

Common Material for the Universal Periodic Review Prepared for the 15th Session of the Human Rights Council's Working Group on the UPR

Covering the State of Human Rights Defenders in Serbia in the Reporting Period 2008 - 2012

Joint Submission by:

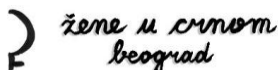


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The Lawyers' Committee For Human Rights (YUCOM) was founded in November 1997 (then called Yugoslav Lawyers Committee for Human Rights) as an expert, voluntary, non-governmental organization whose members are legal experts engaged in promoting and advocating the idea of the rule of law and upholding human rights, raising public awareness, conceiving, designing and leading civic initiatives, rendering legal assistance to victims of human rights violations, as well as developing co-operation with national and international organizations involved in human rights protection and promotion.



WOMEN'S FEMINIST - ANTIMILITARIST PEACE ORGANIZATION

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Women in Black is a feminist antimilitarist organization, founded in 1991, that originally began as an antiwar group and has since emerged as an ardent advocate of gender issues. Women in Black cooperates regularly with similar groups in neighboring countries as well as other countries, especially developing countries.



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Front Line Defenders (www.frontlinedefenders.org) is an international NGO based in Ireland with special consultative status with the Economic and Social Council of the United Nations. Front Line Defenders has particular expertise on the issue of security and protection of human rights defenders and works to promote the implementation of the UN Declaration on Human Rights Defenders adopted by General Assembly resolution 53/144 of 9 December 1998.

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Introduction

1. The following report provides an update on the state of human rights defenders (HRDs) in Serbia. The relationship between state actors and HRDs is briefly analyzed. The report then highlights some cases since 2008 where HRDs have experienced harassment and attacks. The source of the attacks, the attacks' targets and the nature and tools through which these attacks are conducted are outlined. The report ends with a brief conclusion and suggests ways to improve the environment for HRDs

Background

2. Serbia has a vibrant civil society represents a vibrant community. Some of the most prominent human rights organizations emerged from the anti-war movement in the former Yugoslavia, dating back to 1990s and then were systematically targeted by the regime of Slobodan Milosevic. Civil society organizations played a crucial role in the democratic changes in Serbia in 2000. However, problems and stigmatization of HRDs survived despite the democratic changes and took on new shapes in the years to come. After the assassination of Prime Minister Djindjic in 2003 HRDs lost a valuable ally in the fight for the promotion and protection of human rights. The government of Prime Minister Vojislav Kostunica, in power until 2008, invested a lot of energy into harassing HRDs. Many of the most serious threats and attacks against HRDs date from that period, when impunity for the perpetrators of these attacks was full and the judiciary refused to initiate investigations. Many HRDs were also charged and tried during that period.
3. The situation changed since 2008. The new government ceased harassing HRDs. However, very little has been done by state institutions to fight the hostility against HRDs that was created in the previous decades by synchronized attacks and smear campaigns carried out in public speeches and in state controlled media. While instances of hate speech by government members against HRDs are now isolated incidents, they do not provoke any reaction from other members of the government or the judiciary. The Serbian parliament continues to be used as a stage for hate speech against HRDs. For instance, Ivica Dacic, present Minister of Interior and Vice prime minister, during a parliamentary session in February 2008 called for all NGOs that recognized Kosovo to be banned¹.
4. The Ministry for Human and Minority rights that was formed in 2008 and functioned until 2010 did not live up to its potential for supporting HRDs. Even the Minister of Human and

¹ Amnesty International: Serbian HRDs under threat, 2009.

Minority rights at that time Mr. Svetozar Ciplic harassed Marko Karadzic, a human rights defender, and at that time a State Secretary in the Ministry, leading to Mr. Karadzic's resignation in 2010. Media even reported that Mr. Ciplic, during government sessions questioned Karadzic's sexuality.²

5. After a cabinet shuffle in 2010, human and minority rights were merged with the state administration and local self-government portfolio. A new Directorate on Human and Minority rights, functioning within the ministry, has increased their focus on HRDs. The Directorate also co-organised a Conference on HRDs in Belgrade.
6. The role of HRDs in framing policy on Human Rights in Serbia varies. A lack of communication on relevant new legislation between the Parliament and Government on one side, and HR organizations on the other, is notable. Some progress has been made at the Parliamentary level with the introduction of public hearings. However a clear mechanism for inclusion of HRDs in the process of drafting legislation does not exist. Some of the laws drafted within the government are kept secret from the public and HRDs were not consulted. A Law on civic initiatives drafted by the Ministry of State administration and Local self-government in 2011, and the Law on Freedom of Assembly drafted by the Ministry of Interior in 2012 are recent examples.

I. Who are the perpetrators

Stigmatization of HRDs by the media and certain politicians

7. The Parliament and media are used by politicians and government members as platforms for hate speech against HRDs and to increase public hostility against them.
8. The first successful Pride parade was organized in Belgrade in 2010. Organizers enjoyed strong support from some government officials. In 2011 government support was lacking and due to that the Pride parade was banned as a result. Attacks and hostility against LGBT activists was supported by some of the members of the ruling coalition, including the Mayor of Jagodina, Dragan Markovic Palma. The mayor, who is also a member of the Serbian parliament, called on everyone who is against the pride parade to gather together in Jagodina on that day under the slogan: "Come as a family and bring your children with you". The parade was organized specifically as a counter-demonstration in opposition to the Pride parade in an effort to discredit the organizers, supporters, and participants of the Pride parade.
9. Court proceedings initiated by CSOs as a reaction to these statements are having a positive outcome at the moment in the Serbian justice system. The First Basic Court found that Markovic Palma committed a severe form of discrimination on the basis of sexual orientation, according to several articles of the Law against discrimination. Markovic Palma was ordered to

² Mr. Ciplic never publicly denied this

pay for the costs of the trial and informed about the prohibition of spreading hate speech. The case against him was filed by Gay Straight Alliance, a local LGBT organisation. In addition, criminal charges were filed for the same statement but this court proceeding has still not begun.

10. Semiha Kacar, a chairperson of the Committee for Human Rights – Sandzak, from Novi Pazar, is a prominent Human Rights defender in this part of Serbia (Sandzak). She has suffered continuous threats, attacks and acts of defamation by non-state actors, namely from Muslim religious circles. Defamatory texts against her and the Committee for Human Rights - Sandzak, appeared in a local paper, Sandzak Press. Despite a request to the paper to publish her rebuttal, the editor refused, in violation of the legal obligation under the Public Information Law.
11. On October 26th 2011 YUCOM filed a lawsuit on behalf of Semiha Kacar. Since the procedure, which is urgent according to the relevant law, is being prolonged, and each of the six scheduled hearings has been postponed, YUCOM's lawyers are preparing a Constitutional Complaint on behalf of Semiha Kacar. During the 2012 election campaign, some prominent politicians used rhetoric and language reminiscent of the nineties and condemned Human Rights organisations, claiming that they are protecting only Albanians, not Serbs. This statement, by Minister Ivica Dacic, Minister of the Interior and head of the Socialist Party of Serbia, followed the arrest of several Albanians from Kosovo. The arrest was widely seen as a measure of reciprocity for the arrest of Serbs in Kosovo³. In some election campaign gatherings, in a further effort to admonish the activities of HRDs, Mr. Dacic emphasized that none of the Human Rights Defenders is dealing with gender rights and the issue of equal pay for women and men.

Physical Attacks and Intimidation of HRDs

12. Human rights defender Marko Karadzic was physically attacked by four men in Belgrade in 2006. Members of YUCOM's legal assistance team (LAT) monitored the trial of the accused. The first hearing was held on December 24th 2010 and another on March 31st 2011. In November 2011 the Court found the three accused guilty of causing serious bodily harm, based on Article 121 CC RS. Each of them was sentenced to imprisonment. While the attack occurred in 2006, it took four years for the court to initiate the proceedings, despite the fact that the perpetrators were known all along.
13. Unknown person(s) created a Facebook profile "STOP THE MENTAL GENOCIDE – FORBID WOMEN IN BLACK". The creation of this profile is clearly a case of open hate speech. The profile contains ideas and theories that advocate hatred, discrimination and violence against human rights defenders. It contains a number of very serious threats, calls for murder and violence against the NGO Women in Black, and demands the denial of their constitutionally

³ See article in Daily Politika: <http://www.politika.rs/rubrike/Hronika/Dacic-Hapsenje-Albanaca-nisu-reciprocne-mere.lt.html>

guaranteed rights, including the right to peaceful and non-violent assembly and association. On July 24th, 2011 YUCOM's lawyers filed a complaint on behalf of "Women in Black" for the crime of "Racial and other discrimination", (Article 387 CC RS). This article criminalizes discriminatory abuses of human rights defenders. Following the complaint, the Facebook page was taken down, but no further action by the Serbian police was undertaken to find the perpetrators. The police claim that they cannot take any further action, citing the need for a court order from a US court because of where Facebook is based. YUCOM's lawyers do not fully understand the logic of this reasoning and see it as an example of the unwillingness of state authorities to prosecute attacks against HRDs.

II. Targets of the Attacks

Harassment of Women Human Rights Defenders

14. Women human right defenders are seen as particularly vulnerable and are subject to attacks using the gender perspective as an additional trigger for hate and intimidation. On March 8th, 2011 Stasa Zajovic, chair of the Women in Black, received an e-mail with offensive material including pictures and text that present sexual harassment. The e-mail contained pornographic material, threatened the recipients with death, and suggested they engaged in incest and sexual assault of children. YUCOM has filed a criminal lawsuit against unknown person(s) on suspicion of having bullied Staša Zajović from Women in Black, for a crime punishable under paragraph 1 of Article 344 CC RS related specifically to Human Rights Defenders. The prosecutor initially sent the claim to a sector in the police who were not competent to address this kind of claim. A new prosecutor took over the case, re-formulated the claim, changing the charge to inciting national, racial and religious hatred and intolerance. As the facts of the case do not match this charge, this increases the likelihood that the prosecution of the case will fail.

Harassment of LGBT Activists

15. LGBT rights defenders face daily threats, and in public their security is largely endangered. Only a small number of the instances of attacks and harassment are reported and make it to the courts. The Gay Straight Alliance initiated a number of cases for intimidation of and threats against LGBT activists. In June 2012, in Novi Sad, a young HRD was attacked in public transport and stabbed with a knife. The perpetrator stated in the police that the attack was motivated by the fact that the victim was gay.

16. On January 16th, 2011 anti-LGBT symbols and messages appeared overnight on January 16th 2011 in the town of Smederevo. On March 16th 2011 YUCOM filed a complaint to the Commissioner for Protection of Equality, demanding the condemnation of anti-LGBT symbols and messages. The presence of these symbols creates an atmosphere of fear among the LGBT population of Smederevo, and is based on ideologies that promote hatred against minority and marginalized groups. The Commissioner for Equality issued a recommendation to the

authorities of the Municipality of Smederevo that these graffiti should be removed. In relation to the same case YUCOM filed a complaint to the Basic Court in Smederevo, on March 3rd 2011 for the crime of “Racial and other discrimination” under Article 387 (4) of the CCRS.

17. Predrag Azdejković, representative of LGBT NGO GLIC, received an e-mail with serious threats on June 9th, 2011. YUCOM filed a complaint on his behalf for the crime of “Endangering safety”, under Article 138 CC RS.

Independent Journalists

18. Independent journalists have also become a frequent target of harassment and vandalism. Investigations into the murder of journalists that occurred a number of years ago remain pending. Brankica Stankovic, author of the investigative program *Insider* that was broadcasted on TV B92, and revealed cases of corruption, and the close cooperation between the state, war criminals and organized crime, received a number of threats, and in particular death threats in late 2009. Pressure is also strong on journalists from smaller cities, where intimidation is more open and brutal. Some journalists have received 24 h protection from the police, after the threats they received.

19. An editor of a local Paper in Vojvodina Province was sentenced to pay the amount of 250,000 RSD, based on the alleged violation of the Public Information Law. He was accused of publishing incorrect information about a local politician.

20. Through a free access to information request we found out that the information published by the journalist was in fact correct. YUCOM’s lawyer started pro bono litigation before the Basic court in Novi Sad, on May 16th 2011. Due to our complaint, the judgment has been annulled, and a new trial set to start on November 18th 2011.

Attacks against the premises of civil society organisations

21. Unknown person committed numerous crimes against CK 13, a cultural organization from Novi Sad that promotes equality and tolerance, and fights against fascism, xenophobia and right wing extremism. The attackers firstly painted various graffiti containing hate speech. The building hosting CK 13 was also attacked numerous times– unknown persons threw stones and fire cocktails at the windows. The attacks were reported to the police. Despite videos recorded by the security camera (that allowed the attackers to be identified) the police did not pursue the case. In March 2012, YUCOMs lawyers filed a criminal charge for the crimes of ‘Endangering safety’, ‘Racial and other discrimination’ and ‘Damaging others’ property’.

III. Instruments of Attack

Harassment through initiation of court proceedings against HRDs

22. One of the mechanisms used to harass HRDs was starting court proceedings against them. In 2008, Biljana Kovacevic-Vuco, the late president of YUCOM, and YUCOM itself, had seven proceedings initiated against them led by the director of state owned television station. In 2012, there is still one case pending against YUCOM.
23. Borka Pavicevic, a human rights defender – chairperson of the Center for Cultural Decontamination, was accused of offences committed towards a Serbian nationalist organization “Dveri srpske”. The Court of First Instance initially declined the criminal charge on the basis of insufficient evidence. However, the Appellate court ruled against the decision of the first Court, and the hearing is set to start again.
24. Mionka Nikolic, chairperson of the Committee for Human Rights, Majdanpek, was sued for a fictive debt by a man, who was several times accused of family violence (as a chairperson of a Committee for Human Rights Majdanpek, she Monika Nikolic assisted the man’s wife in filing complaints for domestic violence). The procedure before the Municipal Court in Majdanpek was conducted with numerous violations of the Civil Code of the Republic of Serbia. The Court decision was based only on the statements of the plaintiff, without any other evidence. Furthermore, the Court ignored any evidence that was suggested by the respondent.
25. On February 28th, 2011 YUCOM’s submitted a constitutional complaint on behalf of Mionka Nikolic concerning her right to a fair trial.
26. Zuzana Filko, a human rights defender in Vojvodina province, was sued because of a statement about a local politician that she gave in a Serbian daily paper “Press”, edition for Vojvodina. He claimed that the information she gave to the journalists was incorrect and demanded the amount of 500,000 RSD as a compensation. In their response to the complaint, YUCOM’s lawyers stated that there was no violation of the Public Information Law by giving such a statement. This law allows for the possibility of limiting the rights on protection of privacy, with respect to persons who perform some political or public function, in cases where this information is important to the public (citizens).
27. Two human rights defenders – activists of NGO Regional Centre for Minorities, were arrested for trying to stop the forced eviction of a Roma family in Belgrade on October 25th, 2011. They were arrested after they peacefully attempted to prevent police evicting a family with six children from their apartment. Without using any violence, they were politely refusing to move from the door of the apartment. These HR activists were arrested for Obstruction of Justice (Article 336b CC RS), and they were taken to the police station for questioning. YUCOM’s lawyer attended the hearing, insisting that, according to the UN Declaration on Human Rights Defenders, “Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms”. They were released but may face charges, which could lead to a custodial sentence.

Violations of the Right to Freedom of Assembly

28. On March 8th, 2008, without an explanation, the Belgrade police banned the gathering called "One hundred years of battle" organized by the Women in Black, an antimilitarist peace organisation.
29. Women in Black, assisted by YUCOM filed a complaint before The Supreme Court in an Administrative Dispute, but the lawsuit was denied as unfounded. A Constitutional complaint was then filed claiming that the right to a fair trial, right to freedom of assembly and right to an effective remedy were violated. In March 2012 the Constitutional Court considered, complaint admissible and ruled that there had been, a violation of the right to freedom of assembly, right to a fair trial (trial within reasonable time) and right to an effective remedy.
30. Belgrade Pride Parade was effectively banned on 2009. The ban of the Parade in 2009 was not a formal one the organizers were instead asked at the last moment to change the location of the Parade, which they could not do, thus forcing them not to hold the parade. On December 30th, 2011, the Constitutional Court of Serbia accepted a complaint of the 2009 Pride Parade organizers, represented by Belgrade Center for Human Rights, noting that the authorities violated the Constitution.
31. Belgrade Pride Parade was formally banned in 2011. After the ban, Civil Rights Defenders organised a legal team and together with Belgrade Centre for Human Rights, submitted a complaint to the Constitutional Court of Serbia.
32. On October 5th, 2011, members of human rights organizations gathered in Novi Beograd, in order to prevent the forced eviction of several families, living in the barracks in this Belgrade municipality. On this occasion, an activist from the NGO Women in Black was arrested, because of her peaceful protest against this unlawful eviction. She was charged with the crime "Preventing an Official in Discharge of Duty" (Article 322 CC RS) and taken to the police station. After receiving the information about the arrest, a YUCOM lawyer went to the station, claiming that no force or threats were used. She was released, as the prosecutors did not find that she was using force or threats.

Violations of the Right to Privacy

33. Addresses of some of the HRDs are publicly exposed on extremist websites. The authorities have taken any action against these website despite request by the HRDs concerned.

Violations of Freedom of Expression

34. Websites of a number of NGOs, including Gay Straight Alliance, YUCOM and others were hacked during 2011. We still have no information on the investigation.

Conclusions

35. HRDs have the Right to be protected. On the side of the legal framework, the government has improved mechanisms for protection of HRDs. Some of the new provisions of the Serbian Criminal code adopted in 2009, more precisely an article defining racial and other discrimination allows the public prosecutor to initiate cases where the security of HRDs is threatened. However, not a single case has been initiated by the prosecutor's office under the above mentioned article. This is illustrative of the inadequate response from the police and the prosecutor's office in relation to violations against HRDs. The situation has not changes despite a number of open letters from civil society organizations urging investigation of cases of attacks and intimidation of HRDs.
36. A survey conducted by the Belgrade Centre for Human Rights in co-operation with the B92 media organisation indicate that the public does not fully understand the role and work of HRDs.⁴ In answering the question whether HRDs are well enough protected, and whether they are subject to attacks due to their activism, some respondents recognized that they are. For example, one respondent recognized that they operate under daily pressure and threats, and that the state does not view them as an important factor. Others went further indicating that anyone who does not share majority opinions (i.e. those who are atheists or pacifists) generally face intimidation from the majority. Other respondents recognized that HRDs face threats and intimidation, but seemed to tacitly approve of this, claiming that the HRDs are too "aggressive" in their mission, and that they support "anti-Serbian" views that damage "our moral fiber". These two sets of responses confirm two trends: that HRDs are on the one hand perceived as threatened, but also that the vilification campaigns against HRDs that were conducted throughout the 90s and during Kostunica's premiership, and that continue on a lower scale today, have had an effect.
37. To improve the environment in which they operate HRDs deserve both institutional protection from the state, but also visible public support from the influential political actors. Only then will HRDs be able to function most effectively and only then will false perceptions about the allegedly negative role of HRDs be broken.
38. Although the Human Rights situation in Serbia has improved since 2008, there are still significant shortcomings, and HRDs face numerous challenges, as the various attacks outlined in this report demonstrate. The situation for HRDs would be improved by more explicit political support for their initiatives and efforts. A more professional and efficient court system, that would on the one hand dismiss frivolous lawsuits against HRDs, and on the other hand more quickly process criminal cases against those who attack HRDs, would ease the pressure under which HRDs work.

⁴ Based on the last question in the questionnaire, see http://www.b92.net/info/un/odgovori.php?nav_id=613972

39. YUCOM, Women in Black and Front Line Defenders call upon the UN to urge Serbia to prioritize the protection of human rights defenders and to implement the following recommendations:

- (a) Establish, institutionalize and regularize interaction and consultation processes with civil society, with a clear framework of processes and participants. The consultation process should extend to discussing and drafting new legislation and programs relevant to civil society; preparation and follow-up of reports submitted to regional and international human rights organizations. Convene regular meetings and provide updates on the implementation of existing binding recommendations. An Early Warning system is crucial in order to spot early signs of deterioration of the HRD position in Serbia.
- (b) Adopt a national plan or strategy with specific measures for the protection of human rights defenders and their activities. The strategy should be prepared and as necessary, reviewed, with the involvement of representatives of civil society at all levels. Adequate resources should be allocated to the implementation of the strategy. Establish a focal point for human rights defenders within the government structure.
- (c) Provide specific training in human rights, gender issues and on the UN Declaration on Human Rights Defenders for judges, police and other law enforcement officials.
- (d) Form a network of independent and specialized lawyers who would be able to provide legal aid to human rights defenders, and who would be able to resist external pressures to resign. Include Human Rights organisations as providers of free legal aid to HRDs and in cases of other HR violations.
- (e) Complaints and allegations about threats and other human rights violations committed against human rights defenders should be investigated promptly, thoroughly, effectively and transparently, in order to create a safe and enabling environment for human rights defenders. Appropriate disciplinary, criminal or civilian proceedings should be initiated against the perpetrators in order to ensure that impunity for such acts is eliminated.
- (f) Hate crime provisions should be introduced into the Serbian legal system, while prosecutors should be encourage to use existing provisions in the Serbian Criminal Code that provide protection to HRDs.
- (g) Ensure that the right to hold peaceful public demonstrations is available to all individuals without undue restrictions.
- (h) Representatives of State institutions and the media should refrain from stigmatizing human rights defenders. The status and role of human rights defenders and the legitimacy of their activities should be acknowledged in statements of high-level government representatives and other leading politicians. The role of human rights defenders in achieving a flourishing, pluralistic and democratic society should be publicly acknowledged and reaffirmed.
- (i) The NHRI should prioritize the situation and protection of HRDs on their agenda as one of its core activities and set up a focal point for Human Rights Defenders.

- (j) Conduct regular civic awareness and human rights education programs in society to foster tolerance and respect for human rights and to ensure the respect and dignity of the individual. Special attention should be given to formal education, primary school, secondary and faculties.
- (k) Increase the awareness in the media of the role and activities of human rights defenders and encourage them to provide more balanced and objective information about human rights defenders.