



**Government of the
Republic of Serbia**

**Republic of Serbia Report
on implementation of recommendations contained in paragraphs 16 and 17
of the Concluding Observations of the United Nation's Committee for the
Elimination of Racial Discrimination
on the combined second to fifth periodic reports on implementation of
International Convention on the Elimination of All Forms of Racial
Discrimination**

Belgrade, December 2018

Introduction

Delegation of the Republic of Serbia presented its combined second to fifth periodic report on the implementation of International Convention on Elimination of all forms of Racial Discrimination, on the 94th Session of the Committee on Elimination of Racial Discrimination, in Geneva on the 21st and 22nd November 2017. In accordance with the paragraph 34. from the Concluding observations of the Committee (CERD/C/SR.2604), which stipulates that the state party should submit information on implementation of the recommendations contained in paragraphs 16 and 17 within one year of the adoption of the concluding observations, we hereby report on the aforementioned recommendations.

I. Implementation of recommendations contained in paragraph 16 of the Concluding Observations of the Committee for the Elimination of Racial Discrimination relating to the efforts of the State party to enforce Article 54a of the Criminal Code, and notably by: ensuring that all reported incidents, investigations, prosecutions, sanctions and remedies relating to racist hate crimes are recorded; ensuring that sanctions commensurate with the gravity of racist hate crimes are imposed on perpetrators and that victims obtain full redress; designating within law enforcement services contact persons for racist incidents, training those persons to conduct investigations and ensuring that they engage in regular dialogue with targeted groups, in order to ensure adequate reporting of racist hate crimes.

The Republic of Serbia has raised the fight against hate crimes to the highest level. Based on the determination of our state to accede to the European Union, the issues of racism and xenophobia were integrated in the Action Plan for Negotiation Chapter 23: Judiciary and fundamental rights, whereby a set of measures for furthering elimination of racism and xenophobia was envisaged.

To that end, it has been envisaged to organize joint trainings for judges, public prosecutors and police officers with a view to improving their knowledge and skills required for efficient prosecution of hate crimes and ensuring that sanctions imposed against perpetrators are commensurate with the gravity of crimes. As a part of these programs, training for judges, prosecutors and police officers is realized with the aim of equipping them with thorough understanding of the provisions of Article 54a of the Criminal Code, in particular of the potential for proving the subjective element of the motive of hatred, of drawing up of the wordings of indictments and introducing this Article in the explanatory part of the judgement. These thematic trainings are aimed precisely at improving the skills required in the most demanding elements of investigation, in particular the potential for proving the element of hatred, which should lead to broader use of Article 54a of the Criminal Code¹ and to improved efficiency in passing of judgements.

The Republic of Serbia is conducting a series of activities with the aim of improving application of the provision of Article 54a of the Criminal Code. In all the appellate, higher and basic public prosecution offices, in compliance with the Instruction of the Republic Public Prosecutor A. No. 802/15 dated December 22, 2015, special records are kept on the hate crimes

¹ Official Gazette of the RS, No. 85/05, 88/05 - corrigendum, 107/05 - corrigendum, 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16

committed within the meaning of Article 54a of the Criminal Code. The records comprises data on perpetrators of crimes, on the aggrieved parties, criminal offences, activities taken and public prosecutors' offices' and judges' decisions passed, as well as on the motives for committing crimes. In compliance with the said Instruction, the competent public prosecution offices submit to the Republic Public Prosecutor's Office quarterly reports which include information and data from the special records.

Services for information and support to the aggrieved parties and to the witnesses, which were established in all the higher public prosecutor's offices, as well as in the First Basic Public Prosecutor's Office in Belgrade, in the Office of the War Crime Prosecutor and in the Prosecutor's Office for Organized Crime are, within their activities, taking measures which are aimed at providing the aggrieved parties with the timely and individualized assessment of their needs, and while doing that they are particularly bearing in mind the potential discriminatory motive in such criminal offences related to the affiliation of the aggrieved person with the protected categories within the meaning of Article 54a of the Criminal Code, which is of particular significance for the victims of hate crimes.

According to the General Mandatory Instruction of the Republic Public Prosecutor O. No. 4/2018 dated September 28, 2018, it was envisaged that prosecutors were designated as contact points for hate crimes within the meaning of Article 54a of the Criminal Code in all the appellate, higher and basic public prosecutors' offices.

The contact person is the public prosecutor and/or deputy public prosecutor in charge of:

- ✓ Monitoring of recording of hate criminal offences, in compliance with the Instruction of the Republic Public Prosecutor A. No. 802/15 dated December 22, 2015;
- ✓ Monitoring of activities taken in these criminal cases;
- ✓ Consulting with the processor of the case;
- ✓ Contact with the aggrieved party/victim;
- ✓ Contact with the competent police officer, and
- ✓ Contact and dialogue with the specialized civil society organisations which are providing support to victims of hate crimes.

With the aim of identifying and better understanding of hate crimes, conducting efficacious and efficient investigation and criminal prosecution of perpetrators of hate crimes in compliance with the international standards, **Guidelines for Criminal Prosecution of Hate Crimes in the Republic of Serbia** were drawn up and published as a document intended for public prosecutors.

The Guidelines were drawn up as a result of the efforts made by the representatives of the Republic Public Prosecutor's Office, Lawyers' Committee for Human Rights – YUCOM and the OSCE Mission to Serbia. The Guidelines are an example of quality cooperation between the public and the civil sectors.

It has been planned to present the Guidelines for Criminal Prosecution of Hate Crimes in the Republic of Serbia in four seminars organized from October till December 2018 by the Judiciary Academy and the Republic Public Prosecutor's Office, with the support from the OSCE Mission to the Republic of Serbia. It has been planned to train the total of 100 public

prosecutors and deputy prosecutors during the seminars on the criminal prosecution of hate crimes and application of the Guidelines.

II. Implementation of recommendations contained in paragraph 17 of the Concluding Observations of the Committee for the Elimination of Racial Discrimination relating to statistical data, disaggregated by ethnicity, on the number and nature of racist hate crimes reported, prosecutions and convictions and redress provided to victims, as well as relating to statistical data on the number of such cases which are still pending before the Republic Public Prosecutor's Office and before the courts.

Article 54a of the Criminal Code was implemented for the first time in the month of October of the current year in the Republic of Serbia, i.e. the first court judgement was passed whereby the motive of hatred, as a separate aggravating circumstance, was taken into account on the occasion of imposing a sentence for a criminal offence.

The First Basic Court in Belgrade passed the judgement on October 17, 2018², based on the indictment of the First Basic Public Prosecutor's Office in Belgrade³, against the defendant Z. S. for the domestic violence criminal offence from Article 194, paragraph 1 of the Criminal Code, which was a hate crime committed due to the sexual orientation of the aggrieved party.

The Public Prosecutor's Office included hatred in the wording of the indictment as the motive for committing the criminal offence and it managed to prove during the proceedings that the defendant committed the said criminal offence from hatred against his son due to his sexual orientation, as well as that the violent conduct of the defendant against his son and wife was due to prejudices and hatred of the group to which his son was affiliated.

This judgement is significant not only for the protection of rights of LGBT persons, but also for the protection of rights of other sensitive social groups and it is our belief that it will impact the case law in the similar cases in the future.

According to data of the Ministry of Interior⁴, in the period from December 1, 2017 until September 30, 2018, the total of seven criminal offences were committed relating to instigation of national, racial and religious hatred and intolerance or racial and other discrimination. Proceedings on five criminal offences were successfully completed and criminal charges were filed against the total of five persons.

The Ministry of Interior pointed out that these criminal offences were not committed with the motive of hatred due to racial affiliation, but that the victims of these offences were members of various national groups and specifically the members of the Serbian national group (two persons); Roma (two persons); Croatian (one person); Bulgarian (one person) and Hungarian (one person) national groups.

Criminal charges were filed for *six criminal offences* from Article 317 of the Criminal Code – *Instigation of national, racial and religious hatred and intolerance*.

² Case: 7K. No. 1435/17 from October 17, 2018

³ Case: Kt. No. 3998/14 from October 10, 2017, as amended on October 17, 2018

⁴ The Ministry of Interior of the Republic of Serbia is keeping records disaggregated by the number of criminal offences.

The Republic Public Prosecutor's Office⁵ has statistical data from which it can be determined that in the same reporting period criminal charges were filed against *13 persons* for the ***criminal offence of instigation of national, racial and religious hatred and intolerance from Article 317 of the Criminal Code***.

The criminal offence was committed to the detriment of *15 persons* and specifically to the detriment of *four persons* of Serbian nationality, *two persons* of Albanian nationality, *four persons* of Croatian nationality, *four persons* of Roma nationality and *one person* of an undetermined nationality – "Others".

According to the Republic Public Prosecutor's Office, the reported criminal offences were committed through jeopardizing the safety of the aggrieved parties.

Concerning the decisions of the public prosecutor's offices, it can be concluded that decisions to reject the criminal charges were passed in relation to *nine* indictees; activities aimed by the public prosecutors at proving the criminal offences are underway against *three persons*; proceedings is underway before the court against *one person* against whom an indictment was filed.

As for the ***criminal offence of racial and other discrimination from Article 387 of the Criminal Code***, according to data of the Ministry of Interior⁶, in the period from December 1, 2017 until September 30, 2018, criminal charges were filed for *one criminal offence* from Article 387 of the Criminal Code.

Data of the Republic Public Prosecutor's Office⁷ pertaining to the same reporting period shows that for ***the criminal act from Article 387 of the Criminal Code*** criminal charges were filed against *six persons*. Criminal offences were committed to the detriment of *five persons* and specifically to the detriment of *two persons* of Serbian nationality, *two persons* of Roma nationality and *one person* of an undetermined nationality – "Others".

According to the Republic Public Prosecutor's Office, the reported criminal offences were perpetrated through jeopardizing the safety of the aggrieved parties.

It can be concluded in respect of the decisions of the public prosecutors' offices that decisions to reject criminal charges were passed for *two persons*; public prosecutors are currently conducting activities aimed at proving criminal offences against *four persons*.

Concerning the measures that the Republic of Serbia is taking **to provide protection for the victims of criminal acts** we are here pointing out that the Ministry in charge of judiciary has established the Working Group tasked with drawing up of the ***National Strategy for Furthering of Rights of Victims and Witnesses of Crimes***. Means for expert support for drawing up of this document have been provided through the Project "Support to Victims and Witnesses of Crimes in Serbia", which is financed from EU IPA 2016 funds and implemented by the OSCE Mission to Serbia. Three meetings of the Working Group have been organized to date and according to the adopted schedule of their work, Draft Strategy should be completed by the end of 2018.

The Strategy is aimed at achieving complete harmonisation with the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the

⁵ The Republic Public Prosecutor's Office is keeping records disaggregated by the number of reported persons.

⁶ The Ministry of Interior of the Republic of Serbia keeps the records as per the number of criminal offences.

⁷ The Republic Public Prosecutor's Office keeps the records as per the number of persons reported.

victims of crime, at establishing of a national network of support services and at furthering of the right to realisation of property-related legal claims in criminal proceedings.

We are expecting that the protection for the victims, including the victims of hate crimes, will be raised to the level of the highest international standards in the future through implementation of this document.

Concerning the support for the victims, the Supreme Court of Cassation established a Working Group comprising of the judges from different instances, with a view to drawing up guidelines and recommendations for efficient practical application of the legal standards in force in the procedures for compensation of damage to the victims of grave criminal offences by respecting the international standards in that field and drawing up of possible recommendations for amending the legal framework.