



REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS

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Protector of Citizens
Ombudsman

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**OBSERVATIONS ON IMPLEMENTATION OF
THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS IN THE
REPUBLIC OF SERBIA**

The Protector of Citizens (Ombudsman), as an independent and autonomous state authority mandated to control the legality and regularity of operations of public authorities with respect to the exercise of individual and collective rights of citizens and to protect and protect human and minority freedoms and rights of citizens, and in the capacity of an accredited “A status” National Institution for the Protection and Promotion of Human Rights (NHRI),

- starting from the complaints hitherto received, handled and resolved, as well as the facts learned through continual monitoring and research of the exercise of human rights in the territory of the Republic of Serbia and cooperation with other authorities;
- having regard to the Concluding Observations of the Human Rights Committee relating to the Second Report on Implementation of the International Covenant on Civil and Political Rights submitted by the Republic of Serbia;
- having regard to the Third Periodic Report of the Republic of Serbia on Implementation of the International Covenant on Civil and Political Rights and aiming to avoid repeating the points already made therein;
- assured that full and unbiased evaluation of the level of respect for human rights is key for proper focusing of activities carried out by government and other entities to improve the existing situation, which is an ongoing issue,

hereby submits to the Human Rights Committee his observations regarding the implementation of the International Covenant on Civil and Political Rights in the Republic of Serbia, mindful of the List of issues in relation to the Third Periodic Report of the Republic of Serbia.

SPECIFIC ISSUES WITH A REFERENCE TO THE LIST OF ISSUES

Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20 and 26)

Observations with respect to the issues posed in paragraph 2 in the List of issues

Certain activities from the Action Plan for implementing the Strategy of Prevention and Protection against Discrimination have not been carried out yet, even though the deadline for their implementation expired, or the activities are continual. The assessment of fulfilment of planned activities in the report for the 4th Quarter of 2014 and first Quarter of 2015 were inadequate. The assessment was based on the Query for monitoring the implementation of the Action Plan developed and submitted to competent authorities by the Government Office for Human and Minority Rights.

The Protector of Citizens holds the position that Serbia should carry out the full evaluation of activities finalised according to the Action Plan so far, and initiate and timely perform the activities specified thereunder.

Observations with respect to the issues posed in paragraph 3(a) in the List of issues

Regardless of the enhanced legal framework, the position of the persons with disabilities is still quite destitute. Despite the adoption of the Law on Movement Using Guide Dogs, persons with disabilities who use guide dogs for movement purposes have faced a number of difficulties and embarrassments in the public transportation in the previous period in attempting to exercise their rights. The Protector of Citizens has therefore recommended to the City Administration of Belgrade, including the administrations of all cities in Serbia that have public transportation, to notify all the transportation companies and concurrently inform the users of public transportation services about the rights of persons with disabilities, to use guide-dogs for their movement purposes, in the public transportation vehicles.

Moreover, despite the adoption of the Law on the Use of Sign Language, in reality, deaf persons encounter huge problems due to the fact that a very small number of people are familiar with the sign language and due to the insufficient number of interpreters of this language.

The Protector of Citizens commends the adoption of the Law on amendments to the Law on the Prevention of Discrimination Against Persons with Disabilities from 2016, which foresees that persons with disabilities suffering from permanent consequences of bodily or sensory disorders or diseases, shall be enabled to sign documents using a seal containing personal identification data, or using seals with engraved signatures (the facsimiles) before public authorities, legal or natural persons. The Law also lays down the fines for public authorities and persons who deprive the disabled persons from using this right. The Protector of Citizens has pointed out the necessity of adoption of this Law as early as in 2011 and has been repeating his standpoint continuously.

The Draft Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia for the period until 2020 has also been prepared. After having attended the public debate and reviewing of the Draft Strategy, the Protector of Citizens submitted to the Ministry of Labour, Employment, Veteran and Social Affairs the Opinion in which he pointed out that the Draft Strategy represents a solid foundation for further improvement of the position of persons with disabilities and welcomed the fact that its form follows the EU strategy developed for persons with disabilities in the period 2010-2020 – Europe without Borders, but asserted that it required further elaboration. More specifically, the Draft Strategy has prevalingly covered all the areas in which the persons with disabilities encounter problems, but a great number of them has been processed too generally, even though individual areas in the Draft Strategy appear to be so wide that they might just as well qualify for the development of separate strategies. Furthermore, the Protector of Citizens pointed to the requirement to introduce an adequate system of monitoring and evaluation of results of Strategy implementation, but also of the implementation of the UN Convention on the Rights of Persons with Disabilities. The Draft Strategy is not supplemented with any relevant study as to the weaknesses, opportunities and threats in achieving the planned objectives, including the plan for overcoming or alleviating such threats when drafting this act. Finally, no external evaluation of the Strategy implementation has been foreseen.

Observations with respect to the issues posed in paragraph 3(b) in the List of issues

Even though some progress was made in the past, LGBTI persons have been experiencing the violations of their rights. Notable prejudices and stereotypes about LGBTI persons are present in the society and they are being subjected to discrimination, hate speech and violence. LGBTI persons are most commonly mentioned in the context of some sensational events, or before the announcement of the Pride Parade, where such reports often violating the Code of Journalists. Very often, readers' comments in printed or electronic media contain hate speech, with no reaction of media whatsoever. There is a widespread intolerance of the young population towards LGBTI persons, and the employees of public services have shown the lack of knowledge about the rights of LGBTI persons. The legal impact of adjusting (changing) one's sex and their gender identity have not been regulated by the law. The services for young LGBTI persons who have been forced to leave their homes because their families rejected them after learning about their sexual orientation and gender identity, have not been developed yet.

The opinion of the Protector of Citizens is that Serbia should:

- intensify activities to prevent, suppress and sanction the hate speech and any form of violence against LGBTI persons;
- provide training for civil servants about the rights of LGBTI persons;
- establish the support services for young LGBTI persons, in particular for those who were forced to abandon their homes;
- make sure that campaigns are organized to raise awareness about the rights of LGBTI persons, including the educational content for pupils and students delivered in the way that they will find acceptable and comprehensible;
- adopt the law that will regulate the legal impact of adjusting or changing sex and gender identity.

Observations with respect to the issues posed in paragraph 4 in the List of issues

The position of Roma is still rather difficult, even when compared to other minorities. Despite the adoption of the Strategy for social inclusion of Roma women and men, it is not possible to discuss the effects of its implementation as no action plan for its execution that would require an appropriate budgeting has been passed, even almost one year since its adoption.

No affirmative measures for the employment of Roma, or members of other national minorities have been carried out for the purpose of exercising their rights to a proportionate presence in the public administration. The lack of affirmative measures of employment /dismissal within public administration and acting on the labour laws and prohibition of employment in the public sector, resulted in having a considerable number of local self-governments terminating the contracts or failing to fill in the vacancies according to the job classification, at the positions of Roma Coordinators. Moreover, the fixed term employment contracts have been terminated with certain Roma women and men with university degrees, despite the fact that they have already been represented in only a small number in the public administrations.

Following the adoption of the Law on Housing and Building Maintenance, Serbia finally received a regulation laying down the procedure of moving out or relocation of citizens to appropriate accommodation, along with the obligations of state and other bodies and entities

participating in the process of moving out or relocation, being obliged to carry out this process in accordance with the set principles; acting and monitoring of the progress of moving out and relocation and measures of social inclusion following the finalization of moving, including other issues.

The amendments to the draft of this Law submitted by the Protector of Citizens have been mainly accepted, with the objective to ensure the observance of human rights and humane acting during the moving out and relocation of citizens. However, despite the fact that the Law is bringing significant novelties, experience has shown that enactment of regulations in itself is not sufficient for exercising one's rights and protection of rights of the members of national minorities.

Equality between men and women (art. 3)

Observations with respect to the issues posed in paragraph 5 in the List of issues

Aside from the delays with implementing preventive measures, other omissions of state authorities have been identified with respect to the prevention and elimination of child marriages. Despite of being undoubtedly the most serious forms of exploitation and sexual abuse and neglect of children, both these occurrences and the responsibility of adults have been inadequately qualified, diminished and relativized, and quite often, the participation of children in these activities is attempted to be described as wilful and independent choice of the involved children. When taking statements from the children, they were not protected against interference, threats and coercion and the obligation of obtaining authentic testimonies and opinion from the children was not observed. In the case of Roma children, these situations are tolerated and the prescribed measures are being neglected or their enforcement is being postponed or carried out less effectively than in the case of children of non-Roma nationality, in the same situations. The criminal offences *Common-law Marriage with Minors and Incest*, despite of implying sexual activities with a child (a minor) have not been included under the Criminal Code within the Chapter regulating the criminal offences against sexual freedom¹, and therefore, in these cases it is impossible to apply the newly adopted *Law on special measures for prevention of committing criminal offences against sexual freedom against minors*.²

The opinion of the Protector of Citizens is that Serbia should:

- immediately start with planning and taking measures to prevent and suppress child marriages;
- ensure urgent and effective criminal and legal protection to any child involved in a child marriage, that is, if there is a risk for a child to enter into marriage, including to any child being the victim of sexual exploitation or sexual abuse and/or child trafficking;

¹ The criminal offence of Incest has been laid down by Article 197, Common-law marriage with minors, Article 190 and criminal offences against sexual freedom encompass the provisions of articles 178 through 186 of the Criminal Code.

² Art. 3 of the Law on Special Measures for Prevention of Committing Criminal Offences against Sexual Freedom against Minors. This Law provides additional legal protection against crime to children who are victims of criminal offences against sexual freedom, such as specific protective measures, exclusion of statute of limitation for criminal prosecution of perpetrators and other.

- amend the Criminal Code, so as to ensure that child victims of criminal offences of Incest and Common-law marriages with minors, can enjoy the criminal and legal protection prescribed by the Law on Special Measures for prevention of committing criminal offences against sexual freedom against minors;
- make sure that child victims of sexual and other exploitations, sexual abuse, abuse and neglect are provided full family and legal protection and services of support and rehabilitation;
- introduce the principle of personal liability for employees of state authorities for omissions made in providing protection to child victims of violence, abuse and exploitation.

Observations with respect to the issues posed in paragraph 5(6) in the List of issues³

Law on Gender Equality has not been harmonized with international commitments related to gender equality. Certain mechanisms for the enforcement of sanctions for failure to impose legal provisions are missing and gender equality mechanisms have been insufficiently precisely carried out. The practice of introducing the standing working bodies, and/or appointment of persons to be in charge of gender equality and conducting of activities of equal opportunities and the work of these bodies and/or persons is inconsistent, while in a certain number of municipalities and cities the gender equality mechanism has not been established yet, or failed to be put into practice. The Protector of Citizens developed the Model Law on Gender Equality and submitted it to the Government Gender Equality Coordination Body.

The Protector of Citizens is of the opinion that Serbia should adopt the Law on Gender Equality that will ensure full implementation of this principle in all the spheres of public and private life.

Violence against women and children, including domestic violence (arts. 2, 3, 6, 7, 24 and 26)

Observations with respect to the issues posed in paragraph 6(a) in the List of issues⁴

The public authority employees have been insufficiently educated in human rights.⁵ Planning and delivery of training courses have been organized so that neither the bodies whose employees attended these courses nor the bodies whose employees have been trained, have any feedback about effects of the training and the facilitators of such trainings have no information about the needs and priorities of bodies and their employees. None of them are able to make an estimate whether the organized training has been efficient and applicable or whether the knowledge or skills acquired at trainings are practicable, and to what extent. There is also no valid monitoring of training efficiency, the viability of acquired knowledge or the method in which the obtained knowledge and skills are put into practice.

³ In relation to the paragraphs 211,212 and 213. of the Third Periodic Report of the Republic of Serbia.

⁴ In relation to the paragraph 3, 16, 17, 18, 19, 20 and 23. of the Third Periodic Report of the Republic of Serbia.

⁵ For example, in 2015, the Protector of Citizens of the Republic of Serbia determined that only 14% of health workers and associates attended some form of training about violence against women, while out of over 25,000 civil servants, 235 of them attended such training.

The opinion of the Protector of Citizens is that Serbia should:

- ensure systemic planning and delivery of training courses about human rights, in particular the rights of citizens being in particularly vulnerable position;
- ensure the widest possible coverage of employees of public authorities by the trainings;
- ensure the system for monitoring the efficiency of training courses and the implementation of acquired knowledge in their work;
- perform the planning of training based on the operational requirements of public authorities.

Observations with respect to the issues posed in paragraph 6(a, b, c) in the List of issues⁶

With regard to the protection of women against domestic violence and in partner relationships, and the protection of children from abuse and neglect in families, including domestic violence, the principal and major institutional problem is that the competent authorities and services fail to deliver an effective and timely implementation of regulations and working standards and no accountability is sought for such failures. Another key problem is the lack of multidisciplinary cooperation, the absence of exchange of information or monitoring of the imposed measures of protection from domestic violence. The third key problem is the response of judicial authorities in the cases of violence against women and children and criminal policy. According to the findings of the Protector of Citizens⁷, only 25% of criminal reports reach the phase of sentences, while two thirds of cases end up as suspended sentences. These data have been confirmed by the State in its Replies to the List of Issues.⁸ The austerity measures were accompanied with restricted employment in the public sector and the number of experts appear to be insufficient for quality work.⁹

The opinion of the Protector of Citizens is that Serbia should:

- provide human, technical and financial resources that will ensure the full performance of the role and duties of public authorities responsible for protecting women from domestic and intimate partner violence;
- ensure strict implementation of regulations and protocols aimed at the protection of women against domestic and intimate partner violence;
- ensure adequate prosecution and sanctioning of domestic violence cases;
- ensure full protection and rehabilitation of female victims;
- introduce the personal liability principle for employees of public authorities for their omissions in providing protection to women being the victims of domestic and intimate partner violence.

⁶ In relation to the paragraphs 11, 12, 13, 14, 15, 21 and 22. of the Third Periodic Report of the Republic of Serbia.

⁷ Special Report of the Protector of Citizens on amendments to General and Special Protocols on Protection of Women against Violence, available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38>.

⁸ Paragraph 6g.

⁹ According to data of the Republic Institute for Social Protection as at 31 December 2015, there were overall 1,934 qualified employees within Social Protection and their number has been gradually decreasing each year. The age group 50-59 is prevailing among the employees and hiring of young human resources has been slowed down due to austerity measures. The Republic Institute for Social Protection has estimated that "if this trend continues, in the long run, it will undermine efficiency and quality of professional performance". Source: <http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>

Observations with respect to the issues posed in paragraph 7(a) in the List of issues¹⁰

The system for protection of children against violence, abuse and neglect is inefficient. In spite of being effective for 12 years already, the General and Special Protocols for the protection of children against abuse and neglect, have been sporadically and erroneously applied, while in the case of the judiciary and the health care systems, their application is almost completely absent. Education of children has been affected by violence in schools, with additional risk from experiencing the child protection system collapse due to the imposed restrictions to the number of expert associates in schools prescribed by regulations of the Minister of Education. The cases of bullying happen to end up with punishing perpetrators, without any prevention measures or professional response to violent behaviours or handling the causes of such behaviours. This trend is continued with the announcements of competent authorities (the National Assembly and the Minister of Education) about the adoption of new regulations introducing draconian punishments for perpetrators, from the expulsion from school to their referral to competent institutions. At the same time, tightening the penal policy does not affect teachers and other adults who have committed violence against a child. Child victims of domestic violence do not receive adequate protection and the reduced headcount in social protection threatens to make exercising of child's rights to protection from domestic violence even more difficult. The lack of information exchange and cooperation between different bodies is particularly notable, resulting in losing vital information in the process that are crucial for selecting and implementation of appropriate measures to protect the child. The critical shortcomings in the criminal and legal protection of children against violence have been listed in the response to *paragraph 5 of the List of issues*.

The opinion of the Protector of Citizens is that Serbia should:

- intensify efforts to enhance the protection of children from violence, abuse and neglect;
- implement legislative and other measures to impose mandatory processing under the General and Special Protocols to protect children from abuse and neglect;
- implement legislative and other measures to ensure adequate physical and human resources in the process of protecting children from abuse and neglect and appropriate training courses and professional development;
- implement legislative and other measures to establish a system of accountability for the enforcement of measures aimed at protecting children from abuse and neglect;
- establish a functional prevention system to suppress bullying, using early intervention measures that will involve the perpetrator and the victim, including other non-oppressive actions.

Observations with respect to the issues posed in paragraph 7(b) in the List of issues

Statutory prohibition of physical punishment of children has not been introduced in the legal system and no support services have been developed for parents that would provide information and educate them about alternative and far more efficient educational methods and they have not been provided with adequate and accurate information. Other than the Protector

¹⁰ In relation to the paragraph 202. of the Third Periodic Report of the Republic of Serbia.

of Citizens¹¹, none of the state authorities has organized campaigns to raise public awareness about the harmfulness of physical punishment of children and alternatives to such approach in education.

The opinion of the Protector of Citizens is that Serbia should:

- without delay, introduce explicit legal prohibition of physical punishment of children in any environment;
- start the campaign to raise public awareness of the harmfulness of physical punishment of children and positive parenting practices;
- organize and make available the services for parents (counselling services, telephone lines, schools for parenting etc.).

Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the right to an effective remedy (Arts. 2, 6 and 7)

Observations with respect to the issues posed in paragraph 8 in the List of issues

The Protector of Citizens, in cooperation with the NGO Humanitarian Law Centre in Belgrade, initiated the development of the Model Law on the protection of civilian victims of war, bearing in mind that the current regulations in this area have considerable shortcomings that make it difficult for victims of armed conflicts, in particular to their families, to establish the status of victims status and their entitlement to reparation, including an adequate compensation.

Observations with respect to the issues posed in paragraph 10 in the List of issues

Subject to the current regulations, an autopsy of the deceased during the detention in police stations is obligatory, as well as of the deceased who were detained pursuant to the Code of Criminal Procedure and those who passed away in prison. Following the numerous visits made by the National Preventive Mechanism against torture (hereinafter: the NPM), to psychiatric hospitals and social care institutions of dormitory type, it was established that autopsies of the deceased patients and/or inmates have been made only exceptionally, more specifically, that the autopsies are performed only when it is suspected that a death was caused by a violence. Bearing in mind the mortality incidence, the Protector of Citizens believes that it is necessary to consider the obligation of performing the autopsy of every deceased patient and/or inmate who has been placed in psychiatric hospitals or social care institutions of dormitory type, particularly where they had been detained.

The deadline for establishing the mechanism for investigating the cases of the "Missing Babies", administered by the European Court of Human Rights to the Republic of Serbia in its judgement *Zorica Jovanović vs Serbia*, expired on 9th September 2014. The investigation

¹¹ A research on views of children and adolescents about physical punishment of children; publication: "About Parenting without beating", distributed in maternity hospitals and schools; public discussions about harmfulness of physical punishments; training of teachers and health care workers about the harmfulness of physical punishment of children; Taking stand on prohibiting the physical punishment; campaign against physical punishment with the Network of Organizations for Children of Serbia etc.

mechanism has still not been established and the National Assembly was presented the *Bill on procedure for establishing the facts about the status of new-born children suspected to be missing from maternity ward in Serbia*. The text of this bill contains numerous deficiencies that hinder the enforcement of an efficient investigation of these cases. There is an unjustified restriction imposed with regard to persons who may file the petition to instigate the proceedings¹², with the requirement for filing the petition being the use of ineffective legal mechanisms (addressing state authorities or maternity ward) – that led to the judgement by the European Court; the investigation procedure is governed by the Law on Non-Contentious Procedure and the Law on Civil Procedure, that contain limitations that preclude any thorough investigation of these cases.¹³ The Court may pass the ruling stating that it may not determine the status of the missing child. Revision, as a legal remedy and thereby the possibility of court audit before the Supreme Court of Cassation is excluded.

The Protector of Citizens believes that Serbia should amend the proposed text of the bill to provide for an effective investigation mechanism in keeping with the ruling passed by the European Court of Human Rights, as well as ensure, by imposing legislative measures that the investigation mechanism enables the establishment of facts related to each individual case of the missing child.

Observations with respect to the issues posed in paragraph 11(b) in the List of issues

Serbian public has been seriously upset about the incident that took place in the early hours of 25 April 2016 (the parliamentary election night), when a group of masked men using heavy machinery, demolished several buildings in the part of Belgrade called *Savamala*, the area on which the residential and business complex called the *Belgrade Waterfront* is being built with the support of the Serbian Government. Numerous claimants pointed out to the Protector of Citizens that people who found themselves in that area and the night shift guards of the buildings were detained by masked individuals during the several hours of demolition. The state authorities downplayed the significance of this event in the media, claiming that the police had no information about the event, justifying the incident by the fact that the demolished facilities were illegal. Being convinced that the fact that the demolished buildings may have been illegal does not justify the forceful demolition conducted during night hours, by unknown persons, a few days after the events the Protector of Citizens performed the oversight of the police work. He established that the demolition of buildings during night hours by unknown persons had been carried out and that the police, despite numerous telephone reports by the citizens, did not intervene, with an explanation that they had been ordered from the top of the police not to intervene. Considering that an illegal behaviour of the police has been established, the Protector of Citizens addressed to the Ministry of Interior the recommendation to rectify the identified omissions in their work. After a month, the Prime Minister notified the public that

¹² Only the child's parents or exceptionally, brothers and sisters, grandmothers and grandfathers. The draft has failed to prescribe the option that the motion is filed by a person suspecting of being the "missing baby" himself/herself.

¹³ Such as, inability to implement different measures, other than pecuniary sanctions against persons refusing to testify and inability to present other evidence in the procedure, except those laid down by the Law on Civil Procedure.

the demolitions were performed by “complete idiots”, that is, the “top of the City of Belgrade authorities”. However, until today, this incident has not been investigated. The Police, despite their legal obligation, failed to notify the Protector of Citizens about any actions taken upon the addressed recommendations, even though the deadline for such notification expired as early as in mid July 2016. Also, there are no information about internal control performed within the Ministry of Interior, or any results of public prosecutor’s activities. The public in Serbia has particularly been worried about the allegations from the public prosecutor’s office that the police provided no answers to the Prosecutor’s Office and that it failed to act upon its orders with regard to this case.

Observations with respect to the issues posed in paragraph 11(c) in the List of issues

The state authorities have not developed efficient mechanisms for the rehabilitation of victims of torture, while these activities have been left to the NGO sector, among which the IAN - International Assistance Network stands out. Other than this organization, the Protector of Citizens developed the cooperation with the Victimology Society of Serbia, with the objective to initiate and provide concrete proposals for improving the position of the victims of torture.

Observations with respect to the issues posed in paragraph 12 in the List of issues

Fight against impunity for torture has not been successful in Serbia, which is best evidenced by the research conducted by the Belgrade Centre for Human Rights,¹⁴ pointing to a very small number of reports of cases of torture or other forms of abuse, and the utterly ineffective handling of internal control mechanisms, prosecutor’s offices and courts.

The Protector of Citizens has lately found a number of cases of abuse and one case of torture was confirmed by the decision of the Constitutional Court. During 2016, the Protector of Citizens identified a number of irregularities in administering the internal control mechanisms and a prison doctor in case of allegations of beatings of two convicts in the Juvenile Correctional Institution in Valjevo. The Juvenile Correctional Institution accepted the recommendation to remove the omissions. The Protector of Citizens will closely follow the implementation of the recommendations and will support the Correctional Institution in that process, particularly in implementation of the recommendation aimed at educating the employees about international standards for the protection against torture, especially of the medical staff, in terms of the provisions of the Istanbul Protocol.

Rights of persons with disabilities (arts. 2, 16, 23, 25 and 26)

Observations with respect to the issues posed in paragraph 13(a) in the List of issues

The Law on Protection of Persons with Mental Disabilities sets forth the "isolation" of psychiatric patients. The Protector of Citizens has communicated a number of recommendations, stressing the requirement to delete such provision and abandon the practice of any form of isolating the patients with severe mental disorders, emphasizing the necessity of having any member of medical staff present whenever a person is in an agitated state.

¹⁴ Belgrade Centre for Human Rights, *Human rights in Serbia 2015 – Law, Practice and International Human Rights Standards*, Belgrade, 2016.

Persons with mental and intellectual disorders are still being found at residential institutions of social protection in isolation, although such option has not been provided by the law. The Protector of Citizens addressed a number of recommendations to cease with such practice, pointing out that there are cases of isolation of users kept in rooms with bars, resembling “cages” without running water or access to toilet, which is the case of abuse, while in the prolonged period, this is qualified as torture.

It is necessary to start with creating conditions for deinstitutionalization. The present legal framework is completely inappropriate and as such, will never allow achieving the end goal, being to make sure that persons having intellectual disorders no longer live in dislocated institutions of asylum type, but rather participate in the local community, with the support of the society.

While discharging the activities of NPM, the Protector of Citizens found that specialized psychiatric hospitals adopted some improves with regard to respecting the standards of physical restraints by tying. The Protector of Citizens is convinced that a number of his recommendations will further contribute to the protection against torture or abuse. The Protector of Citizens will particularly focus on the enhancement of compliance with the standards of physical restraints at psychiatric units within general hospitals.

A special problem is providing an informed consent by patients having mental or intellectual disorders for administering particular medical treatments. The current legislation in Serbia provides that the consent with medical treatment of these persons is provided by their guardian, who is rarely present at the moment when certain measure needs to be administered at psychiatric or social institutions. Consequentially, such measures are chiefly taken without an adequate consent, or the problem is solved by having all the future interventions agreed in advance, which according to the opinion of the Protector of Citizens is not acceptable. This issue needs to be legally regulated in a more precise and adequate manner.

Also, a huge problem arises with regard to medical or scientific testing of these patients, since the Protector of Citizens believes that in this respect, the consent provided by the guardian cannot be relevant or sufficient protection against abuse.

Observations with respect to the issues posed in paragraph 13(b) in the List of issues

During the visits made to psychiatric hospitals, it was established that a vast number of patients had been hospitalized based on their formal consent, despite the fact that the veracity of their expressed will is questionable, considering their mental disorders and agitated condition and circumstances of their being locked up all the time, that is, being hospitalized behind the bars.

The opinion of the Protector of Citizens is that the fact that a person is locked up behind the bars points to their being detained, meaning that such hospitalization cannot be treated as a wilful accommodation.

Liberty and security of person and humane treatment of persons deprived of their liberty (arts. 7, 9 and 10)

Observations with respect to the issues posed in paragraph 15(b) in the List of issues

Significant efforts had been made in the previous period to reduce the overcrowded accommodation capacities and improve the capacities of the detained persons. Prison capacities have been considerably upgraded, however, individual prisons are still in a very poor condition (such as the shattered pavilions of the Detention and Rehabilitation Centre of Sremska Mitrovica). There is still a problem with the poor condition of a great number of rooms designated for police detention (predominantly located in the basement level, in a ruined condition, most often without a natural light or adequate lighting, of inadequate floor space, ventilation or heating), including the flaws with accommodation of certain psychiatric hospitals (such as: ruined pavilions at the psychiatric hospital in Kovin), big dormitories with 20-30 beds depriving the patients from any privacy, or of any positive therapeutic environment (in some psychiatric hospitals and social institutions).

The majority of complaints received by the Protector of Citizens from the detained persons refer to the medical service provided in prisons, and it needs to be further improved. During the last year, the Protector of Citizens, among other, issued the recommendation to enable the HIV patients the timely administration of their therapy. The Protector of Citizens believes that the role of prison doctors is particularly important when it comes to fighting impunity for torture. In this respect, the Protector of Citizens issued to the medical staff of the institutions numerous recommendations concerning the presence of non-medical staff at medical check-ups, particularly of the security officers who was the one to carry out the restraint measure. Also, certain recommendations have been addressed to perform complete examination of the body of the convicted person in order to document any injuries, as provided in the Istanbul Protocol and to determine the causality between the allegations about the way of causing such injuries and the injuries identified.

The Protector of Citizens is particularly encouraged by the improvement of conditions in individual prisons. During the last year, significant achievements have been noted in the Detention and Rehabilitation Centre in Niš. It is indicative that in this Centre accommodating around 1400 convicted persons, 1000 of them are employed at different jobs within the economic Unit of the Institution. Such an impressive data announces the end of the practice that so far, the convicted persons used to spend all day long in their cells, being idle.

Rights of displaced persons, refugees and asylum seekers (arts. 7 and 13)

Observations with respect to the issues posed in paragraph 18 in the List of issues

The received complaints have shown that these persons are in a very difficult social-economic position. This calls for a more efficient implementation of the housing programs for refugees and programs for economic support these persons. Considering the time schedule of closing the collective centres, there is still an open issue about when the centres will be closed and when the persons occupying them will be provided with accommodation. The Protector of Citizens stated

in his Opinion that the housing competition for refugees and internally displaced persons are not being conducted within the legally prescribed deadlines, that the procedures are inappropriately prolonged, and that due to certain irregularities, they are being returned for another decision making process.

There is an open issue of providing the housing and resolving numerous problems faced by the inhabitants of unofficial collective centres. A vast number of citizens, prevailing of Roma nationality, have been displaced from the territory of AP of Kosovo and Metohia since 1999 and live in unofficial settlements having no infrastructure. These are socially deprived persons whose members sometimes even still missing their personal IDs.

Observations with respect to the issues posed in paragraph 19(a) in the List of issues

Serbia is located on the “Balkan route” and has decided to take a liberal stand towards the migrants. They have been enabled to enter Serbia at the southern borders, outside of border crossing points, to cross Serbia without any limitation or physical prevention and to abandon Serbia at its north-west borders. So far, over one million migrants have transited Serbia. In the course of 2015, certificates were issued for approximately more than 600,000 persons who allegedly expressed their intention to seek for an asylum in the Republic of Serbia. The circumstances of the competent authorities issuing such certificates to all the migrants who found themselves on the territory of the Republic of Serbia although none of them actually expressed the will to seek for an asylum nor had such intention (done in order to legalize the presence of these persons in Serbia) which brought to the situation that no efficient asylum procedure is possible, due to insufficient capacities of the Asylum Office.

The Protector of Citizens pointed to the risks of establishing the liberal approach towards the migrants, considering that they, as persons arriving from another continent, aiming at reaching west European countries without the knowledge of languages, have been exposed to the hazard of smugglers and any other individuals who were in the position to abuse their vulnerable position.

Considering that today, the borders to Croatia and Hungary are closed, over 6,000 migrants are ‘stuck’ in Serbia at this moment, majority of whom are coming from Pakistan, Afghanistan and Iraqi, most of them being young men of whom nobody intends to find their haven in the Republic of Serbia.

During the visit to the Reception Center in Subotica in 2016, NPM found out that migrants are being released according to the prescheduled plan, considering that Hungary receives around 15 asylum seekers a day, only on work days. At the request of the Hungarian migration service, the migrants are creating lists based on which the order is being determined. These lists are handed over to Hungarian authorities, who then form the lists with the order of admission. The priority is given to families, while 1 migrant – single person is admitted per day. Exceptionally, there are cases of receiving a higher number of persons, so that on the day of NPM visit, the Hungarian authorities received 22 persons. Due to this, the migrants are often being targeted by smugglers, trying with their help to reach some of the countries of the west Europe through Serbia, as soon as possible. On the other hand, Serbia is facing the problem with providing them with due care, even with their integration, where required.

Observations with respect to the issues posed in paragraph 19(b) in the List of issues

Based on the statements given by the migrants, the practice of all the countries on the “Balkan route” is to collectively return the migrants without individually investigating each case and without any procedures applied. The Protector of Citizens received no complaints about any such acting of the competent authorities in Serbia and identified no such case while conducting his own investigations.

Observations with respect to the issues posed in paragraph 15(c) in the List of issues

The Protector of Citizens dedicated special attention to the issue of unescorted young migrants and established that they have been provided with additional support by the competent authorities. NPM performed over 100 visits to locations of migrants, including unofficial gathering locations and addressed numerous recommendations to the Asylum Centres and Reception Centres aimed at eliminating the identified deficiencies, that is, to further improve the respective actions, most of which have been complied with.

Right to a fair trial and independence of the judiciary (art. 14)

Observations with respect to the issues posed in paragraph 20(a) in the List of issues

In the beginning of September 2016, when the implementation of the Law on Amendments to the Law on Judges started, the High Court Council published the advertisements for election of a large number of judges, even though by the time it had not met the legal obligation to adopt the subordinate legislation to regulate the program and method of taking exams aimed at evaluating the qualifications and skills of judge candidates, as the precondition for providing legal and valid appointment.

In the mid November 2016, the above mentioned advertisements for the appointment of judges were annulled and on the same date two regulations were adopted: the Regulation on Criteria and Evaluation of qualifications, skills and respectability of candidates for the judge being elected for the first time and the Regulation on the Criteria and Evaluation of qualifications, skills and respectability for the appointment of judges to the position of a standing judicial function in another or a higher court and the criteria for proposing the candidates for the president of the court. The High Court Council officially notified the Protector of Citizens about the adoption of mentioned regulations during the oversight procedure of its work, opened by the Protector of Citizens..

The untimely adoption of subordinate legislation caused the justified mistrust in the work of the High Court Council among both the public and academic communities and thereby, among the candidates for the appointment of judges. The Protector of Citizens ended the oversight procedure by pointing out to the High Court Council that publishing the advertisement for the appointment of judges, in the situation where appropriate regulations about criteria and evaluation of the qualifications, skills and respectability of candidates have not been enacted yet, also without having prescribed the program and method of taking the exams, represent a justified grounds for doubting both the motives of the High Court Council when publishing the advertisement, and any the successful completion of the competition procedure.

The Protector of Citizens also asserts that the arbitrary and random actions should not take place in any of the phases of election process. Taking into account the importance of courts and the function of judges in protecting the rights of citizens, if the very process of electing the judges is accompanied with suspected illegality, improper acting or managing the criteria and evaluation that are not grounded on the current legislation, the consequences could be far reaching and question the trust of citizens in the work of courts.

Observations with respect to the issues posed in paragraph 21 in the List of issues

In the reporting period, with the objective to relieve and ensure better efficiency of the judicial system, public enforcement officers and notaries public were introduced in Serbian legal system. The new method of mediation in the settlement of disputes was also introduced, as well as a separate law regulating the protection of right to trial within a reasonable period.

These novelties resulted in the Protector of Citizens having, in addition to the already accustomed large number of complaints to the work of courts, the increased number of complaints about the work of public enforcement officers. Since the Protector of Citizens has no authority to control the work of courts, nor the work of public enforcement officers, the citizens are being referred to the competent bodies and procedures where they could protect their rights.

Report on progress made in adopting a law on free legal aid (see CCPR/C/SRB/3, para. 72)

The Law on free legal aid has not been adopted, even until the end of 2016, which continues to pose an obstacle in exercising the rights and having access to justice, particularly to economically deprived population and vulnerable groups. According to the information available to the Protector of Citizens, following a range of attempts to regulate the field of free legal aid, the agreement was reached about defining the scope of users of such legal aid. There is still a disputable issue of defining the providers of legal assistance, conditional upon the confronted positions of the representatives of the Bar Association and civil sector.

In the reporting period, in his regular annual reports presented to the National Assembly, the Protector of Citizens pointed to the necessity to regulate the segment of free legal aid and the requirement to accelerate the work on preparing the Law on Free Legal Aid.

The opinion of the Protector of Citizens is that Serbia should, without delay, adopt the Law on Free Legal Aid that would specifically provide this service to the victims of violence and human trafficking, children, women being victims of domestic and intimate partner violence, including the citizens suffering multiple deprivations and those coming from discriminated and marginalized groups.

Freedom of expression and peaceful assembly (arts. 19 and 21)

Observations with respect to the issues posed in paragraph 24 in the List of issues¹⁵

The adoption of a set of new media laws in 2014 did not in itself provide for the expected improvements. The Government managed to formally bring to an end the retrieval of the state from the ownership over media, with the exception of two major daily newspapers in which it still owns shares. Media that have not been privatized according to the law, are undergoing bankruptcy procedure. As of November 2016, the Law banned any direct budget funding and the system of projected (competitive) funding of media contents of public interest has been introduced. The Ministry of Culture and Information carried out the media competitions rather successfully, unlike the competitions in local self-governments that have shown more prominent conflict of interests and violation and abuse of procedures. In several cases, the competitions were run only to have the majority of funds used for buying the media from the state returned to new owners and it was noticed that even seven local media in different cities have been bought by the same businessman.

Right to nationality (arts. 23, 24 and 26)

Observations with respect to the issues posed in paragraph 25 in the List of issues

The issue of entering the new-born child into the Registry of Births when parents and/or mother have no personal documents, has still not been resolved. During the working visits to the substandard settlements, the Protector of Citizens found that there are cases of families having several children of different age, who are able to exercise their rights as legally recognized persons and become visible to the protection system, only after having completed the procedure of entering the mother into the Registry of Births.

Right to participate in public life (arts. 25, 26 and 27)

Observations with respect to the issues posed in paragraph 26 in the List of issues

The members of minorities have still not been provided with affirmative employment to be administered up to the achievement of a proportionate presence in public administration, considering that no amendments to the Law on Protection of Rights and Freedoms of National Minorities have been adopted yet, so as to constitute the legal grounds for collecting the data about the nationality of employees of public administration, record keeping, processing and keeping such data as particularly sensitive. There are no planned and monitored implementation of measures of affirmative employment. The Action Plan for exercising of rights by national minorities had prescribed that this Law was supposed to be adopted in the second quarter of 2016.

¹⁵ In relation to the paragraphs 181. и 182 of the Third Periodic Report of the Republic of Serbia.

SPECIFIC ISSUES WITH A REFERENCE TO THE THIRD PERIODIC REPORT OF THE STATE PARTY

Position of pregnant women¹⁶

Despite of having the regulatory frame providing for the protection of pregnant women and mothers of new-born babies, in practice, they have been encountering difficulties, primarily with exercising their right to salary remuneration. At this moment, the remuneration is late by several months, during which the pregnant women/mothers of new-born babies receive no income. The particularly difficult position of the pregnant women and mothers of new-born babies is experienced in the case of employers who ceased to operate, without providing to these women the appropriate documents legally required to be presented in order for them to exercise their rights before the public authorities. There is a noticeable lack of engagement and cooperation in such cases among the labour inspection, Tax Administration, National Employment Agency and local self-government units.

The Protector of Citizens is of the opinion that Serbia should provide full protection of living standards of the pregnant women, mothers of new-born babies and children during their leave due to the child care and special child care.

Optional Protocol to the Convention on the Rights of the Child¹⁷

The Republic of Serbia signed the Optional Protocol accompanying the Convention of the Rights of the Child, about the procedure for filing complaints to the Committee on the Rights of the Child of 2012, however, it has not ratified it yet. On the 74th session of the UN Committee on the Rights of the Child, during the discussion on the Second and Third Periodic Reports on the implementation of the Convention on the Rights of the Child in the Republic of Serbia, the State Delegation said that the Optional Protocol will be ratified when certain 'preliminary conditions' have been met.

The Protector of Citizens believes that Serbia should confirm the Optional Protocol to the Convention of the Rights of the Child with respect to the procedure for filing complaints to the Committee on the Rights of the Child.

Protector of the Rights of the Child¹⁸

The National Assembly's Committee on the Rights of the Child hasn't been considering the annual reports of the Protector of Citizens in the segment related to the rights of the child for two years already. The National Assembly has also not discussed the Annual Reports of the Protector of Citizens for the years 2014 and 2015 at their plenary sessions. On the other hand, the government drafted the Law on the Protector of the Rights of the Child and planned its adoption despite the period of economic poverty and austerity measures that largely affect

¹⁶ In relation to the paragraph 198. of the Third Periodic Report of the Republic of Serbia.

¹⁷ In relation to the paragraph 200. of the Third Periodic Report of the Republic of Serbia.

¹⁸ In relation to the paragraph 201. of the Third Periodic Report of the Republic of Serbia.

children. The state has not even fully provided the conditions for the work of the Protector of Citizens¹⁹, despite the fact that this institution has been successfully working towards the child rights and even though it has been established in compliance with international standards. At this point, the establishment of the Protector of the Rights of the Child is not in the interest of the children in the Republic of Serbia. Instead, it would be in the interest of the children to invest into the cancelled and missing services that would improve the position of children in their family and social environments, as well as in their everyday lives.

Criminal and legal protection of child victims

The level of criminal and legal protection of child victims is different, depending on the age of the child, considering that the prescribed sanctions and the method of prosecution in some criminal acts are different, depending on the age of the victim. There is no obligation imposed on the judges or prosecutors to implement the measures to protect the child victims, but instead they are authorized to make an assessment and decide whether the protective measures will be implemented or not. In practice, the protective measures for child victims are being ordered in a very small number of cases.²⁰ Experts acting to protect the children and persons working with children are often not sufficiently familiarized with the sexual abuse of children. The *Law on Public Order* has criminalized child begging, child prostitution and other forms of exploitation of children and the worst forms of child labour. This law has prescribed sanctions for practicing begging and prostitution, and since there are no special provisions to exclude the liability of children (while the children have received the status of victims), the children aged above 14 are being processed for these activities.

The Protector of Citizens is of the opinion that Serbia should:

- ensure full protection of child victims of sexual abuse and sexual exploitation, from re-victimization and re-enactment of trauma by implementing the legislative and other measures;
- children must be provided with equal criminal and legal protection by imposing the appropriate legislative measures, regardless of their age;
- the legislative measures should ensure better criminal and legal protection to children who are victims of sexual abuse and sexual exploitation;
- the legislative measures should ensure decriminalization of children exposed to the worst forms of child labour, economic exploitation and living and working in the street and ensuring that they receive the status of victims and full legal and other family protection and

¹⁹ For example, the Protector of Citizens has been working in the temporary premises for ten years already, while the premises intended for this institution have been provided for the use to another authority.

²⁰ According to available data, 66% of judges interrogate child victims in the court, 10,6% in their offices, while around 3% use special area designated for children (both inside and outside the court). None of the judges has interrogated a child in the child's home, school or any other child institution. The similar practice has been noticed among the prosecutors. Data provided from: Child's Rights Center: *How to reach judicial system tailored to meet child needs – Protection of child victims in criminal procedures and state of affairs in the Republic of Serbia practice (Kako do pravosuđa no meri deteta - Zastita dece žrtava u krivičnim postupcima i stanje u praksi u Republici Srbiji)*, Belgrade, 2015.

protection from crime as well as other forms of protection and services that will help with their recovery and reintegration in the community.

Pedagogical assistants²¹

The number of pedagogical assistants providing support to children in education has been identical for years (total of 174), even though the requirement for these experts are far higher. No further employment of pedagogical assistants is possible due to the prohibited increase in the number of employees. There is a similar situation with personal escorts of children, also being the additional support provided in education. This support is supposed to be funded by the local self-government units, but a great number of them fail to do so, due to insufficient budget funds at their disposal, nor any additional hiring would be possible.

The Protector of Citizens is of the opinion that Serbia should:

- intensify efforts to improve inclusive education at all levels;
- implement legislative measures to ensure full regulation of the system of providing additional support to pupils and students in the education process;
- implement legislative and other measures to ensure human and physical resources and adequate trainings for employees in educational institutions.

Health care of children²²

The Law on exercising the rights to health care of children, pregnant women and mothers of new-born babies provides full health protection to all the children having medical care documents (regardless whether the contributions for health insurance have been paid or not or whether the document has been verified). However, since the precondition for implementing this law is to possess a medical document, the children having no such documents – being mainly the “legally invisible” children – are not able to use the services of health protection based on this law.

The Protector of Citizens is of the opinion that Serbia should ensure free and available health protection for every child.

Acting towards juvenile offenders²³

The Law on Police from 2016 provides that majority of police authority exercised against minors may be conducted by police officers without the presence of parents, guardians or guardian bodies. This is lowering of standards achieved in exercising the rights of children, since the former Law on Police used to prescribe that the police authority against minors may be exercised solely by police officers specially trained to work with minors, in the presence of parents, guardians or representatives of guardian bodies. The new Law on Police lays down that the Ministries in charge of interior affairs, justice and health are obliged to prescribe the

²¹ In relation to the paragraph 168. of the Third Periodic Report of the Republic of Serbia.

²² In relation to the paragraph 199. of the Third Periodic Report of the Republic of Serbia.

²³ In relation to the paragraphs 44. and 45. of the Third Periodic Report of the Republic of Serbia.

method of exercising the police authority towards minors within the one-year period. This deadline will expire on 5th February 2017, and such subordinate legislation has not been adopted.

The Protector of Citizens is of the opinion that Serbia should make sure that the police authority exercised towards minors is conducted solely by the police officers trained to work with children and minors and that this has to be conducted in presence of parents, guardians or representatives of guardian bodies.

Prohibition of advocacy of national, racial or religious hatred²⁴

The notion of hate crime, specifically Article 54 of the Criminal Code, has not been implemented in practice, despite of the fact that the prosecutor's office issued mandatory instructions with respect to the implementation of this provision, in December 2015. This deficiency has also been pointed out in the Report of the European Commission against Racism and Intolerance (ECRI) in the fifth monitoring cycle of Serbia.

The Protector of Citizens is of the opinion that Serbia should take any legal and other measures to implement the provisions of the Criminal Code introducing special liability for committing the hate crime.

²⁴ In relation to the paragraph 182. of the Third Periodic Report of the Republic of Serbia.