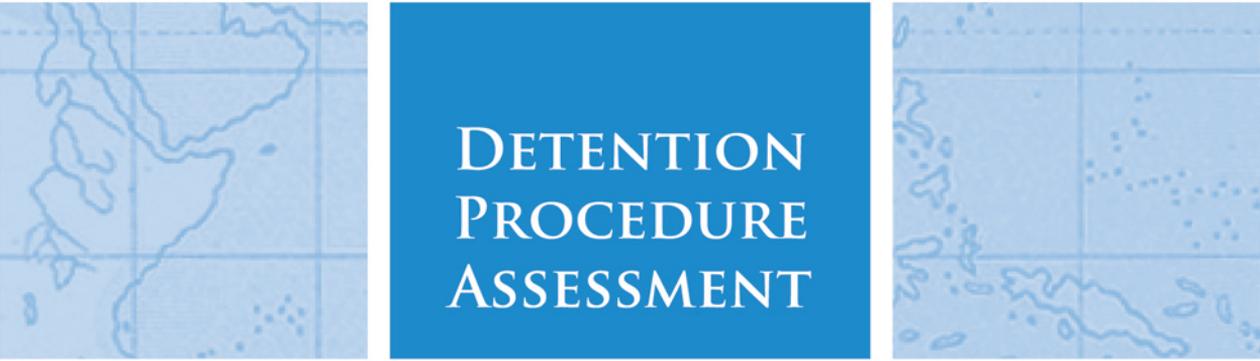


DETENTION
PROCEDURE
ASSESSMENT



FOR
SERBIA





PARTNERS
for Democratic Change
SERBIA

DETENTION PROCEDURE ASSESSMENT

FOR

SERBIA

Pre-Disposition Stages

July 2013

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All terms used in the text in the male grammatical gender include the male and female individuals to which they relate.

ISBN: 978-1-62722-819-0 (paperback)

ISBN: 978-1-62722-820-6 (PDF)

Printed in the United States of America

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1050 Connecticut Avenue, NW, Washington, DC 20036

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Introduction

In many countries, overreliance on detention is a major problem both at pretrial and dispositional stages of criminal proceedings. International standards strongly encourage the imposition of non-custodial measures during investigation and trial and at sentencing, and hold that deprivation of liberty should be imposed only when non-custodial measures would not suffice. The overuse of detention is often a symptom of a dysfunctional criminal justice system that may lack protection for the rights of criminal defendants and the institutional capacity to impose, implement, and monitor non-custodial measures and sanctions. It is also often a cause of human rights violations and societal problems associated with an overtaxed detention system, such as overcrowding; mistreatment of detainees; inhumane detention conditions; failure to rehabilitate offenders leading to increased recidivism; and the imposition of the social stigma associated with having been imprisoned on an ever-increasing part of the population. Overuse of pretrial detention and incarceration at sentencing are equally problematic and both must be addressed in order to create effective and lasting criminal justice system reform.

Drawing on the American Bar Association Rule of Law Initiative's (ABA ROLI's) 24 years of experience providing technical legal assistance to promote the rule of law in more than 60 countries worldwide, and in the framework of ABA ROLI's seven other legal assessment tools,^{*} ABA ROLI has developed the *Detention Procedure Assessment Tool* (DPAT) to evaluate the use of detention in criminal cases at both the pretrial and sentencing stages.

ABA ROLI's assessment tools were designed to fulfill several functions. First, local government leaders and policymakers can utilize the findings to prioritize and focus reform efforts. Second, the ABA and other rule of law assistance providers will be able to use the assessment tool results to design more effective programs related to improving the quality of the legal system. Third, the assessment tools also provide donor organizations, policymakers, NGOs and international organizations with hard-to-find information on the structure, nature, and status of the legal system in assessed countries. Fourth, the assessment tools contribute to a comprehensive understanding of how the rule of law functions in practice. Fifth, assessment tool results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of the legal system in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally-established standards for the rule of law.

* ABA ROLI has implemented more than 80 assessments in over 30 countries, including initial and updated volumes of the Judicial Reform Index, Legal Profession Reform Index, Legal Education Reform Index, Prosecutorial Reform Index, Human Trafficking Assessment Tool, Access to Justice Assessment Tool, ICCPR Index, and CEDAW Assessment Tool, in addition to numerous legislative assessments.

Scope of the Assessment

In implementing criminal law reform programs, ABA ROLI was struck that, while many academics, governmental institutions, and non-governmental organizations had heavily documented and evaluated issues of prisoners' rights, including issues such as overcrowding, mistreatment, detention conditions, rehabilitation, and social stigma, no organization or study had sought to directly address the legislative and structural causes of these problems. In developing the DPAT methodology, ABA ROLI aimed to evaluate the procedural and legislative framework that contributes to the overuse of detention and incarceration, as well as the actual practices of criminal justice sector actors charged with implementing detention procedure and legislation. It is ABA ROLI's belief that, by promoting the rule of law through transparent and effective procedural reforms, a country is likely to improve the human rights situation in its detention facilities. ABA ROLI will implement the DPAT in countries where the government, civil society, or other local institutions have identified problems arising from overreliance on detention and incarceration, with the goal of identifying the reasons for this overreliance and providing a blueprint for reform.

This assessment focuses on detention issues throughout pre-trial and trial stages; while the full DPAT assessment goes on to analyze detention practices after disposition as well. This assessment also looks at overarching issues including due process guarantees; consistency and fairness; institutional resources; external and undue influence; victim involvement; and special considerations for juveniles and vulnerable populations.

The DPAT methodology considers the roles played by all actors and institutions involved in criminal detention, including police, investigators, prosecutors, judges, defense advocates, court personnel, corrections staff, parole board members, defendants, detainees, prisoners, victims, witnesses, and, when applicable, others. It covers both detention arising from lawful processes, such as the court-supervised arrest of a criminal suspect by a state actor, and unlawful processes, such as forced disappearance or apprehension of a suspect without judicial supervision.

Methodology

The DPAT draws heavily on the structure and process employed for ABA ROLI's seven other legal assessment tools, but unlike other assessment tools, the DPAT methodology focuses narrowly on procedural aspects of criminal detention and should not be viewed as an overarching assessment of the criminal justice sector or of criminal justice actors and institutions.

In developing the DPAT methodology, ABA ROLI relied on many international and regional legal instruments pertaining to criminal procedure, prisoners' and detainees' rights, juvenile justice, sentencing, and alternatives to detention. These included major international human rights treaties as well as regional conventions from the European, Inter-American, and African human rights systems; guidelines, rules, declarations, and best practices developed by the United Nations, regional intergovernmental bodies, bar associations, and civil society organizations; jurisprudence from international, regional, and domestic judicial or quasi-judicial bodies; and books and manuals by academic or civil society experts. The DPAT examines both the *de jure* legislative and procedural framework for detention, and the *de facto* practices under which detention is imposed and implemented. The DPAT assessment draws on international and regional laws, norms, and best practices concerning pretrial detention, evaluating a country's detention regime vis-à-vis 2 factors reflecting distinct critical issues and stages of the detention process.

The DPAT report will be presented in a standardized format for each country assessment, allowing readers to compare and contrast performance of different countries in different areas as well as—as follow-up assessments are implemented—within a given country over time. Each DPAT report includes an introduction to the DPAT methodology and assessment process; background on the country's history and legal system; and an executive summary of DPAT findings. Each of the factors is introduced with a short summary of the internationally-accepted standards pertaining to that factor. The DPAT assessment is qualitative, not quantitative, and each factor will be assigned a correlation of positive, negative, or neutral, indicating the country's progress in meeting internationally-accepted standards. Each factor will include a brief conclusion of the country's situation with respect to the factor, followed by in-depth analysis summarizing the *de jure* and *de facto* situation detailing the various issues affecting that factor in the country. The DPAT presents a neutral and apolitical evaluation of a country's detention procedures, legal framework, and practices and does not make specific recommendations for reform, but rather provides an analysis of the issues surrounding pretrial detention and incarceration, highlighting both strengths and weaknesses of a country's detention regime.

Information used in the DPAT analysis is gathered during a two- to three-week assessment process during which a neutral, independent assessor or assessors conduct a series of key stakeholder interviews in the country being assessed. Interviewees include approximately 40 judges, defense advocates, prosecutors, justice ministry or other governmental representatives, corrections officials, police, investigators, former or current detainees or prisoners, civil society representatives, and other interested parties from throughout the country. Prior to the assessment process, ABA ROLI's in-country partners conduct *de jure* and secondary source research, providing the assessor with all pertinent legislation,

regulations, court decisions, and reports and articles, as well as relevant data and statistics. Following the assessment, the assessor drafts the DPAT country report. The report is edited by ABA ROLI staff and peer reviewed by experts and key stakeholders in country prior to being published in English and local languages.

Acknowledgements

ABA ROLI is extremely grateful to the team who developed the concept, methodology, and design of the DPAT in 2009–2010. Senior Criminal Law Advisor Mary Greer and Legal Analyst Jessie Tannenbaum served as project coordinators, creating and drafting the factor methodology, developing the design and structure of the assessment report, and conducting the pilot DPAT assessment in Armenia. Research Assistant Jim Wormington was indispensable in researching comparative criminal procedure laws and best practices and developing the DPAT methodology. Other ABA ROLI staff including Simon Conté, Julie Garuccio, Danny Adams, Hasmik Hakobyan, Sarah Shirazyan, and Keith Peterson also provided crucial support for the concept and development of the DPAT.

Input and critical comments on the draft DPAT methodology were provided by a panel of criminal law and procedure experts, including Prof. Cynthia Alkon, Jurabek Aripov, Hon. Paul Dennenfeld, Prof. Jimmy Gurulé, Martin Schoenteich, Jason Reichelt, Andrew Solomon, and Dr. Richard Vogler. ABA ROLI extends sincere thanks for their invaluable contributions to the development of the DPAT.

Assessment Team

This assessment was conducted jointly by ABA ROLI and Partners for Democratic Change-Serbia. ABA ROLI Senior Criminal Law Advisor Mary Adele Greer was the lead assessor and project coordinator. Marija Obradovic, Attorney with Partners for Democratic Change-Serbia was also on the assessment team. The entire Belgrade office for Partners for Democratic Change-Serbia provided strong support and assistance, especially Director Blazo Nedic, Attorney's Ana Toskic, Tamara Ljubovic and Ana Desic, Office Manager Irena Lucic, and Legal Specialist Judge Denise Johnson, as did ROLI staff in Washington, especially Senior Program Manager Hana Hausnerova and Program Officer Lila Miller, Director of Research and Assessments Simon Conté served as editor of the report. We would also like to thank the Bar Association of Serbia for their support and cooperation throughout implementation of the Criminal Defense Capacity Program, including during this assessment. The conclusions and analysis contained within this report are based on interviews conducted in Serbia in late June and early July, 2013 and relevant materials reviewed up to that time. Records of relevant authorities and a confidential list of interviewees are on file with ABA ROLI. ABA ROLI greatly appreciates the time and assistance rendered by those who were interviewed for this assessment.

Definitions

Detention procedure varies greatly by country, and terminology used in one country may have a different meaning elsewhere. Therefore, it is crucial to define the terminology used in the DPAT and use each term with precision. Unless otherwise noted in the body of the assessment report, the terminology listed below should be considered to be strictly defined as follows:

Alternative Sentence: Any non-incarcerative sanction imposed on an individual convicted of a criminal offense.

Alternatives to Pretrial Detention: Any non-custodial measure intended to ensure that an individual accused of a crime appears for further legal proceedings.

Appeal: Review of a decision made by a judicial authority by a higher judicial authority.

Apprehension: The taking into custody of a person suspected of a crime.

Arrest: The taking into custody of a person suspected of a crime.

Arrestee: Any individual who has been apprehended or arrested by a state actor on suspicion of a crime, but whose detention has not yet been imposed by a judicial authority.

Clemency: Any act of the executive branch of government leading to a lessening of criminal sanctions against an offender.

Competent Authority: A state-established entity with jurisdiction over a particular area of law or procedure.

Confinement: The physical deprivation of liberty in a state-controlled detention institution.

Convict: Any individual who has been convicted of a crime and is currently subject to a sanction for his offense.

Conviction: The finding of a judicial authority that a defendant is guilty of a crime.

Counsel: Any advocate or attorney representing the interests of a detainee, prisoner, or defendant.

Custody: Any deprivation of liberty of an individual by a state actor, either exclusively in a state-controlled detention institution or with partial liberty (e.g., house arrest or work release).

Defendant: Any individual who has been charged with a crime who has not been convicted or whose appeal is pending

Deprivation of Liberty: Any restriction on an individual's physical freedom such that he is not permitted to leave the area in which he is held, with or without formal legal or judicial supervision and regardless of whether the individual is detained in accordance with legally-established procedures.

Detainee: Any individual subject to detention who has not been convicted of a crime and sentenced to deprivation of liberty as a sanction for his offense, including persons who have been deprived of liberty without formal legal or judicial supervision.

Detention: The holding of an individual in state custody or by a state actor at any stage in the criminal process, with or without formal legal or judicial supervision and regardless of whether the individual is detained in accordance with legally-established procedures.

Detention Facility: Any facility in which individual are detained by state actors or under state authority, regardless of whether they have been formally arrested or convicted of a crime.

Disposition: The final resolution of a criminal case.

Extraordinary Remedy: Any legal remedy designed to obtain review of the lawfulness of detention, incarceration, or other deprivation of liberty, before a judicial authority competent to order the release of the detained person.

Imprisonment: The detention of an individual who has been convicted of a crime and sentenced to deprivation of liberty as a sanction for his offense.

Incarceration: The detention of an individual who has been convicted of a crime and sentenced to the deprivation of liberty as a sanction for his offense.

Inmate: An individual who has been convicted of a crime and sentenced to deprivation of liberty as a sanction for his offense.

Judicial Authority: A judge, magistrate, or other legally-established arbiter of criminal proceedings.

Non-incarcerative: Any sanction or measure pertaining to individuals convicted of a crime other than the full and absolute deprivation of their liberty in a state-controlled detention institution.

Offender: Any individual who has been convicted of a crime and is currently subject to a sanction for his offense.

Parole: Any procedure allowing the release under state supervision of an offender who has not served his full sentence of incarceration.

Penitentiary: A residential facility housing individuals who have been convicted of crimes.

Pretrial Detention: Detention of an individual whose detention has been ordered by a judicial authority, but has not yet been convicted of a crime. This includes detention during the individual's trial or other preconviction adjudicative process.

Prison: A residential facility housing individuals who have been convicted of crimes.

Prisoner: An individual who has been convicted of a crime and sentenced to deprivation of liberty as a sanction for his offense.

Probation: Any procedure allowing an individual convicted of a crime to remain at liberty subject to state supervision.

Sentence: A sanction imposed on an individual convicted of a criminal offense.

State Actor: Any functionary or agent of the government with a role in the criminal justice sector, regardless of whether he acts within his official capacity or in accordance with the law.

State-Controlled Detention Institution: Any facility used to house or shelter individuals subject to state-imposed detention, whether directly managed by state actors or managed by private actors under state contract.

Suspect: Any individual suspected by police or other investigative actors of having committed a crime, regardless of whether he has been formally identified as or notified that he is a suspect

Victim: Any individual directly adversely affected by a crime.

Witness: Any individual who has observed the commission of a crime or who is requested by police or other investigative actors to give information regarding the commission of a crime, but has not been formally identified as a suspect.

Executive Summary

Brief Overview of the Results

As Serbia targets entry into the European Union as an accession candidate, numerous reforms to the criminal justice system have transpired in recent years. While related legislative reform, especially to the Criminal Procedure Code, has been impressive, Serbia continues to struggle to implement several systemic changes—especially that of shifting increased responsibility and leadership in critical decision making to the prosecutors. Serbia’s use of detention at pre-trial stages remains excessive, and its application lacks specific tailoring to the severity of crime and circumstances of the accused. Criminal justice actors are attempting to consider and use alternatives to detention more frequently, which could result in a more measured use of limited resources, and a more nimble and fair administration of criminal justice, without jeopardizing security to the community.

Positive Aspects

- The new Criminal Procedure Code mandates that prosecutors assume responsibility for leading criminal investigations. Their involvement in the earliest stages of decision making, especially involving decisions around questions regarding detention, has the potential to ensure that only the strongest cases proceed to investigation, and, most importantly, the more thoughtful use of detention, which could lessen overcrowding in facilities, and more efficiently streamline criminal matters through the continuum of the process.
- Serbia has admirably focused on improving its procedures for handling juvenile matters, and has indeed prioritized the training of criminal justice actors in this very specialized area. It has also devised formal and informal procedures which tend to minimize their detention pending final disposition.

Challenges

- In an environment where detention is overused no matter the nature of the crime, its severity or the profile of an accused, most detention decisions begin with a lack of specific, articulated, appropriate legal grounds justifying that detention. Police are the first offenders in this regard, since they often make the initial decision to detain. Prosecutors must cite a statutory ground justifying detention, but typically do so without providing case specific facts to support the request, and the ground submitted may

or may not be appropriate to the particular situation or accused. And it was reported that not only do judges typically continue the detention, but it is often then affirmed on appeal without any more facts demanded by the judiciary to substantiate it.

- Indirect pressure exerted on justice actors from political power bases, often channeled through media outlets, to initiate investigations and prosecutions, negatively impact the functioning of the criminal justice system. These proceedings often result in prolonged periods of detention, often without a proper legal basis, for the target of the investigation.
- While the CPC limits the length of pretrial detention to up to six months during the preliminary investigation, there is no statutory limit on the use of detention once that phase of the criminal process is over, pending the commencement and completion of the trial. There is also no statutory limit for detention during appellate proceedings.

Serbia Background

Historical and Political Context

The Republic of Serbia is located in Southeastern Europe, in the Balkan Peninsula. It occupies an area of 88,407 sq. km and shares its borders with Hungary to the north, Romania and Bulgaria to the east, Macedonia and Albania to the south, and Montenegro, Republika Srpska in Bosnia and Herzegovina, and Croatia to the west. The Republic of Serbia has two autonomous territories: Vojvodina, and Kosovo and Metohija (hereinafter KiM). According to the 2013 census, Serbia has a population of approximately 7,181,505 people. Beginning in 1999, the Statistical Office has not tallied this data for KiM, therefore its population was not included in this census. Serbia is a multi-ethnic community. In addition to Serbs (82.9%), the next most numerous group are Hungarians (mostly in Vojvodina), then the Bosniaks (mainly in the Sumadija and Western Serbia region), Roma people (the Southern and Eastern Serbia region and Vojvodina) and, finally, Yugoslavs (Vojvodina region). See The Statistical Yearbook of the Republic of Serbia for 2011, *available at* http://www.media.srbija.gov.rs/medsrp/dokumenti/SGS2011_cyr.pdf

Great political changes occurring in the Soviet Union and Eastern Europe toward the end of the twentieth century did not bypass the Socialist Federal Republic of Yugoslavia (hereinafter SFRJ). In 1989, Slobodan Milosevic revoked the autonomy of the provinces of KiM and Vojvodina in violation of the 1974 SFRJ Constitution. At the same time several republics within the SFRJ began moving toward independence. Slovenia was the first republic to declare its independence on June 27th 1991. This was followed by Croatia. The president of BiH declared Bosnia's independence from the SFRJ on 5 April 1992, but two days later the Republika Srpska declared its independence from BiH and further declared its intention to remain within the SFRJ. An armed conflict began in April 1992 and lasted until September 1995. On November 21, 1995, the Presidents of Croatia, BiH and Serbia, Franjo Tudjman, Alija Izetbegovic and Slobodan Milosevic met in Dayton, Ohio where they reached a peace accord, which was signed in Paris later that year.

In the meantime, conditions for Albanians in KiM continued to deteriorate, eventually attracting the attention of the international community. In 1998 the tensions escalated into an armed conflict between the Kosovo Liberation Army (KLA) and Serbian forces. In January 1999, 45 Albanians were killed in the village of Racak, Municipality of Stimlje, initiating the international community's protests against Serbian authorities. The war ended on June 9, 1999 by the signing of a Military-Technical Agreement in Kumanovo between the Yugoslav National Army and NATO. The next day, the UN Security Council adopted Resolution 1244, placing KiM under the transitional protection of the UN and establishing the UN Interim Administration Mission in Kosovo (hereinafter UNMIK).

On October 5, 2000 mass protests took place in Belgrade. People from all over the country gathered in Serbia's capital to demonstrate their dissatisfaction with the regime of Slobodan Milosevic. While other protests had occurred in the past, protesters took to the streets, amid allegations that Milosevic was attempting to steal the presidential election victory from his opponent, Vojislav Kostunica. After setting fire to the Parliament and taking over state television, protesters forced Milosevic to resign.

Despite the lack of consensus within the Serbian Government, in June 2001, Slobodan Milosevic was extradited to the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, Netherlands, to face charges of genocide, crimes against humanity, and violations of the laws or customs of war and grave breaches of the 1949 Geneva Conventions. These crimes were allegedly committed in KiM, BiH and Croatia during the conflicts described herein in the former Yugoslavia. Milosevic died in detention on March 11, 2006 and shortly thereafter, the proceedings against him were terminated, without a final disposition.

Serbia began its path to reform under the leadership of its democratically elected Prime Minister, Zoran Djindjic, who started establishing positive relations with western countries after many years of isolation. However, on March 12th, 2003 Djindjic was killed, by an organized criminal group, in the courtyard of the government's offices in Belgrade. In August of the same year an indictment was filed against 44 people for their involvement in organizing the murder of Djindjic. The accused were members who were reportedly closely connected to the Zemun criminal gang and the disbanded Special Operations Unit (JSO) established by the Ministry of Interior. The main suspect for organizing the assassination was former commander of the JSO, Milorad Ulemek. The trial commenced on December 2003, at the District Court in Belgrade (the Department for Organized Crime) and lasted until May 23, 2007, when all accused were found guilty and sentenced to a total of 378 years in prison.

On February 17, 2008 Kosovo declared its independence. This was followed by mass protests in Belgrade that escalated dramatically into the demolition of the city, including setting the US Embassy on fire. Since Kosovo's independence, the Serbian Government has participated in a series of meetings in Brussels with representatives from Kosovo, supervised by the EU Representative. In March 2012 Serbia was granted EU candidate status, and in June 2013 the Council of the European Union agreed to open accession negotiations with Serbia.

The conflicts in Croatia, Bosnia-Herzegovina, and KiM led to huge migrations of people of Serbian ethnicity within those countries who found refuge in Serbia as their motherland. Registration of people displaced from KiM conducted in 2000 showed that there are more than 200,000 internally displaced persons (hereinafter IDPs) in Serbia. The first analyses of the data beginning in July 2001 showed that 451,980 IDP's in Serbia were registered, of whom 377,731 had recognized

refugee status. The largest numbers of refugees were from Croatia (about 63%), while the percentage of those from BiH dropped to 36%. According to UNHCR, in 2012 over 3,100 people expressed their intention to apply for asylum in Serbia. However, only 488 were registered by the asylum office, while many left for Western Europe without submitting the application or without completing the second step of registration, reportedly due to some shortcomings in the asylum system and lack of resources at the asylum centers. Despite the fact that the legal framework regarding asylum is intended to be in accordance with European standards, the cases of asylum granted in Serbia remains low, with only two awarded thus far in 2013. Available at <http://www.unhcr.org/pages/49e48d9f6.html>

Legal Context

Serbia is a parliamentary democracy. Its system of government is based on the division of powers into the legislative, executive, and judicial branches.

The National Assembly is the supreme representative body in the Republic of Serbia. The assembly is unicameral and consists of 250 deputies chosen by direct elections with a four-year mandate. Its jurisdiction includes adopting and amending the Constitution; enacting laws and other general acts; supervising the work of security agencies; adopting the budget; granting amnesties for criminal offences; approving international treaties; electing and dissolving the government; and appointing and removing Constitutional Court judges, court presidents, public prosecutors and their deputies.

The President represents the state, promulgates laws, nominates the Prime Minister and other state officials to the National Assembly, grants amnesties, presents recognition awards, commands the army, and, upon the proposal of the Government, appoints and dismisses ambassadors of the Republic of Serbia. The President is elected by direct election, under secret ballot, for a term of five years. He enjoys the same immunity as a parliamentary deputy.

The Government holds executive power and is accountable to the National Assembly as it executes its duties. It is authorized to establish and pursue policy, propose and implement laws and other general acts, and direct and adjust the work of public administration bodies. It consists of the Prime Minister, one or more deputy prime ministers and other ministers. The Prime Minister's mandate is 4 years.

The duties of the **Ministry of Justice and Public Administration** are set forth in Article 10 of the Law on Ministries. LAW ON MINISTRIES, art. 10, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 72/2012, 76/2013. Its purview includes the drafting of criminal, commercial, and misdemeanor legislation; the organization of qualification examinations for advocates, judicial office holders, and public notaries; the enforcement of criminal sanctions, amnesties and pardons;

extraditions; witness protection programs; and it represents the Republic of Serbia before the European Court of Human Rights (ECHR).

Judicial power belongs to the courts of general and special jurisdiction. Courts of general jurisdiction are the basic, higher, appellate and the Courts of Cassation and Constitutional Court. The courts of special jurisdiction are the trial and appellate level Commercial Courts, the Misdemeanor Courts, the Higher Misdemeanor Courts and the Administrative Court. LAW ON THE ORGANIZATION OF THE COURTS, art.11 OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 116/2008, 104/2009, 101/2010, 31/2011, - corr., 78/2011 - corr., 101/2011. In performing his judicial function, a judge must be independent. He is protected from liability for expressing his judicial opinion or voting in the process of issuing a court decision, except in cases when he has committed a criminal offence. A judge is prohibited from engaging in political activities.

Article 146 of the Constitution of Serbia provides:

Par.1: A judge shall have a permanent tenure.

Par.2: Exceptionally, a person who is elected a judge for the first time shall be elected for the period of three years.

As discussed later in this report, it is the High Judicial Council that elects judges to permanent positions.

Composition of Trial Panels for criminal proceedings is defined in Article 21, of the Criminal Procedure Code ((hereinafter CPC):

First-instance courts adjudicate in panels consisting of:

1. One judge and two lay judges for criminal offences punishable by a term of imprisonment exceeding eight years, and up to twenty years;
2. Two judges and three lay judges for criminal offences punishable by a term of imprisonment of thirty to forty years;
3. Three judges, for criminal offences within the jurisdiction of the prosecutor's office of special jurisdiction.

Second-instance courts adjudicate in panels consisting of:

1. Three judges, unless the CPC stipulates otherwise;
2. Five judges, for criminal offences punishable by a term of imprisonment from thirty to forty years and for criminal offences within the jurisdiction of the prosecutor's office of special jurisdiction.

Third-instance courts adjudicate in panels consisting of:

1. Three judges, unless the CPC stipulates otherwise;
2. Five judges, for criminal offences punishable by a term of imprisonment from thirty to forty years and for criminal offences within the jurisdiction of the prosecutor's office of special jurisdiction.

Courts sit in three-judge panels when deciding on appeals on judicial rulings for preliminary proceedings, issuing decisions outside trials. Higher-instance courts can also make decisions in panels consisting of three judges, except in cases outlined above. The Supreme Court of Cassation sits in panels consisting of five judges.

Depending on the stage of the criminal proceedings, the trial may be within the competence of different judges, as defined in Article 22 of the CPC: An individual judge adjudicates in the first instance for criminal offences punishable by a fine or a term of imprisonment of up to eight years. In pre-investigation proceedings and the investigation, the judge for the preliminary proceedings adjudicates cases. Finally, in some instances the president of the court and the president of the panel adjudicate cases. For example, the president of the court shall decide on a petition of a convicted person for a stay of enforcement of a criminal sanction. Id. The procedure of executing criminal sanctions is within competence of the judge for the execution of criminal sanctions. Id.

The Supreme Court of Cassation, which sits in panels consisting of 5 judges and is located in Belgrade, issues decisions on formal Requests for Protection of Legality, and ensures consistency in establishing the legal practice among the courts. The National Assembly has the right to elect the president of this court, upon the nomination of a candidate by the High Judicial Council and after considering the opinion of the conference of the Supreme Court of Cassation and the competent committee of the National Assembly. The regular term of the President of this court is five years and he cannot be reelected.

The Constitutional Court sits in Belgrade and has 15 judges. It is a court of limited jurisdiction, entertaining claims of constitutionality or legality of general acts; electoral disputes; conflicts in jurisdiction; some matters relating to autonomous provinces, political parties, trade unions, and religious communities; a violation of the Constitution by the President; and appeals relating to termination of office of judges, public prosecutors and deputy public prosecutors.

The High Judicial Council (hereinafter HJC) is an independent body intended to provide autonomy for courts and judges. For this purpose, the HJC appoints removes and transfers judges, proposes to the National Assembly the initial

election of judges to the post of judge, and proposes to the National Assembly the election of the President of the Supreme Court of Cassation, as well as court presidents. The Council has eleven members: the President of the Supreme Court of Cassation, the Minister of Justice and Public Administration, the president of the judicial committee of the National Assembly, and eight members elected by the National Assembly, of which six have to be judges and one being a lawyer with at least 15 years of professional experience, and, finally, one law professor. Except for members appointed *ex officio*, the tenure of office of the HJC's members is five years. Members of the HJC also enjoy immunity.

Legal practice in Serbia is enabled through membership in a Bar Association (hereinafter BA). The Bar Association of Serbia, based in Belgrade, includes, as organizational members: BA Belgrade, BA Vojvodina, BA Kosovska Mitrovica, BA Sabac, BA Nis, BA Zajecar, BA Pozarevac, BA Cacak, and BA Kragujevac. The governing bodies of the BA of Serbia are: the assembly, the managing board, the supervisory board, and the disciplinary court and prosecutor. Official positions include the president, and one or more vice-presidents. Sources of funding for the bar associations are revenues from subscriptions, membership and other means.

The rights, duties, and responsibilities of attorney's and trainees are set forth in the Legal Profession Act, LEGAL PROFESSION ACT, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 31/2011. This Act also addresses the organization and operation of bar associations. Some of the conditions for registering in the directory of attorneys include a law degree; passage of the general bar exam and exam specifically administered to attorneys; citizenship in the Republic of Serbia; general health and full working capacity; and no felony record or other issues that would make an applicant unworthy. The number of registered attorneys in Serbia is approximately 10,000.

In terms of attorney-client protections, the defense counsel has the right to have a confidential conversation with the accused before his first interrogation and with an accused who is in detention, to read the criminal complaint immediately before the first interrogation of the suspect, examine the evidence after the issuance of an order on conducting an investigation or after an indictment is filled directly, and perform on behalf of the defendant all the actions to which the defendant is entitled as set forth in Article 71 of the CPC.

Article 74 of the CPC provides that when the freedom of the accused is limited or completely deprived, defense counsel is mandatory from the moment of deprivation of liberty until the ruling discontinuing the measure becomes final, as well as in cases of plea agreements and in *absentia* trials. These mandates also include those situations when the accused suffers from physical disabilities.

Defense counsel may be chosen by an accused or his family, or be appointed by the court, as set forth in Article 76 of the CPC. The public prosecutor or the president of the court before which the proceedings are being conducted shall issue a ruling appointing a court appointed defense counsel if no defense counsel is chosen, or the defendant is left without a defense counsel during the criminal proceedings, and in a situation wherein defense counsel is mandated, or in cases involving multiple accused and a defendant fails to agree with co-defendants on the selection of a defense counsel or does not select a separate defense counsel. The defense counsel is selected from a roster of attorneys provided by the competent bar association. The bar association is required to specify the date of registration of the attorney in the list of attorneys and to take into account the level of criminal expertise. A court appointed defense counsel may seek his recusal only on justifiable grounds.

Article 77 of the CPC regulates the defense of indigent persons. Even when the criteria for mandatory defense do not exist, if the criminal offence is punishable by a term of imprisonment of over three years, or where reasons of fairness so demand, the costs of the defense counsel will be borne by the budget of the court.

Non-governmental organizations (NGO's) in Serbia do not represent defendants before the court, since only an actual defense attorney (or an attorney trainee if the criminal act is punishable by up to 5 years of imprisonment) is entitled to represent a defendant who has been charged with a crime. NGO's are primarily focused on the treatment of detainees and convicted persons and the monitoring of conditions in prisons and detention centers, as well as monitoring of trials for human rights violations. Some NGO's, such as the Belgrade Center for Human Rights, YUCOM, and the CHRIS Network closely cooperate with defense attorneys who are representing defendants, and also provide free legal advice, as do ASTRA, PRAXIS, the Victimology Society, LABRIS, the Humanitarian Law Center, Partners for Democratic Change-Serbia, and others. In addition, NGO's often advocate for reform in criminal legislation and practices by organizing round tables and public debates.

Structure of the Criminal Justice System

Serbia's 2012 Progress Report from the European Commission states that "Serbia has made only little progress in the area of the judiciary. Overcrowding in the prison system, poor living conditions in detention facilities, unsatisfactory healthcare and the lack of adequate and specific treatment programs are still a matter of concern. The internal control of the police needs to be enhanced. Alternative sanctions need to be introduced on a wider scale." See EUROPEAN COMMISSION, 2012 PROGRESS REPORT

ACCOMPANYING THE DOCUMENT COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL [hereinafter EU PROGRESS REPORT] p.46, *available at* http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf

Serbia undertook a huge reform of its criminal justice system, primarily through changes to the Criminal Procedure Code (CPC) and Criminal Code. Changes in the new CPC, adopted on November 26th 2011 (with amendments' in April 2013) were implemented in stages: in the Special Departments for War Crimes and Organized Crime beginning January 15, 2012 and in all other courts beginning on October 1, 2013.

The Public Prosecution, which is headquartered in Belgrade, is the highest public prosecution in the Republic of Serbia. Like the judiciary, this legal body is intended to be autonomous. The executive and legislative branches of power are not to influence the work of the public prosecution in any way, including indirectly, such as creating pressure through the use of the media. This institution is strictly hierarchical. A lower public prosecutor is directly subordinate to the immediately higher public prosecutor and each prosecutor is subordinate to the Republic Public Prosecutor.

The Public Prosecution of the Republic of Serbia consists of the following offices: Basic, Higher Appellate, State Prosecutor's Office and the Public Prosecution of Special Competency, which is comprised of the Departments for Organized Crime and War Crimes, also located in Belgrade. Article 162 of the Constitution provides that a Public Prosecutor or Deputy Public Prosecutor may not be held responsible for opinions expressed while performing prosecutorial functions, except in cases when a Public Prosecutor or Deputy Public Prosecutor commits a criminal offence. A Public Prosecutor or a Deputy Public Prosecutor may not be detained or arrested in legal proceedings instituted due to a criminal offence committed in performing the prosecutor's function or service without the approval of the authorized committee of the National Assembly. A public prosecutor is mandated to remain impartial in its work, and cannot be held responsible for its official actions or opinions expressed while performing its duty, unless a criminal offence has been committed. LAW ON PUBLIC PROSECUTION art. 52, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 116/08 *amended by* LAW ON AMENDMENTS AND SUPPLEMENTS TO THE LAW ON PUBLIC PROSECUTION, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA Nos. 104/2009, 101/2010, 78/11, 101/11 [hereinafter LAW ON PUBLIC PROSECUTION]. When a final decision of the Constitutional or other Court, or a settlement before a court or other competent authority determines that damage was caused intentionally or by gross negligence by a public prosecutor, the Republic of Serbia may request the public prosecutor or public prosecutor deputy to provide compensation. *Id.*

Article 43 of the CPC states that the basic duty of a public prosecutor is to prosecute the perpetrators of criminal offences. For criminal offences prosecutable *ex officio*, the public prosecutor is authorised to: 1) manage pre-investigation proceedings; 2) make decisions to not undertake or defer criminal prosecution; 3) conduct investigations; 4) conclude plea agreements and agreements on giving testimony; 5) file and represent an indictment before a competent court; 6) abandon charges; 7) file appeals against court decisions that are not final and submit extraordinary legal remedies against final court decisions; 8) conduct other actions when specified by the CPC.

The Public Prosecutor is appointed from public prosecutors and deputy public prosecutors, among those who meet the requirements for election for a term of six years and may be re-elected. A significant part of the responsibilities in the election process for Public Prosecutors and Deputy Public Prosecutors lies within the competencies of the State Prosecutorial Council (hereinafter SPC). The SPC is defined by the Constitution as a special autonomous body that guarantees the autonomy of prosecutors and deputy prosecutors. After conducting the gradual procedure of recruiting and assessing the applicants' professional qualifications, specific knowledge and worthiness, the SPC makes a list of candidates deemed eligible for the posts. For election of Public Prosecutors, the SPC submits the list of candidates to the Government, though if only one candidate is proposed, the Government may return the proposal to the SPC. For the election of the RPP the Government shall obtain the opinion on the candidates from the competent committee of the National Assembly. In the end, the National Assembly elects Public Prosecutors upon proposal by the Government. Public prosecutors are elected for a term of six years and may be reelected. However, if a Public Prosecutor is not re-elected to same office, he will be elected to the office of Deputy Public Prosecutor where he was posted prior to election, or to a higher prosecution office if the prosecution he formerly headed is higher compared to the one where he served as a deputy. Deputy Public Prosecutors serving for the first time are elected for three year terms by the National Assembly, from one or more candidates proposed by the SPC. After the completion of an initial three year term, a deputy prosecutor may be elected to permanent office, based on the sole decision of the SPC. The SPC also has competence to decide on the election of a Deputy Public Prosecutor seeking a position within a higher ranked public prosecution office. Any person may initiate proceedings seeking the dismissal of the Public Prosecutor, but the reasons for dismissal are determined by the SPC.

Law enforcement officers are required to undertake measures to detect the perpetrator of a criminal offence, to prevent the perpetrator or accomplice from going into hiding or absconding, to detect and secure evidence of the criminal offence and objects which may serve as evidence, and generally to collect all information that might be of use in a criminal proceeding. CPC art. 225(1).

The Criminal Code sets forth criminal penalties in Article 43 through Article 53. It prescribes four **types of punishments**: imprisonment, fine, community service and revocation of drivers' license. When the court determines that the purpose of punishment may be achieved by a mitigated penalty, in instances provided by the Criminal Code, the court may pronounce a penalty under the statutory limits or impose a mitigated penalty CRIM. CODE art. 57.

Prison Network in Serbia

The Administration for the Enforcement of Penal Sanctions (hereinafter the Administration), within the Ministry of Justice, administers Serbia's prison system. Its work is regulated by the Law on Enforcement of Penal Sanctions. The Administration organizes, implements and supervises the enforcement of criminal sanctions in adult and juvenile prisons, as well as alternative sanctions including community work, suspended sentence with protective supervision, mandatory drug and alcohol addiction treatment and rehabilitation in a correctional institution, and security measures imposed ordering mandatory psychiatric treatment and custody in a medical institution. Additionally, the Administration keeps records of all prisoners, as well as organizes professional education and training for staff. The institutions supervised by the Administration are:

Penal-correctional facilities: Pozarevac/Zabela, Sremska Mitrovica, Nis, Penal-correctional facility for women (Pozarevac)

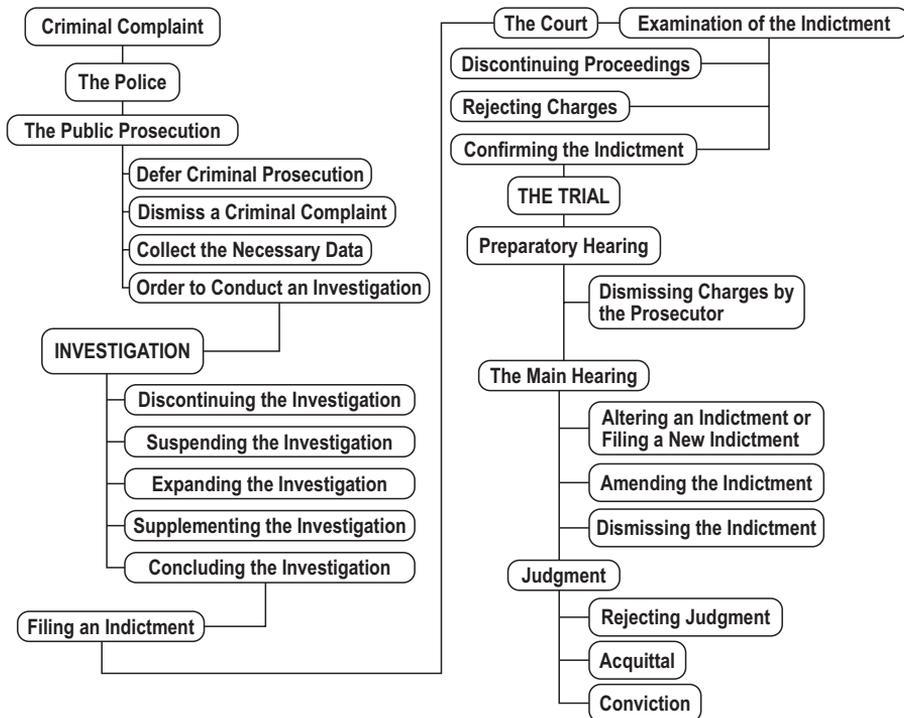
Penal-correctional facility for juveniles: (Valjevo), Sombor, Beograd/Padinska skela, Sabac, Cuprija

District prisons: Belgrade, Vranje, Zajecar, Zrenjanin, Kragujevac, Kraljevo, Krusevac, Leskovac, Negotin, Novi Pazar, Novi Sad, Pancevo, Prokuplje, Smederevo, Subotica, Uzice, Cacak

- Correctional facility for juveniles in Krusevac
- The Special Prison Hospital in Belgrade

Processes

CASE FLOW IN THE SERBIAN JUSTICE SYSTEM



The CPC sets forth 3 stages of the criminal process:

1. Pre-trial Proceedings (Pre-investigation, Investigation and Indictment)
2. Main Hearing within First Instance Proceedings (Preparatory Hearing, Main Hearing, Pronouncing and Proclamation of the Judgment)
3. Legal Remedies Proceedings

The pre-investigation stage begins with filing a criminal complaint and it is supervised by the Public Prosecution. Therefore, all authorities participating in the pre-investigation proceedings are accountable to the particular public prosecutor, as defined in Article 44 of the CPC: “All authorities participating in the pre-investigation proceedings are required to notify the competent public prosecutor of all actions taken with the aim of detecting a criminal offence and locating a suspect, while the police are required to comply with every request of the competent public prosecutor.” Everyone, including the state and other bodies, can report criminal offences which are prosecutable *ex officio*. A criminal complaint can be submitted to the public prosecutor or to the police, in which case the police

shall receive the complaint and deliver it to the competent public prosecutor immediately. If the public prosecutor does not dismiss a criminal complaint he can collect the necessary data himself, through the police, or request citizens to provide more information. CPC art. 282.

The public prosecutor undertakes necessary actions in pre-investigation proceedings, but some actions can be undertaken by the police, as provided in Article 285 of the CPC: “The public prosecutor may assign to the police the undertaking of certain actions aimed at detecting criminal offences and locating suspects. The police are required to execute the order of the public prosecutor and to inform him regularly about actions undertaken.”

The investigation stage is initiated by the Public Prosecutor. The investigation must begin shortly after the first evidentiary action taken by the public prosecutor, or in some cases, by the police. CPC art. 296. The prosecutor may expand the investigation, if necessary, to include other persons and other offences. The prosecutor has considerable discretion over crimes with penalties of under five years, and may defer prosecution upon defendant’s agreement to rectify whatever harm he caused and satisfy other conditions of a law-abiding life that the prosecutor may propose. CPC art. 283.

The **filing of the indictment** must be supported by a justified suspicion that a certain person has committed a criminal offence and must be filed within 15 days of the date when the investigation was concluded, except in complex cases. CPC art. 331. If the public prosecutor does not file an indictment in a timely fashion, and does not state that he is discontinuing criminal prosecution, the defendant, his counsel and the injured party may object to a higher authority. The immediately superior public prosecutor will, within 15 days of the date of receiving the objection, issue a ruling rejecting or adopting the objection against which no appeal or objection is allowed. By the ruling accepting the objection the public prosecutor will issue a mandatory instruction to the competent public prosecutor to file an indictment within a specified time limit, which may not exceed 30 days. If the collected data regarding the criminal offence and the perpetrator provide sufficient grounds for filing charges, an indictment may be filed even without having to conduct an investigation. *Id.*

Deprivation of Liberty

The Constitution of Republic of Serbia states that any person charged with a crime enjoys the presumption of innocence, and may be remanded to detention only upon the decision of the court, should detention be necessary to conduct criminal proceedings. CONST. arts. 30, 34. A person who is arrested must be brought without delay to the competent public prosecutor, with a report from the police as to the circumstances of the arrest. CPC art. 293. The arrestee also has a right

to secure counsel, but if he has not secured counsel within 24 hours or states he does not wish to be represented by defense counsel, the public prosecutor must question him without delay. In cases of mandatory defense, counsel will be provided notwithstanding the arrestee's intention to proceed without counsel. *Id.* Immediately after questioning, the public prosecutor will decide whether to release the arrested person or request that the judge for preliminary proceedings to order detention. The public prosecutor may hold an arrestee for up to 48 hours from the time of arrest, as long as defendant has counsel or is provided with counsel so that he may protect his procedural rights to challenge custody. CPC art. 294. The conditions under which detention may be ordered are specified in the CPC. There must be a grounded suspicion that the defendant committed a crime, and detention may be ordered to avoid the risk of flight, obstruction of justice, repetition of criminal behavior in a short period of time, or if the crime charged carries a serious penalty or involved violence. Detention may be ordered if the criminal offense with which he is charged is punishable by a term of imprisonment of more than ten years or a term of imprisonment of more than five years for a criminal offense with elements of violence, or he has been sentenced by a court of first instance to a term of imprisonment of five years or more, and the manner of commission and the gravity of the consequences of the criminal offense have disturbed the public to such an extent that this may threaten the unimpeded and fair conduct of criminal proceedings. CPC art. 211.1 (4). The court decides whether to order detention based on the request of the public prosecutor, and after the indictment is confirmed, also *ex officio*. CPC art. 212. Before issuing the decision, the court must question the defendant in the presence of the public prosecutor and the defense counsel, though it may be performed in their absence. A judge may also impose detention without questioning if a duly summoned defendant fails to appear, and without justifying his absence; if service of the summons could not be performed, and the circumstances obviously indicate that the defendant is evading the receipt of a summons, or a danger of delay exists. In that case, the court will within 48 hours of the hour of the arrest question the defendant and decide whether to leave the decision ordering detention in force or to repeal detention. *Id.*

During the investigation, detention may be ordered, extended or repealed by a ruling of the judge for preliminary proceedings or the panel. CPC art. 214. Detention may last a maximum of three months from the date defendant is deprived of liberty. CPC art. 215. The judge for preliminary proceedings is required, every 30 days, even without a motion by the parties or defense counsel, to examine whether the reasons for detention still exist and to issue a ruling extending or repealing detention; however, a panel of the immediately higher court may, for important reasons, extend detention by a maximum of another three months. An appeal is allowed against that ruling, but it does not stay execution of the ruling. If no indictment is filed by the expiration of the time limits, the defendant will be released. *Id.*

After the indictment has been filed, detention may be ordered, extended or repealed, upon motion by the parties, but even if no motion is filed, detention must be reviewed every 60 days after the indictment is confirmed. CPC art. 213. Detention ordered or extended may last until the commitment of the defendant to serve a custodial criminal sanction, but no longer than the expiration of the duration of the criminal sanction pronounced in the first-instance judgment. *Id.*

It is possible for the court to utilize measures other than detention to secure the presence of the defendant and to ensure the unobstructed conduct of criminal proceedings. CPC art. 188. In fact, Article 189 of the CPC indicates that the court should not impose harsher measures than are necessary to accomplish the same purpose. Other measures are: prohibition of approaching, meeting or communicating with a certain person; prohibition of leaving a temporary residence; bail; or the prohibition of leaving a dwelling (house arrest). To better ensure compliance with these measures, the court may also decide to order the wearing of a location tracking devices, or reporting to the police (see CPC art. 190 regarding house arrest); or seizure of driver's license or travel documents (see CPC art. 199 regarding the prohibition of leaving a temporary residence). When a motor vehicle is used in the preparation for or the actual commission of an offense, or the offence of threatening public traffic was committed with intent, the seizure of a driver's license may be ordered as an independent measure. The court may use more than one measure, depending on the needs of the individual case. CPC art. 189. See Articles 197-209 of the CPC for the procedures for imposing specific conditions.

Restitution for Wrongful Detention

A person who is wrongfully deprived of liberty has the right to restitution, but before submitting a restitution claim to the court, the injured party is required to submit the request to the Ministry of Justice for the purpose of reaching a settlement on the damage and the type and amount of restitution. CPC art. 588. If the restitution claim is not accepted, the injured party may file a civil action for restitution against the Republic of Serbia. The statute of limitations for the right to restitution expires three years from the date of finality of the judgment of rejection or acquittal, or the finality of the ruling terminating the proceedings or rejecting the charges, and, if an appellate court rendered a decision on an appeal, from the date of the receipt of the appellate court decision. CPC art. 591. Under Article 584 of the CPC, a person is deemed wrongfully deprived of liberty if he was detained and no proceedings were instituted, or the proceedings were terminated unsuccessfully by the prosecution, he served longer than the criminal sanction imposed, or was detained due to a mistake or unlawful execution of the duties of the authority conducting the proceedings.

Juvenile Criminal Offenders

The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, as well as the CPC, treats juvenile perpetrators of criminal offences separately from adults, and distinguishes among juveniles on the basis of age at the time of the commission of the criminal offence. THE LAW ON JUVENILE CRIMINAL OFFENDERS AND CRIMINAL PROTECTION OF JUVENILES, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No 85/05 [hereinafter JUVENILE OFFENDERS ACT]. A juvenile is a person who, at the time of commission of the criminal offence, has attained fourteen years of age and has not attained eighteen years of age. *Id.* art. 3. If, at the time of commission of a criminal offence a person has attained the age of fourteen and is under sixteen years of age, he is considered a younger juvenile. An elder juvenile is a person who at the time of commission of an offence has attained sixteen and is under eighteen years of age. *Id.* A juvenile judge may impose detention that may not exceed one month in preparatory proceedings. The detention may be extended for a maximum of one month by the Court panel of the same court. *Id.* art. 67. Following the conclusion of the preparatory proceeding and from the moment of filing a motion for pronouncement of a criminal sanction, detention of an elder juvenile may not exceed six months, and four months for a younger juvenile. During the trial proceedings, detention may not exceed six months. *Id.* Juvenile detainees are kept separately from adults, but Article 68 of the Juvenile Offenders Act provides an exception, stating that: “[A] Juvenile Judge may order a juvenile to be remanded in detention together with an adult, who would not have a detrimental effect on him, while in the opposite case, juvenile solitude would last longer, and would be harmful to his personal development.”

Serbia 2013 Analysis

While the correlations drawn in this assessment serve to give a sense of the relative status of the factors analyzed, ABA ROLI emphasizes that the factor correlations and conclusions are of greatest use when viewed in conjunction with the underlying analysis.

Table of Factor Correlations

Detention Procedure Assessment Tool Factors		Correlation
I. Considerations at All Stages of Detention		
Factor 1	Due Process	Neutral
Factor 2	Consistency and Fairness	Neutral
Factor 3	Resources	Neutral
Factor 4	External and Undue Influence	Neutral
Factor 5	Victim Involvement	Neutral
Factor 6	Special Considerations for Juveniles	Positive
Factor 7	Special Considerations for Vulnerable Adult Populations	Neutral
II. Imposition of Detention at the Pretrial Stage		
Factor 8	Initial Deprivation of Liberty	Negative
Factor 9	Detention prior to Initial Review	Negative
Factor 10	Oversight of Initial and Investigative Detention	Negative
Factor 11	Detention during the Adjudicative Process	Neutral
III. Mechanisms for Challenging Pretrial Detention		
Factor 12	Extraordinary Remedies	Neutral
Factor 13	Appeal of a Decision Imposing Pretrial Detention	Neutral
Factor 14	Guaranteed Periodic Review of Detention	Neutral
IV. Detention Practices		
Factor 15	Procedures during Confinement	Neutral
Factor 16	Mechanisms for Complaints	Neutral
Factor 17	Personnel and Staffing Procedures	Neutral

I. Considerations at All Stages of Detention

Factor 1: Due Process

Persons who have been deprived of liberty, including persons who have been remanded into custody, are entitled to full due process rights, including a right to review by a competent tribunal, a right to counsel, and a right to participate effectively in their own defense.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Serbia's Constitutional and legislative framework includes most due process protections; however access to competent legal counsel is still less than adequate, especially when an individual lacks the resources to secure counsel.	

Analysis/Background:

The Constitution of the Republic of Serbia guarantees personal freedom and security to everyone. See CONSTITUTION OF THE REPUBLIC OF SERBIA art.27 [hereinafter CONST.]. Deprivation of liberty is allowed only as provided by law, and the Constitution specifically mandates that any such person be informed promptly, in a language they understand, of the grounds for arrest or detention, or of the charges brought against them, as well as be informed of the right to notify a person of their choosing of their arrest or detention. *Id.* Article 61 of the Law on Enforcement of Penal Sanctions also requires that immediately upon admittance to a penal institution, the institution shall enable a detainee to notify his family or anyone he chooses. LAW ON THE ENFORCEMENT OF PENAL SANCTIONS, art. 61, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 85/2005. In instances where a person is deprived of liberty without a decision of the court, he shall be informed promptly of his right to remain silent, and the right to be questioned only in the presence of a defense counsel of his own choosing, or one provided free of charge if he is unable to pay for it. He must be brought before a competent court without delay and specifically not later than 48 hours, or shall otherwise be released. CONST. art. 29. The Constitution also provides that a detainee may initiate proceedings to review the lawfulness of his arrest or detention and, the Court shall order the release of the detainee if the arrest or detention is found to be unlawful. CONST. art. 27.

Once charged with a criminal offense, an accused has the right to be informed promptly, in a language he understands, of the nature and cause of the accusation against him, as well as the evidence in support thereof. CONST. art. 33. Further, he has the right himself or through legal counsel of his own choosing to defend

himself, to contact his legal counsel freely and to be allowed adequate time and facilities for preparation of his defense. *Id.* When the interests of justice so require, any person charged with a criminal offense who lacks sufficient means shall have the right to free legal counsel. *Id.* Article 74 of the Criminal Procedure Code does mandate that a defendant must have a defense counsel from the moment of his deprivation of liberty, whether actually taken into custody, placed in detention, or prohibited from leaving his abode, until a ruling discontinuing such a measure becomes final. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF SERBIA art. 74(3), OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013 [hereinafter CRIMINAL PROCEDURE CODE OR CPC].

The Constitution further provides that an accused has the right to a trial without undue delay. He has the right, by himself or through his legal counsel, to present evidence in his favor, to examine the witnesses brought against him and demand that his own witnesses be examined under the same conditions as the witnesses against him, and in his presence. CONST. art. 33.

Many of the due process issues mentioned in this factor are addressed in more detail later in this report, but the general problem of meaningful and timely access by those deprived of liberty to competent counsel, including a lack of prompt notification of those rights as mandated by the Constitution, was highlighted often throughout the assessment interviews. While noting unsatisfactory progress in this area, Serbia's newest National Judicial Reform Strategy highlights the critical importance of the establishment of an effective and sustainable Legal Aid system, since improved access to justice is one of its basic goals. *The National Judicial Reform Strategy, 2013-2018, (working version)*. (at p. 30) [hereinafter NATIONAL JUDICIAL REFORM STRATEGY]. It is envisioned that a proposed Law on Free Legal Aid will provide the foundation for a more efficient regulatory and institutional framework to assist in this regard. *Id.*

As also noted elsewhere in this report, many accused go before the court without legal representation at all (representation has not previously been mandated for crimes where the maximum possible sentence is under 10 years (see art. 71(1) CPC 2001), and that practice remains under the new CPC, though the threshold has been lowered to crimes with prison sentences up to 8 years. One judge interviewed, after describing the current system wherein the Bar submits a list of attorneys from which the court may appoint counsel, expressed dissatisfaction with the competence and ethics of some of the attorneys on the list. It was also reported that, especially during the earliest stages, appointed counsel will consult with their client once, and then ask to be released without being forced to articulate justifiable grounds, yet is still able to collect his fee. A different attorney, unfamiliar with the case, is then appointed. Generally speaking, serving as appointed counsel is apparently not financially advantageous, since the rates paid by the court are reported to be below what an attorney might typically be paid.

Representatives from the Ministry of Interior outlined its procedures in connection with criminal investigations. A log is maintained listing documents kept in connection with an investigation, including a complaint that a crime has occurred. Also, when an individual is being questioned in the course of an investigation, law enforcement personnel note the time questioning begins, the time arrested (if that occurs), and also record the time of the notification of family and defense counsel. A decision is made within two hours whether to hold an individual, and that individual is questioned in the presence of defense counsel within 8 hours. In some instances, under the new CPC, the prosecutor will be present. Ministry representatives stated that the defense attorney is unable to access the file containing documentation relating to his client until there is a formal court proceeding. Ministry representatives further noted that if the accused, on his own initiative, wants to talk to law enforcement about other crimes unrelated to those in which he is charged, law enforcement must inform the judge and his attorney must be present, which can delay and impede investigations of other crimes, especially organized crimes.

Factor 2: Consistency and Fairness

The circumstances in which deprivation of liberty occurs and the procedures under which it is authorized are established in law. Discretionary decisions relating to deprivation of liberty are made by comparing the facts of the case to established criteria.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Justice actors typically impose detention without regard to the individual circumstances of the accused at least through the pre-trial investigation phase. There is also some evidence of disparate treatment of minorities.	

Analysis/Background:

Article 21 of the Constitution provides that not only all are equal, but everyone in Serbia has the right to equal legal protection. The Constitution prohibits discrimination, whether direct or indirect, on any grounds, particularly race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability. *Id.* The Constitution further provides that everyone has the right to judicial protection when any of the human or minority rights guaranteed by the Constitution have been violated or denied, and further have the right to elimination of the consequences arising from the violation. *Id.* art 22. Article 317 of the Criminal Code also sets forth criminal penalties for anyone who instigates or exacerbates national, racial or

religious hatred or intolerance among peoples and ethnic communities living in Serbia. While constitutional and legislatively defined procedures exist to guide police, prosecutors, and judges at all stages of the detention process, in the vast majority of cases, however, detention is the norm, commencing at apprehension, and often lasting up to and beyond the maximum investigative period of 6 months. These decisions are typically affirmed on appeal. See Factors 8–14, below. Detention is consistently imposed by police, approved by prosecutors and affirmed by judges, without regard for the unique facts of a case or the individual circumstances of the accused. Reportedly, criminal justice actors rarely provide reasoning unique to each accused substantiating their decisions to impose pretrial detention. See Factors 8, 9 below. Pretrial detention decisions, especially after the initial, post 48 hour hold appearance, are typically made without evidentiary hearings. Judges reportedly do not provide an explanation for their decisions to impose pretrial detention, and it was further reported that the legislative grounds cited are often inappropriate, misinterpreted, not supported by evidence, or depend on the broadest of grounds, including that of “causing public alarm.”

Outside pressures, both direct and indirect, were perceived to influence detention decisions. See Factor 4 below. A lack of expertise and resources also contributes to the lack of individualized reasoning in detention decisions, and its overuse. Bail is allowed, but its use is infrequent and it was reported that many judges are not as familiar with the procedures to implement it. Also many offenders lack the financial means to post a bail. Electronic monitoring is being used with some success in lower level criminal cases. See Factors 3 and 11 below.

It was reported that national minorities are occasionally not treated the same as Serbs. See Factor 7 below.

Factor 3: Resources

Adequate resources, whether financial, infrastructure, personnel, or other, are allotted to both individuals and institutions involved in detention and sentencing, including alternatives thereto.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Serbia is attempting to address issues of overcrowding by increasing capacity in detention facilities, but must continue to explore alternatives to detention, as well as increasing budgetary investments, especially given new mandates for Prosecutors under the new Criminal Procedure Code.	

Analysis/Background:

In its 2012 Progress Report, the European Commission noted some improvement in the prison system and especially on the overcrowding problem. See EUROPEAN COMMISSION, ANALYTICAL REPORT ACCOMPANYING THE DOCUMENT “COMMUNICATION FROM THE COMMISSION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL, COMMISSION OPINION ON SERBIA’S APPLICATION FOR MEMBERSHIP OF THE EUROPEAN UNION” (2012) [hereinafter EU REPORT 2012] p.13. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf. It further noted that Serbia’s 2011 Strategy for the Reduction of Prison Overcrowding resulted in improvements to existing infrastructure as well as opening of a new facility near Belgrade in 2012, with a capacity of 450 detainees. The EU stated, however, that serious problems of overcrowding remain, with an estimated 11,500 individuals held in facilities with capacities of 5000-6000. The EU also noted that improvements were needed in the areas of health care, living conditions and adequate treatment programs for prisoners. *Id.* Several interviewees stated that conditions of detention were definitely more favorable post-conviction, citing a definite lack of resources at pre-trial stages, primarily due to overcrowding. The Protector of Citizens, in his 2012 Report, also noted the lack of adequate facilities for those deprived of liberty at police stations, characterizing the conditions in some instances as degrading, if not abusive. 2012 ANNUAL REPORT OF THE PROTECTOR OF CITIZENS p. 46.

Serbia’s current National Judicial Reform Strategy notes progress in addressing overcrowding and other issues related to detainees, including the construction of a detention facility within the existing Belgrade prison, construction of a new closed-type prison in Belgrade, Padinska Skela with the capacity of 450 prisoners; and construction of new pavilions for juvenile offenders in JCI Krusevac, thus improving accommodations for juvenile offenders and their proper internal classification. NATIONAL JUDICIAL REFORM STRATEGY, pp. 19-20. As further noted, budgeting authority for individual courts and prosecutors’ offices is being transferred from the Ministry of Justice to the High Judicial and State Prosecutorial Councils. This competence was transferred from the Ministry of Justice to the High Judicial Council in March 2012. All competences for drafting and monitoring the execution of public prosecution budgets were transferred from the Ministry to the State Prosecutorial Council in 2012, except those relating to salaries and travel expenses of civil servants and employees. Some remaining weaknesses were noted as still persisting in the budget planning system, including that there are no systemic plans for capital investment, and that only 40-50% of the budget funds earmarked for capital investments are spent; and that budget allocations reflect the previous not the current needs. *Id.* pp. 16-17. This is particularly concerning, given that changes to the existing CPC will likely create a greater strain on already limited resources in the criminal justice arena. As discussed in Factor 8, under the new CPC, prosecutors take over responsibilities for leading

criminal investigations, and will therefore likely need additional staffing to fulfill these additional duties, increased budgets for forensic and other experts, as well as additional physical space, including interview rooms, video equipment, etc. One attorney interviewed estimated that 50% of all criminal cases involve a range of punishment of greater than a 10 year sentence. Since, as discussed elsewhere in this report, the new CPC has lowered to 8 years the range of punishment under which an accused will have appointed counsel, this will likely be a greater strain on resources. Lastly, one attorney noted that a lack of competent investigation and prosecution is a double hit to already limited resources, since the State first pays for the costs of detention, then, when it is, on occasion, determined by a judicial authority that the criminal charges lacked any legal basis, the State may then be forced to pay civil damages to the detainee.

One attorney stated that one reason for the overuse of detention is that it is easier administratively to stay in touch with and notify an accused of various court dates if he is in custody. One logical procedural alternative could be the greater use of a summons. However, it appeared that a lack of adequate internal systems and resources was one cause preventing the use of service by summons as a plausible alternative means by which to secure the appearance of an individual charged with a crime. Articles 243 through 249 of the CPC set forth the procedure for delivering a summons. Article 242 provides that documents, as a rule, are delivered by an official of the authority conducting proceedings which issued the decision, or other means, including through the post office. Article 243 provides that a document be served by delivering it directly to the person to whom it was dispatched. However, if that person is not present, the document may be delivered to an adult member of his household, who is required to accept it. If either the targeted individual or his family member refuses in writing to accept it, the delivery slip will be marked with the date, hour and reason of the refusal to accept, and the document is left in the dwelling. *Id.* This procedure is problematic, however. It was reported that while urban areas have access to court bailiffs who could undertake the service of a summons, areas outside of Belgrade don't, and typically use the postal service for delivery of court documents, including a summons. This method, however, is often ineffective and unsuccessful. Many community members know that if a "blue envelope" is being delivered, it is a court summons and will then attempt to avoid contact with the postal delivery person. On occasion, it was reported there is collusion between the postal employee and the individual targeted for service, and the documents remain unserved. And, as discussed in other areas of this report, service of documents, including by mail, of minorities and those without consistent housing arrangements often result in failed attempts due to inaccurate addresses, and end in an arrest, though the targeted individual may have no knowledge that the court was attempting to contact him.

Factor 4: External and Undue Influence

Actors in the criminal justice system, including police, investigators, and prosecutors; defense counsel; judges and court personnel; and corrections staff, pursue their functions free from undue influence.

Conclusion

Correlation: Neutral

While there was scant mention of direct pressures and influences upon actors in the criminal justice system, there is often indirect pressure exerted from political power bases to initiate investigations and prosecutions. These proceedings can then result in prolonged periods of detention, without a proper legal basis. Media outlets are reported to exacerbate the problem, and serve as conduits in this chain of political influence.

Analysis/Background:

During its progress reviews, the European Commission commented several times on issues of political influence within the justice system in Serbia. In its 2012 report, the Commission stated that the legal framework leaves openings for undue political influence, pointing specifically to Parliament's power to appoint judges and prosecutors, including the President of the Supreme Court of Cassation and the Republic Public Prosecutor, and its direct participation in the work of the HJC and the SPC. EU REPORT 2012, p.10. In its newest National Judicial Reform Strategy, Serbia addresses these issues by articulating the necessary Constitutional changes, especially excluding the National Assembly from the process of appointments of court presidents, judges, public prosecutors/ deputy public prosecutors and members of the HJC and SPC; and changes in the composition of the HJC and SPC aimed at excluding representatives of the executive branch from membership in these bodies. NATIONAL JUDICIAL REFORM STRATEGY, at p. 9.

According to Transparency International's 2013 Global Corruption Barometer (GCB) citizens perceive that the judiciary is tied with political parties, public officials/civil servants and medical and health institutions as the most corrupt in Serbia (score 4.3 on a scale of 0 to 5). GLOBAL CORRUPTION BAROMETER, TRANSPARENCY INTERNATIONAL 2013 Available at <http://www.transparency.org/research/gcb/overview>. Information obtained through interviews, however, indicated that the type of influence most often exerted within the justice system was indirect in nature, targeting decision making of criminal justice actors at the earliest junctures of the process, and originating from individuals in political office or positions of power. These pressures are often furthered through the use

of the media, many of which are also controlled by political power bases. The “Delta Holdings” case was cited several times as an example of this situation. An influential politician advocated critically and publicly, through sensationalized media reporting, of the need to investigate Miroslav Miskovic. Soon after the media publicity, an investigation was opened and charges were filed. Several individuals pinpointed this trend as beginning with the assassination of Prime Minister Djindjic in 2003. The Serbian government felt pressured to not only arrest the assassins, but, more importantly, to display the public persona of a government “tough on crime.” This type of improper pressure is exacerbated by the vulnerability and insecurity within the ranks of prosecutors and judges due to a very arduous, politically charged and incomplete reappointment process. Criminal justice actors are therefore reluctant to assert their independence and resist outside pressures, especially due to job insecurity. Also, Serbia still lacks effective ethical standards for prosecutors, which could create some accountability for the initiation of charges without a legal foundation. An attorney cited the bankruptcy mafia cases wherein 18 individuals were declared innocent after a prolonged 7 year trial as an example of the need for more accountability for filing decisions of prosecutors.

While influences by those in political power may have an impact on individual cases, it was pointed out that they also can have serious financial implications for Serbia, since some charged individuals who may be later acquitted or have their charges dropped have petitioned the Serbian government or the European Court of Human Rights for compensation. One attorney reported that the initial calculations in such compensation cases were 120 euros per day, but given the increasing frequency of these petitions, it was dropped in 2012 to 90 euros per day, and the rate for 2013 has been 45 to 60 euros per day. These financial realities then can create huge pressures on the judiciary to convict even when the evidence is insufficient

One attorney did note the challenges faced by respected media outlets to obtain factual information about criminal proceedings and investigations against certain individuals. Court information officers are not always willing or able to explain procedures in non-legal terminology, or they release confusing public announcements, which creates misunderstandings. There is a perception that the court is hiding information, especially the “sexier” information, so outlets turn to other sources, like the police, who may ferment the sensationalization of the information.

Factor 5: Victim Involvement

Victims are kept adequately informed of the progress and outcome of detention decisions. The impact on victims of the offense and the detainee's release are considered when making decisions regarding detention.

Conclusion

Correlation: Neutral

Other than in the Specialized Department and the War Crimes Department of the Higher Court in Belgrade, Serbia's criminal justice system lacks any formal victim services or coordination units. Efforts to inform and consult victims are, therefore, uneven or nonexistent, especially in spousal violence cases.

Analysis/Background:

There are no specific constitutional or legislative mandates requiring notification or consultation with a victim, especially regarding detention decisions. Criminal proceedings are initiated on the basis of a motion to indict by the Public Prosecutor. When the Public Prosecutor finds that there are no grounds for instituting criminal proceedings, the injured party may file an objection with the superior Public Prosecutor. CPC arts 50, 51. If the prosecutor withdraws charges after the confirmation of the indictment, the injured party may pursue prosecution. CPC art 52. Article 235 of the CPC mandates that the Public Prosecutor dismiss a criminal complaint where the act reported does not constitute a criminal offence or a criminal offence prosecutable *ex officio*, where the statutory limit for prosecution has lapsed, or the offence is encompassed in an amnesty or pardon or where there are other circumstances that exclude proceedings, or, lastly, where there is no reasonable suspicion that the suspect committed a criminal offence. If dismissed, the Prosecutor shall notify the injured party of the reasons for dismissal. See *also* CPC art 52.

Except in the special offices for organized and war crimes, there are no victim services within the Public Prosecution, nor is there any such formal unit within the courts. It does not appear that the prosecutor interacts significantly with victims during the pre-trial and trial phases, or consults with them regarding proceedings or decisions in the case. One CSO working with victims affirmed that justice actors, including the prosecutor's office, tend to ignore victims when making decisions including those involving detention, and information is not readily available to victims regarding court procedures generally or their specific cases. Of particular concern was the handling of spousal violence cases. While several interviewees noted that attempts are made to handle such cases more delicately and expediently, one CSO noted an increased chance for "manipulation" of the victim to go along with less severe dispositions. Almost all interviewed, including

one judge, noted that it was rare for detention to be ordered in spousal cases. “Stay away” orders or “house arrest” may be used, though there is no active monitoring of such measures to ensure compliance and the safety of the victim.

In its 2012 Human Rights Report, the United States Department of State noted that violence against women continued to be a problem in Serbia, though there were no reliable statistics as to the extent. It further stated that these cases are difficult to prosecute due to a lack of witnesses and evidence, and an unwillingness of witnesses or victims to testify. See DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012, pp.19-20. Available at <http://www.state.gov/documents/organization/204546.pdf>. It would be reasonable to infer that if victims were more regularly and adequately consulted, and protected during the pendency of a criminal investigation, these cases might not be as difficult to bring to some disposition within the criminal justice system.

Factor 6: Special Considerations for Juveniles

The criminal justice system upholds the unique rights and safety needs of juveniles and promotes their physical and mental well-being, with alternatives to detention given priority consideration.

Conclusion

Correlation: Positive

Serbia has indeed prioritized the training of criminal justice actors handling juvenile matters, and has devised formal and informal procedures that tend to minimize their detention pending final disposition.

Analysis/Background:

Criminal sanctions may not be imposed in Serbia on offenders who are under the age of 14 at time of the commission of the unlawful act. THE LAW ON JUVENILE CRIMINAL OFFENDERS AND CRIMINAL PROTECTION OF JUVENILES, art. 2, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No 85/05 [hereinafter JUVENILE OFFENDERS ACT]. A juvenile is a person who at the time of commission of the criminal offence has attained fourteen years of age and has not attained eighteen years of age. *Id.* art. 3. If at the time of commission of a criminal offence a person has attained the age of fourteen and is under sixteen years of age, he is a younger juvenile. An elder juvenile is a person who at the time of commission of an offence has attained sixteen and is under eighteen years of age. *Id.* Article 48 of the Juvenile Offenders Act mandates that all who participate in any actions involving a juvenile, particularly during his questioning, exercise care. A juvenile may be summoned through his parents and/or legal guardian, unless this is not feasible due to

exigent circumstances. *Id.* art. 54. A juvenile shall have defense counsel during the first questioning and throughout the proceedings, and if one is not retained, such counsel shall be appointed ex-officio by the Juvenile Judge. Counsel for the juvenile may be only an attorney with special qualification in the field of the rights of the child and juvenile delinquency. *Id.* art. 49.

The Juvenile Public Prosecutor, specially trained in juvenile law, is the only prosecutor entitled to file a criminal case against a juvenile. *Id.* art. 57, and does so by filing a motion to initiate preparatory proceedings with the Juvenile Judge of the competent court. *Id.* art. 63. In addition to facts relating to the criminal offence, during the preparatory proceeding against the juvenile, the Court, by querying the juvenile's parents, adoptive parent or guardian and other persons who may offer relevant information, determine the age of the juvenile, gather facts necessary for evaluation of his maturity, his living environment and circumstances, and others relating to his character and behavior. When the state of health, degree of maturity or other aspects of the juvenile's character require examination by experts, this examination is carried out by medical practitioners, psychologist or pedagogues, and may be carried out in a health or other institution. *Id.* art. 64. During the preparatory proceeding, if it is necessary to separate the juvenile from his current environment or to provide assistance, supervision, protection or accommodation for the juvenile, the Juvenile Judge may remand a juvenile to a home, educational or similar institution, under supervision of a guardianship authority, or order placement in foster family on temporary basis. This decision to impose a temporary placement measure may be appealed within twenty four hours by the juvenile, parent, adoptive parent or guardian, defense counsel and Juvenile Public Prosecutor. The appeal shall not stay enforcement of the decision. *Id.* art. 66. If the purpose for ordering detention cannot be achieved through the use of a temporary placement measure, the Juvenile Judge may remand the juvenile to detention when grounds exist as for adult offenders (see factor 8). Any time spent in detention, as well as any other deprivation of liberty, is counted toward any final disposition in an education institution, correctional facility or juvenile prison. Detention in preparatory proceeding may not exceed one month, unless extended for maximum of one additional month. Upon completion of the preparatory proceeding, the detention of an elder juvenile may not exceed six months, and is not to exceed four months for a younger juvenile. The Juvenile Judge is required to review the detention once a month to determine whether grounds for detention continue to exist, and to pronounce a decision on either suspending or extending the detention. *Id.* art. 67. A juvenile is held in detention separately from adults. In exceptional cases, a Juvenile Judge may order a juvenile to be remanded in detention together with an adult who would not have a detrimental effect on him, and especially when isolation of juvenile would be harmful to his personal development. *Id.* art. 68.

One or more diversion orders may be applied to a juvenile offender for criminal offences punishable by a fine or imprisonment of up to five years. *Id.* art. 5. If the juvenile confesses, the relevant state prosecutor for juveniles or a Juvenile Judge may apply a diversion order to a juvenile, after considering the attitudes of the juvenile and the injured party. *Id.* Diversion orders may include: compensation to the injured party, regular attendance at school or employment, community service, drug or alcohol treatment or therapy. *Id.* art. 7.

The data published by the Statistical Office for the Republic of Serbia showed that in 2011 (the most recent year included in the survey) the number of convicted juvenile offenders totaled 2290, the highest since the Office began collecting this data in 2004. Available at <http://webrzs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d140101IND02%2635%3d6%2623%3d0%2c1%2c2%262%3d%23all%23%266%3d1%2c2%26sAreald%3d140101%26dType%3dName%26lType%3dEnglish> As this number has increased, however, Serbia has successfully endeavored to improve the level of specialized expertise among criminal justice actors in this area. It was reported that judges, prosecutors and police undergo specific training in handling juvenile matters, and, as of two years ago, defense attorneys began to undergo voluntary training as well. One attorney interviewed stated that she had lingering concerns that the training for defense counsel was not in-depth enough, but she still felt it was better than the previous situation when there was no specialized training for members of the Bar. In instances where defense attorneys are appointed for juveniles who lack the resources to hire their own, she reported that judges choose counsel only from those on Bar Association lists who have undergone specific training, and she felt judges try to appoint those lawyers who are of a higher caliber. Remuneration remains a problem, however, since attorneys are paid at approximately 50% of their normal rates, and these funds are dispersed only on an annual basis.

It was reported that police, especially in more populated regions, have specialized juvenile investigative units, with officers specially trained to interview. Typically, if a juvenile becomes the subject of a criminal investigation, the juvenile may be contacted through his parents or guardians, and less frequently, formally summoned or picked up by the police. It was reported that while detention is used sparingly, except in serious offenses, it is often longer in duration than necessary when it is imposed. Other than the social issues associated with lengthy detention, one attorney stated that it was the lack of educational services available in detention that likely cause the most damage to an accused, since any interruption in education can have lasting negative impact on the juvenile's future, and this is especially true with lower socio-economic classes or already vulnerable populations, like Romani.

Factor 7: Special Considerations for Vulnerable Adult Populations

Detainees who are members of vulnerable adult populations, including but not limited to foreign citizens, persons with a physical or mental disability or illness, women, and sexual minorities, have the right to be treated non-discriminatorily and to benefit from special measures that may be necessary for their protection. Persons seeking refugee status or asylum shall not be penalized solely for entering a country illegally, and may be only detained when necessary to establish identity, verify claims, or protect national security, and subject to judicial and administrative review.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
While there were no alarming reports of disparate treatment of vulnerable populations or minorities in Serbia, there are issues with some minorities not being afforded equal protection and fair treatment at the earliest stages of the criminal justice process.	

Analysis/Background:

Serbia's Constitution protects minorities, guaranteeing special protection in their exercise of full equality and identity. CONST. art. 14. The Constitution also provides for equal opportunities for men and women, *Id.* art 15, and states that foreign nationals shall enjoy all rights guaranteed by the Constitution and under Serbian law, except those only afforded to Serbian citizens. *Id.* art 17. The Law on Enforcement of Penal Sanctions provides that a prisoner shall not be discriminated against on the basis of race, color, sex, language, religion, political or other convictions, ethnic or social origin, financial status, education, or social or other personal status. LAW ON THE ENFORCEMENT OF PENAL SANCTIONS, art. 7. A prisoner with special needs is entitled to accommodation in line with the type and degree of his needs. *Id.* art 66. Lastly, article 317 of the CPC provides criminal penalties for anyone who instigates or exacerbates national, racial or religious hatred or intolerance among peoples and ethnic communities living in Serbia.

There were minimal reports of unique issues of minorities and vulnerable populations relating to detention, but a few comments are worth noting. As mentioned elsewhere in this report, including in Factor 15, many of those deprived of liberty, especially outside of Belgrade, are held in facilities also housing those convicted of crimes. Since women detainees comprise a sizably smaller percentage of the total population of detainees, segregation of women being held at the pre-trial stage is more challenging, and they are often housed

with those women already convicted, with the same level of security and without regard to severity of crime. The only institution for women in Serbia is located in Požarevac, where all women are confined in closed cells. Its population is comprised of mostly women who have been convicted. Article 106 of the CPC provides that female prisoners with children under one year old may keep a child until the child's first birthday, and it was reported that this does happen in practice.

While the most current CIA Factbook data is based on a 2002 census, it was reported that Hungarians still represent the most populous minority in Serbia, followed by Romani. Specifically, Serbs represented 82.9% of the total population in 2002, Hungarian were 3.9%, Romany (Gypsy) were 1.4%, Yugoslavs were 1.1%, Bosniaks were 1.8%, Montenegrin were 0.9%, and other were 8%. CENTRAL INTELLIGENCE AGENCY, FACT BOOK FOR 2013. Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ri.html> Several issues with minority populations were reported, including situations where non-Serbs are occasionally not treated the same as Serbs. One CSO representative in Novi Sad stated that Hungarians are sometimes treated differently. She described a situation where co-accused of different ethnicities from the same crime base and level of culpability were not treated the same in terms of the severity of charges initiated and their subsequent detention. The Hungarian was formally charged with spreading national hatred and was held in detention. The Serb was charged with the less severe crime of disturbing the public peace, and was released within 48 hours. Lastly, it was reported that sometimes postal workers are unwilling to attempt to serve court documents in Romani settlements, since often the perception is that such settlements are dangerous or unclean. One attorney stated that her juvenile client was held in detention for 25 days for failing to respond to a summons, even though he was, in fact, living at the address cited on the return certification, but service was not attempted due to the reluctance of postal delivery staff to actually serve it.

In a 2012 report, The Belgrade Center for Human Rights noted that persons with disabilities were particularly vulnerable in police detention, further stating that the inadequacy of detention facilities and prisons create an increased likelihood that the these individuals' rights will be violated while they are in detention. *Recommendations on How to Improve the Legislative Framework and Practices Regarding the Prevention and Punishment of Ill-Treatment in Serbia*, The Belgrade Centre for Human Rights, 2012 (at pp. 41-42) [hereinafter PREVENTION AND PUNISHMENT OF ILL-TREATMENT IN SERBIA]. While the best solution would be the construction of specially equipped rooms, the report suggested utilizing possible interim measures and implementing a system of quicker processing of these individuals into better equipped detention facilities with access to toilet facilities, light switches, and, in particular, a call system. Finally, it was urged that immediately upon apprehension, police summon a doctor to make an initial



determination as to whether or not the individual is fit to be in detention, and, if so, make specific recommendations regarding those conditions necessary to accommodate the disability. *Id.*

In terms of religious expression, it was reported in Nis that those detainees who are Muslims are now able now to freely practice their religion.

II. Imposition of Detention at the Pretrial Stage

Factor 8: Initial Deprivation of Liberty

The taking into custody of a person suspected of a crime is based upon an arrest warrant issued by a detached and neutral judicial officer, except in extraordinary circumstances where obtaining an arrest warrant is not feasible and there are reasonable grounds to believe the arrestee has committed an offense. Arrests are made for the purpose of bringing the arrestee before a competent legal authority, and due consideration is given to alternatives to arrest.

<i>Conclusion</i>	<i>Correlation: Negative</i>
In practice, most initial decisions to detain are made by investigators or prosecutors, and not a judicial officer, and there is a general overreliance on detention. Also, there is little effort to provide articulation of the specific justification for detention.	

Analysis/Background:

Article 286 of the CPC provides that when grounds exist for suspicion that a criminal offence prosecutable *ex officio* has been committed, the police are authorized to, among other options, seek information from citizens and, if necessary, restrict the movement of individuals in a certain space for up to a maximum of eight hours. The police are required to draft an official record noting the facts and circumstances established during the performance of such actions, including any objects found or seized, which may be of interest for the criminal proceedings. *Id.* Article 289 of the CPC further mandates that when the police collect information from a person from whom there exist grounds for suspicion that he is a perpetrator of a criminal offence, they may summon him only in the capacity of a suspect, and the summons shall state that he is entitled to obtain defense counsel. If during the collection of information the police find that the citizen summoned may be deemed a suspect, they are required to advise him immediately of the right to obtain a defense counsel to attend his questioning and notify the competent public prosecutor without delay. *Id.* Article 293 of the CPC requires that the public prosecutor advise an arrested person brought before him of his rights and to make it possible for him to use a telephone or other electronic message communicator, in his presence, to notify a defense counsel directly or through members of the family or a third person, and if necessary also to assist him to find a defense counsel. The public prosecutor may personally conduct the suspect's questioning, or assign it to the police. If the suspect agrees

to make a statement, the authority conducting the questioning must ensure that the statement is given in the presence of his defense counsel. *Id.* If the arrested person does not secure the presence of a defense counsel within 24 hours, or declares that he does not wish to obtain a defense counsel, the public prosecutor is required to question him without delay. *Id.* In cases where defense counsel is mandatory and the arrested person does not obtain a defense counsel within 24 hours of being advised of this right, or if he declares that he will not obtain a defense counsel, an *ex officio* defense counsel will be appointed for him. *Id.* Immediately after conducting this questioning, the public prosecutor will decide whether to release the arrested person or request that the judge for preliminary proceedings order detention. *Id.* The transcript of this questioning may be used as evidence in criminal proceedings. *Id.*

Article 294 of the CPC requires that the public prosecutor, or upon his authorisation, the police, issue and immediately serve upon the accused a ruling on custody, or not more than two hours after the suspect was told that he will be kept in custody. The ruling must specify the offence of which the suspect is accused, the grounds for suspicion, the date and time of the deprivation of liberty or response to a summons, as well as the time custody commences. *Id.* The suspect and his defense counsel are entitled to appeal against the ruling on custody within six hours of the delivery of the ruling. A decision on the appeal is issued by the judge for the preliminary proceedings within four hours of receiving the appeal. The appeal does not stay the execution of the ruling. *Id.* If a suspect does not retain a defense counsel on his own within four hours, the public prosecutor will secure one for him *ex officio*, according to the order on the list of lawyers submitted by the competent bar association. *Id.*

In its 2012 Human Rights Report, the United States Department of State noted that arrests in Serbia are generally based upon the use of warrants and did not find any abuse of the legal requirement that an order from an investigating judge or judge is required to hold individuals for more than 48 hours. See DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012, p. 5. Available at <http://www.state.gov/documents/organization/204546.pdf> The Department of State did note that judges generally follow the recommendation of a police officer or a prosecutor to hold a suspect for the full 48 hours. *Id.* The report recognized that the Constitution provides that police must inform arrested persons immediately of their rights, and that authorities respected this requirement in practice, including allowing family members to visit detainees. *Id.* While detainees are typically provided access to counsel at government expense, if necessary, the Department of State reported that, at times, police interview suspects outside the presence of counsel in a process known as “informative talks,” which are conducted under the premise that they are not genuine interrogations, though these conversations frequently form the basis for criminal charges against the interviewee. While noting that the law prohibits the use of force, threats, deception, and coercion

by police to obtain evidence, and such evidence is not permissible in court, the report stated that police sometimes used these means to obtain statements. *Id.* It was further observed that while bail is permitted under the law, it is rarely used in most kinds of cases, though bail and home detention is being used with greater frequency in organized-crime, high-corruption, and war-crimes proceedings, especially after the amended Criminal Procedure Code entered into effect for specialized institutions. *Id.*

It was reported by a CSO representative that police often conduct what are called “citizen interviews” wherein an individual may be brought in only for questioning for up to 4 hours. If an individual becomes a suspect, during these initial conversations, an accused may be held for, in actuality, up to 52 hours (48 hours in addition to the initial 4 hours) before being presented to the court.

Several prosecutors interviewed did complain that initial decisions to detain are, most often, in practice, made by the police, and police are not mandated to articulate a justification. One interviewee who had actively been involved in the CPC reform process pointed out that the initial 48 hour hold requires only a basic suspicion that the accused committed a crime. After 48 hours, while typically no additional information is produced or further investigation conducted, the continued detention must be justified under the higher standard of “grounded suspicion,” though an accused is rarely released at this point. A CSO representative noted that bail is never set at this juncture, even if requested by the defense attorney.

One attorney interviewed outlined several options for securing the presence of the accused, and noted that while criminal justice actors are often afraid to implement different procedures, there has been some progress in recent years. One such positive example was a client of his who was 21 when caught in the act of disposing of 6-7 bags of marijuana. Given his young age and lack of priors, he was not held in detention. At the time of the interview, the judge was considering educational measures instead of time in prison. He also cited a case wherein his client was the driver of car in a serious car accident, causing extensive injury to the driver of the other vehicle. Because his client stayed at the scene and was not perceived to be under the influence of any chemicals or alcohol, he was not detained. But the attorney did admit these examples represented exceptionally rare behavior on behalf of criminal justice actors. He noted that for all criminals’ charges the issuance of a summons which lists the date of appearance, the charge and the right to be represented by an attorney, is a rarely used option. He noted that problems with the use of a summons revolve around procedural rules, and a lack of training (especially with judicial support staff) and resources (See Factor 3). In practice, it was reported that there is typically only one attempt to serve a summons, and there is no obligation to try more than once. If an accused receives a summons and fails to appear, however, a judge may or may not decide to issue a warrant.

As discussed elsewhere in this report, many of those interviewed, even many justice actors, admitted to an overuse of detention, especially at the earliest stages of the criminal process. One CSO representative noted that detention is definitely the norm, estimating that over 90% of those accused of a crime spend some time in detention, beginning with the initial decision by the prosecutor. The prosecutor's decision is typically rubber stamped by the judge, who fails to review the justification independently, even when the prosecutor has failed to articulate a specific ground. The same CSO representative stated that, while bail is an option, it is rarely used, except by those with better defense counsel, and is acutely unavailable to those lacking in financial resources.

One judicial interviewee (a pre-trial judge) stated that she tries to use detention sparingly. In estimating her caseload at the time to be approximately 80 criminal cases, most of which are property offenses, she stated she has 3 accused in detention.

While there is more discussion regarding the specific legal grounds or justifications for detention later in this report, the recurring misuse of certain justifications begins at the earliest stages, and several issues are therefore noted herein. The "Paragraph 4" justification for detention (an accused on release may cause a disturbance or distress to the public) is typically used as a "catch all" justification, without further explanation or fact specific argument. One interviewee who had actively been involved in the CPC reform process stated that the "distress to the public" justification for detention is a throwback to Socialist times. It remains a challenge for justice actors to objectively assess a risk of disturbance or distress, given the inherent vagueness of the justification, and especially when media reports are often intended to inflame instead of inform the public. He stated that if an accused is convicted, and the original justification for the detention is that of causing public distress, the ground may continue to be used as justification pending appeal even if no longer appropriate. He also gave the example of an accused, who, with others, in the "road construction mafia" cases, were detained amid much sensational media coverage for four months, pending the investigation. Once the publicity quieted down, the attorney was able to obtain a ruling from the appellate court that the "public distress" no longer existed. However, thereafter, B92 Radio reported the simple fact that the trial had started, and this was enough to justify the prosecutor requesting and receiving continued detention based on this ground. One attorney did note that one improvement under the new CPC is that the detention justification that the accused might re-offend must now fall within a shorter period in which that could happen, which gives the prosecutors and judges much needed direction. Several prosecutors interviewed gave the example of a 67 year old accused who was, at the time charged, a medical doctor. He was accused of accepting a bribe. Originally one

of the grounds justifying his detention was he could reoffend, which was noted as the most common justification. The accused was detained for 6 months during which time he retired, though his detention was continued on this ground and others. After that decision was appealed the new prosecutor requested detention be revoked, since the justification was no longer legally valid.

One interviewee who participated in the CPC reform process noted disparate statistics between the total number of indictments and the number of convictions. He stated that many cases go away after the investigation finishes. One attorney interviewed stated that detention is really the equivalent of a prison sentence since after a substantial period of detention, charges are often dropped, and these longer periods of detention do not typically correspond to the lack of severity of crime. Another attorney who also practices mostly in the special chambers stated that “house arrest” or electronic shackling would be an effective way to ensure the attendance of the accused. He also pointed to the misuse of detention in that often the prosecutors prolong the investigation to nearly the end of the 6 month investigative period, in order to keep an accused in detention longer, even though the investigation could have been finished sooner. He further described a war crimes case with 4 accused wherein all were detained for three years, but then the charges were ultimately dismissed and the accused were compensated by the State.

Factor 9: Detention Prior to Initial Review

Following initial deprivation of liberty, an arrestee is brought promptly before a judicial authority to determine whether detention should continue. Prior to being brought before the judicial authority, an arrestee has the right to be notified of the nature of the charges or accusations against him, as well as of his rights to counsel, against self-incrimination, and to notify family members or, in the case of a foreign national, his consulate, of his arrest.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>Typically in Serbia, an individual placed under arrest is brought before a judicial authority within 48 hours of arrest. During this time period, he may be informed of the nature of the charges against him, of rights to counsel and against self-incrimination, and is also usually permitted to notify family members. There were, however, concerns raised regarding the improper and/or illegal use of initial periods of interrogation for extracting confessions, even before the 48 hour period commences.</p>	

Analysis/Background:

As noted in Factor 1, Article 27 of the Constitution guarantees the right to personal freedom and security. Deprivation of liberty is permitted as provided by law, and anyone so deprived shall be informed promptly in a language they understand of the grounds for arrest or detention, charges brought against them, and their right to inform, without delay, any person of their choice of their arrest or detention. *Id.* Article 61 of the Law on Enforcement of Penal Sanctions also requires that immediately upon admittance to a penal institution, the institution shall enable a detainee to notify or call his family or anyone identified by the accused. LAW ON THE ENFORCEMENT OF PENAL SANCTIONS, art. 61, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 85/2005. Any person deprived of liberty without a decision of the court is to be informed promptly of his right to remain silent, his right to be questioned only in the presence of a defense counsel of his choosing or one provided free of charge if unable to pay. CONST. art. 29. An accused must be brought before a competent court without delay and specifically not later than 48 hours after being deprived of liberty, or shall otherwise be released. CONST. art. 29. Legal assistance is guaranteed in Serbia under conditions provided by law, including free legal assistance. CONST. art. 67. Article 293 of the CPC requires the public prosecutor advise an arrested person brought before him of his rights and to make it possible for him to use a telephone or other electronic message communicator, in his presence, to notify a defense counsel directly or through members of the family or a third person, and if necessary also to assist him to find a defense counsel. The public prosecutor may personally conduct the suspect's questioning, or assign it to the police. If the suspect agrees to make a statement, the authority conducting the questioning will make sure that the statement is given in the presence of his defense counsel. *Id.* If the arrested person does not secure the presence of a defense counsel within 24 hours, or declares that he does not wish to obtain a defense counsel, the public prosecutor is required to question him without delay. *Id.* In cases where defense counsel is mandatory and the arrested person does not obtain a defense counsel within 24 hours of being advised of this right, or if he declares that he will not obtain a defense counsel, an *ex officio* defense counsel will be appointed for him. *Id.* Immediately after conducting this questioning, the public prosecutor will decide whether to release the arrested person or request that the judge for the preliminary proceedings order detention. *Id.* The transcript of this questioning may be used as evidence in criminal proceedings. *Id.* Article 74 of the CPC does mandate that a defendant must have a defense counsel from the moment of his deprivation of liberty, whether actually taken into custody, placed in detention, or prohibited from leaving his abode, until a ruling discontinuing such a measure becomes final, CPC art. 74(3). Article 80 of the Law on Enforcement of Penal Sanctions does provide for visits of foreign prisoners by diplomatic or consular representatives from their country. A prisoner whose interests are not protected by any country may be visited by the representative of competent authorities of the Republic of Serbia and international organizations. *Id.*

It was reported by several attorneys that the use of detention at the earliest stages is a common tool for extracting a confession, especially since the CPC does not mandate that an accused be “promptly” notified of his due process rights within the initial 48 hours, as set forth in Article 29 of the Constitution. One attorney interviewed stated that it is this 2-4 hour period that is often abused by the police, since individuals are not formally in custody, especially in attempts to force confessions. While any statements taken during that period cannot be used as evidence, the attorney stated that he has represented individuals who were told during these initial conversations with the police that if they then confessed during the 48 hour period they would not be held any longer in detention. He also highlighted how police use the entire 48 hours to “work on an accused,” outside of the protection of legal counsel. While prosecutors are typically notified that an individual is in custody, they do not often interfere with police at this initial stage. He stated that even though police do notify defense counsel and the accused of their decision to detain an individual, he cited instances in his practice where after visiting an accused early in the 48 hour period and advising his client not to make any statement, his client was promised a release by the police after his attorney left the detention facility if he made a statement, or a different lawyer was appointed who is more cooperative with the police. Another attorney stated that if an accused confesses, he will typically not be held in detention. CSO representatives stated that police still fail to note the actual time an “interview” becomes an arrest to enable them to hold someone longer.

One attorney acknowledged that the police in the earliest stages are merely collecting evidence, and not actually conducting an investigation, and are, therefore, often unable to articulate a specific justification for holding someone in detention, at least for the initial 48 hours. He also noted that appeals during this 48 hour period are not practical. It was further pointed out that once a decision to detain is made, at the earliest stages, inertia by other justice actors can set in, as it is easier to just go along than undo the status quo.

Many justice actors recognized that prosecutors will now be more involved in the earliest stages of criminal proceedings, especially at the investigative stage, and it is hoped they will be more proactive in shutting down cases which lack merit, or less accused persons will be held in detention pending a fuller investigation. One attorney, lamenting the improper use of justifications to impose detention, gave the example of an abuse of office case against a total of 5 accused. Three were brought before an investigating judge, and detained so as to not be in a position to tip off or influence those yet to be apprehended. He stated that it was a ploy simply to justify detention, since the other accused were not, in fact, in hiding,

Factor 10: Oversight of Initial and Investigative Detention

A judicial authority determines whether detention should continue pending trial. A full record of the circumstances of detention is taken and made available to the arrestee, his counsel, and the competent authorities. A competent authority adequately supervises the detention practices of actors in the criminal justice system.

Conclusion

Correlation: Negative

While the detention of an accused is overseen by a judicial authority, it is rare for detention to be removed once imposed, especially during the initial 6 month investigative period.

Analysis/Background:

As discussed previously, Article 30 of the Constitution specifically states that detainees must be brought before the competent court within 48 hours, at which time detention shall be reconsidered. An individual may be remanded to detention only upon the decision of the court, and only when detention is necessary to conduct criminal proceedings. A written decision of the court containing the reasons for detention shall be delivered to the detainee not later than 12 hours after the pronouncement. Decisions on appeal shall be delivered to the detainee within 48 hours. *Id.* The Constitution further mandates that the court reduce the duration of detention to the shortest period possible, whether before or after the filing of the indictment, while keeping in mind the grounds for detention. CONST. art. 31. Detention ordered by the court of first instance shall not exceed three months during the investigation, whereas the higher court may extend it for another three months. *Id.* If the indictment is not forthcoming by the expiration of this period, the detainee shall be released. *Id.* Most importantly, the detainee shall be released as soon as the grounds for remanding to detention cease to exist. *Id.* The Law on Enforcement of Penal Sanctions also sets forth the requirement that a remand into detention is based on a decision ordering detention, and a written order for admitting the detainee along with the decision be delivered to the penal institution. LAW ON THE ENFORCEMENT OF PENAL SANCTIONS, art. 235. Article 10 Law on Enforcement of Penal Sanctions mandates that appropriate records be kept of all prisoners and detainees, in compliance with rules promulgated by the Minister of Justice.

As noted previously, detention is to be imposed only if an individual may influence witnesses or tamper with evidence, if he is an escape risk, if there is a possibility he will complete the crime or commit a new offense, or if the severity of the crime may cause alarm to the public. CPC art. 211. A prosecutor interviewed

within the War Crimes Chamber further delineated the “escape risk” justification to include situations where someone’s actual identification and/or location are not determinable. One judge indicated she also considers prior convictions, “findability,” or possible substance abuse issues. One attorney noted that it was his fear, especially as prosecutors are to now lead the investigations under the new CPC, that the justification of the possibility of influencing witnesses will be used with more frequency, and prosecutors will deliberately NOT interview potential witnesses until nearly the end of the six month investigatory period, so as to prolong the justification for detention, and in turn, the actual detention.

A prosecutor within the War Crimes Chamber estimated he has 5-7 persons under active investigation who have been detained 1 or 2 or 3 months at the most since the crimes are very old, and there is minimal risk of tampering or flight. It was reported that these situations are indeed unusual, because if an accused is arrested as a crime is committed he is immediately taken to a prosecutor who can and often does impose detention for up to 48 hours before taking the accused before a judge. A preliminary investigation judge typically imposes detention for up to 3 months during the investigation but must reassess every 30 days.

One judicial interviewee, who was also a member of the CPC reform working group, stated that it is often the judicial branch who serves as a check on the constant requests of prosecutors to hold individuals in detention, no matter what the circumstances. The judge also noted that the current shift in procedures to a more adversarial system is almost seismic, since judges often acted in parity with the prosecutors, though now it is intended judges should be a more neutral arbiter. He noted that judges remain fearful due to recent reform and reappointment efforts and this has an impact on their independence. The judge also recognized the influence of media sensationalism on the criminal justice system generally, but including the issue of detention. Members of the public are left with the incorrect impression that if an accused is released from detention he has been acquitted. While most court hearings are open, judicial reviews of orders of detention do not typically occur in open court, especially after the initial appearance at the end of the 48 hour hold. Many courts now have public information officers, but the media remains unskilled at reporting on justice issues, seeming to prefer hyper-sensationalism.

Representatives interviewed from the Ministry of Interior highlighted detention issues faced when investigating organized crime occurring on a regional if not global scale. Sometimes simply identifying the individual in custody, especially if the hold is initiated pursuant to a request from another country, can be challenging, much less gathering all necessary investigative information within 48 hours, or the

next deadline given (often 6 months with organized crime cases). Other issues arise when the prosecution occurs in another country. In recent years, Slovenia was the site of a trial resulting in an acquittal of an alleged drug smuggler wherein that court stated that the procedures under which the evidence was gathered in Serbia were not, in the end, in compliance with Slovenian law.

Some CSO representatives commented that the criminal justice reforms do nothing but shift responsibilities between actors for decision making, but the problem remains that no justice actor is willing to dig deep enough at the very beginning stages of the process to determine if someone truly qualifies to be held in detention, and this is especially true for minorities like Romani. This creates a level of unpredictability for someone who is arrested. The example was given of a gay man accused of a sexual harassment type criminal charge by a Novi Sad man with whom he had consensual sex with while in Belgrade. After the initial complaint was ignored by the Belgrade police, the accuser convinced police in Novi Sad to drive to Belgrade, arrest the gay man and place him in detention in Novi Sad. He was detained for five days until he was finally released with no charges filed, given his connections and the efforts of two determined lawyers. The CSO representatives stated that likely a less well-resourced and connected accused would still be in custody.

One attorney interviewed cited several examples of some of the irregularities of detention practices, as well as a lack of understanding of the justifications supporting its imposition. In one case, he represented an electrician who installed the electrical wiring for a disco. A fire occurred in the disco and six people were killed. Four individuals were subsequently charged, including his client, the lessee and the owner of the building. His client was held for 14 months due to the severity of the allegation, which he had argued to no avail is tantamount to a punishment before a conviction. He fears being held in contempt if he tries to educate judges as to the relevant legal grounds. To make matters worse, the expert testimony revealed that the wiring was not the cause of the fire, since, in actuality, rats had chewed through the wiring. In another case he represented one of several individuals charged with economic crimes. All spent four and one half months in detention, using the justification that the accused would influence witnesses, while the most culpable accused was not detained. He pointed out that typically in economic crimes cases the evidence is heavily dependent on documents more than testimonial witnesses, and therefore there is minimal danger of influencing witnesses. He also stated that he has cases wherein the witnesses are intentionally not interviewed until just short of the six months' time limit, in order to prolong the detention. He stated, in the end, the overuse of detention is intended to give the appearance to the public that the justice system and the government are fighting crime.

Factor 11: Detention during the Adjudicative Process

Pretrial detention is used only when necessary in the interests of justice and after consideration of other options for ensuring the accused’s appearance at trial. Individuals detained during the adjudicative process are tried within a reasonable time or released pending trial. Reasons are given for judicial decisions resulting in or continuing detention.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>While detention is often continued pending trial, the odds of release seem to increase later into and after the expiration of the six month investigative period, and alternatives to detention are utilized. However, indefinite periods of detention may result if any irregularities or weaknesses to the indictment are ordered to be corrected, or if further investigation is needed, since there are no maximum time limits for such corrective procedures once the initial indictment is filed.</p>	

Analysis/Background:

The Constitution provides that an accused has the right to a trial without undue delay. CONST. art. 33. An accused who is to be placed in detention or already in detention may be left at liberty, or released, if he offers a bail that he will not abscond until the conclusion of the criminal proceedings, or go into hiding or leave his abode without the permission of the court. CPC art. 202. The bail is always in the form of an amount of money set by the court on the basis of the level of danger of absconding, the personal and family circumstances of the accused, and the financial standing of the person depositing the guarantee. *Id.* If circumstances exist indicating that an accused could abscond, the court may prohibit the accused from leaving his dwelling without permission and determine the conditions under which he will remain in his dwelling, including a prohibition forbidding the use of the telephone or the Internet, or receiving other persons into the dwelling. CPC art. 208.

Representatives from the Administration for the Enforcement of Penal Sanctions described some of the alternatives to detention being used especially to address overcrowding issues, including the use of monitoring devices as a means to monitor an accused while not in detention. They stated that the European Union donated about 600 electronic monitoring devices that are provided at no cost to the accused. In 2011, there were four cases in which the electronic monitoring was used. This increased to 20 cases in 2012, and at the time of the assessment in 2013, there were 24 cases. It was reported that any alleged violations are investigated by the police.

Some interviewees noted that while there is an overuse of detention, there is an increased use of alternatives, which include house arrest, electronic monitoring, and release on bail. In addition to a mandate to appear in court, other conditions imposed on an accused may include a prohibition not to leave Serbia, temporary confiscation of a passport, or a prohibition to not have contact with co-accused, the victim and/or witnesses. One attorney who practices predominantly outside of Belgrade stated that alternatives to detention would likely be more effective in smaller communities where an accused is more known, and could be more easily dealt with if he fails to appear for court appearances or violates any conditions imposed on him, pending final disposition. The attorney noted he has been able to successfully obtain the release of some of his clients on “house arrest.” He also pointed out that while bail should be available to all, no matter what someone’s financial condition is, it is likely not affordable for the average person. One attorney reported that the Republic Public Prosecutor had instructed all of her chiefs to never agree to the release of an accused from detention, which results in more pressure on the judiciary to maintain detentions already imposed. However, one investigative judge interviewed stated she rarely uses detention or bail, and is comfortable using house arrest with an accused charged with a less severe crime.

Some attorneys interviewed highlighted some of the implementation issues in existence when alternative measures are used, including examples of improper influences around the decisions to consider and impose alternative measures. One accused was allowed to be placed under “house arrest” from the outset of the investigation; however, once media outlets stepped up their reporting on the case, and especially after publicizing that the accused was not in custody, the prosecutor reversed course, alleging the accused was a flight risk, and he was promptly detained. Another case cited was that of a famous female singer allowed to remain at liberty under electronic monitoring, though not legally eligible given the considerations which would typically mandate detention. One attorney described a case three years prior involving a prominent businessman arrested for a less serious offense, but his arrest caused much media attention. The attorney offered a sizable amount of money to post as bail on behalf of his client, but the court was reluctant to accept it because of the media pressure.

Several attorneys practicing predominantly in the special chambers reported that most accused, even those with financial resources, typically have to spend some time in detention; however, they noted an increased, though inconsistent, use of bail specifically in organized crime cases. Typically, the judge sets a dollar amount and the accused, through counsel, posts something of similar value with the court, whether it is cash or property. Other attorneys noted not only the lack of consistent use of bail, but the lack of predictable procedures used when bail is allowed. One attorney stated by way of example that he may offer 10,000 Euros as bail, which is likely to be refused, but neither the

prosecutor nor the judge is willing to indicate what amount may be acceptable. He stated prosecutors typically simply oppose requests for bail, but fail to offer alternatives. He also feels like prosecutors are still reluctant to enter into negotiations with defense attorneys on various matters, including bail, as they remain concerned it gives the appearance of collusion or corruption. A representative from the international community also reiterated the need for more cooperation between the prosecution and defense counsel, especially on identifying possible alternatives to detention. One attorney interviewed described a case where his client, now living in Sweden, was accused of vehicular manslaughter that occurred in Serbia. He offered to tender the amount set by the court for bond by giving the court the deed to the accused's real estate, valued at over the amount set by the court. The judge rejected the deed, asserting it was simpler to tender cash, which caused the attorney to realize the court had no experience procedurally with accepting security other than cash. Therefore, the attorney created the actual proposed order for the judge, who cut and pasted it into his own order to sign, finally holding the deed as security. Another attorney noted there were no official guidelines to assist in the determination of the amount appropriate for bail. He also stated it was, indeed, a problem for those who lack financial resources, but he hopes with the increased use of bail, the amounts set by the court will be more accessible by more accused. One attorney observed that an appropriate guide in an embezzlement case would be to set the bond equal to the amount alleged to have been stolen. Finally, and most concerning, one representative from the international community stated that the lack of predictable procedures to administer bail causes some accused to be, in effect, held illegally, since there is often a significant time lapse between an order releasing an accused on bail, and the finalization of the paperwork.

In its 2012 Human Rights Report, the United States Department of State noted that prolonged pretrial detention remains a problem in Serbia. See DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012, p. 6. Available at <http://www.state.gov/documents/organization/204546.pdf>. While the CPC limits the length of pretrial detention to six months during the preliminary investigation, there is no statutory limit on the use of detention once that phase of the criminal process is over, pending the commencement and completion of the trial. There is also no statutory limit for detention during appellate proceedings. The report stated that much of the overuse of detention is the result of inefficient court procedures. By the end of 2012, approximately 27 percent of the more than 11,000 inmates in prison were in pretrial detention, or had only been sentenced by a first instance court and were awaiting appeal. No instances of cases in which pretrial and trial detention exceeded the maximum sentence for the crime were noted. *Id.*

One attorney described the “black hole” detention problem, which occurs when the six month time limit ends after which an indictment is to be filed. Even though a prosecutor may discover during the six month period that additional investigation should occur, he may go ahead and raise the indictment so he does not have to release the accused. If defense counsel objects to the quality of the indictment, the judge may order additional investigation to be conducted. This causes an accused to be detained indefinitely, since there is no time limit during which the additional investigation must be completed. Nor is there any maximum time limit within which the trial must be commenced or completed. This is especially typical and problematic in complex cases, where it is unlikely that the prosecutor has gathered all the evidence needed in the initial 6 month period. The attorney stated that he, therefore, does not usually object to the quality of the indictment, even though he would have the legal grounds to do so. He also stated that, on occasion, a judge will dismiss an indictment before trial, but, if this happens, it is usually in cases where the accused is not in detention. An attorney who practices mostly in the special chambers affirmed this problem, noting that an accused typically does not want his attorney to object to an indictment once the investigation finishes, since the case will then go back into investigation and prolong detention indefinitely. Even when an accused is in detention, and the detention cases are fast-tracked, the trial proceedings could last up to five years.

A specific example cited was the case of Miroslav Miskovic, the owner of the Delta Holding Company. He was arrested on December 12, 2012, along with nine other suspects for of abuse of office, having allegedly illegally profited from the privatization from the purchase of road construction and maintenance companies in Serbia. He spent over seven months in custody, but in July 2013 was finally released pending trial after posting bail in the amount of 12 million Euros. It has been reported subsequent to the completion of assessment interviews that on October 3, 2013 the Constitutional Court of the Republic of Serbia determined that Miskovic was deprived of the constitutional right to a limited duration of detention guaranteed by Article 31 of Serbia’s Constitution. *Constitutional Appeal, Miroslav Miskovic*, judgment of 8 November 2013, Constitutional Court of Serbia No. 3231/2013, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 98/2013

III. Mechanisms for Challenging Pretrial Detention

Factor 12: Extraordinary Remedies

Legal mechanisms are available for a person who has been deprived of liberty prior to conviction of a crime, including a person who has been remanded into custody, to speedily challenge the lawfulness of his confinement before a judicial authority competent to order his release.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Legal mechanisms do exist under which a detainee may challenge his detention; however, in practice, detention orders are rarely vacated.	

Analysis/Background:

Article 27 of the Constitution provides that any person deprived of liberty has the right to initiate proceedings requesting the court review the lawfulness of his arrest or detention, and mandates that the court order his release if the arrest or detention is against the law. Article 9 of the Law on Enforcement of Penal Sanctions also provides that prisoners are entitled to judicial review of individual acts related to their rights. Articles 482-485 of the CPC set forth the procedures upon which a decision to impose detention may be reviewed. Article 482 provides that an authorised person may submit a request for “protection of legality” against a final decision of the public prosecutor or the court or for a violation of provisions of the procedure preceding its issuance. A request may be submitted by the Republic Public Prosecutor, the defendant or his defense counsel. CPC art. 483. Such a request may be submitted if a law was violated or applied incorrectly to the finding of fact determined in the final decision. CPC art. 485. A defendant may submit a request for the protection of legality in connection with violations of the CPC made in the first-instance proceedings and proceedings before the appellate court, within 30 days from the date of the delivery of the final decision, provided that he has used an ordinary legal remedy against that decision. CPC art. 485. The Supreme Court of Cassation decides on a request for the protection of legality. CPC art. 486.1 After granting such a request the Court of Cassation will issue a judgment:

1. abolishing in full or in part the first-instance decision and a decision issued in ordinary legal remedy proceedings, or only the decision issued in ordinary legal remedy proceedings and send the case for a new decision to the authority conducting proceedings or for trial by a court of first instance or an appellate court, where it may order that new proceedings be held before a completely changed panel;

2. Reversing in full or in part the first-instance decision and the decision issued in ordinary legal remedy proceedings or only the decision issued in ordinary legal remedy proceedings;
3. Limiting its judgment to declaring a violation of law.” CPC art. 492.

The Supreme Court of Cassation may only abolish or reverse a decision in favor of the defendant when the request is submitted by the public prosecutor CPC art 489.3. Otherwise, the Court only determines that a violation of the law exists and makes no ruling as to the finality of the decision. CPC art. 493. As discussed more in depth in Factor 13, many reported frustration with these provisions, since it allows for a decision favorable to the detainee but does not necessarily vacate the detention.

Factor 13: Appeal of a Decision Imposing Pretrial Detention

Detainees have the right to have a decision imposing pretrial detention reviewed by a higher tribunal.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
While legal mechanisms exist providing that a detainee may appeal detention decisions to a higher court, such orders are rarely reversed, even when the justifications for detention used are incorrect or vague.	

Analysis/Background:

As previously noted, the Constitution provides that any person deprived of liberty shall have the right to initiate court proceedings to obtain judicial review of the lawfulness of the arrest or detention, and further mandating that the court order the person’s release if the arrest or detention was against the law. CONST. art. 27. An individual deprived of liberty must be brought before a competent court within 48 hours, and the court shall reconsider the initial decision to detain. CONST. art. 30. While these judicial actions may be appealed, as previously discussed, it is typically logistically impractical if not impossible, and is usually not pursued. A written decision of the court containing an explanation of the reasons for detention shall be delivered to the detainee not later than 12 hours after the pronouncement. If appealed, the court shall decide on such appeal and deliver its decision to the detainee within 48 hours. *Id.* Articles 214-216 of the CPC set forth the specific process for appeals of orders of detention. The panel of three judges from the same court decides on the appeal against the ruling of detention of the judge for preliminary proceedings, while the panel of three judges of the appellate court makes a decision on the appeal against the ruling of the lower court panel.

A high level of frustration was expressed by many justice actors and members of the public regarding the lack of specific, articulated, appropriate legal grounds set forth from the outset of the deprivation of liberty to justify a detention. This often starts with the police, who make the initial decision to detain. Prosecutors typically cite a statutory ground only, without providing case specific facts to support the request. And it was reported that not only do judges typically continue the detention, but it is often then affirmed on appeal without any more facts demanded by the judiciary to substantiate it. One attorney cited a case wherein the nature of the crime was improperly cited as a ground justifying detention. He was representing an individual who was in a car accident, killing a pedestrian. There were no aggravating circumstances alleged, such as alcohol use, but the prosecutor improperly justified his request for detention based on the fact that someone was killed.

One judge interviewed noted that most decisions to detain are appealed and this is almost always true if an accused is not detained, or the detention is ended, since it is reportedly the policy of the prosecution to always appeal a ruling terminating a detention. One of the biggest complaints cited by interviewees related to situations on appeal when a detention is determined by the court of second instance to be illegal, but the ruling of the court often simply abolishes the decision, and the matter is returned to the court of first instance to reconsider their original ruling, and the accused remains in custody. One appellate judge interviewed indicated that sometimes returning the case back to the first instance court is a necessity. The appellate court can discern there are likely one or more grounds present to justify the detention, but those grounds are not adequately articulated, and therefore the matter is returned to the trial court for further examination at that level, or, in other words, the initial decision by the first instance court may be correct but for wrongly articulated reasons, or without adequate reasoning. Several justice actors pointed to the ridiculous nature of the grounds cited, given the actual facts of a specific case. One judge was presented an appeal of a detention for an individual accused of war crimes occurring 20 years prior. The ground proffered to support the detention was potential distress to the community. He stated he has quashed several detention orders that were substantiated on this particular ground, though other legitimate grounds for the detention may have existed and were not cited. Another example given was use of the justification of likelihood that an accused will recommit a crime. The judge interviewed stated that the likelihood of that happening decreases the longer someone is in detention. Several judges interviewed also noted a lack of proactivity by the defense bar, who have become used to being unsuccessful in their attempts to appeal orders of detention.

Judges are sensitive to community reactions when they release an accused from detention, including on appeal, especially in smaller communities. One attorney noted that Serbia has been paying an increasing amount in damages for criminal

cases that proceed to trial but lack the evidence to support a conviction, as provided under Serbian law, and stated that if an accused was at least released from detention pending trial, Serbia may not have to pay so many such claims. *Also see* Factor 16.

Factor 14: Guaranteed Periodic Review of Detention

Decisions imposing pretrial detention are periodically reviewed by a judicial authority.

Conclusion

Correlation: Neutral

Legal mandates do exist in Serbia to periodically review orders for detention. In practice, however, the review process does not seem to result in an in-depth review.

Analysis/Background:

Section 498 of the CPC mandates that the court panel is required to determine monthly if the reasons for detention continue to exist. Every 30 days the judge for preliminary proceedings is required, even without a motion by the parties or defense counsel, to examine whether the reasons for holding an accused in detention still exist, and to issue a ruling either extending or repealing detention. *CPC art. 215.* A panel of the immediately higher court may, acting on a reasoned motion of the public prosecutor, may extend detention by a maximum of another three months. An appeal is allowed against that ruling, but it does not stay execution of the ruling. *Id.* If no indictment is filed by the expiration of the time limits, the defendant will be released. *Id.*

Once the indictment is filed, until the commitment of the defendant to serve a custodial criminal sanction, detention may be ordered, extended or repealed by a ruling of the judicial panel and may be issued *ex officio* or on a motion of the parties and the defense counsel. *CPC art. 216.* The panel is required even without a motion of the parties and the defense counsel to examine whether reasons for detention still exist and to issue a ruling extending or repealing detention, at the expiration of each 30 days until the indictment is confirmed, and at the expiration of each 60 days after the indictment is confirmed and up to the adoption of a first instance judgment. *Id.* The parties and the defense counsel may appeal against the ruling referred and the public prosecutor may also appeal against a ruling denying a motion for ordering detention. An appeal does not stay the execution of the ruling. *Id.*

As discussed in Factor 16, the mandate that a judge is tasked with monitoring detainees, and is required at least once in 15 days to visit detainees, serves as a practical, consistent form of review. It was noted that a new law is expected to be enacted in 2014, setting up the formal position of an “enforcement judge” who would then assume responsibility for receiving complaints from detainees and undertaking visits to the institutions. While it appears that most of those visits focus on conditions of detention, they do provide at least an additional avenue in which the court can revisit the necessity of detention.

IV. Detention Practices

Factor 15: Procedures During Confinement

Different categories of persons deprived of liberty are kept in separate institutions or parts thereof. Solitary confinement is forbidden or its use is extremely limited.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Serbia's overuse of detention at pre-trial stages creates overcrowding, which, in turn, can thwart efforts at segregation, especially in holding facilities at police stations.	

Analysis/Background:

Serbia's Constitution provides that persons deprived of liberty must be treated humanely and with respect, and further prohibits any violence against them. CONST. art. 28. As stated previously, the Administration for the Enforcement of Penal Sanctions [hereinafter PRISON ADMINISTRATION], housed within the Ministry of Justice, is legislatively tasked with organizing, implementing and supervising the enforcement of imprisonment, including in juvenile prison, as well as community work sanctions, suspended sentences with protective supervision, mandatory psychiatric treatment and custody in a medical institution, mandatory drug and alcohol addiction treatment, and rehabilitation in a correctional institution. LAW ON ENFORCEMENT OF PENAL SANCTIONS, art. 12, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 85/2005.

Many of the functions of the Prison Administration, including specific mandates with respect to the treatment of detainees and conditions in which they are confined, are set forth in the Law on Enforcement of Penal Sanctions. Article 8 states that prisoners are entitled to the protection of fundamental rights guaranteed by the Constitution, ratified international agreements, and generally accepted rules of the international law, and those rights may be restricted only to the extent necessary for the purpose of enforcement of a sanction. Article 6 states that sanctions are to be enforced in a manner ensuring respect for the dignity of prisoners. Any treatment subjecting a prisoner to any form of torture, abuse, or degrading or experimental treatment is forbidden and punishable, as is the use of disproportionate force. Lastly, Article 65 provides that everyone must respect the dignity of a prisoner and that no one may endanger his physical and mental health.

Article 239 of the CPC states that a detainee is to be remanded in the penal institution under the same conditions as a prisoner, unless otherwise provided by the CPC. As mentioned previously, Article 235 sets forth the requirement that a remand into detention be based on a decision ordering detention, and a written order for admitting the detainee along with the decision be delivered to the penal institution.

Article 34 of the Law on Enforcement of Penal Sanctions provides that male and female prisoners are to be held separately. It is further mandated that a detainee be placed in a section of the penal institution, organized as a closed-type ward, separate from prisoners. Detainees with previous convictions are separated from other detainees, and co-accused are also to be held separately. *Id.* art 237. A detainee is examined by a doctor directly following admittance to an institution, and medical findings are to be recorded in the detainee's medical file. *Id.* art 238. Article 18 provides that a penal institution shall have a separate room for isolation of sick prisoners and that women's institutions specifically must have special equipment for general treatment and illness, and for pregnant women and those undergoing childbirth. Article 64 states that pregnant women, women after childbirth, and nursing mothers are to be separated from other women. Article 106 provides that female prisoners with children may keep their children until the child turns one. Article 23 addresses general medical services, and states that institutions shall have at least one medical doctor and one medical orderly, and must have at its disposal the services of a psychiatrist. When medical treatment is provided within the institution, the institution shall have a doctor and medical staff of appropriate qualifications and equipped with required hospital premises, medical material, equipment, devices and medication. *Id.* Lastly, a medical officer examining and treating a prisoner is guaranteed full professional independence. *Id.*

Article 140 of the Law on Enforcement of Penal Sanctions addresses the use of isolation. It may be used for a continuous duration of up to three months, and no more than twice during one calendar year on a prisoner who consistently disturbs order, threatens security and represents a serious threat for other inmates. It can be ordered only following an opinion of a doctor. It shall be discontinued when prison services assess that it is no longer necessary. The prisoner has the right to appeal the decision to impose isolation within three days of receiving the decision. The appeal shall not stay enforcement of the decision. *Id.*

In its 2012 Progress Report, the European Commission noted that overcrowding in the prison system was still of concern, as were poor living conditions in detention facilities, unsatisfactory healthcare and the lack of adequate and specific treatment programs. EU PROGRESS REPORT, p.50.

In its annual report, *Country Reports on Human Rights Practices for 2012*, the United States Department of State made the general observation that many prisons and detention centers in Serbia did not meet international standards and were marked by severe overcrowding, generally poor sanitation, lack of proper lighting and ventilation, and weak discipline and poor training of custodial staff. See DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012, p.3. Available at <http://www.state.gov/documents/organization/204546.pdf>. The report states that in 2012, women made up approximately 3 percent, and juveniles 1 percent of the prison population. While there was no evidence of mixing male and female populations, youth and adult populations lacked proper separation at the juvenile reformatory in Valjevo, and there were sporadic reports of mixing youth and adults elsewhere, although this was in violation of Serbian law. *Id.* p 4.

In its 2012 report, *Human Rights in Serbia*, the Belgrade Centre for Human Rights noted that despite an adequate legislative framework, the situation in penal institutions in Serbia remains unsatisfactory and much of it is a connected to the overcrowding problem: the short periods of time inmates are allowed to spend outdoors (often an hour or even less), poor material conditions in the facilities in which convicted and detained persons live, the lack of meaningful activities, and unsatisfactory access to health care. THE BELGRADE CENTRE FOR HUMAN RIGHTS, HUMAN RIGHTS IN SERBIA, 2012. (at p. 130) [hereinafter BCHR 2012 HUMAN RIGHTS REPORT]. Available at http://english.bgcentar.org.rs/images/stories/Datoteke/Human_Rights_in_Serbia_2012.pdf

In 2011, Serbia passed amendments to its Law on Ratification of the Optional Protocol to the Convention against Torture. LAW ON AMENDMENTS TO THE LAW ON RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 7/11, which, coupled with Article 22 of the Law on the Protector of Citizens, provided the Protector access to correctional institutions and other places where persons deprived of liberty are held. LAW ON PROTECTOR OF CITIZENS, art. 22, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA Nos. 79/2005 and 54/2007. Under this mandate, by the end of 2012, the Protector of Citizens had conducted 69 institutional visits, including to 41 police stations and 8 prisons (including also 6 detention units). PROTECTOR OF CITIZENS, THE PROTECTOR OF CITIZENS 2012 ANNUAL REPORT, , June, 2013. (at p. 54) [hereinafter 2012 ANNUAL REPORT OF THE PROTECTOR OF CITIZENS]. The Protector of Citizens noted that facilities used by police for custody, prior to transport to an actual detention institutions, are inadequate. 2012 ANNUAL REPORT OF THE PROTECTOR OF CITIZENS, p. 42. The report stated that in a large number of police stations, there are no separate premises for police custody, and therefore, persons deprived of liberty are often simply kept in the offices, or in prison detention units. The Protector of Citizens warned that the practice of keeping persons for hours, and especially the whole day, in police offices or other inadequate premises not intended for that purpose, should be immediately discontinued. Most police stations have special rooms

for police custody, but they, to a greater or lesser extent, do not meet minimum standards. Accommodations in such premises can be characterized, according to the Protector of Citizens, as degrading treatment, in some cases even as abuse. *Id.* p. 46. In a specific finding, the Protector of Citizens determined that in 24 police stations, premises for police detention did not meet applicable standards, and 9 of those stations should stop using their facilities for such purposes because they are inadequate, and the remaining 15 stations should be adjusted according to applicable standards. *Id.* p. 47.

The Protector of Citizens also found that detention units (especially the Belgrade District Prison) are overcrowded and insufficient in capacity to accommodate the existing number of detainees. *Id.* p. 47. He recommended that detainees who have not been convicted should not be placed in the same space with those already convicted, and instructed that attention be paid to their placement, depending on the type of a crime they are charged with. *Id.* p. 48. And while the same report cited the general failure of judicial reform overall, it noted this failure is especially evident in the area of detention, which is imposed too easily and is unduly long. Moreover, it stated the actual accommodation and other living conditions of detainees are generally not in compliance with applicable standards, creating a situation wherein detention in many cases is a kind of punishment in itself, prior to any conviction. The report further highlighted the fact that women detainees mostly stay in detention in isolation due to their small number which is tantamount to a punishment more typically used on convicted individuals as a disciplinary measure. *Id.* p. 42. The report cited situations in which a person stays in detention for a long time, is never convicted, and eventually released. While these individuals are entitled to seek compensation from the budget of the Republic of Serbia for the time spent in detention, an effective reimbursement system has not been established.

The Protector of Citizens also noted that the inadequate provision of health care in the institutions was the main category of complaints received, in that after admission into a prison, medical examinations were carried out superficially, especially during the initial medical examination when not all parts of the body are examined. There exists no uniform examination protocols, no regular medical examinations of the prisoners conducted at intervals shorter than three months, and physicians do not examine sick prisoners every day. In many prisons, physicians are present less than two hours a day, whereas on weekends and on holidays, physicians do not even visit the institutions. The Protector of Citizens also reported that it was a common occurrence for non-medical staff to administer medicines. It is also a common phenomenon that non-medical staff attend medical examinations when a health care worker does not require them to do so, which violates the privacy of prisoners and the right to confidentiality of their health status, thus reducing the likelihood that a detainee will report any abuse caused by prison or police personnel. *Id.* p. 50.

The report also noted that persons with disabilities are generally not provided with accommodation and assistance that suit their needs. In some instances the premises and sanitary facilities are not adapted, ramps are missing, and doors are too narrow for the passage of wheelchairs. Of particular concern mentioned was that the institutions still accommodate convicted persons with severe mental disorders, although there are no conditions for their treatment. *Id.* pp. 50-51. Lastly, the report noted, in the only institution for women in Serbia, located in Požarevac, all women are confined in closed cells. *Id.* p. 51.

As of Monday, June 24, 2013, representatives of the Prison Administration stated that, out of the total prison census of 10,341, there were a total of 2366 individuals in detention, and that 103 of those detainees were women. It was reported that on the same date, there were a total of 241 juveniles being held in various facilities, 16 of which were detainees. It was further reported that the largest number of detainees being held annually peaked in 2010 at 3328, and those figures have since been trending downward. In 2011 there were 3019 individuals detained, and in 2012 there were 2478, with similar percentages for male and female detainees. Assessors were, however, cautioned regarding the accuracy of the statistics. Several CSO representatives stated that it is hard to verify the statistics published by the Prison Administration, since it is not always possible to obtain the corresponding case documentation from the courts. It was also reported that the statistics in the Belgrade detention facility had, at the time of the assessment, just inexplicably and sizably decreased with no explanation (from 1500 to 1000), while other regions had only slight decreases. One CSO representative stated that while it was hard to get information on what crimes detainees are being held for, it is typically for low level property offenses or less serious narcotics offenses, and almost never for domestic violence. Novi Sad court representatives asked one particular CSO staffer to stop requesting court documents, and he now must request them through formal channels.

Prison Administration representatives stated it had adopted a comprehensive strategy to address overcrowding which has included the construction of several new facilities. With the assistance of the European Union, a new juvenile facility opened in June 2013 in Krusevac, and the government of Norway has provided financial assistance for the renovation of the facility at Valija. The Belgrade facility has expanded its capacity by 180. Representatives stated that one hundred and forty-four new staff positions have been budgeted.

In terms of services, Prison Administration representatives stated that medical (and dental) services are typically provided within the confines of the prison, with only larger facilities having full time medical staff. In smaller facilities medical services are secured on a contract basis. Psychological and social services are available but not in-house and typically depend on a court order. Lastly, detainees are allowed to observe their religious practices while confined, however, no members of the clergy or representatives from religious groups are formally on the staff.

It was reported that detainees are typically held in separate units within the same facilities from those who have been convicted, though one CSO representative stated that detainees are still held in cells with convicts in some locations. There is only one formal detention facility in Serbia, located in Belgrade, where reportedly segregation of detainees is problematic. As mentioned elsewhere in this report, in total, there are 27 prison facilities; one specialized for women, and two for juveniles. Several interviewees stated that there is inconsistent segregation of detainees by severity of crime, though attempts are made to segregate individuals accused of sexual offenses. It was, however, reported that co-accused are definitely segregated from each other. It was further reported that segregation of minors remains a problem in Prokuplje. Juveniles are not only held with adults, but also with convicts of all crimes, including felonies. It was noted by other interviewees that persons with disabilities, especially in smaller regions and facilities are also not treated well and this includes lack of adequate medical care.

Confirming reports by the Protector of Citizens, one CSO representative stated that often the police use their own holding facilities to temporarily house detainees, but these facilities are typically in horrible condition, and do not always segregate juveniles from adults. It was further reported that these holding facilities are sometimes improvised spaces located in closets or cellars, lacking even alarms for individuals to request help. Representatives from the Ministry of Interior acknowledged existing issues with facilities for police custody and effective segregation, given lack of appropriate space. In its response to the report of the European Committee for the Prevention of Torture, Serbia acknowledged that Belgrade police keep individuals detained for up to 48 hours in cells in the city police stations or the city administration buildings, while outside of Belgrade detainees are typically held in facilities overseen by the Prison Administration. RESPONSE OF THE GOVERNMENT OF SERBIA TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, GOVERNMENT OF THE REPUBLIC OF SERBIA, 2012. (at p. 18). Available at <http://www.cpt.coe.int/documents/srb/2012-18-inf-eng.htm>. It was reported that law enforcement personnel take advantage of a vague provision in its Rulebook on Police Powers. Article 28 of the Rulebook mandates that individuals detained for shorter periods of time be held in official police detention premises or those designated by competent judicial authorities; it further provides for individuals to be detained in “other official premises not designated for detention or in a vehicle, but not longer than necessary to transport the detainee or perform other police duties.” RULEBOOK ON POLICE POWERS, art. 28, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 54/06.

Most interviewees agreed both conditions and services available and provided to individuals in institutions were better at the post-conviction stage. This is especially true in the area of medical and social services, including for those with substance abuse problems. One CSO representative stated that if a medical

problem exists at pre-trial stages, even if verified by a medical expert, a judge would have to order a specific medical treatment to address the problem. It was reported that an accused who is in advanced years, and women generally, are not as frequently detained as other accused persons given the challenges in segregating them in facilities and providing services.

Several CSO's noted that all detainees are in closed cells (not semi open or open) without regard to severity of the offense, with most being held for up to 23 hours per day with no windows or ventilation. At the public hearing releasing the NPM report, it was estimated by one CSO representative that Serbia is at least 3000 detainees over capacity. One attorney related an ironic joke which highlights the overcrowding issue: an accused was one of 9 detainees being held in a small very overcrowded cell. The bunk beds barely accommodated 8 accused, with two sleeping on the floor under the lower bunk. The ninth person slept on the floor in the small space between the bunks. When the ninth accused told his attorney that he had been moved to solitary confinement, his attorney noted that at least he would have a bed. His client replied that was not the case, since he was in "solitary confinement" with three other accused.

Factor 16: Mechanisms for Complaints

Mechanisms exist for persons deprived of liberty to seek remedies for mistreatment and other abuses, both within the institution where they are confined and through the judicial system.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
While both internal and judicial mechanisms exist for those deprived of liberty to initiate complaints, the implementation of the mechanisms are an uneven and sometimes ineffective means by which to protect the rights of detainees.	

Analysis/Background:

Serbia's Law on Enforcement of Penal Sanctions sets forth some complaint mechanisms for those deprived of liberty. As previously discussed, prisoners in Serbia are entitled to the protection of the fundamental rights guaranteed by the Constitution, in ratified international agreements, and generally accepted rules of the international and domestic law, and these rights may be restricted only to the extent necessary for the purpose of enforcement of sanction and under defined procedures. LAW ON ENFORCEMENT OF PENAL SANCTIONS, art. 8. A prisoner shall not be discriminated against on grounds of race, color, sex, language, religion, political

or other convictions, ethnic or social origin, financial status, education, social or other personal status. *Id.* art. 7. Article 6 mandates that sanctions are enforced in a manner ensuring respect for the dignity of prisoners, and further forbids any form of torture, abuse, degrading or experimental treatment. *Id.* art. 6. Prisoners are entitled to judicial review, without being charged an administrative fee, for individual acts related to their rights and duties. *Id.* art. 9.

Article 114 of the Law on Enforcement of Penal Sanctions states that every prisoner has the right to file with the prison governor a grievance related to violations of their rights or other irregularities affecting them. The complaint is to be carefully considered and a decision rendered within 15 days. If the prisoner is not satisfied with the decision or does not receive a reply, he has the right to file a written complaint with the Head of Prison Administration who, in turn, is also required to render a decision within 15 days from the date of receiving of the complaint. Article 114 further provides that the content of a complaint is secret. A prisoner has the right to make a complaint to a person who supervises the work of the institution without the institution staff being present. *Id.* Lastly, internal Rulebooks, including the Rulebook for Detention Facilities, set forth specific procedures for the submissions of complaints and grievances regarding violations of the rights of individuals deprived of liberty. RULEBOOK ON HOUSE RULES IN DETENTION FACILITIES, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 35/99.

As previously mentioned, the Protector of Citizens is tasked with ensuring that human rights in Serbia are protected and promoted. LAW ON PROTECTOR OF CITIZENS, art. 1. Article 25 provides specific guidance on who is protected and who may file: “Any physical or legal, local or foreign person who considers that their rights have been violated by an act, action or failure to act of an administrative authority may file a complaint with the Protector of Citizens.” If the individual whose rights have been violated is a juvenile, a parent or legal representative may initiate the complaint. *Id.* art 25. Prior to submitting a complaint, however, a citizen is required to endeavor to protect his rights in appropriate legal proceedings, and the Protector of Citizens is mandated to direct the complainant to instigate relevant legal proceedings when such proceedings are provided. *Id.* And while he is prohibited from commencing an investigation until all legal remedies have been exhausted, exceptionally, the Protector of Citizens may initiate proceedings even before all legal remedies have been exhausted if “the complainant would sustain irreparable damage, or if the complaint is related to violation of good governance principle, particularly incorrect attitude of administrative authorities towards the complainant or other violations of rules of ethical behavior of administrative authorities employees.” *Id.* While the Protector of Citizens is prohibited from proceeding on anonymous complaints, he may act on his own initiative based on his own knowledge or information received from other sources, and exceptionally

on the basis of anonymous complaints, if he perceives that an act, undertaking or inactivity of an administrative authority has caused a violation of human rights and freedoms. *Id.* art 32.

Articles 26-31 of the Law on Protector of Citizens set forth the specific procedure to be followed in initiating a complaint. It may be initiated orally or in writing, without cost, not later than one year from the date the violation occurred or the action undertaken by the administrative authority. *Id.* art 26. The Secretariat of the Protector of Citizens is mandated to offer technical assistance in drafting the complaint, without cost, which may be submitted in a sealed envelope provided by the institution. *Id.* art 27. He shall have authority to freely access correctional institutions and other places where persons deprived of liberty are held, and to speak in privacy with those individuals. *Id.* art 22. The Law on Enforcement of Penal Sanctions provides not only for the Head of Prison Administration to allow for institutional visits by, among others, representatives from CSO's, international and domestic institutions, media and researchers, but may allow those conversations to take place without officers present. LAW ON ENFORCEMENT OF PENAL SANCTIONS, art. 30.

As discussed earlier in this report, the judge for the execution of criminal sanctions or a judge designated by the president of the court is tasked with monitoring detainees, and is required at to visit detainees at least once in 15 days. If deemed necessary, outside of the presence of the employees of the custodial institution, the judge shall inform himself regarding the diet of the detainees, fulfillment of other needs, and their treatment. If any irregularities are detected, the judge is required to notify without delay the Ministry of Justice as well as the Ombudsman. The Ministry is required to inform the judge of corrective measures undertaken within 15 days from the date of receipt of the notification of such irregularities. The judge or his designee may also visit and converse with all detainees at any time, and receive complaints from them. CPC art. 222. It was noted that a new law is expected to be enacted in 2014, establishing the formal position of an "enforcement judge" who would then assume responsibility for receiving complaints from detainees and undertaking visits to the institutions. One judge located outside of Belgrade indicated that he is often assigned by the court president to monitor the detainees. He actually visits the institution every Friday or more frequently if needed, but talks daily to the guards to discern if there are any complaints, hunger strikes, or overcrowding issues. When onsite, he typically either asks if any detainee wants to have a private conversation with him or picks a few detainees randomly to talk to them away from others. Most complaints he receives revolve around the excessive length of court proceedings. He acknowledges problems with segregating juveniles, since very few are held in detention. While other facilities in Serbia have more privileges, he does endeavor to assist detainees in addressing complaints such as the need for more frequent

showers, especially since there is often no air conditioning, more physical activity outside, and access to televisions.

Other interviewees noted that it is advantageous when judges, upon ordering detention, indicate what level of security is necessary for the detainee so that the institution has some guidance from the initial point of placement. When there are acts of violence committed by detainees, staff members from the institution sometimes have to wait for the judge to modify the conditions of confinement in order to move them to a more secure section for more violent offenders.

In its 2012 report analyzing the state of human rights in Serbia, the Belgrade Centre for Human Rights (hereafter BCHR) was critical of the overall complaint process as an ineffective means by which to protect the rights of those deprived of liberty, since neither the procedures set forth in legislation nor internal rulebooks specify how complaints should be addressed, including those received by court presidents, who are not legislatively obligated to review them. It further noted that since the recommendations of the Protector of Citizens are not binding, neither can this mechanism be considered an effective means to investigate and address allegations of violations. BCHR 2012 HUMAN RIGHTS REPORT, p. 128. Representatives from the Prison Administration did indicate that any complaint submitted to the warden of a facility has to be reviewed by them.

CSO representatives confirmed some of the issues raised by BCHR, stating that typically the inspections by judges occur in the company of staffers from the institutions and therefore detainees are very unlikely to complain. If a judge does order an institution to undertake corrective actions of any kind, interviewees indicated there is no legal obligation to respond. One attorney did indicate, however, that when she observed bruising on the body of her detained juvenile client, and complained to the judge with jurisdiction on the matter, the judge immediately ordered the juvenile moved. Generally speaking, it was reported, that most complaints (up to 90%) made by those deprived of liberty related to a lack of medical care, especially in non-emergencies.

In terms of timing, one CSO representative stated that it often took several months before a complainant could navigate the internal complaint processes through the prison administration system and be filed with the Protector of Citizens.

Lastly, Article 35 of the Constitution provides that any person deprived of liberty, unlawfully or without grounds, for a criminal offense, has the right to rehabilitation and compensation. CONST. art. 35. The provision includes both material and non-material damage. *Id.* See also CPC art. 18. It was reported by the MOJ in 2010 53 individuals filed claims and were paid a total of 7.5 million RSD.

Factor 17: Personnel and Staffing Procedures

Prison administrators take great care in hiring well-qualified employees, and also provide specialists in medicine, religion, and other fields to accommodate the needs of detainees.

Conclusion

Correlation: Neutral

Prison Administration officials endeavor to hire qualified, well-trained employees; however this is inconsistent, especially given the general lack of resources and the stress created by the duties and responsibilities of staffers. Medical care is available for those deprived of liberty, but regions outside of Belgrade often lack full time doctors and other medical staff.

Analysis/Background:

Article 12 of the Law on Enforcement of Penal Sanctions mandates that the Prison Administration shall undertake measures aimed at the permanent professional education and advanced training of its staff. Representatives of Prison Administration indicated that in addition to its regular curriculum, prison staff was being trained on relevant standards from the European Convention on Human Rights. In terms of experience, a commander within an institution must have at least a high school education with a police background and must pass a physical and psychological examination, and 6 months of initial training. CSO representatives commented that the newest generations of staffers within facilities are being trained more effectively. CSO representatives also highlighted the stressful nature of positions within detention facilities, especially the long hours, which often total 50-60 hours per week. The pay is considered to be good, given the depressed economy in Serbia, and it was estimated that up to 90% of staff become employed in these institutions because of the compensation. CSO representatives stated that the prison officials needed to institute more stringent oversight of the administration of physical and mental examinations of staff members, both initially and on an ongoing basis. It was reported that officials were told a few years ago to re-administer a mental health exam, since over half of those who were tested would have had to have been terminated after failing this exam.

As previously discussed, representatives of the Prison Administration stated that larger facilities have full time medical and dental staff, but smaller facilities contract out those services. Psychological and social services are usually contracted for outside of the facilities and often require an order from the court. No religious clerics or ministers are on staff; however detainees do have access to religious representatives on occasion, and remain free to observe their

respective religions. The Special Prison Hospital in Belgrade was designed to accommodate around 400 patients, but the number of inmates it treated in 2011 exceeded 700. BCHR 2012 HUMAN RIGHTS REPORT, p. 130. CSO representatives stated that while medical care is available, its quality is hard to assess, especially when it is secured outside of an institution. Limited resources and staffing may not allow for adequate treatment for those individuals with advanced or complicated medical issues in need of longer term care. One attorney outside of Belgrade reported that there are doctors visiting facilities where he is representing an accused detainee only occasionally, since there is no full time doctor on staff. One doctor testifying at the release of the report on the National Prevention Mechanism stated that he had been visiting prison medical facilities for 10 years and there has been little improvement, noting that not all improvements depend on increased resource allocations, such as ensuring that examinations be conducted only outside the presence of staff. He also advocated that medical services should be administered by the Ministry of Health and not the Ministry of Justice (and the Prison Administration).

List of Acronyms

ABA-ROLI:	American Bar Association Rule of Law Initiative
BCHR:	Belgrade Centre for Human Rights
COE:	Council of Europe
CPC:	Criminal Procedure Code
ECHR:	European Court of Human Rights
EU:	European Union
EULEX:	European Union Rule of Law Mission in Kosovo
HJC:	High Judicial Council
ICTY:	International Criminal Tribunal for the Former Yugoslavia
MOJ:	Ministry of Justice and Public Administration
OSCE:	Organization for Security and Cooperation in Europe
PAS:	Prosecutors Association of Serbia
RPP:	Republic Public Prosecutor
SPC:	State Prosecutorial Council
UNODC:	United Nations Office of Drugs and Crime