

## **Review of some legal-technical criteria from Road Map which Serbia has met –guidelines (applicable) for fulfilling of criteria for achieving EU free visa regime for Ukraine**<sup>1</sup>

### **Block 1: Security of documents**

The National Assembly of the Republic of Serbia adopted the Law on Identification Cards<sup>2</sup> in 2006. The implementation of the law that included the issuance of new electronic cards started in April, 2008.

“By introducing new biometric identification cards, a dynamic document was created which enables certain data contained in the document to be changed because the prescribed identification card form contains area for contact microcontroller (chip) and area for machine readable zone for the needs of automated data reading from the identification card. At the same time, it contains security elements owing to which the possibility to counterfeit the identification card as document is drastically minimized. The mechanisms for control of identification card issuance were also implemented, which are contained in the form of program protection of the application for issuance of identification card. In this way the operating process for issuance of this document is fully automated.”<sup>3</sup>

In regards to travel documents, the National Assembly of the Republic of Serbia adopted the Law on Travel Documents<sup>4</sup>, which entered into force in October, 2007. For the first time in Serbian history, the Law has introduced a biometric travel document for the purpose of protection and security of travel documents. The Law encompasses standards imposed by the EU regulations and standards of the International Civil Aviation Organisation (ICAO), which stipulate that by 2010 all countries must introduce travel documents with integrated photograph and mechanically readable zone.

The creation of biometric passports for applications submitted in the territory of the Republic of Serbia started in July, 2008. Originally, the creation of biometric passports for the applications submitted out of the territory of Serbia, at diplomatic-consular offices throughout the world, should have started in October 2008, when technical conditions for data transferring were met. In this way, the collected data will flow into the Ministry of Foreign Affairs, from where it will, via protected connection, reach the Personalisation Centre in the Ministry of the Interior for production.<sup>5</sup>This procedure was however initiated at the end of 2008, and only at 4 out of 66 diplomatic-consular offices of RS.

The implementation of the Law on ID Cards and the Law on Travel Documents has produced initial confusion in police offices responsible for receiving requests for issuance of new ID cards and passports. Due to large crowds, the offices extended their working hours and started scheduling appointments for submitting documents for new ID cards and passports. The need for improving capacities of the entire system for issuing biometric ID cards and passports has been even more highlighted in the middle of 2008 when relevant organs stopped issuing old, the so-called blue passports. Up to that date, Serbian citizens could choose between old and new, biometric ones. The original expiry date of old passports, stipulated by the Law on Travel

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<sup>1</sup> Annex 1- VISA LIBERALIZATION WITH SERBIA- Roadmap

<sup>2</sup> Official Gazette of RS No. 62/06

<sup>3</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008, pages 8 and 9

<sup>4</sup> Official Gazette of RS No. 90/07

<sup>5</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 9

Documents, was December 31, 2008 and it was already prolonged three times- firstly, until December 31 2009, then until December 31 2010, and with last changes until the end 2011. Old ID cards cease to be valid five years after the enforcement of the Law on ID Cards, in July 2011.

During last year as well before, Group 484 suggested to relevant organs that the foreseen deadline for the issuance of new passports is too short, since the experiences of other EU countries prove that between 5 and 7 years are necessary for the process to be completed. The number of equipped diplomatic-consular offices also points to the insufficient time for changing passports.

It is a know fact that only the citizens with biometric passports can visit some of the Schengen countries without visas. There still remain a large number of Serbian citizens who don't have biometric passports<sup>6</sup>. On the plus side, however, from this year the Ministry of the Interior (MoI) began production of the improved second generation of biometric passports, containing chips that hold fingerprint information, in accordance with the ICAO and EU standards<sup>7</sup>

In regards to administrative measures for ensuring integrity and security of personalisation process and distribution of travel documents, "personalisation of travel documents is centralised and falls under the competence of the Information Technology Administration of the Ministry of the Interior. It is a part of the system which includes acceptance of applications for document issuance, data processing and personalisation. When citizens submit an application for the issuance of new passport, the processed data, through telecommunication and information system of the MoI, reaches the data preparation system. Via protected connection, the prepared encrypted data is transmitted to personalisation, what implies laser engraving of alphanumeric data and inscription of data on the chip. After that, visual and electronic control of passports produced is conducted. Information on produced passports is returned via the same tunnel into MoI. Through a courier service of authorised MoI officers, personalised passports are forwarded to the point of issuance. The Ministry of Foreign Affairs of the Republic of Serbia is not perform personalisation of travel documents, but only data acquisition for personalisation purposes in the premises of the Ministry for diplomatic and official passports and in diplomatic consular missions of the Republic of Serbia abroad for ordinary passports. Delivery of personalised diplomatic and official travel documents from the Ministry of the Interior to the Ministry of Foreign Affairs is made through official couriers, with all necessary security measures. Delivery of personalised travel documents to diplomatic consular missions of the Republic of Serbia abroad will be made through DHL<sup>8</sup>.

In regards to ensuring a high level of security of breeder documents and identification cards, the Ministry of Interior applies the procedure in compliance with the European and ICAO standards. By passing the Law on Identification Card<sup>9</sup> and the Rulebook on Identification Card<sup>10</sup>, the recommendations of the Council of Europe for implementation of the project for integrated

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<sup>6</sup> According to recent the MoI data, a total of two million seven hundred thousand biometric passports have been issued. Population according to the Census, 2002-7498001 Statistical Office of the Republic of Serbia  
<http://webrzs.stat.gov.rs/axd/en/osn.php?kljuc=1>

<sup>7</sup> Source: Zorica Djokic Milosavljević, Ministry of Interior, Head of the Department for travel documents and Readmission, interview October 2010

<sup>8</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008, pages 14-15

<sup>9</sup> Official Gazette of RS, 62/06

<sup>10</sup> Official Gazette of RS, 11/07

automated system for identity documents personalisation are incorporated, and in this way the need to follow the world's technology trends in the field has been satisfied.<sup>11</sup>

Security of documents necessary for obtaining biometric passports (registers - citizenship and birth certificates) has been most poorly assessed in the expert report of EC. This is particularly related to registers from the territory of AP KiM<sup>12</sup>.

Serbian Assembly in year 2009 adopted the Law on Registry Books<sup>13</sup>, prepared by the Ministry of State Administration and Local Self-government. Due to the Law, the national register which are established, enabling citizens to obtain their certificates faster, regardless of the place registry books are kept. Furthermore, the certificate do not have expiry dates. The issuance of certificates "without expiry date" started from January 2010. They are now on new forms, prepared by the Institute for Manufacturing Banknotes and Coins. All the data are protected from fraud, guaranteed by the Constitution, and the collected data can be used only for the intended purpose. The forms used so far have not had adequate protection. The law foresees that all the organs responsible for keeping registry books are obliged to provide electronic data evidence within the five-year period, which will enable the creation of the national register of citizens.

## **Block 2**

### **Integrated border management – including readmission**

In the 1990s, during the armed conflicts that followed the disintegration of former Yugoslavia, 4 million people left their homes. Several hundreds of thousands of them received temporary protection in the countries of Western Europe due to discrimination and wars in their country of origin. After the democratic changes in October 2000, thousands of Serbian citizens continued to seek asylum in Western Europe. Since almost all applications for asylum have been rejected and temporary protection withdrawn, those people are now returning on grounds of obligations undertaken by our government by signing the readmission agreement.<sup>14</sup>

Apart from several modest attempts, until the beginning of 2009 there were not systematic efforts made to identify and monitor the problems of returnees in both western countries and the countries of origin.

The Conclusion of the Government adopted in December 2008, foresees the plan of priority activities of competent organs for the period up to April 2009, for the purpose of fulfilling conditions for placing Serbia on the white Schengen list. The creation of the Strategy for Reintegration of Returnees under Readmission Agreements<sup>15</sup> and the relating Action Plan for the period 2009-2010<sup>16</sup> was one of the activities.

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<sup>11</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 22

<sup>12</sup> As prerequisite for visa liberalization, Serbian Government has adopted the Regulation which established the separate passport issuing procedure for the Serbian citizens who reside in Kosovo and Metohija. They are obliged to submit breeder documents directly to Ministry of Interior Directorate which has been established by this Regulation. Residence of Kosovo and Metohija are not entitled to travel without visas to EU countries. This regulation does not apply on Serbian citizens from Kosovo and Metohija who have IDP status.

<sup>13</sup> RS Official Gazette 20/09

<sup>14</sup> Serbian nationals still seek asylum in the EU countries and other developed countries of the world. By the number of asylum claims, 15,200, Serbia was on the sixth place in the world in 2008.<sup>14</sup> The statistics certainly influenced somewhat reserved position of certain EU countries related to placing Serbia on the white Schengen list.

<sup>15</sup> RS Official Gazette 15/09

The Ministry of Labour and Social Policy was responsible for the creation of the Strategy and Action Plan. The Strategy and Action Plan were adopted. In this way, foundations were laid for thorough changes in the position of the state related to this issue.

With the purpose to propose measures and activities for the realisation of reception, accommodation and integration of people returned to Serbia according to redmission agreements the government formed the interministerial body – Council for Integration of Returnees. Having in mind that the government bodies formed at high level are not operational, the Team for the Strategy Implementation has been formed as an expert and coordination body.

The Team comprises of members of all relevant and responsible ministries and other organs and organisations<sup>17</sup> The Team cooperates with other organs, institutions and public services, both national and international. It monitors the problems of returnees, exchanges information, and proposes necessary solutions and measures. The Team can be positively assessed primarily due to its efficiency and the fact that the continuity of monitoring of all changes in this field is provided by monthly meetings of the Team members, and their regular reporting.<sup>18</sup>

The Action Plan provides detailed elaboration of the objectives defined by the Strategy and identifies institutions responsible for the implementation of all activities, deadlines, and funds for their implementation.

According to the Action plan the Commissariat for Refugees had and still has an important jurisdiction. The Commissariat is responsible for coordination and organisation of reception and cooperation with reception communities in Serbia, operational implementation of planned activities on the field, working on successful reintegration of returnees, working on the prevention of human trafficking and the promotion of positive discrimination principles.

The Intervention Reception Centre for Returnees is also under the competence of the Commissariat. The lack of coordination and information exchange between western countries and Serbia was and still is a main obstacle in the registration of returnees and understanding their needs in order to offer adequate assistance. At the same time, as an additional consequence of poor cooperation is that very returnees have been uninformed. Certain information, important for

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<sup>16</sup>RS Official Gazette 22/09

<sup>17</sup> Representatives of the Ministry of Labour and Social Policy, Ministry of Interior, Ministry of Foreign Affairs, ministry of Human and Minority Rights, Ministry of Health, Ministry of Education, Ministry of State Administration and Local Self-government, Ministry of Environment and Spatial Planning, Ministry for Diaspora, EU Integration Office, Commissariat for Refugees.

<sup>18</sup> Source : Rade Dubajić, coordinator of the Team for returnees reintegration, interview, June 19 2009

the realisation of their rights was available to them only at the moment they returned to the territory of the Republic of Serbia. Very often returnees lack the information on the importance of certain documents. They leave destination countries without diplomas on gained education, birth certificates, proofs of the years of service, etc, and such a situation deprives them from certain rights in the territory of the Republic of Serbia. So, creation and production of handbook with basic information and its distribution through diplomatic-consular offices can primarily inform people waiting for return under readmission agreements. As an additional measure, this handbook could be distributed through international NGO networks.

The readmission agreements that Serbia has signed, apart from the return of citizens, also include the return of third country citizens and stateless persons who have transited Serbia on their way to western countries. Prevention related to reception of these individuals can be provided by efficient control of external borders, as well as by clearly defined visa policy of the state.

Regards, the IBM system, for the purpose of harmonization of Serbian legal framework with the EU standards related to the field of integrated border management, after the Integrated Border Management Strategy<sup>19</sup> and the Action Plan had been adopted, enactment of other relevant regulations was initiated. The Strategy expresses the readiness for the implementation of European standards in this field and sets foundations for passing sectoral strategies of borders services (police, custom, sanitary and phytopathological inspection), as well as functional strategies that define the areas of common interest (joint trainings, telecommunication and information systems, infrastructure at border crossing, etc). The improvement in this field was also made by the adoption of the Law on Border Protection<sup>20</sup>, enforced on April 1, 2009 and completely harmonised with the European standards.

Having in mind that the essence of integrated border management is the establishment of the most optimum proportion between the flow of people and goods and security challenges, and that the optimum results can be achieved only with the coordinated work of all services on the border, the Agreement that formalise this cooperation was signed in February 2009. The Agreement on Cooperation in the Field of Integrated Border Management<sup>21</sup> was signed by ministers of the following ministries – Ministry of Agriculture, Forestry and Water Management, Ministry of Interior and Ministry of Infrastructure, and thus one of the main conditions for further implementation of the Strategy was fulfilled.

The purpose of this Agreement is to harmonise and coordinate all the services on the borders, for faster flow of people and goods and with maximum respect of the security principles. Direct exchange of obtained information is also important, which leads to joint actions and seizure of goods, prevention of human trafficking, and arms and drug smuggling. Besides, it cuts expenses of the state through the reduction of number of state employees from all services present on the borders, use of equipment that need not to be purchased for each service but is jointly used by all the services.

The organisational and personnel structure of the Border Police Directorate is defined in the document on the job classification of the Ministry of Interior. The document gives a

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<sup>19</sup> RS Official Gazette 11/06

<sup>20</sup> RS Official Gazette 97/08

<sup>21</sup> See [www.minpolj.gov.rs](http://www.minpolj.gov.rs)

comprehensive description of all tasks and responsibilities of the Border Police. The Border Police belongs to the Border Police Directorate, which with its annual plans defines achievements, objectives and activities, priority actions, ways of their realisation and the activities of the Border Police. The defined methods of work are good.<sup>22</sup>

The Border Police comprises of regular police officers from the Serbian MoI. The education of members of the Police is the same for all. However, the tasks and activities of the Border Police members require special types of trainings. One of recommendations for Serbia from EC Mission was to enhancement of the cooperation between the Border Police and the Customs, i.e. work in pairs, which would establish a more efficient system of detection of illegal migratory movements and trade.<sup>23</sup>

It was very important to provide the modern instruments on the border crossings-for detection of suspicious travel documents during the first verification at all border crossings, as well as more sophisticated equipment that will be used for the second verification of travel documents.

According to the report of EC mission, as regards technical equipment, the early warning system has been praised, but its further improvement and upgrading have been suggested. At the same time, detailed suggestions have been given as to what kind of equipment is necessary for the improvement of efficiency of the border police and the IBM system, even with the alternative, cheaper but equally effective technical solutions. "The introduction of cameras on all border crossings would facilitate court proceedings related to giving bribe to customs officers".<sup>24</sup>

The EU standards on the cooperation in this field, with regards to bilateral and multilateral agreements, impose their practical and pragmatic nature as the main criteria, for the purpose of more efficient fight against illegal migration and cross-border crime. The development of the system should be based on plans related not only to the level of central authorities of one country but also to the regional level. With that aim, Serbia has signed the agreement on strategic cooperation of the Republic of Serbia and the European Police Office (EUROPOL)<sup>25</sup>, as well as the Working Agreement for the Establishment of Operational Cooperation with FRONTEX, and Memorandums of Understanding with international organisations such as DCAF, IOM, MARRI and OSCE. The Declaration signed with UNDOC is also important, relating the cooperation in the field of fight against drugs and organised crime.

In terms of asylum policy, Serbia was obligated to adopt and implement legislation in the field of asylum in compliance with international standards and legal framework and standards of the EU. This was done in order to ensure relevant infrastructure and empower responsible bodies, particularly in the field of asylum procedures and accepting asylum expenses.

With a view to harmonising legal regulations with the regulations of the European Union, the Law on Asylum<sup>26</sup> was adopted in 2007 and entered into force on April 1, 2008. The Law on Asylum is harmonised with the UN Convention on Status of Refugees from 1951, the Protocol on the Status of Refugees from 1967, the Universal Declaration of Human Rights from 1948, the European Convention on Protection of the Human Rights and Fundamental Freedoms from

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<sup>22</sup> Expert Report relating to block 2- IBM, March 2009, page 8

<sup>23</sup> Expert Report relating to block 2- IBM, March 2009, page 8

<sup>24</sup> Expert Report relating to block 2- IBM, March 2009, page 9

<sup>25</sup> RS Official Gazette 38-09

<sup>26</sup> Official Gazette of RS 109/07

1950, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment from 1984 and the UN Convention on the Rights of the Child from 1989.

Group 484 has fully supported the adoption of this law, which has set benchmarks for the further development of the asylum policy of the Republic of Serbia, where the first instance, the Asylum Office, as the competent organisational unit of the Ministry of the Interior, takes decisions on the submitted requests for asylum and on the type of protection granted.

It is possible to lodge a complaint against the decisions taken by the Office to the Asylum Commission, which is established under the Law as an independent body of the Government, second instance body in the procedure of establishing the right to asylum. In this way the principle of two-instance system is observed (and by that fact, objectivity in decision making), as one of the fundamental postulates of our legal system.

The asylum procedure provides for court protection of the asylum seeker in the form of possibility to initiate administrative dispute before the Supreme Court of Serbia, in which way the principle of court control over operation of the public administration organs is also realised. The Asylum Commission was based on the Asylum Law, as a body that examines asylum claims in the second instance. The Asylum Commission comprising of 9 members, all the members are experienced experts from different fields and they are appointed for the period of 4 years. According to the Asylum Law, the Republic of Serbia will, within its abilities, ensure conditions for the inclusion of refugees in the social, cultural and economic life, as well as their naturalisation. However, the Law does not define an institution that will be dealing with the integration of refugees that have gained the status according to the Asylum Law, also in the budget of the Republic of Serbia, for several years, there is no funds for integration of persons who have gained the status of refugees or are under subsidiary protection.

In accordance with the Law on Asylum and undertaken obligations related to the Commissariat for Refugees, appropriate measures for establishment of the Asylum Centre have been taken.

Within the Centre, asylum seekers are provided with accommodation, food, clothes and shoes, and in case they are not accommodated in the Centre, they are entitled to financial aid through a competent social care centre.

Despite all the above, it is really important to provide specialised courses for the all actors involved in asylum system in the country. In Serbia a lot of trainings were implemented in cooperation with UNHCR, CARDS, AENEAS and through various other projects.

In terms of migration control, establishing of a relevant mechanism for monitoring migration flows was one of the biggest challenges for the Serbian Government. For the first time in the Republic of Serbia, a comprehensive migration flows monitoring policy had to be established, and a Serbian migration profile defined.

Migration Management Strategy was adopted on July 23, 2009<sup>27</sup>. Recommendations and measures provided for in the Strategy:

- Contents of the Serbian migration profile shall be defined in accordance with the European integration requirements, taking into account specific characteristics of the Republic of Serbia.
- The Serbian migration profile shall be updated on regular basis

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<sup>27</sup> RS Official Gazette 59/09

- Statistics shall be harmonised with EU standard requirements
- Normative and technical conditions shall be established for data exchange among relevant institutions
- Gather information, statistics and reports on migration in RS.
- Designate an institution responsible for data gathering
- Follow migration movement trends

The Strategy also lays the foundations for an institutional framework for migration policy development. It is defined in line with competences and duties that ministries and state institutions have in the area of migration within the Law on Ministries, other laws and appropriate normative acts and Strategies.<sup>28</sup>

In February 2009, the Government established a Coordination Body for Migration Monitoring and Management<sup>29</sup> composed of ministers who are, within their purview, in charge of certain migration aspects. The Commissariat for Refugees is in charge of vocational, operational and administrative-technical tasks for the Coordination Body. The Coordination Body submits to the Government a written progress report every 90 days.

As regards the migration profile for the Republic of Serbia, it has not been created yet. The profile would have to encompass relevant data for both the field of immigration and emigration connected to the Republic of Serbia, updated statistics in these fields, established migration policies, in respect to both forced migration as well as legal (economic) migration, and clearly identified problems in the field of implementation of the aforementioned policies.

Within the project "Western Balkans towards White Schengen List" Group 484 has been researching whether the Serbian EU accession represents an immigration threat to EU Member States. For that purpose, it has carried out a research on migration potential on representative sample in Serbia, but also in Romania, an EU Member State, and made a comparative analysis in order to have a better insight in scope, structure, but also in migration potential determinants.<sup>30</sup> Very important Law in this field is the Law on Foreigners<sup>31</sup>. Provisions of this Law which are of special importance refer to the establishment of central database which will encompass data recorded in special records (total of 21 records - 16 of the Ministry of Internal Affairs and 5 of the Ministry of Foreign Affairs). The central database can be used by authorised police officers in the Ministry of Interior, authorised civil servants of the Ministry in charge of foreign affairs and diplomatic-consular offices of the Republic of Serbia, for the purpose of performing their duties in accordance with competences provided for in this Law. Being authorised by the Minister in charge of internal affairs, the data from the central database can be used by other state institutions, when necessary, for the purpose of performing duties in their purview.

With regard to movement and stay of foreigners in the Republic of Serbia, the Law on Foreigners also introduced types of visas in line with the Schengen standards. The Law defines requirements for entrance and stay of foreigners in the country, possibility of registering their residence through Internet, the existing types of visas that have been abolished and the new ones introduced (A – airport transit visa, B – transit visa, C – short stay visa and D – long stay visa). As regards visa types, it must be noted that, unlike before, D visa – for temporary stay - can also

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<sup>28</sup> Migration Management Strategy, July 2009, p.4

<sup>29</sup> RS Official Gazette 37/09

<sup>30</sup> [http://www.grupa484.org.rs/index.php?option=com\\_deeppockets&task=catShow&id=23&Itemid=147](http://www.grupa484.org.rs/index.php?option=com_deeppockets&task=catShow&id=23&Itemid=147)

<sup>31</sup> RS Official Gazette 97/08



be obtained at diplomatic-consular offices of the Republic of Serbia. Tourist pass has been repealed, and border permit, which is issued under strictly regulated conditions and through the procedure stipulated by the Law, has been introduced. Temporary stay, which was previously regulated by by-laws, has been introduced. The law stipulates exceptionally high penalties for either aliens who violate provisions of the law or for citizens, physical and legal entities who do not report the stay of an alien.

Work on the establishment of the Visa Information System has not been finalised yet. A visa system of a county is a part of state security and its ability to manage borders in a coordinated manner. Establishment of such a system will provide support for the work of diplomatic-consular offices, as well as to the tasks regarding documentation checks on border posts which are the responsibility of the Ministry of Interior. Main holders of the project implementation are the Ministry of Interior and the Ministry of Foreign Affairs. The solutions envisaged by the project are based on Schengen Catalogue best practices and in accordance with the EU Consular Instructions<sup>32</sup>.

### **BLOCK 3: Public order and security**

#### **Preventing and fighting organised crime, terrorism and corruption**

The importance of the fight against corruption and organised crime was confirmed by the Serbian Government. The Government especially emphasising the need for the adoption of the strategic document in the fight against organised crime, but also the need for intensive regional cooperation in this field.<sup>33</sup>

As a condition for a successful fight against organised crime it was necessary to adopt the Strategy for Fighting Organised Crime. The Strategy, whose adoption was the responsibility of the Ministry of Interior, was adopted in March, 2009.<sup>34</sup> The Strategy has tight conceptual and functional connections with certain strategies in RS, which refer to various fields, such as: fight against corruption, money laundry and financing of terrorism, integrated border management, trade in illegal drugs and combating illegal migration. The Strategy for Fighting Organised Crime is based on three basic principles – implementation and development of preventive, repressive action and illegally gained property seizure.

As it had identified the level of inter-dependence of these fields, the Government established a Commission for operation harmonisation and further improvement of cooperation in the field of justice and internal affairs on the issues of general interest, especially in the fight against corruption, organised crime, terrorism, drugs, human trafficking, property seizure, money laundry and other relevant issues<sup>35</sup>. The Commission is composed of representatives of the Ministry of Justice, Crime Investigation Department within the Ministry of Interior, Public Prosecutor's Office, Security-Information Agency, and the Ministry of Finance (Anti-Money Laundering Administration, Customs Administration, and Tax Administration).

The Commission was established for the purpose of providing opinions, expert explanations, and proposing measures for operation harmonisation and further improvement of cooperation and

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<sup>32</sup> Migration Management Strategy in the Republic of Serbia, July 23 2009, p. 16

<sup>33</sup> National plan for Integration into the EU, working version, Government of the Republic of Serbia, may 2008, page.584

<sup>34</sup> RS Official Gazette 23/09

information exchange in the field of justice and internal affairs. It was established for a four-year period, and vocational and administrative-technical tasks of the Commission have been designated to the Ministry of Justice. The Commission is obliged to submit its Progress Reports to the Government every 90 days.<sup>36</sup>

Based on the legislation in force, the institutions in charge of fight against organised crime are: the Ministry of Interior, Security-Information Agency, Military-Security Agency as a public administration body of the Ministry of Defence, the Ministry of Justice and the Ministry of Finance (Anti-Money Laundering Administration, Customs Administration, and Tax Administration). Specialised state institutions for fight against organised crime have been also established. (Special Anti-Organised Crime Department - Special Prosecutor's Office, The Administration for Fighting Organised Crime (SBPOK), within the Ministry of Interior (within SBPOK there are organisational parts that deal with fight against organised crime in the field of drugs, general, financial and high-tech crime) Special Department in the Belgrade District Court, Special detention unit in the District Prison in Belgrade etc.).

Trafficking in persons is a multi-layer, complex and a dynamic social phenomenon which demands a comprehensive (legal and social) approach to the problem, i.e. the implementation of efficient measures in respect to prevention, fighting, sanctioning of offenders and protection of victims, with an obligatory cooperation of victims.<sup>37</sup> It is estimated that there are about three million victims worldwide annually and that a turnover from human trafficking mounts to 10 billion Euros annually, which classifies human trafficking as one of the most profitable illegal activities.

Unlike other countries where only sexual exploitation is predominant, in Serbia there are many forms of human trafficking. Labour exploitation, persons forced to conduct crimes, child trafficking for begging purposes, forced labour and housework, use of persons for pornographic purposes, are all recognised in Serbia, and the latest one is child trafficking for the purpose of conducting crimes.<sup>38</sup>

Human trafficking, as a criminal offence, is defined by the Article 388 of the Criminal Code of the Republic of Serbia. This provision relies on the definition set by the First Protocol to the UN Convention against Transnational Organised Crime, adopted in 2000 and ratified by the FRY Assembly in June 2001.

The Government of the Republic of Serbia, with the support of the OSCE Mission in Serbia enacted the Strategy for the Fight against Human Trafficking<sup>39</sup> in 2006, comprising a set of measures and activities that should be undertaken in order to tackle this problem. With the creation of the Strategy, strategic goals have been set, which should be realised through various activities of state institutions, nongovernmental and international organisations.<sup>40</sup>

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<sup>36</sup> Slobodan Bošković, advisor at the Ministry of Justice, interview. May 28 2009

<sup>37</sup> Taken from the Strategy for Fighting Organised Crime in the Republic of Serbia, p. 1

<sup>38</sup> See "Serbia has almost all the forms of human trafficking, RTV Studio B, [www.studio-b.co.yu](http://www.studio-b.co.yu) , August 8 2008

<sup>39</sup> Strategy was published in the Official Gazette of RS, No. 111/2006 of December 12, 2006

<sup>40</sup> More about the Strategy, see in the analysis of Article 9 of the Protocol

The efforts to prevent human trafficking were resumed during 2008. The Government appointed a new national coordinator for fighting human trafficking, established a Council for Fighting Human Trafficking<sup>41</sup> at the ministerial level<sup>42</sup>. At one moment it was clear that there can be no successful fight against human trafficking in Serbia without cooperation with nongovernmental organizations. This cooperation has been conducted in the Republic Team for Combating Human Trafficking. The Council and a Team for fighting human trafficking, worked together on drawing up an Action Plan for suppression of human trafficking, which the Government adopted. The Action Plan<sup>43</sup> is a positive example of successful both interdepartmental cooperation between state institutions and their cooperation with nongovernmental sector and international organizations.

The Action Plan covers the period from 2009 to 2011 and all relevant fields are included, such as national identification mechanism improvement, assistance in protection of victims, education and training, legal framework improvement in accordance with international obligations, statistic monitoring improvement, raise of awareness, reduction of risk factors to minimum, prevention of secondary victimisation of victims, as well as international cooperation.

It should be noted that the Serbian Government has made efforts to protect victims, but did not improve identification procedure. While the state, assisted by international organisations, resumed training of police officers on the subject of victim identification and treatment, there are still no systematic procedures and standards for identification, instruction and treatment of victims of human trafficking, and the cases are being dealt with in an *ad hoc* manner.

A large number of NGOs, and a significant part of governmental sector representatives participated, and they still participate, in preventive activities of fight against human trafficking. Representatives of governmental institutions gladly reply to and take part in projects of this kind (both as participants or lecturers).

For successful fight against this specific form of violence, the state should be categorically and systematically involved in the eradication of poverty. We also have to be aware that human trafficking would not be so widely spread without corruption. Out of these reasons, the main causes of human trafficking, above all poverty, unequal position of women, and violence against them, corruption and organised crime are priorities in terms of suppressing human trafficking.

As regards fight against corruption, the basis of this system is certainly the national Strategy of the Government of RS, as well as an Action Plan for its implementation. For the purposes of efficient implementation of the Strategy, the Serbian Government formed a Commission for the Strategy Implementation and for the implementation of recommendations of the Group of States against Corruption (GRECO). In 2008, many laws that directly or indirectly refer to fight against corruption were adopted.<sup>44</sup> Adoption of these laws can be also seen in the context of adopting GRECO recommendations which Serbia has been trying to fulfil since 2006.

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<sup>41</sup> The role of the Council is to define a national policy for combating human trafficking. The Council reviews the reports of relevant international bodies, creates opinions and proposes measures and implementation of recommendations for combating human trafficking made by international bodies. The Council also prescribes and adopts strategic and general objectives in combating human trafficking.

<sup>42</sup> Minister of Interior; Minister of Justice; Minister of Labour, Employment and Social Policy; Minister of Health; Minister of Education and Sport; Minister of Finance.

<sup>43</sup> RS Official Gazette 35/09

<sup>44</sup> The Law on Responsibility of Legal Entities for Crimes<sup>44</sup>, the Law on Illegally Gained Property Forfeiture, the Law on the Agency for Fight against Corruption<sup>44</sup>, the Law Amending of the Law on Financing Political Parties<sup>44</sup>, The Public Procurement Law<sup>44</sup>, the Law Amending the Law on Criminal Proceedings<sup>44</sup>, the Law on Protection of Personal Data<sup>44</sup> and a set of judicial laws ( the Law on the Organisation of Courts, The Law on Public Prosecutor's Office, the Law on Judges, the Law on High Judicial Council, The Law on State Council of Prosecutors, the Law on the Seats and areas of Courts and Public Prosecutors, the Law amending the Law on Offences).

Of special importance in this field is the Law on Agency for Fighting Corruption. This Law foresees the establishment, legal status, competences, organisation and manner of work of the Agency for Fighting Corruption, rules in respect of prevention of conflict of interests in performing public functions and reporting of the property of a person having a public function, procedure and decision making in the case of infringement of this Law, introduction of integration plans, as well as other issues of importance for the work of the Agency. The Agency is a separate and independent state institution, and it is responsible to the National Parliament for carrying out tasks in its purview.

The corruption issue in Serbia is still an immense problem, which results in a bad ranking, according to an index of corruption perception.<sup>45</sup> An inevitable segment in analysing corruption in Serbia, and finding solutions for its reduction, is the manner in which political parties in Serbia are financed.

Experts warn that fight against corruption in Serbia has been slowed down due to, above all, lack of political will, negligence of effective laws, but also the imperfections of certain legal solutions.

### **Fight against Financial Crime, Terrorism, and International Collaboration Regarding Criminal Affairs**

Regarding the area of money laundering and financing terrorism, the framework for improving the systems and formulating recommendations for overcoming problems is undoubtedly adopted Strategy for Fighting Money Laundering and Financing Terrorism.

Recommendations given in the Strategy refer to enhancement of legal framework, both institutional and operational, as well as recommendations for improvements necessary to be implemented in the field of professional training, with five-year period planned for their application.

As stated in the Strategy, money laundering and financing terrorism are global problems with reciprocal effect on economic, political, security and social structures of a country. According to this, wide range of regulations effective in the Republic of Serbia is applied.<sup>46</sup> It may be stated that fight against money laundering directly relates to other forms of fight against crime, and that all regulations mentioned earlier may, to smaller or greater extent, be applied in this area too.

The Law upon which the success of fighting these forms of criminal operations is largely dependent is the Law on Prevention of Money Laundering and Financing Terrorism. The stated Law includes provisions prescribing necessary activities and measures aimed at revealing and prevention of money laundering and financing terrorism, defines authorities responsible for undertaking those activities and measures, as well as authorities of the Directorate for Money Laundering Prevention.<sup>47</sup>

Institutional framework in this area, apart from the Directorate, includes many state authorities such as the Ministry of Finance, Tax Administration, Customs Directorate, Ministry of Justice, Ministry of Interior, Security – Information Agency, Ministry of Defence, Public Prosecutor's

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<sup>45</sup> According to the latest research, out of 180 countries of the world, Serbia was on 85<sup>th</sup> position last year, with corruption index of 3.4 in the scale up to 10. Albania, Montenegro, India, and several more countries had the same corruption index. Source: The Voice of Serbia, Slobodan Homen, State Secretary of the Ministry of Justice, August 12 2009

<sup>46</sup> Strategy for Fighting Financial Crime and Financing Terrorism, p. 2

<sup>47</sup> The Directorate for Money Laundering Prevention is a financial and intelligence agency established as management body within the Ministry in charge of financial activities. The Directorate collects, processes, analyses and forwards information, data and documents gathered in accordance with Law, to authorised bodies (police, justice and inspection bodies), and performs other duties related to prevention and revealing money laundering and financing terrorism in accordance with Law.

Office, courts. Training and development of abilities and professional skills of the existing human resources in all the above mentioned relevant bodies was an essential condition for setting up an efficient state mechanism in fighting money laundering and financing terrorism.

Expert Mission Report suggested that special attention should be paid to training in investigations, criminal prosecution and proceedings in the financial crime area, improvement of technical equipment, collection of data, whose absence was obvious, as well as adequate data exchange between state bodies. „The best solution for efficient data exchange may be creation of a shared database of all relevant bodies, which would serve as a basic tool in both prevention and repressive implementation of effective laws”.<sup>48</sup>

#### **BLOCK 4: Foreign Relations and Fundamental Rights**

In this Block maybe the most applicable is experience of Serbia related to adoption and implementation of legislation in the field of discrimination.

Regarding discrimination, until 2009 there was no separate Law in Serbia to regulate in general terms the field of discrimination, and this issue was criminally sanctioned and prohibited by diverse legal documents. After intensive debates in public caused by the Law on Prohibition of Discrimination, which was at one moment withdrawn from the adoption procedure, it was eventually passed in March 2009<sup>49</sup>. The Ministry of Labour and Social Policy was in charge of formulating, while the Ministry of Human and Minority Rights was responsible for implementing the Law. The Law, for the first time, sanctions in a comprehensive way all cases of discrimination and protects especially vulnerable and endangered groups.

The Law regulates overall prohibition of discrimination, discrimination forms and cases, as well as practices for protection from discrimination. Important novelty refers to the fact that the Law also establishes the Trustee for Protection of Equality (hereinafter: Trustee), as independent state authority, autonomous in execution of assigned duties. Having analysed the responsibilities commissioned to the Trustee, the fact that the Trustee may, apart from the possibility of informing the public about cases of discrimination, act before court (filing suits on account of violation of rights related to this Law, in his name, with the approval and on behalf of a discriminated person, if a court procedure upon the same case has not already been initiated or legally closed; submitting charge sheets on account of violation of rights stipulated by the Law) must be marked positively.

Although the significance of passing such a Law was recognised, a single Law on prevention of family violence, which would include efficient family and crime-related legal provisions, as well as rules on activities of police in cases of family violence, has not been produced.

In February 2009, Serbia also endorsed National Strategy for Improving the Position of Women and Strengthening Gender Equality<sup>50</sup>, which sets out the activities planned for the 2009-2015 period. This document defines complete and harmonised state policy aimed at eliminating discrimination of women, improving their position and integrating the principle of gender equality in all areas in which system institutions operate, as one of the elements of modernisation and democratisation of society. It incorporates the fields dealing in participation of women in creating policies and decision making in economy, education, health, as well as issues of

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<sup>48</sup> Individual expert reports of the EC relating to bloc 3 - Fighting financial crime, terrorism and international cooperation in criminal affairs, February 2009 , p. 13

<sup>49</sup> RS Official Gazette 22/09

<sup>50</sup> Official Gazette RS 15/09

violence over women, and other matters related to mass media and public opinion.<sup>51</sup> Institutional framework for implementing the Strategy consists of the Ministry of Labour and Social Policy, Ministry of Human and Minority Rights, Ministry of Culture, Ministry of Telecommunications and Information Society, provincial authorities, authorities of local self-government, and professional and other associations. Speaking of state bodies which, by means of their activities, should contribute to the improvement of gender equality, the Directorate for Gender Equality<sup>52</sup> and the Council for Gender Equality<sup>53</sup> should undoubtedly be mentioned.

Despite the closure of legal framework in this segment, discrimination is still present to a large extent, especially against women, national minorities, and LGTB community (lesbians, gay, transsexuals and bisexuals), as government still does not offer sufficient protection.

### **The role of the civil society**

As it is already mentioned, during the process of fulfilling criteria, these and all others from Road Map, the Government of the Republic of Serbia provided the European Commission with detailed Reports on Progress in this process. It is unclear why the governmental reports were not available to general public and why the Government of the Republic of Serbia had greater need to inform the European Commission rather than public about the undertaken reforms, taking into account that the public is very interested in the visa liberalisation process and that it is the party mostly concerned in the process.

From the very beginning of the process civil society in the Ukraine must insist that the information about every step during the process need to be available. In Serbia we didn't have always a good situation. Most information used by Group 484 for creating reports was collected by interviewing state authorities, representatives of Embassies, by desk research, analysis of EC reports obtained by personal efforts of employees. The Government has the largest responsibility to regularly inform the public during the process of adoption and implementation of the reform measures, and to develop clear criteria for the successfulness of the implemented measures.

In the process of visa liberalization the role of the civil society is extremely important, since it corrects, instigates and monitors the work of state administration, like in most of areas. Without the civil society, which must have unlimited and unrestricted access to all public data on the work of state organs, there could not be well enough implemented reforms and real changes in the society.

Also, civil society can be seen as a partner in this process. In Serbia the Team for Combating Human Trafficking is undoubtedly a good example for that kind of "partnership". Also, we have good example in readmission area.<sup>54</sup>

Within the Republic Team, there are four working groups in following areas:

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<sup>51</sup> National Strategy for improving the position of women and strengthen gender equality, page 1

<sup>52</sup> Directorate for Gender Equality – this is an executive governmental mechanism established in July 2007, operating within the Ministry of Labour and Social Policy. The tasks of this body imply analysing the existing state of gender equality, proposing solutions, creating and implementing National Strategy for Improving the Position of Women, cooperating with other state bodies, cooperating with other countries, integrating principles of gender equality in all areas and institutions, and implementing UN recommendations

<sup>53</sup> Council for Gender Equality – is a government interdepartmental and advisory body whose members are recruited from academic circles and civil organisations. It was founded in 2004. Its tasks include proposing measures for improvement of gender equality based on their analyses, initiating encouragement of women for participation in public and political life, formulating suggestions and directing them to the Serbian government

<sup>54</sup> Noted in Block 2- part about readmission agreement

- Prevention and education (coordinated by nongovernmental organization ASTRA),
- Assistance to victims by creating assistance mechanisms (coordinated by the Ministry of Labour, Employment and Social Policy),
- Suppression of trafficking in children (coordinated by nongovernmental organisation Beosupport),
- Implementation of the Law (coordinated by the Ministry of Justice).

When it comes to the field of combating human trafficking, it is important to note that NGOs have taken upon themselves a number of activities, especially those with regard to suppressing human trafficking, and enhancing reintegration and resocialisation of victims. It could be said that these activities fall under the obligations of the state bodies.

It is necessary to point out that civil society can contribute when it comes to lobbying. Group 484 had been advocated in the country for the importance of lobbying in the visa liberalization process within in the EU Member States and in Brussels. Having in mind the whole procedure in the process of visa liberalization, it is extremely important for authorized bodies of Ukraine to pay special attention in the following period to visit member states playing key roles in bringing a decision and advocating in favour of their positive attitude. The key role in this process it would be taken by the EU Council, i.e. Ministers of Interior of EU member states. It is a fact that civil society has a great knowledge and experience when it comes to lobbying. State authorities can learn and can have great support from the experts from civil society.

Without doubt it is of special importance to make efforts to inform the public about the rights and obligations imposed by the Schengen system or in other words, about the conditions of movement under the visa-free regime. Civil society may do that through the campaigns. Of course, the state authorities also need to work on that. It is useful to draw attention that in Serbia the most campaigns during the process of fulfilling criteria were about the importance of visa liberalization, benefits of inclusion into the white Schengen list, especially for the young people, and that a minimum attention was dedicated to the obligations imposed by Schengen system. In a way, this kind of a campaign could be seen as a preventive measure for the situation when EU decides to include Ukraine in the White Schengen list. In Serbia, the lack of knowledge has contributed in certain extent to the increase in the number of Serbian citizens seeking asylum in the EU<sup>55</sup> after the obtaining of free visa regime. Most cases involve persons requesting asylum without proper grounds (so called false asylum seekers), and who are then soon returned to Serbia, in accordance with the readmission agreements. This kind of misuse of asylum right usually stem from economic reasons of individuals, which can, by no means stand as grounds for approving asylum. It is mainly a responsibility of the government to carefully manage the situation in generation of conditions for citizens not to abuse with freedom. As a part of solution, the government should strategically think of reforms aimed at improving life conditions, especially in least developed areas as a means to discourage immigration in the Schengen area. But civil sector can also help, though informing of citizens<sup>56</sup>.

It is possible to find many ways for using the capacity of civil society. Often the civil society takes the initiative even before authorities realize that there is a need for realization of certain activities. When it comes to the activities of the Group 484, it turned out that the research paper

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<sup>55</sup> According to data presented by Ivica Dačić, minister of Interior, 7,500 Serbian citizens requested asylum in Sweden, Belgium and Germany since the beginning of 2010; [http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=10&dd=21&nav\\_id=466763](http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=10&dd=21&nav_id=466763)

<sup>56</sup> It is very important to explain ordinary people as well as state stakeholders, that visa liberalization is very responsible process which does not guarantee permanent status on white Schengen list. In 2005, Ecuador lost its status because of the irregular migration movements towards EU countries.

“Migration potential of Serbia“<sup>57</sup> was seen from the authorities as very useful. Within the project White Schengen List Group 484 investigated into whether the accession of Serbia to the EU might act as immigration tret to the EU states. With this objective in mind, we conducted a survey of migration potencial at the representative sample in Serbia in orded to gain insight the volume, structure and the determinants of migation potencial. Civil society in Ukraine should be thinking about conducting similar research.

As regards civil societyin this process we must not neglect the role of media. Logical question is why media are important? Firstly, they can improve the transparency of the process- it has to be evident what is going on. Secondly, they can provide the learning „space“- the easiest way to present some good examples and to assist in finding adequate solution to obstacles in the process of fulfilling the criteria. It is the fact, that the media don’t understand the importance of the process, they don’t know much about it and this kind of news does not sales newspapers. Non governmental organizations can help them to understand and to improve its reporting through various types of trainings and educations<sup>58</sup>.

## **Conclusion**

The issue of visa liberalisation regime gains additional significance from the viewpoint of individuals, who are having benefit from immediate positive effects at the end of the process. Inclusion of Serbia in white Schengen list is the initial concrete effect of European integrations for the citizens of Serbia. They are provided with the possibility to enjoy one of the fundamental freedoms the EU is grounded upon, the freedom of movement. This, as it turned, led to additional encouragement to persevere in further process of reform implementation aimed at Serbian accession to the EU. The EU Integration Office conducted a survey in May 2009 on the attitudes of Serbian citizens towards the possibility of travelling without visas, which indicated that even 82 % of citizens found that inclusion in white Schengen list was important for Serbia, 49 % responded that this was important for them from personal viewpoint as well, 16% stated that this was both important and not important, while 33% claimed that this was not of importance at all. <sup>59</sup> These figures clearly show that the citizens had a clear idea of the importance of inclusion on White Schengen list.

It is necessary to be honest and sad that without political will nothing can be done. Creating of strong and unique political voice for the visa liberalization is important step in this process.

Of course, there is always a question of money needed for this process. Good tactic is to make public to think “What is the cost of our not being on the Schengen white list yet?” An accurate estimate of all the costs associated with the current EU visa regime with Ukraine would certainly prove this reasoning correct.

In Ukrainian case, this process can be long. This is reality when it comes to the size of the country and negative reputation as a country of origin and transit of irregular migrants. Unfortunately, we have to add EU skepticism towards migrants and frustration which is not completely understandable.

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<sup>57</sup> [http://www.grupa484.org.rs/index.php?option=com\\_deeppockets&task=catShow&id=23&Itemid=147](http://www.grupa484.org.rs/index.php?option=com_deeppockets&task=catShow&id=23&Itemid=147)

<sup>58</sup> In 2009, Group 484 has organized training for 10 media representatives and students of journalism from WB countries on visa liberalization process.

<sup>59</sup> Government of Serbia EU Integration Office, research: European Orientation of Citizens of Serbia - Trends , May 2009



But civil society in Ukraine must be the initiator of the positive energy and movement which will influence Government and EU stakeholders to accelerate visa liberalization dialogue. As well, through accurate and regular reports, civil society can break some stereotypes and provide necessary information to all involved parties.

The most important fact is that visa liberalization dialogue between EU and Ukraine has started. Ukraine citizens can achieve historical step towards EU, if they participate and support this process. The light is visible at the end of the tunnel, but a lot of work is in front Ukrainians.