

# STRENGTHENING UNIVERSITY COOPERATION OSIJEK – PÉCS

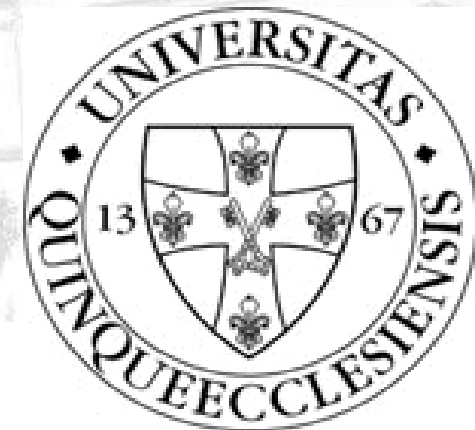
*SUNICOP*

*Summer school*



**Hungary-Croatia**

IPA Cross-border Co-operation Programme

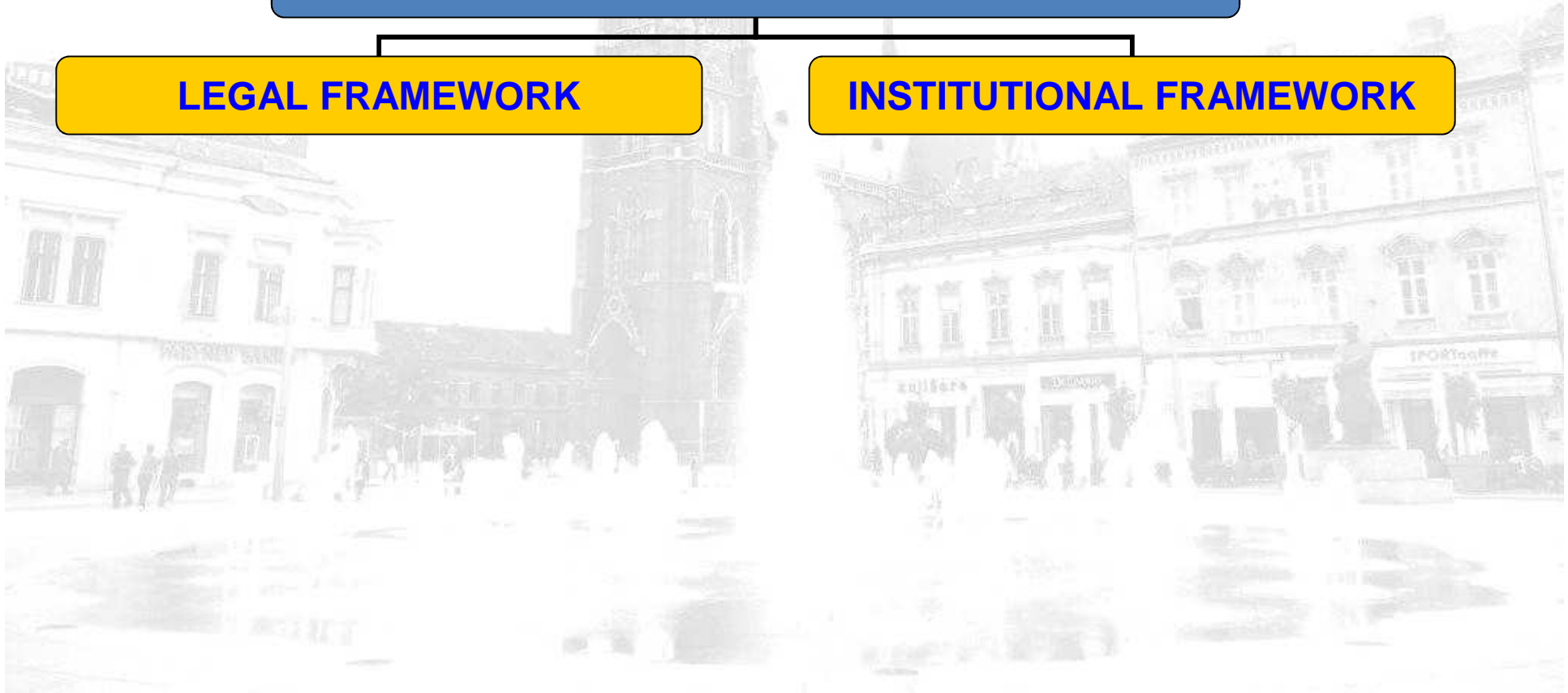


# PROTECTION OF HUMAN RIGHTS - CROATIA

PROTECTION OF HUMAN RIGHTS

LEGAL FRAMEWORK

INSTITUTIONAL FRAMEWORK



# LEGAL FRAMEWORK:

- ❖ Constitution of the Republic of Croatia
- ❖ International treaties (art.141)
- ❖ Constitutional Act on the **Constitutional Court**
- ❖ Constitutional Act on the Rights of National Minorities
- ❖ People's **Ombudsman Act**
- ❖ Law on the Ombudsman for Children
- ❖ Gender Equality Act
- ❖ Anti-discrimination Act
- ❖ Act on the Ombudsman for Children...

# Constitution



- I. **Historical foundations** (“...*freedom and human rights are guaranteed and secured...*”)
- II. **Basic provisions** (art.3 – the highest values of constitutional order)
- III. **Protection of human rights and fundamental freedoms:**
  1. Common provisions (art. 14-20)
  2. Personal and political liberties and rights (art. 21-47)
  3. Economic, social and cultural rights (art. 48-70)

# Some of Common provisions:

**ART. 14** – PROHIBITION OF DISCRIMINATION  
IN THE ENJOYMENT OF RIGHTS AND  
FREEDOMS;

**ART. 15** – PROTECTION OF THE RIGHTS OF  
NATIONAL MINORITIES

**ART. 16** – LIMITATION TO FREE ENJOYMENT  
OF RIGHTS AND FREEDOMS



# Restrictions of rights and freedoms:

## ART. 16.:

- ONLY BY LAW, in order to:
  1. protect the rights and freedoms of others;
  2. protect public order;
  3. protect public morality;
  4. protect health
- any restriction – PROPORTIONATE to the nature of the need to do so in each individual case

## ART. 17.:

- restrictions in following situations:

1. STATE OF WAR
2. IMMEDIATE DANGER TO THE INDEPENDENCE AND UNITY OF THE REPUBLIC
3. SEVERE NATURAL DISASTERS

## DECISION:

- a) Parliament – 2/3 majority;
- b) President – if the Parliament is unable to convene

# INSTITUTIONAL FRAMEWORK

## **LOCAL LEVEL:**

- *county human rights coordinations;*
- *state administration offices in counties;*
  - *NGOs*

## **REGIONAL AND INTERNATIONAL LEVEL:**

- *cooperation in the field of human rights*

## **NATIONAL LEVEL:**

- *all state bodies (courts!);*
- ***Constitutional Court;***
- ***Ombudsman;***
  - *NGOs*

# CONSTITUTIONAL COURT



# Constitutional complaint

*Everyone may lodge a constitutional complaint if he deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his/her rights and obligations, or about suspicion or accusation for a criminal act, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution*

# Conditions?

- **violation of constitutional right;**
- **30 days** (1 exception – justified reasons+15 days after the cessation of the reason)
- **exhaustion of all other legal remedies - 2 exceptions:**

*1. when the court of justice did not decide within a reasonable time*

*2. when the disputed act **grossly violates constitutional rights** and it is completely clear that grave and irreparable **consequences** may arise for the applicant if CC proceedings are not initiated*

# Does the constitutional complaint prevent the application of the disputed act?

- as a rule – **NO**;
- **BUT:**
  - on the proposal of the applicant, CC may **postpone the execution of the court of justice decision** until the decision is made, **IF:**
    - a) the execution would cause to the applicant such **damage**, which could hardly be repaired, and
    - b) the postponement is **not contrary to the public interest**, nor would the postponement cause **to anyone greater damage**

# Decision:

- Chamber of 6 judges
- **unanimously** (all members present)
- if no unanimous decision (or if the Chamber holds that the matter of the c.c. is of broader significance) – **the Session** of the C.C.

1. c.c. is **ACCEPTED**

2. c.c. is **REFUSED** as not grounded

# When shall the C.C. reject the c.c.?

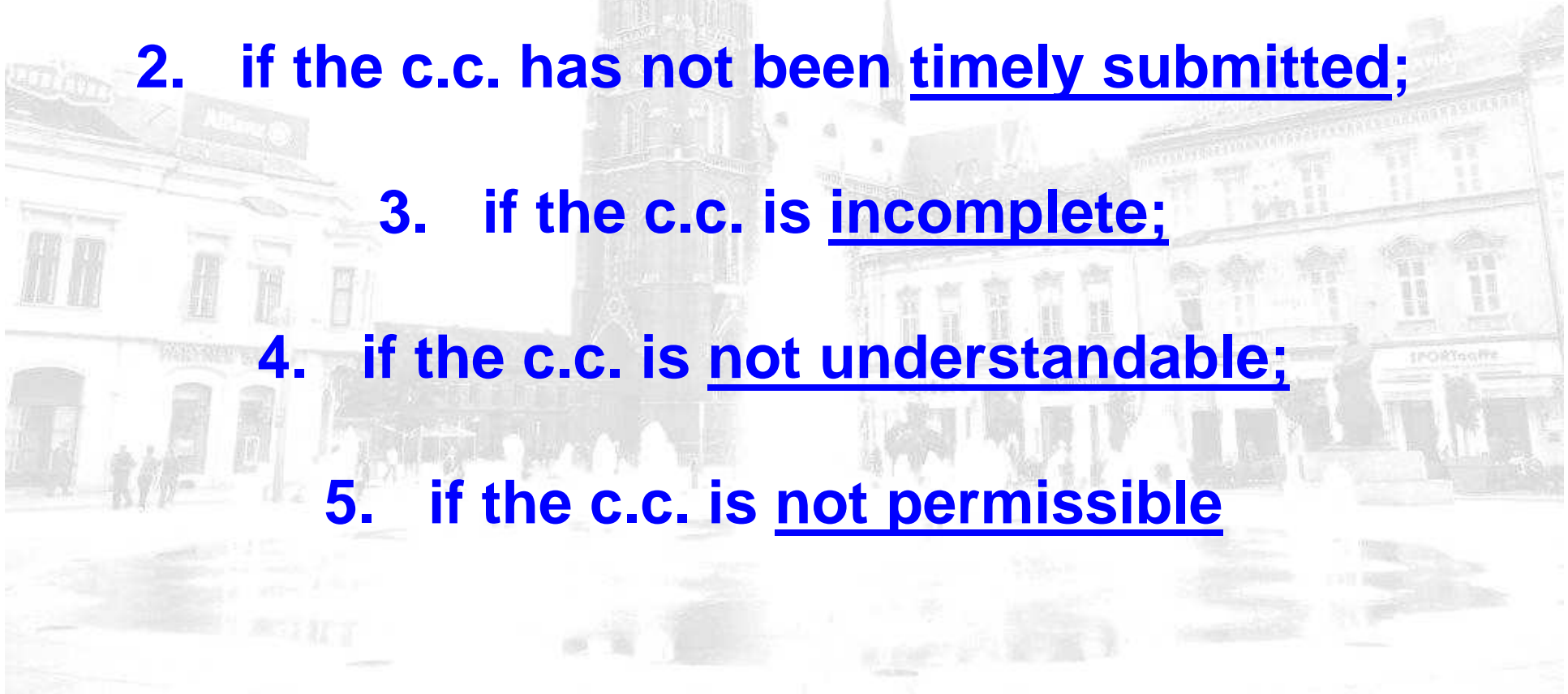
1. if it is not competent;

2. if the c.c. has not been timely submitted;

3. if the c.c. is incomplete;

4. if the c.c. is not understandable;

5. if the c.c. is not permissible



# When the c.c. is not permissible?

1. if the provided legal remedies are not exhausted;
2. if the c.c. has been submitted by the person not entitled to submit it;
3. if the c.c. has been submitted by a legal person who cannot be entitled to the constitutional rights

# Constitutional complaint – problems?

## 1. LARGE PERCENTAGE OF c.c.:

- from 1999 to December 31, 2010 – 44.887!

## 2. CONSTANT INCREASING NUMBER OF c.c.:

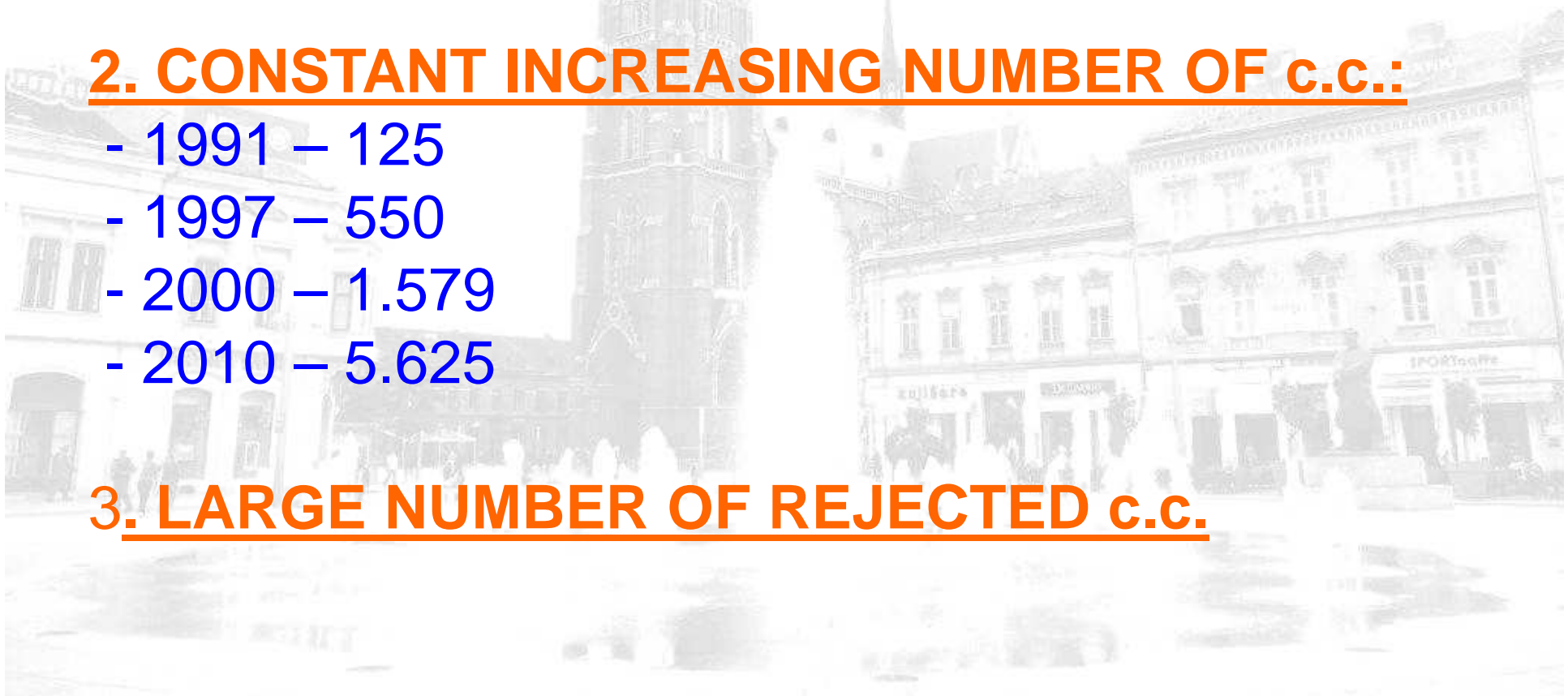
- 1991 – 125

- 1997 – 550

- 2000 – 1.579

- 2010 – 5.625

## 3. LARGE NUMBER OF REJECTED c.c.

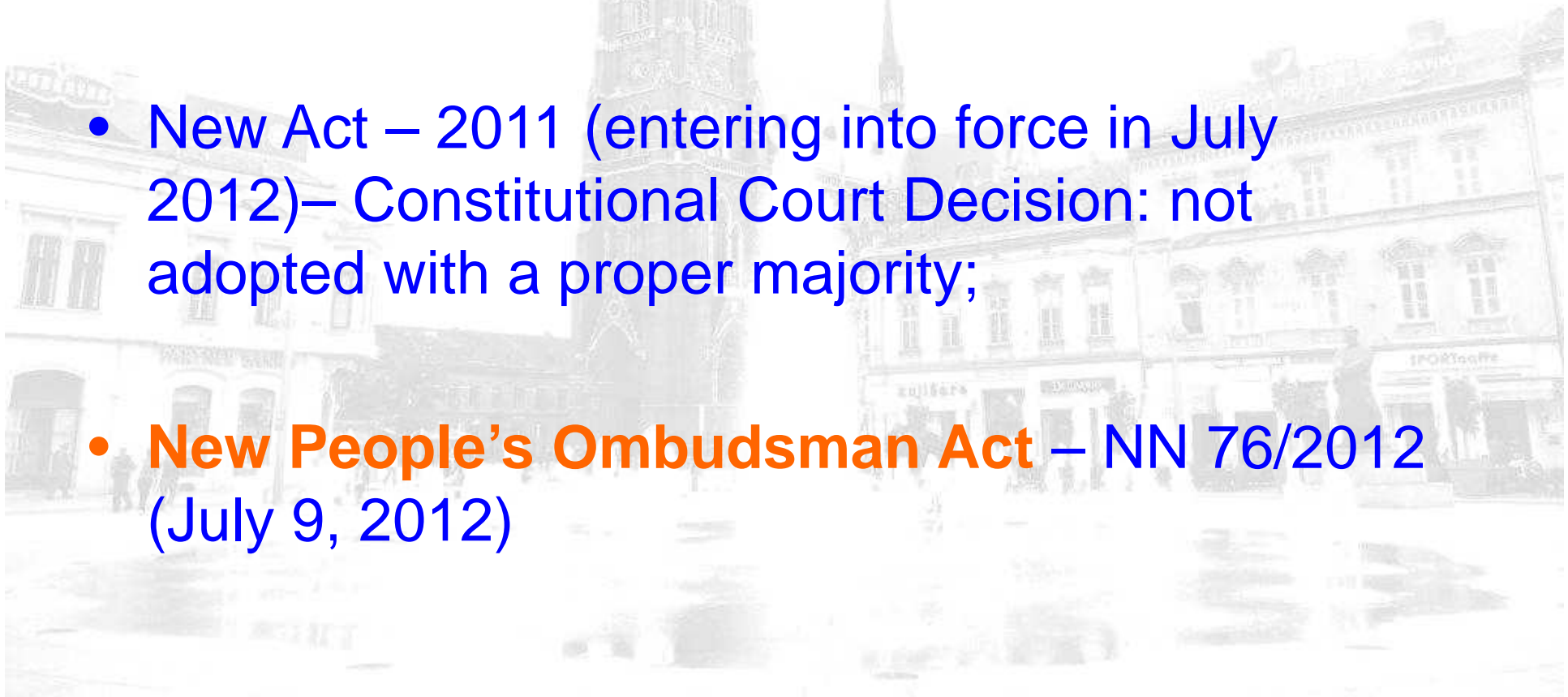


# PEOPLE'S OMBUDSMAN (Pučki pravobranitelj)



# Legal basis:

- **1990 Constitution** – art. 90 (now – art. 93)
- People's Ombudsman Act – **1992**
- New Act – 2011 (entering into force in July 2012)– Constitutional Court Decision: not adopted with a proper majority;
- **New People's Ombudsman Act** – NN 76/2012 (July 9, 2012)



## Art. 93. para. 1. of the Constitution:

*“The Ombudsperson shall be a commissioner of the Croatian Parliament responsible for the **promotion and protection of human rights and freedoms** enshrined in the Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Croatia.”*

# Mode of work:

## 1. COMPLAINT TO THE OMBUDSMAN

- **everyone**
- if he/she deems that his/her constitutional or legal rights have been **threatened or violated** as a result of any **illegal or irregular act by:**
  - governmental bodies and the civil service, local and regional self-government bodies and bodies vested with public authority
- **free of charge!**

## 2. OWN INITIATIVE

- examinations of the **individual or frequent same type** violations of constitutional or legal rights and freedoms

# Jurisdiction:

- issue warnings, give notices, make proposals and give recommendations;
- once a year submit a **report** on his activities to the Parliament (plus **special reports**);
- **inform the Parliament and the public** if relevant bodies have not in a proper term taken measures in accordance with his recommendation;
- **initiate amendments** of relevant laws;
- **request the proceedings before the CC** – review of the constitutionality of laws and the constitutionality of other regulations from his area of jurisdiction;
- propose the initiation of **criminal, civil or discipline proceedings**;
- **inspect penal-correctional institutions** and other institutions in which the freedom of movement is confined;
- is the **Central Equality Body** (from 2009 Anti-discrimination Act)

# SPECIALIZED OMBUDSMANS

**MILA JELAVIĆ – Ombudsman for children  
(2003)**



**VIŠNJA LJUBIČIĆ – Ombudsman for gender  
equality (2008)**



**ANKA SLONJŠAK – Ombudsman for persons with  
disabilities (2007)**



# NGOs

- ORGANIZATIONS FOR HUMAN RIGHTS (GONG, HHO...);
  - **MINORITY** ORGANIZATIONS (Udruga Roma Zagreba...);
- ORGANIZATIONS FOR **WOMEN** RIGHTS (B.a.B.e.);
- ORGANIZATIONS FOR **PATIENTS** RIGHTS (Hrvatska udruga za promicanje prava pacijenata);
  - ORGANIZATIONS FOR **CONSUMER** RIGHTS (Potrošač);
- ORGANIZATIONS OF **LGTB**-PERSONS (Kontra, Iskorak...)

# Civil society

- promotion of **democracy and human rights**;
- promotion of **tolerancy**;
- promotion of **non-violence**;
- promotion of **gender equality**;
- promotion of **marginalised persons...**

## PROBLEMS:

- **public mistrust**;
- **indifference to membership**;
- **finance**;
- **instruments of control of their work (“legalization of grey economy”?)...**



# **HUMAN RIGHTS SITUATION IN CROATIA?**

# HUMAN RIGHTS SITUATION:



**1. NATIONAL PROGRAMME FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS 2008-2011**

**2. ECHR-cases**

**3. REPORTS:**

- ombudsman/s
- NGOs
- relevant international human rights org.

# National Programme...

- 126 goals (!)
- 223 measures (!)
- **21 priority areas**

**1. AREAS IN WHICH THE PROGRESS HAS BEEN MADE** (fighting corruption, rights of older persons...)

**2. AREAS IN WHICH MORE EFFORTS ARE NEEDED** (education for human rights, right to free legal assistance, right of national minorities to be represented in public bodies and in bodies of local and regional self-government)

# PRIORITY AREAS:

- Elimination of racial and other forms of discrimination;
- Gender equality;
- National minorities;
- Care for Croats outside Croatia;
- Detained and missing persons in Croatia;
- Right to a fair trial;
- Victim/witness protection;
- Right of access to information;
- Freedom of the press;
- Right to work;
- Children;
- Youth;
- Combating corruption;
- Care for particularly vulnerable groups of citizens – like: sexual and gender minorities:

**Please read the AI Report: “Inadequate protection – homophobic and transphobic hate crimes in Croatia” (June 2012)**

# CROATIA AND THE ECHR

At the end of 2010, the Court had delivered **191 judgements** concerning Croatia, of which **154** found at least one violation of the European Convention on Human Rights, primarily of:

- **Art. 6. – right to a fair trial;**
- **Art. 13 – right to an effective remedy,**

# OMBUDSMAN 2011 REPORT

2010 – 1823 complaints

**2011 – 1900 complaints**

**397 – judiciary**

**212 – persons deprived of liberty**

**182 – labor relations**

**117 – insurance**

**94 – right of renewal**

**94 – statutory rights (asylum,  
citizenship...)**

**402 RECOMMENDATIONS**

**346 ADVICES**

**58 WARNINGS**

## **TRENDS IN THE LAST 5 YEARS:**

- 1) 20% of all complaints – complaints connected with the right to renewal, right to insurance and statutory rights;
- 2) 20% - complaints connected with the judiciary;
- 3) 20% - social and legal security

# OMBUDSMAN REPORT ON DISCRIMINATION (2010)

## 144 COMPLAINTS

- **60 (41,66%) – race, colour, national origin;**
- 17 (11,80%) – no grounds;
- 10 (6,94%) - **age;**
- 9 (6,25%) – **disability;**
- 7 (4,86%) – family or marital status;
- 7 (4,86%) – union membership;
- 6 (4,16%) – gender...

# OMBUDSMAN FOR GENDER EQUALITY REPORT (2010)

- INCREASING NUMBER OF  
REGISTERED CASES OF FAMILY  
VIOLENCE ;

- VICTIMS – SYSTEMATIC CARE?;

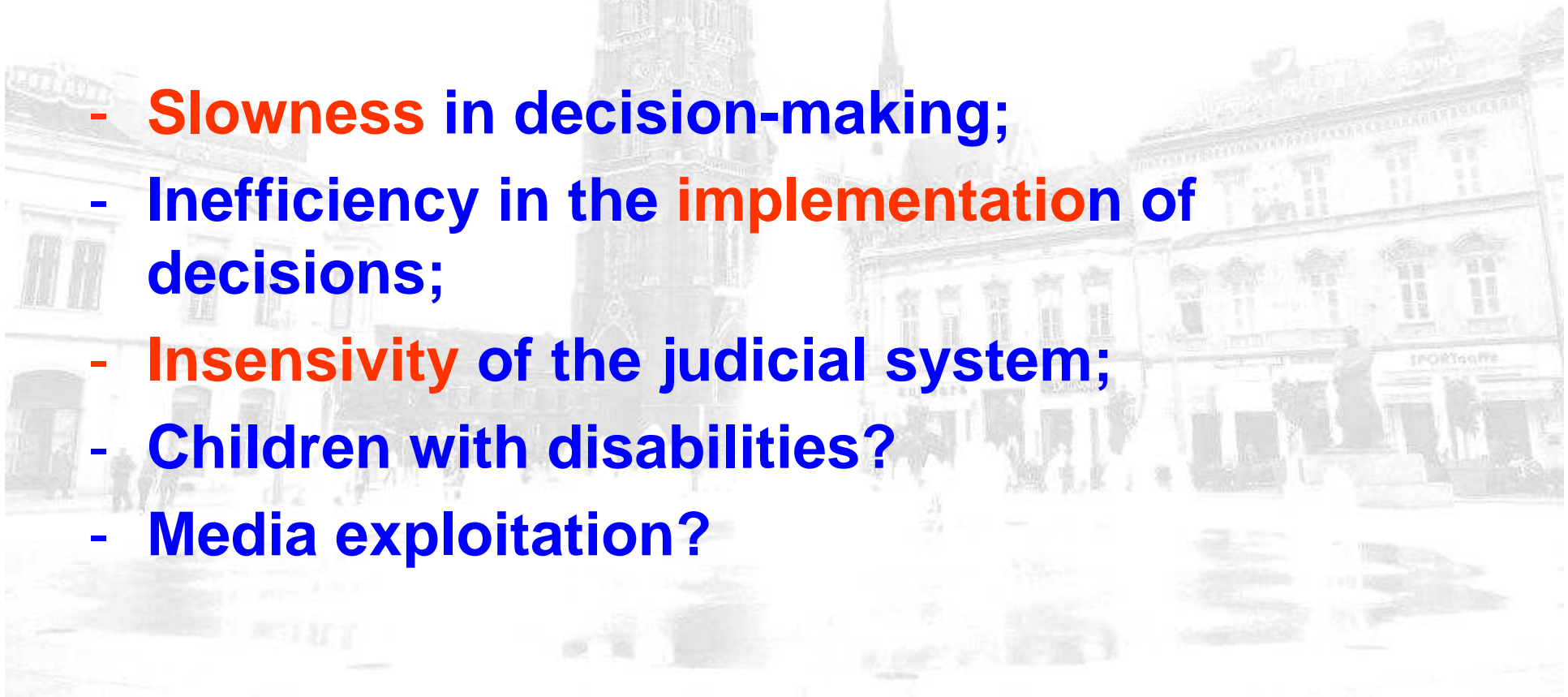
- POSITION OF WOMEN IN  
EMPLOYMENT?



# OMBUDSMAN FOR CHILDREN REPORT (2010)

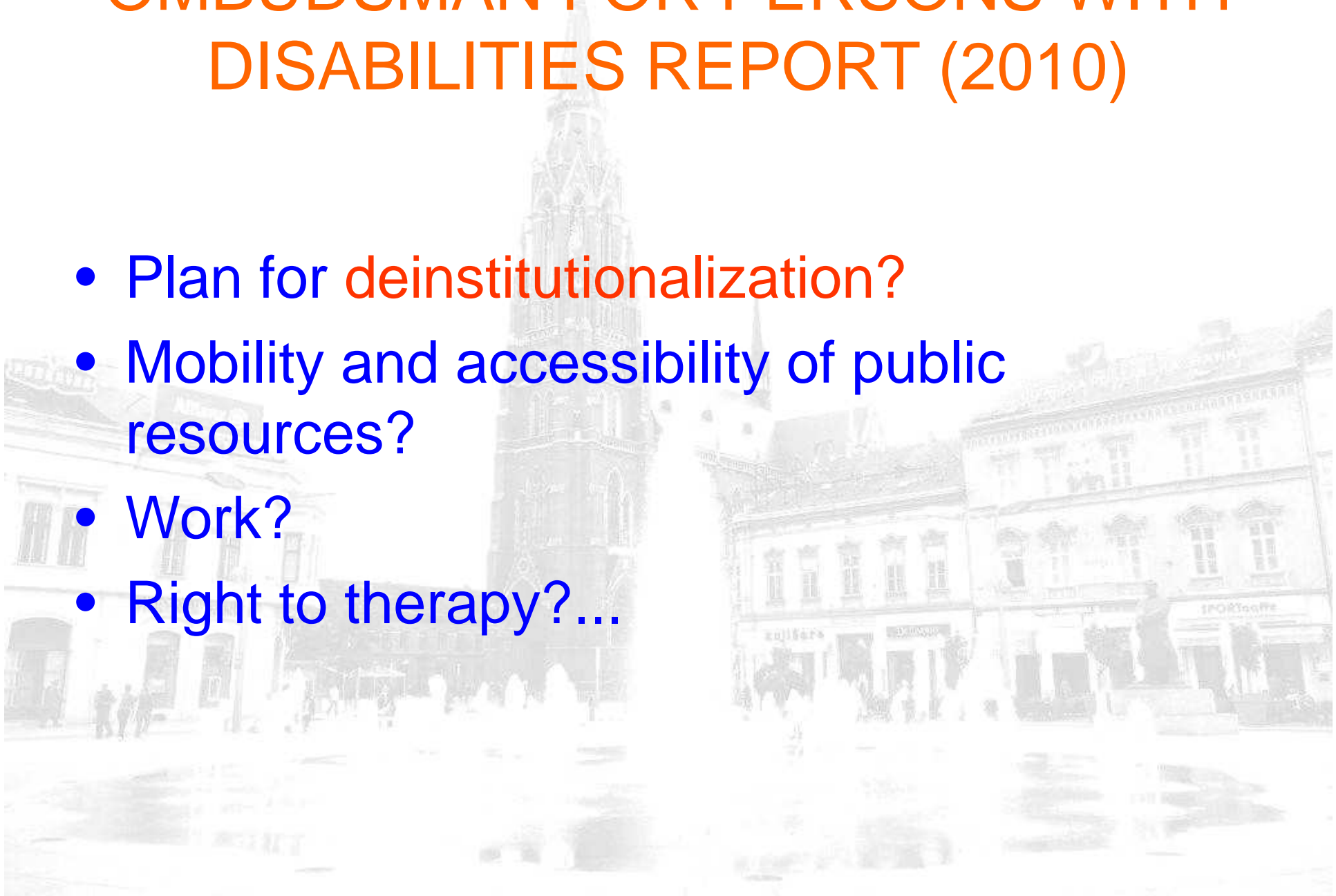
## CHILD PROTECTION SYSTEM OF CHILDREN IN CROATIA: **inconsistency and inefficiency**

- **Slowness** in decision-making;
- Inefficiency in the **implementation** of decisions;
- **Insensitivity** of the judicial system;
- Children with disabilities?
- Media exploitation?



# OMBUDSMAN FOR PERSONS WITH DISABILITIES REPORT (2010)

- Plan for **deinstitutionalization**?
- Mobility and accessibility of public resources?
- Work?
- Right to therapy?...



# AMNESTY INTERNATIONAL 2011 REPORT

*Please  
read it and make some conclusions...*



# HUMAN RIGHTS WATCH 2011 REPORT

*Please  
read it and make some conclusions...*



# ALMOST ALL REPORTS – SAME CONCLUSIONS:

- IMPLEMENTATION PROBLEM;
  - JUSTICE SYSTEM;
  - WAR CRIMES ACCOUNTABILITY;
- RETURN AND REINTEGRATION OF SERBS;
- RIGHTS OF PERSONS WITH DISABILITIES;
- DISCRIMINATION OF ETHNIC MINORITIES (SERBS, ROMA);
  - RIGHTS OF LGTB-PERSONS

