Position Paper of the Serbian Civil Society

on the proposed amendments to criminal legislation in Serbia

Context

Serbia has been in deep political and social crisis ever since the 2023 December elections. The crisis escalated significantly following the deadly collapse of the train station canopy in Novi Sad on November 1st, 2024, that killed 16 people. This tragedy triggered the most massive protests in the history of Serbia, since the fall of Milošević. Led by university students and supported by the broader society, these protests represent an outcry of the Serbian people for democracy and against corruption and oppression.

The response from the regime has been further pressure and violence, building on the dozen years of ruling of Vučić's Serbian Progressive Party (SNS). This oppression has resulted in a shrinking civic and media space, reminiscent of the hybrid regimes and creeping authoritarianism, massive corruption scandals, evidenced surveillance practices and arrest of prominent political activists and human rights defenders across the country.

In geopolitical terms, the Government of Serbia has consistently played a balancing act between the west and the east, using the EU Accession process to secure the vital funding whilst the process remains effectively frozen, the alignment with EU's Foreign Policy kept to a minimum (at only 48% with EU CFSP decisions), all the while Serbia's President attended both military parades in Moscow (May 2025) and in Beijing (September 2025), alongside the likes of Xi Jinping, Vladimir Putin and Kim Jong Un.

Issue

On September 10, 2025, the Ministry of Justice of Serbia opened simultaneous public consultations on the proposed amendments to the Criminal Code, the Code of Criminal Procedure, and the Law on Juvenile Offenders, the three crucial criminal laws.

Position

Regarding this important matter, we are fully in alignment with the statement of the National Convention on the EU. It is evident that the current Government lacks the legitimacy to propose sweeping amendments to crucial criminal laws, especially with such an unacceptably short consultation period.

Moreover, the proposed reforms suffer from serious procedural and substantive flaws, posing significant risks to human rights and creating opportunities for further repression.

We call on the Ministry of Justice to recognize the gravity of the current political climate and to withdraw the proposed amendments until there is genuine transparency, institutional legitimacy, and public trust - conditions that can only be met following free and democratic elections in Serbia.

We urge the European Union not to allow this flawed process to be used as a box-ticking exercise under the Growth Plan, which the Government appears to be exploiting as a pretext to further erode human rights in Serbia.

Rationale

The proposed amendments are extensive and problematic from both procedural and substantive perspectives. The Ministry has offered the minimum statutory period of 20 days for opaque online consultations, inviting the public to submit comments via email, without any public presentation of

the proposed amendments either online or offline. This sets a precedent that the adoption of legislation of this magnitude in terms of impact can be adopted without meaningful debate.

Meaningful public consultation on the far-reaching criminal law amendment must be properly conducted, thus ensuring sufficient time for transparent communication of proposed changes and adequate opportunities for the public and experts to provide feedback, in line with EU standards and good practices which are applied in EU Member States. Taking into consideration the context and complete lack of public trust towards the institutions given the ongoing deep political crisis in the country, these "consultations" can be considered performative at best.

In terms of substance, in the very limited time at our disposal, we have managed to map out an ample of issues, the most problematic being set below:

Criminal Code

Article 290 – Criminalization of Road Blockades

The proposed amendment to Article 290 introduces road blockades and the placing of obstacles on public roads or stopping the traffic as a criminal offense, punishable by up to one year of imprisonment. While presented as a measure to secure public order, this provision directly threatens the right to freedom of peaceful assembly and protest, which in Serbia often involves road blockades as a legitimate form of civic resistance. By turning this form of protest into a crime, the Government effectively creates a chilling effect on democratic dissent, undermining fundamental rights protected under the European Convention on Human Rights (ECHR). The issue of broadly formulated criminal offence as proposed simply criminalises typical protest tactics - road blockades - with prison terms, without clear limits like duration, risks, proportionality *etc*, and thus creates a suppressing and silencing effect on protests in Serbia.

Article 343a – Publishing Materials Advising the Commission of a Criminal Offense

The draft introduces a new offense under Article 343a, criminalising the publication, distribution, or sharing of materials that may be interpreted as advising others to commit a criminal act. The provision is vaguely worded, leaving excessive room for arbitrary interpretation by prosecutors and courts. In practice, this could be misused against journalists, activists, or ordinary citizens sharing content on social media, effectively curtailing freedom of expression and stifling public debate. Such overbroad restrictions are incompatible with international human rights standards, including Article 10 of the ECHR.

Article 178a – Sexual Intercourse Without Consent

The proposal adds Article 178a, introducing a new offense of "sexual intercourse without consent," intended to cover cases where there is no explicit agreement but also no use of force or threats. While framed as progress, this provision risks reclassifying many cases of rape (currently under Article 178) into this lesser offense, thereby subjecting perpetrators to lower penalties. Such a downgrade would weaken the protection of survivors, perpetuate impunity for sexual violence and runs counter to the spirit of the Istanbul Convention, which specifically provisions consent as part of the incrimination of sexual violence and rape. Instead of improving access to justice for victims, the amendment risks undermining it by shifting serious acts of rape into a diluted legal category.

Article 112(20) – Malicious Computer Program

The draft introduces a new definition of a "malicious computer program" in Article 112(20), describing it as software created *with the purpose* of causing harm and *with the intent* to compromise confidentiality, integrity, or availability of computer data, applications, or systems, or otherwise disrupt computer networks. Unlike the current Criminal Code, which focuses on objectively verifiable actions such as creating, inserting, and damaging through computer viruses, the proposed definition shifts the emphasis to subjective elements of purpose and intent. This significantly complicates prosecution by requiring proof of a perpetrator's inner motives rather than observable harmful effects, while at the same time lowering the threshold for arbitrary interpretation. Such a departure from objective standards undermines legal certainty, risks inconsistent application in courts, and opens the door to selective enforcement, instead of strengthening protection against genuine cyber threats.

Code of Criminal Procedure

Over 200 articles of the existing CoCP are proposed to be amended. The sheer amount of amendments, coupled with the short time allocated for review and public consultation makes it impossible to have a meaningful

assessment of the impact the proposed amendments have on human rights in Serbia.

Article 51 - The injured party's right to appeal

Paragraph 1 states that the prosecution is obliged to inform the injured party of the dismissal of a criminal complaint, the termination of an investigation, or the withdrawal from criminal prosecution, and to deliver this decision to the injured party together with instructions on the right to appeal. However, the second paragraph grants the injured party the right to file an appeal within 3 months from the day they become aware of the decision if they were not informed. Apart from being contradictory, this provision is not an improvement compared to the previous version, since it once again imposes on the injured party the obligation to inquire about the course of the proceedings. Moreover this provision is not in line with Directive 2012/29/EU, which establishes minimum standards on the rights, support and protection of victims of crime. According to this Directive victims are guaranteed the right to be informed, without undue delay, about the decision not to pursue criminal prosecution, as well as to receive sufficient information to decide whether to seek a review of that decision.

Articles 103 - Particularly Vulnerable Witness

Articles 48 of the Draft Law introduce amendments to Articles 103 of the CoCP, concerning the institution of a particularly vulnerable witness. However, the proposal should not be adopted, as the Working Group has not provided reasonig for introducing the rights to appeal against a decision granting the status of a particularly vulnerable witness. Such a proposal would lower the existing level of victims' rights because: it enables suspects to continue intimidating victims, it prolongs already lengthy proceedings and it discourages prosecutors and judges from issuing decisions granting this status. Furthermore if the stated purpose of the amended provision is to regulate in more detail the procedure for determining this status, it is unclear why working group has not addressed the obligation to issue a reasoned decision when the prosecutor or judge rejects the request for granting such

status, nor whether victims themselves would have the right to appeal against a decision rejecting such a request.

Article 162 Criminal offenses to which special evidentiary measures are applied

Article 73 of the Draft CPC expands the list of criminal offenses to which the special evidentiary measures, including secret surveillance of communications, can be applied. With this amendment, essentially special evidentiary measures would be moved from the regime of exception to the rule. Such a solution weakens the standards of necessity and proportionality, increases the risk of selective application, and opens up space for the inclusion of a wide range of situations that do not require such invasive methods. The broad and heterogeneous list of criminal offenses (from crimes against life to economic, tax and political-security crimes) makes this list unpredictable and practically a general clause, which is not in line with the requirements of legal certainty and protection of the confidentiality of communications prescribed by the Constitution of the Republic of Serbia and the right to privacy under Article 8 of the European Convention on Human Rights

Article 283 Deferred Prosecution

Article 283 extends the application of deferred prosecution (opportunity principle) to criminal offences punishable by up to five years of imprisonment. These amendments introduce dangerous solutions that relativize criminal responsibility and undermine the general purpose of prescribing and imposing criminal sanctions, namely the suppression of criminal offences. If deferred prosecution is applied to certain offences such as domestic violence or the aggravated form of the offence of abuse and torture, and bearing in mind that in cases of deferred prosecution the defendant is not entered into the criminal record of convicted persons, this erodes trust in the legal order and conveys a message to potential offenders that certain crimes may go unpunished.

Article 295 Purpose of Investigation

The amendments to Article 295 abolish the possibility of initiating an investigation against an unknown perpetrator. The Draft Law explains this as follows: 'the informal procedure that precedes criminal proceedings, the pre-investigative procedure, is conducted at the lowest level of suspicion, i.e. grounds for suspicion against a suspect, who may also be an unidentified person, and establishing the suspect's identity is one of the primary tasks of the police upon learning that a criminal offence has been committed.'

Draft Law on Juvenile Offenders and the Protection of Juveniles in Criminal Proceedings

The Ministry of Justice, once again, ten years after the withdrawal of the previous draft Law on Juvenile Offenders and the Protection of Juveniles in Criminal Proceedings (hereinafter: the Juvenile Justice Act), has proposed a reduction in the level of children's rights to protection that had already been achieved.

The first reduction of rights concerns the list of criminal offences in which judges, prosecutors, and police officers with specialized knowledge in the field of children's rights, criminal law protection of juveniles, and the protection of juveniles in criminal proceedings are to act. The Ministry of Justice retained the solution from the 2015 draft, according to which specific criminal offences are no longer enumerated; instead, the application of the law is limited to certain categories (chapters) of criminal offences. In this way, certain offences where application of the law would be essential have been excluded, such as stalking, the future offence of unauthorized disclosure of recordings of sexual content, as well as neglect and abuse of a minor in an extramarital union, child abduction, alteration of family status, and other offences where it is necessary to appoint ex officio legal representatives for minors if parents or guardians are unable to do so, or in situations where there is a conflict between the rights of the child-victim and the duties of the parent or guardian.

The second reduction of rights relates to abolishing the obligation to appoint ex officio legal representatives even for this already reduced and broadly defined list of criminal offences, leaving the matter instead to the discretion

of prosecutors and courts. The justification for this reduction in children's rights as victims repeats the same reasoning from 2015 – namely, that the formal obligation to appoint a representative for a minor victim is to be relativized, because such a provision, which required a minor victim to have a representative "from the first interrogation of the defendant," allegedly lacked a clear *ratio legis*. Furthermore, no procedural consequences had been prescribed for failing to appoint a representative for a minor victim. It was also argued that what is of far greater importance to a minor victim than representation by an attorney is adequate psychological and pedagogical support, which is provided by the law itself. A representative would be appointed for a minor victim only if necessary to achieve the purpose of the criminal proceedings and to protect the minor victim's personality—something that, logically, would occur in very few cases, since it is to be presumed that the interests of the victim would in any case be protected by the public prosecutor, who is formally specialized.

Instead of strengthening these provisions, granting minors additional rights as victims, and introducing sanctions for non-compliance, the Ministry of Justice decided to "ease" the burden on courts and prosecutors' offices that had failed to properly fulfill their duties, and, as in the 2015 draft, proposes to relieve them of both the additional obligation to protect the interests of minor victims and the financial cost of appointing ex officio representatives.

As in 2015, the new Juvenile Justice Act should have been harmonized with the acquis of the European Union, most notably Directive 2012/29/EU establishing minimum standards on the rights, support, and protection of victims of crime.

Furthermore, after 14 years, the Juvenile Justice Act should finally have been harmonized with the Criminal Procedure Code, as envisaged by the revised Action Plan for Chapter 23. However, this has not been fully accomplished in the current draft with respect to provisions on the protection of minors as victims, in particular those relating to the examination of minor victims through audio-visual transmission, for which the draft provides that the decision is to be made by the court, although the investigation itself is conducted by the prosecution.

Supporting organisations

Autonomous Women's Center (AŽC)
Base of Activist Community "Sviće"
BeFem Feminist Cultural Center
Belgrade Centre for Human Rights
Center for Research, Transparency and Accountability (CRTA)
Civic Initiatives
Civil Rights Defenders (CRD)
European Movement in Serbia
FemPlatz
Independent Journalists Association Serbia (NUNS)
Lawyers' Committee for Human Rights (YUCOM)
Ministry of Space
Novi Sad School of Journalism (NSSJ)
Partners Serbia
Polekol
Rainbow Ignite
SHARE Foundation
Slavko Ćuruvija Foundation
Youth Initiative for Human Rights (YIHR)