

Fundamental rights

Regarding **international human rights instruments**, action plans are being developed to implement the most recent recommendations under the UN Convention on the Elimination of all Forms of Discrimination against Women and those of the second Universal Periodic Review of the UN Human Rights Council. The Council of Europe's Committee for the Prevention of Torture carried out its 11th country visit in 2014.

Since September 2014, the **European Court of Human Rights** (ECtHR) has found that the country violated the European Convention on Human Rights (ECHR) in 11 cases relating to the right to life, prohibition of torture and degrading treatment, right to a fair trial within a reasonable time, respect for family life and protection of property. A total of 379 new applications were allocated to a decision-making body, bringing the number of pending applications to 324. At present, 117 ECtHR judgments still have to be executed by the country, of which two are under enhanced supervision. The government submitted its action plan in relation to the *El Masri* judgment after considerable delays. The Committee of Ministers urged the authorities to carry out a fresh investigation of the case in order to bring those responsible to justice. The country's Bureau for Representation before the ECtHR remains seriously under-staffed and the country rarely seconds national judges to the ECtHR (see the 'Urgent Reform Priorities').

On the **promotion and enforcement of human rights**, the Office of the Ombudsman remains the key oversight institution underpinning democratic values in the country and continued to deliver on its constitutional and legal mandate to protect citizens' rights. In 2014 the Ombudsman received 4 249 complaints, an increase of 11 % from 2013. The level of follow-up on the Ombudsman's recommendations rose to 87 %. However, some public authorities including the Ministry of Interior and some prison institutions continue to be less responsive. Amendments to the Law on the Ombudsman aiming at full compliance with the Paris Principles were prepared some time ago but have still not been adopted by Parliament (this is also one of the 'Urgent Reform Priorities'). Sufficient resources for the Ombudsman's office have still not been provided.

Regarding the **prevention of torture and ill-treatment**, the Office of the Ombudsman continued to play an active role as national preventive mechanism (NPM) under the Optional Protocol to the Convention against Torture. However, it remains under-resourced and its current staffing level is critically low, requiring urgent action to ensure that it can continue to function. In 2014 the NPM carried out 28 preventive visits to places of detention and warned against worsening conditions. There was limited follow-up to its recommendations by the relevant authorities. Inhuman physical conditions persist in a number of prisons and almost all detention facilities. Seriously substandard conditions in juvenile facilities and in Idrizovo prison continue to cause concern.

In 2014, the Ombudsman's Office received 20 complaints of ill-treatment or excessive use of force by the police. The Sector for Internal Control and Professional Standards received 71. In four cases it was determined that unjustified physical force had been used. Criminal charges were brought against two police officers. In January the ECtHR found that potentially lethal use of force by a member of the special Alfa unit in 2009 violated the right to life. Prisoners' complaints to the Ombudsman's Office increased to 274 in 2014 (247 in 2013). Most concerned inhuman conditions and 14 ill-treatment or excessive use of force. The Directorate for Execution of Sanctions received 75 complaints against prison staff, including 3 for torture or ill-treatment. One prison officer was convicted for failure to report ill-treatment and received a conditional sentence. Procedures have yet to be established for conducting detailed examinations of all alleged cases of torture, inhuman treatment and other

unprofessional conduct towards inmates and detainees. Concerns persist that severe disciplinary measures are not being imposed on police and prison officers in ill-treatment cases and the number of criminal charges remains low.

A new strategy and action plan for the **prison system** for 2015-19 were adopted in May but adequate financial resources need to be allocated to ensure proper implementation. Administrative capacity improved with the recruitment of 46 new staff in prisons and 5 in the Directorate for Execution of Sanctions. There is still no systematic initial and in-service training programme for prison staff although ad hoc, largely donor-led training took place. The prison reconstruction programme continued, despite major delays. The prison system continues to be heavily underfunded, under-staffed and mismanaged, leading to systemic breaches of international human rights standards. Increasing overcrowding, in some facilities exceeding 200 %, raises serious concerns over its sustainability. Provisions for conditional release, alternative sanctions and non-custodial pre-trial measures continue to be under-used. A probation service has yet to be introduced. Basic education and other re-socialisation services have yet to be provided to juveniles in detention. Numerous prison management rules, re-socialisation measures and treatment programmes for vulnerable groups have yet to be fully implemented in practice. The transparent and merit-based appointment of prison directors and prison staff should be ensured as an urgent priority and is key to tackling many of these problems.

The Law on **Personal Data Protection** is largely aligned with the EU *acquis*. The Directorate for Personal Data Protection continued to strengthen its capacity through ongoing training, employment of 4 new staff and a slight budget increase. It further increased its activities in 2014, carrying out 404 inspections in the public and private sectors (387 in 2013) and finding 300 violations in total. It received 371 complaints in 2014 (404 in 2013), mostly concerning abuse of personal data on social networks. The number of personal data controllers and processors trained increased to 66 in 2014 (54 in 2013) and active public awareness-raising measures continued. The Directorate was consulted on draft legislation, public policies and operations of data controllers more frequently than in previous years. Further efforts are needed to ensure full harmonisation of sectoral legislation with the Law on Personal Data Protection. The Directorate, which is an independent regulatory body, has yet to take action following the recent disclosure of massive unlawful interception of individuals' electronic communications. This has raised questions about its ability to act with full independence.

Freedom of thought, conscience and religion continues to be guaranteed and enforced. Following the rejection of three new applications which did not meet legal requirements, the number of registered religious entities remains at 31.

In the area of **freedom of expression**, increased reports of harassment and intimidation of journalists were noted, as were some cases of property damage by unknown perpetrators. A funeral wreath was delivered to the family of a journalist critical of government policies. There were several physical altercations involving journalists, including a physical attack by a senior politician, which was not condemned by the government. Numerous journalists were revealed by the content of the intercepted communications to have been under illegal surveillance. Some intercepts indicated that media had been under direct and indirect government pressure to alter their reporting. Attempts to limit reporting on matters of public interest are worrying. There is still a lack of transparency on government spending on media advertising and the government has failed to provide details on the amounts, criteria and recipients despite the requirement under the Law on Audio and Audiovisual Media Services to do so (see also the 'Urgent Reform Priorities').

The Agency for Audio and Audiovisual Media Services continued to play an active regulatory role. It carried out industry- wide programme monitoring in areas including protecting young audiences and fostering and protecting cultural identity. It also prepared numerous studies and reports, including on the treatment of gender issues by broadcasters and a guide to monitoring hate speech. The Agency approved changes in the ownership structures of three regional TV and radio stations and carried out administrative supervision of the transparency of 138 broadcasters' operations.

Since becoming operational in November 2014 the new self-regulatory body for the media, the Media Ethics Council, received 40 complaints against various media outlets and issued decisions on 39. However, in many cases the media concerned did not publish the Council's decision, limiting the impact of self-regulation. Principles of fair reporting in online media were also adopted by Web portals. There is still a large amount of litigation in the area of defamation and insult, pointing to the need to further revise the legislation and court practice. Greater emphasis should be put on non-judicial resolutions such as mediation (in non- media cases) and right to reply mechanisms (in media cases). Investigative reporting remains weak. The professional standards and ethics of some journalists, notably in the mainstream media, remain a serious problem. The tendency of influential programme hosts to use deliberately offensive or provocative language under the mantle of freedom of expression continues to be unhelpful in a media culture which is dominated by polarisation, intimidation, a lack of solidarity and a lack of balanced, objective debate. The widespread misappropriation of the term hate speech for what is in fact unprofessional or provocative language in the media also continues. This risks overshadowing true incidents of hate speech, which must be investigated and penalised when they do occur. The country continued to backslide in this area, although the publication of the content of the intercepted communications have increased open public discussion of political issues.

Measures were taken to increase the financing of the public service broadcaster MRT, including improvements to the licence fee collection system. However, there are serious concerns about MRT's editorial independence. It provided limited reporting of the interception revelations, and some of the published recordings implied that government officials had threatened public service journalists' job-security if they did not report along the 'desired' lines.

Freedom of association is satisfactory but the situation regarding **freedom of assembly** has deteriorated. Protests by students, university and high school professors, journalists and other citizens' groups increased as a result of the political situation and the most recent education reforms. In May public protests against police brutality led to a violent clash between police and protesters. Civil society observers reported that police used excessive force to restore public order and, after dispersing the protesters, continued to make arrests in the surrounding areas. There were concerns that some of those detained had nothing to do with the protests. There appears to be an increasing reliance on the criminal offence of 'participating in a crowd which commits a crime'. This broad provision is open to interpretations which infringe the freedom of assembly, since the state has an obligation to protect the majority of peaceful demonstrators rather than incriminate them. Amendments to the Law on Police increased its powers relating to public order, including allowing the use of tasers and rubber bullets. Such broad powers need to be balanced by accompanying provisions to safeguard human rights. Clear operational standards are needed, as well as rigorous human rights training for all police officers involved in such activity.

The Ombudsman's Office received 239 complaints about **property rights** in 2014 and found breaches in 102 cases. Most complaints concerned the slow process of denationalisation and the work of the Cadastre Office. The Cadastre Office needs to be far more proactive in rectifying errors and omissions made at administrative level, so as to provide legal certainty on property rights.

As regards **non-discrimination**, from its creation in January 2011 until the end of 2014, the Commission for Prevention of and Protection from Discrimination has only received 288 complaints and confirmed the existence of discrimination in 12 cases. Much greater efforts are needed to raise public awareness of the Commission's role and work. It remains understaffed and under-resourced and concerns persist about its independence. The legislative framework still needs to be aligned with the *acquis* as regards discrimination on grounds of sexual orientation. Collection of data on the reporting, investigation and prosecution of hate speech and hate crime is still not systematic and several cases of hate speech in social media and blogs require adequate follow-up by the authorities. (See also *Chapter 19 — Social Policy and Employment*.)

As regards **equality between women and men**, a gender equality strategy (2013-2020) and action plan (2013-2016) are in place and some ministries have earmarked a budget for implementation. Of the 123 members of Parliament 42 are women including one minister. Four of the 84 mayors are women, as are 405 councillors (30 % of the total). Mechanisms to promote gender equality lack visibility and there are limited opportunities for civil society organisations and external stakeholders to feed into decision-making processes. Gender stereotyping persists and further measures are needed to combat double or multiple discrimination, particularly against Roma women. A new Law on Combating Domestic Violence was adopted to protect survivors, but it fails to recognise all forms of violence and only provides for civil proceedings against perpetrators. Further public awareness raising measures are necessary, particularly in rural areas. (See also *Chapter 19 — Social policy and employment*).

Regarding **rights of the child**, the Law on Child Protection was amended to introduce early childhood development services and broaden the scope of child protection. New kindergartens and early childhood development centres were opened, with the latter providing a range of quality services, especially for the most vulnerable children. However, services to protect children most at risk remain limited. The most marginalised children who fall outside both the education and healthcare systems, as well as children with disabilities, continue to face problems accessing their rights. The National Commission on the Rights of Children still lacks qualified staff and funding. The Ombudsman's Office received 124 complaints in 2014 about breaches of children's rights. The lack of systematic collection of data in this area remains a major shortcoming.

Implementation of the new Law on Justice for Children started and mediation was successfully used as an alternative to criminal proceedings involving juveniles. Child-friendly interrogation rooms were installed in eight police stations, but none has child-friendly detention facilities required by law. Training was held for juvenile justice professionals and should be introduced on a permanent basis. Police services and Centres for Social Work dealing with juveniles remain underfunded and under-staffed. The status and resources of the State Council for Prevention of Juvenile Delinquency should be strengthened to ensure it functions properly. Most municipalities have yet to establish local councils for preventing juvenile delinquency, and most of those that do exist are inactive. Despite improvements in the law, there is still no systematic access to legal aid for juveniles in practice.

Little improvement can be reported on **integration of persons with disabilities**. An interparty parliamentary lobby group was established to promote the rights of disabled people. Implementation of the 2010-18 national strategy on equal rights for people with disabilities is inadequate. The national coordinating body monitoring implementation of the UN convention on the Rights of Persons with Disabilities is inactive.

Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons continue to suffer discrimination and homophobic media content, both online and offline. A sixth violent attack occurred during the celebration of the second anniversary of the LGBTI support centre, leaving two people injured. Despite calls by civil society organisations and the international community for the perpetrators to be prosecuted, none of the attacks has yet been fully investigated. In August parliament rejected a draft amendment to the anti-discrimination legislation, which would have prohibited any form of direct or indirect discrimination on the grounds of sexual orientation and gender identity. Considerable efforts are still needed to raise awareness of and respect for diversity within society and to counter intolerance. This needs to be done through public campaigns and training of law enforcement bodies, prosecutors, judges and health workers.

Despite many difficulties, **labour and trade union rights** are generally respected. Implementation of the Law on Peaceful Settlement of Labour Disputes, and the start of mediators' and arbiters' work, has been slow. Trust in social dialogue both among employers and employees should be strengthened as well as the capacity of social partners in policy shaping. (See also *Chapter 19 — Social Policy and Employment*.)

The new Law on Criminal Procedure, applied since the end of 2013, guarantees the **procedural rights** of suspected and accused persons and victims of crime. It sets out clearly the right to interpretation and translation of the defendant, victim, private plaintiff and witness, and establishes the defendant's right to a lawyer. It also specifies the information which must be given to anyone who is invited for questioning or detained. This includes the reasons for their detention, any charges against them, the right to remain silent and the right to inform a third person and/or diplomatic or consular authorities. Adequate medical assistance must be provided as needed or upon request and any person deprived of their liberty must be brought before a court within 24 hours. Legal aid is available under the 2009 Law on Free Legal Aid but its implementation is not yet widespread. Special safeguards are in place for juveniles and for vulnerable witnesses or victims. The presumption of innocence is set out in the Constitution and the Law on Criminal Procedure but there have been some concerns about its full observance, including in relation to the content of the intercepted communications. Further efforts are needed, particularly as regards statements made to the public and media, including by the courts and by members of the executive. The ECtHR has found several violations of the right to liberty in cases where pre-trial detention was imposed without concrete and sufficient justification, and judges have made efforts to improve the reasoning given in pre-trial detention orders and extensions, but there is scope for further improvement. Trial *in absentia* is possible in certain circumstances.

Regarding the protection of **minorities** and cultural rights, the Ohrid Framework Agreement continues to provide a basis for inter-community relations. The Agency for the Protection of Minorities representing less than 20 % of the population still struggles with an inadequate mandate, insufficient budget and a lack of support from relevant institutions. The Directorate for education in communities' languages and the Directorate for the promotion of culture of the communities also continue to be inadequately funded and staffed. Inter-institutional cooperation remains weak. Systemic measures to ensure that all communities can exercise their ethnic, cultural and linguistic rights remain largely donor-funded. Curricula for the

Roma, Vlach and Bosnian languages in elementary schools were developed, coming into effect from 2016/17. Limited use was made of the new policy measures to promote inter-ethnic relations under the integrated education strategy. Measures against separation along ethnic lines in schools are insufficient. Multiple forms of discrimination against the non-majority communities persist and action to combat stereotyping, including in the media, remains ineffective.

The new **Roma** strategy for 2015-20 was adopted. The Ministry of Labour and Social Policy's unit for implementing Roma policy was strengthened. The Roma Seminars have been held regularly but their conclusions have not been followed up comprehensively and coordination among institutions is still weak. A number of government projects on social housing, education, employment and social assistance have produced some good results. Roma health mediators are functioning in six municipalities. Under a project to include people in the register of births, 120 of the 550 people identified so far have been registered. However, the most disadvantaged Roma still have problems accessing social benefits due to their lack of administrative documentation. Hardly any progress can be reported in terms of political representation, media coverage in the Roma language and the status of the Roma language in municipalities with a Roma majority. Roma have limited economic opportunities. Poverty remains the biggest factor behind the low share of Roma children in education. There continues to be a disproportionate number of Roma children placed in special needs schools. Segregation, stereotyping and other forms of discrimination remain prevalent. Complaints have been registered by Roma prevented from leaving the country and of mistreatment of Roma who have returned after unsuccessfully seeking asylum abroad. Roma refugees and internally displaced persons continue to live in substandard conditions and their access to education, housing, health and employment remains a concern. The number of active Roma non-governmental organisations is declining because less funding is available.