

The response to the questions of the Michel Forst UN Special Rapporteur on environmental defenders under the Aarhus Convention concerning the alleged persecution, penalization or harassment of Mr. Nikola Krstic, in connection with the exercise of his rights under the Aarhus Convention

The Republic of Serbia ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) on May 12th, 2009 (Official Gazette of the Republic of Serbia – International Agreements, No. 38/09).

Strategy for the Implementation of the Aarhus Convention (Official Gazette of the RS No. 103/11) was adopted in 2011. Currently, we are in the process of the preparation of the new revised Strategy for the Implementation of the Aarhus Convention.

Implementing the Aarhus Convention in practice is a complex process that requires the synchronized action of the various subjects and stakeholders included in the environmental protection systems, as well as the more consistent reform of the public administration and society as a whole. This is especially because all three groups of standards established by the mentioned Convention go beyond the responsibility and the competencies of a single ministry and are also relevant for the various issues related to the functioning of the public administration as a whole, the functioning of the judiciary and legislative authorities, the processes of building and strengthening the democratic institutions, strengthening the rule of law, the realization of human rights, etc. Our goal is to create the conditions for full implementation of the standards established by the Aarhus Convention and other relevant international agreements in the field of environment, as well as to provide the full harmonization of the national legislation with the legislation of the European Union.

We are aware that Article 3 (8) of the Aarhus Convention requires that “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement.” Representatives of the Republic of Serbia participated in the seventh session (Geneva, 18–21 October 2021) of the Meeting of the Parties to the Aarhus Convention where is adopted decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention

We are very concerned regarding the alleged persecution, penalization or harassment of Mr. Nikola Krstic, in connection with exercising his rights under the Aarhus Convention.

As you stated in the letter: „On 4 December 2021, Mr. Krstic organized a peaceful protest in the form of a roadblock concerning the high levels of pollution in Smederevo and recent legislative amendments that favored foreign direct investors. Mr. Krstic, as the organizer of the protests, was charged with a failure to comply with the laws on public gatherings about the protests. 9. In May 2023, the first instance court in Smederevo decided to drop the charges against Mr. Krstic. However, the Smederevo police subsequently filed an appeal to the Court of Appeal in Belgrade, which then sent the case back to the first instance court. 10. On 3 June 2023, the first

instance court then reversed its first decision and ordered Mr. Krstic to pay a fine of RSD 100,000 (approximately EUR 1,000). As noted in the court's decision, Mr. Krstic's monthly salary is RSD 50,000 (approximately EUR 500). Mr. Krstic was not provided with an opportunity to respond or submit any further evidence in response to the submissions by the police before the first instance court rendered its second judgment." To clarify the case we sent the requests to the Ministry of Justice, Ministry of Interior, and the Ministry of Human and Minority Rights and Social Dialogue. Ministry of Justice responded that deciding on the appeal filed by defense attorney Nikola Krstić against the conviction of the first instance Misdemeanor Court in Smederevo dated June 3, 2023., the Misdemeanor Appellate Court is 01.12. 2023 issued a verdict acquitting Nikola Krstić of responsibility for the misdemeanor.

We obtained the Statement of the environmental inspector from the Ministry of Environmental Protection, Mr. Goran Zbiljic, regarding the threats to Mr. Krstić which we sent you as an attached document.

We also received the official letter from the Ministry of Interior as the response on the alleged persecution, penalization, or harassment of Mr. Nikola Krstic which we sent you as a translated attached document.

Serbia established a legal and institutional framework for implementing the Aarhus Convention and Article 3 (8) of the Convention.

The basic principles of the Law on General Administrative Procedure (LGAP) include, among other things, the principle of protection of civil rights and protection of public interest (Article 7) and the principle of assistance to the parties (Article 8).

The important role in assisting the public in achieving legal protection in environmental matters belongs to the Ombudsman (*Protector of Citizens*). The Ombudsman was introduced as an independent public authority that protects the rights of citizens and controls the work of public administration bodies, the body authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organizations, enterprises, and institutions which have been delegated public authorities. The Ombudsman has the power to control the legality and regularity of the work of administrative authorities, to establish violations resulting from acts, actions or failure to act by administrative authorities, if they are the violations of laws of the Republic.

- The Law on Local Self-Government (LLSG) specifies that the bodies and services of the local self-government shall inform the public about their work through the media and in other suitable ways, as well as provide the citizens with the necessary data, clarifications and information needed to exercise their rights. Moreover, the bodies and services of the local self-government shall make it possible for everyone to file a complaint about their work and inappropriate conduct of their employees and be obliged to respond within 30 days of the day of submission of the complaint, if an answer is required by the complainant. The same law allows the civic defender (Ombudsman) to be established in a local self-government unit with the power to control that the rights of citizens are respected, establish the existence of violations resulting from the acts, actions

or failure to act by the administrative authorities and public services, if they are violations of the laws, regulations and other general acts of the local self-government unit.

- Article 18, Paragraph 2 of the Constitution of the Republic of Serbia guarantees, and as such, directly implements human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws. Article 34 stipulates that no person may be held guilty for any act which did not constitute a criminal offence under law or any other regulation based on the law at the time when it was committed, nor shall a penalty be imposed which was not prescribed for this act.

-The Republic of Serbia has ratified the key international agreements in the field of human rights and combat corruption by adopting of the following laws, such as: Law on Ratification of European Convention on Human Rights ("Official Gazette of SM- International Treaties", No. 9/03); Law on Ratification on Criminal Law Convention on Corruption ("Official Gazette of FRY- International Treaties", No. 2/02 and Official Gazette of SM, No 18/05); Law on Ratification on Civil Law Convention on Corruption ("Official Gazette of RS- International Treaties", No. 102/07); Law on Ratification of the United Nations Convention against Corruption (UNCAC) ("Official Gazette of RS- International Treaties", No. 12/05); Law on Ratification Aarhus Convention ("Official Gazette of RS- International Treaties", No. 38/09). Basic strategic and legal acts regarding human rights, corruption and environment in the Republic of Serbia are the following: Constitution; National Strategy of Combating Corruption in the Republic of Serbia for the period 2013. to 2018. („Official Gazette of RS", No. 57/13) and Action Plan to the National Strategy („Official Gazette of RS", No.79/13); Law on State Servants; Law on Prevention of Corruption, („Official Gazette of RS", No. 35/19 and 88/19); Law on Data Secrecy; Law on Protection of Personal Data („Official Gazette of RS", No. 87/18); Law on Free Access to Information of Public Importance; Law on Prevention of Harassment at Work („Official Gazette of RS", No. 36/10); Criminal Code („Official Gazette of RS", No. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19); Criminal procedure Code („Official Gazette of RS" No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19); Law on Offences („Official Gazette of RS", No. 65/13, 13/16, 98/16, 91/19 and 91/19). The Republic of Serbia has adopted environmental laws and subsidiary regulations which prescribes and ensures the right for healthy environment, public access to information, public participation in decision making and access to justice in order to implement Aarhus Convention.

- Article 1 of the Law on protection against discrimination establishes the Commissioner for the Protection of Equality as an independent state body, independent in the performance of duties established by law. The competence of the Commissioner is stipulated in Article 33 of the law on protection against discrimination and includes, among other things, monitoring the implementation of laws and other regulations, initiating the adoption and amendment of regulations to implement and improve protection against discrimination, giving opinions on draft laws and other regulations, etc.

-The Whistleblowers Protection Act („Official Gazette of RS", No. 128/14) was adopted in 2014. This Act regulates whistle-blowing, the whistle-blowing procedure, rights of whistle-blowers, obligations of the state and other authorities and organizations, and private and legal entities in relation to whistle-blowing, as well as other affairs of importance to whistle-blowing

and the judicial protection of whistle-blowers. Whistle-blowing may be internal (an act of disclosing information to an employer), external (an act of disclosing information to a designed authority) or alarming the public (an act of disclosing information using mass media, the Internet, at public gatherings or in any other way information may be made available to the public). The employer of a whistleblower must not, by doing or by failing to do so, put a whistleblower or an associated person in an unfavorable position, particularly related to recruitment; disciplinary measures and penalties; working conditions; termination of employment; job assignments or transfer to another job; etc. With a motion for the issuance of a preliminary injunction, a court may be requested to delay the legal effect of an act, prohibit adverse action from being taken and order for the consequences of the adverse action to be eliminated.

Response prepared by the National Focal Point for the Aarhus Convention:

Tina Janjatovic, Senior Legal Advisor,

Ministry of Environmental Protection,

Republic of Serbia

Official letter from the Ministry of Interior - English translation



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SUBJECT: Petition of the UN Special Rapporteur on Environmental Defenders, Michael Forst

With regards to your request from act No. 001381375 2024 14850 003 000 070 002, of 30 April 2024, related to the statement on the petition submitted to the Ministry of Environmental Protection by the UN Special Rapporteur on Environmental Defenders, Michael Forst, concerning the case of repeated threats to security, life and livelihoods of the Environmental Activist N.K., Director of the Non-Governmental Organisation "Pokret tvrdjava", from Smederevo, and his family members, please find below the statement of the Ministry of Interior.

Acting on the letter of the Permanent Mission of Serbia to the United Nations and other international organisations in Geneva, concerning personal safety of the said person, the members of the Police Department of Smederevo submitted the initiative to the Basic Public Prosecutor's Office in Smederevo, which sent to this Police Department a Request for the collection of necessary information, with an order to conduct an interview with the said person; the said person did not respond at first, with an explanation that he postponed the interview due to the obligation to have a chosen legal representative, and that he would attend the interview depending on the possibility of having a chosen legal representative.

After postponing the interview on multiple occasions, the said person confirmed on 15 May 2024 by phone the date of the interview to be held on 20 May 2024; on that occasion he stated that on one of his trips to Geneva, most probably in 2023, he indicated to one of the organisations known to him threats to his personal safety in the past five years

On the same occasion, the said person stated that he was not aware of the fact that his statement would be the subject of the actions of the Police Department in Smederevo, and that not a single incident that he cited as a threat to security, indicated to the organisation in Geneva, had been reported to the Police Department in Smederevo.

Besides, the said person said he did not want to and had no intention of prosecuting anyone for endangering his safety, and that all he stated before was off-the-record, and that he would officially state this in the premises of the Police Department in Smederevo, in the scheduled interview, in the presence of a legal representative.

Furthermore, police officers in the Police Department in Smederevo established that there were no reported incidents in which personal safety of N.K. and his family members was endangered.

At the time of checks performed when the said person is in question, it was established that in December 2021, to the Misdemeanour Court in Smederevo, against the said person, two requests for initiating misdemeanour proceedings were filed because of the offence committed under Article 22 paragraph 1 item 3 of the Public Assembly Act, prescribing that a monetary fine in the amount of RSD 100,000 to RSD 150,000 shall be the penalty for the offence of a natural person as the organiser of the public assembly who is trying to hold or holds the assembly regardless of the decision on banning a public assembly.

Further checks have shown that the said person was pronounced not guilty for one of the mentioned two misdemeanour requests, while for the other misdemeanour request, he was punished with a fine of RSD 100,000.

Finally, bearing in mind the acting of the Basic Public Prosecutor's Office in Smederevo, we propose that the statement of the Ministry of Justice be sought.

Contact person in the Ministry of Interior is Marina Ribar, Head of the EU Affairs and International Agreements Department, Mobile phone 066/88-92-570, email marina.ribar@mup.gov.rs.

ADVISOR TO THE MINISTER – CHIEF OF STAFF
Police Colonel
Slobodan Nedeljković

**Statement of the environmental inspector from the Ministry of Environmental
Protection, Mr.Goran Zbiljic**

STATEMENT

Upon the delivery of the letter from Michael Forst, the United Nations Special Rapporteur on Environmental Defenders, Ref: ACSR/C/2023/20 (Serbia) of 3 April 2024, which was presented to me on 8 April 2024, I hereby submit my statement to you.

As regards the part of the said letter which concerns verbal and physical threats, point 6 states as follows:

“On 27 July 2023, the Environmental Inspector of the Ministry of Environmental Protection, Goran Zbiljić, entered the office of the NGO and threatened Mr. Krstić: “If you ever mention my name, you're going to be sorry!” Mr. Zbiljić also threatened to send inspectors to the Tvrdjava Movement to “destroy” this NGO. According to the information we have received, the incident was prompted by an interview given by Mr. Krstić earlier that month to the Serbian TV station N1, in which Mr. Krstić talked about the explosion in the steel mill in March 2023, and mentioned that, over the preceding twelve months, the Ministry of Environmental Protection had carried out 17 inspections in the steel mill and identified 14 illegalities regarding air quality protection.”

It is true that I visited the office in question, located in Cvijićeve 18, Smederevo, on the day in question. Present in the office at the time were [REDACTED] and Mr. Nikola Krstić.

After greeting them with “Good afternoon”, I addressed Mr. Krstić and pointed out that I had come in person because I had tried to contact him by telephone multiple times for the purpose of collecting facts regarding incidents that he was posting on the account of the TVRDJAVA Movement, and explained that this was the reason for my visit. I asked him not to mention my name anymore without any arguments or real facts, especially when it was in regard to unverified and unsupported information and allegations, to refrain from interpreting my “alleged” statements, as I am not authorised to make any statements (Tvrdjava Movement's Facebook post of 24 July 2023), and I told him that he could always get official statements from the PR Department of the Ministry of Environmental Protection.

I particularly focused on the post he had posted on 30 March 2023, which said that “members of the Association have reported the accident in the Smederevo steel mill to Inspector Zbiljić by telephone, but the Inspector has not carried out an on-the-spot inspection”. (I have not been able to find the post in the archive of the Tvrdjava Movement Facebook page, so it is possible that it has been subsequently removed.)

It is absolutely untrue that I uttered the words “If you ever mention my name, you're going to be sorry”, or that I used any threats or insults, as I am aware of the responsibility for the words I use that I have as a civil servant, and as my behaviour, both official and private, is determined by the

code of professional conduct and by my conscience. At the same time, I emphasise that, both as a professional and as a human being, I cannot remain silent when faced with untruths and trivialities that have been put forward, especially taking into account the fact that Mr. Krstić has not responded to my telephone calls, which, in the context of this event as a whole, supports the idea that he has a need for dramatics, which is reflected in this complaint he has filed.

In this context, I asked him who of the Tvrdjava Movement members, and when, had reported the incident in the steel mill by telephone. He stated that it was [REDACTED] from Radinac. When asked if [REDACTED] was their registered member, he answered that [REDACTED] was not. In this context, I pointed out that he had thus published inaccurate information, which reflected badly on the kind of activism that he was promoting.

After these words, Krstić jumped from his chair and posed a suggestive question: "Are you threatening me?" I told him to make an effort going forward to only write and say things supported by evidence.

The further conversation was somewhat unpleasant, as, on his part, it consisted of trivial comments such as that he was paying me for my work as an inspector, and that I was accountable to the public. I responded by asking him whether he, as a public figure himself, was acting in a responsible manner, and whether he was paying taxes and contributions to the state. He said that he was, of course, paying them, and I replied that this could be checked and that it could be ascertained if he was meeting his legal obligations.

After his affective response, the tension disappeared, and I continued the conversation in this tone. I explained that he should call me whenever he had any information on pollution, and that he could contact the Ministry through the *G-rect* application and provide information in a timely manner, so we could act upon it. In the preceding period, no one from Tvrdjava had contacted me by telephone, other than [REDACTED], who was calling me only with respect to a problem that [REDACTED] personally had. I stated that their activity would otherwise consist of sensationalism - informing and alarming the public first, without letting the Inspectorate know.

I would like to stress that I did not make any threats, raise my voice nor gesticulate, while Krstić was visibly agitated, and even had an unpleasant conversation with [REDACTED] over the tone he was using to talk to me.

I do not understand where the statement about a "destruction" of the Tvrdjava Movement comes from, as I never used any such words in such a tone. I believe that this is pure sensationalism and insinuations, made before this UN body with a view to emphasise the importance and vulnerability of Mr. Krstić as an activist of the Tvrdjava Movement.

I hold that my allegations can be also checked through [REDACTED], who was present during this conversation, and whose telephone number I am hereby providing if you wish to contact [REDACTED]

Finally, I must admit that I was quite surprised by the mention of my name, in view of the facts that I know Krstić personally, that he has visited me in my office more than once, and that he is a student in the school where I used to be the Principal.

I am available for any further information you may need.

the Republic of Serbia

National Environmental Inspector of

Goran Zbiljić