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Concerns on the State of Rule of Law in Serbia

ODIHR / OSCE Human Dimension Implementation Meeting 2019

Rule of Law Session

Respected delegates, experts and colleagues,

On the behalf of Lawyers' Committee for Human Rights YUCOM we would like to raise several issues concerning the state of rule of law in Serbia.

We have witnessed that Serbia is not complying with the international commitments and treaties (e.g. amendments to the Criminal Code and non-compliance with the ECHR and extradition of Cevdet ayas in Turkey despite the UN CPT interim measure), followed by open statements by the high officials that they shall continue with contrary practices. Human rights and independence of judiciary are becoming the collateral damage of the widespread populism and process of capturing the state, with the use of different tools, including establishment and use of GONGOs. Most of the reform processes concerning RoL have been narrowed and respective minimum guarantees agreed in the EU negotiation process within Chapter 23 are presented as maximum reach for reforms.

As the organization has been dealing with the issues of rule of law and human rights, and as coordinators of the National Convent on EU's Working Group for this respective Chapter (23) we want to note the following:

1) The separation of power, as one of the main guarantees of rule of law, has been seriously endangered which has been reported not only by the civil society organizations from Serbia, but strongly addressed in the reports of international organizations, networks and professional associations (European Commission Report on Serbia 2019, Freedom House, Joint Consultative Council EU-Serbia, CIVICUS, MEDEL, etc).

a. The legislative branch of power is used as confirmator of every proposal / decision of the executive power – therefore we could see the National Assembly had practices as – passing several important laws in one session with no discussion; number of amendments were raised that had nothing to do with the respective laws; there was no initiative to discuss the reports of independent bodies until the recent strong warning from the EC Report; etc

b. On the other hand, there has been a strong pressure on the judicial branch of power. In the process of amending the Constitution the civil society and judicial experts and practitioners were invited to participate in this process marked in hostile environment for them and dismissal of most of their suggestions for improvement of the independence of judiciary and removal of political influence. The version cleared by the Venice Commission (Ministry of Justice draft) still contained vast amount of solutions which could make the judiciary even more affected by possible political influence (the composition of the judicial councils, the position of the deputy prosecutors, the role of Judicial Academy, etc.). Although now the process is finally at the National Assembly

where it should have started from the beginning – the process is paused for after elections.

2) Second issue we would like to stress is the shrinking civic space for those with the critical opinions related to the reforms the State has been imposing and those who have been engaged in human rights protection. The trend of forming the organizations and associations that are supporting all the State proposals, started with the consultations on amending the Constitution, and has continued for almost 2 years. These organizations have been continuously leading the smear campaigns in coordination with government supportive media against judges, prosecutors and civil society representatives who are critical towards Government (Ministry of Justice) reform solutions, while on the other hand they have been given place at the table for all the discussions, working groups on legislation / strategic documents and consultative meetings with the relevant state actors. Their orchestrated campaigning and the passivity of the judicial councils in protecting judges and prosecutors under attack, is becoming a dangerous practice and lowers the already damaged trust in judiciary.

3) Finally, we want to warn on another practice that breaches the right to access to justice and freedom of association which have been highly affected by the campaigning of the Bar Association of Belgrade to dismiss from the Bar those attorneys that are affiliated to human rights organization, and involved in pro bono work for the breaches of human rights, as well as those working in mediation as alternative dispute resolution.

We raise awareness of the member states and the respective OSCE institutions and missions on the aforementioned trends and call upon the Republic of Serbia to act towards removing all the aforementioned practices, re-establish the institutions so they could act in accordance to their mandate, and secure the division of power in order for the rule of law state to reach the level of a democratic country that Serbia is represented to be.

Kind regards,

Lawyers' Committee for Human Rights YUCOM