<sup>71</sup> Ibid.

<sup>72</sup> Interview No. 6: op.cit.



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 toxic 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.”<sup>73</sup>

## 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.<sup>74</sup> 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.<sup>75</sup> 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 Vršac 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 and I believe we will never again be able to win any grant from that Ministry and the state, and in fact we have not done anything wrong. Regrettably, I know many of my colleagues would cede the pressure and accept this offer, thinking that otherwise their organisations would not survive.”<sup>76</sup> Eventually, this organisation has not passed this call for proposals and believe they will never do in the future.

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.<sup>77</sup>

## 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.”<sup>78</sup>

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.<sup>79</sup> The same politician publicly threatened the Women in Black and their activist Staša Zajović, by saying: “She was supposed to be killed on the day she was born” and does not abstain from insulting female journalists in his speeches in the Parliament.<sup>80</sup> Parliamentary immunity gives to the members of parliament, such as Šešelj, the opportunity to use hate speech and violent rhetoric without any legal consequence.

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.

<sup>73</sup> Interview No. 15: media representative, 7.9.2019.

<sup>74</sup> Interview No. 14, op.cit.

<sup>75</sup> Official Gazette of RS, No. 51/2009, 99/2011 – other law and 44/2018 – other law

<sup>76</sup> Interview No. 11, op.cit.

<sup>77</sup> Peščanik, “Minister Vulin and NGO mafia,” 2014, available at: <https://pescanik.net/ministar-vulin-i-nvo-mafija/>; N1, “Vulin accused NGO of criminalising the competition,” 2014, available at: <http://rs.n1info.com/Vesti/a17136/Vulin-optuzio-NVO-da-kriminalizuju-konkurs.html>

<sup>78</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Serbia, 2019, p.5, available at: [https://www.womenngo.org.rs/images/CEDAW/CEDAW\\_Concluding\\_observations.pdf](https://www.womenngo.org.rs/images/CEDAW/CEDAW_Concluding_observations.pdf)

<sup>79</sup> His original tweet in Serbian can be found here: : [https://twitter.com/predsednikSRS/status/1151786754208407552?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1151786754208407552&ref\\_url=https%3A%2F%2Fpulsembed.eu%2F2em%2FomZ9bNQ4H%2F](https://twitter.com/predsednikSRS/status/1151786754208407552?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1151786754208407552&ref_url=https%3A%2F%2Fpulsembed.eu%2F2em%2FomZ9bNQ4H%2F)

<sup>80</sup> <https://www.espreso.rs/vesti/politika/413961/seselj-izvredjao-novinarku-snezanu-congradin-lici-na-mungosa-ruznija-je-od-stase-iz-zena-u-crnom>

## 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 made 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 *de facto* domination of executive power over the judiciary, which feels threatened to perform its duties diligently in sensitive areas due to governmental pressure.

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

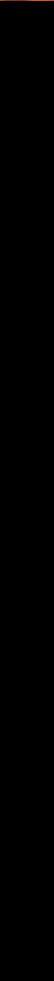
- ▶ To promote HRDs as partners in the reformative processes in the country and to provide them with moral support.
- ▶ To take advantage of the opportunities given in the framework of the EU accession process better. EU officials are giving legitimacy to the current authorities and make the work of 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.



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