



REPUBLIC OF SERBIA

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Protector of Citizens
Ombudsman

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**THE SUBMISSION OF THE PROTECTOR OF CITIZENS (SERBIAN NHRI) ON
IMPLEMENTATION OF THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS IN THE REPUBLIC OF SERBIA PRIOR TO THE EXAMINATION OF THE THIRD
PERIODIC REPORT OF THE REPUBLIC OF SERBIA AT THE 71nd SESSION OF THE
COMMITTEE**

Introduction

As a national human rights institution and in accordance with General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights, the Protector of Citizens is pleased to submit to the United Nations Committee on Economic, Social and Cultural Rights a report on the implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter, the Covenant) ahead of the consideration of the Third Periodic Report of the Republic of Serbia at the 71st session of the Committee.

The report is based on relevant information available to the Protector of Citizens on the basis of complaints received, handled and resolved so far, investigations initiated on his own initiative, as well as facts obtained through continuous monitoring and research of the realization of human rights on the territory of the Republic of Serbia and cooperation with other bodies.

The time frame selected for this report is the period from 2019 to 2021, in order for the Committee to get acquainted with the relevant information on the implementation of the Covenant ahead of the consideration of the Third Periodic Report of the Republic of Serbia.

The Protector of Citizens is the national human rights institution in the Republic of Serbia (NHRI), which was awarded the highest "A" status in 2010 by the Global Alliance of National Human Rights Institutions (GANHRI). At the session of the GANHRI Subcommittee for Accreditation held in October 2021, the Protector of Citizens was re-accredited for the second time as a national human rights institution in the "A" status.

I. General Information

Protector of Citizens

With regard to paragraph 8 of the Concluding Observations: The Committee is concerned about the lack of legal authority of the Protector of Citizens to interact with the international human rights system and civil society organizations, about the lack of financial and human resources available to the Office of the Protector of Citizens and about limited monitoring of attitudes and recommendations of the Protector of Citizens by a Contracting State.

The Committee recommends to the Contracting State to:

(a) Amend the Law on the Protector of Citizens to enable him to interact with the international human rights system and civil society organizations;

Article 42 of the new Law on the Protector of Citizens, adopted on 3 November 2021, stipulates that the Protector of Citizens establishes and maintains cooperation with civil society organizations, international mechanisms for the protection and promotion of human and minority rights.

(b) Provide the Office of the Protector of Citizens with sufficient financial and human resources for the effective implementation of the mandate, in accordance with the principles relating to the status of national human rights institutions (Paris Principles);

Funds for the work of the Protector of Citizens

The budget of the Protector of Citizens has been growing since 2015 (Table 1). The exception is the budget for 2018, which is less than the one set for 2017, which can be explained by the fact that the Protector of Citizens in 2017 spent a total of 78.89% of the provided budget funds.

Table 1 – Realization of the budget of the Protector of Citizens in the period 2015-2022

year	approved	realized
2015	171,416,000.00	154,792,573.14
2016	209,447,000.00	154,621,240.66
2017	215,998,000.00	170,396,899.49
2018	195,296,000.00	180,720,058.00
2019	209,447,000.00	186,381,605.57
2020	208,023,000.00	193,341,591.31
2021	218,703,000.00	in progress
2022	227,224,000.00	

Salaries of civil servants in the Secretariat of the Protector of Citizens

The Protector of Citizens continuously advocates the need to set higher salary coefficients for civil servants in the Secretariat, which would be in line with the complexity of work and the responsibility for working in an independent and controlling institution of constitutional rank. For example, the Protector of Citizens, in his Opinion on the Draft Law on the Protector of

Citizens, among other things, reiterated the proposal to add new provisions that would regulate the income (salaries) of employees in the Secretariat of the Protector of Citizens, however, such a provision has not found a place in the new Law on the Protector of Citizens.

Staff capacities of the Protector of Citizens

The current staff capacities on 15 December 2021 in the Secretariat of the Protector of Citizens are: 82 employees, of which 74 for an indefinite period and 8 for a definite period of time.

Since the new Law on the Protector of Citizens was only adopted on 3 November 2021, a new Rulebook on the organization and systematization of job positions in the Secretariat of the Protector of Citizens has not yet been adopted, which would be in line with the new law.

The Protector of Citizens passed the Decision on the formation and work of the Secretariat of the Protector of Citizens, which was published in Official Gazette of the Republic of Serbia. The decision represents the starting point in the process of adopting a systematization which would closely regulate the work of the Secretariat, determine and classify the job positions of civil servants and employees and regulate other issues of importance for the work of the Secretariat. In addition, other general acts necessary for the work of the Protector of Citizens are being drafted. It is expected that the new Rulebook on the organization and systematization of job positions in the Secretariat of the Protector of Citizens will be adopted by the end of the first quarter of 2022.

The headquarters of the Protector of Citizens

The headquarters of the Protector of Citizens are still in the building in Belgrade, at 16 Deligradska Street, which has been used for that purpose since 4 May 2010. Temporarily allocated premises, with a total area of 1502.25 m², consist of 57 offices, archive rooms, conference rooms and a garage for five vehicles.

The existing premises are accessible for people with disabilities after the installation of the hydraulic passenger elevator in 2013, however, their capacity does not suit the number of employees, nor a more efficient organization of work. The Protector of Citizens has repeatedly pointed out to the competent authorities the need to provide adequate premises for the permanent accommodation of the institution.

(c) When adopting laws or creating policies and programs, take into account the views and opinions expressed by the Protector of Citizens, especially in the field of economic, social and cultural rights.

In the period 2019-2020, the Protector of Citizens received a total of 4,176 complaints in the field of economic, social and cultural rights (2019: 1680, 2020: 2496), which is half of the total number of complaints received in the mentioned period.

In the period 2019-2021 the Protector of Citizens issued 22 legislative initiatives which are wholly or partly related to the protection and promotion of economic, social and cultural rights.

Of that number, the competent authorities accepted three initiatives, did not accept six initiatives, while thirteen initiatives are still in the procedure.

In the same period, the Protector of Citizens:

- issued 76 opinions to public authorities, 35 under the legal provision to act preventively, by giving advice and opinions on issues within its competence, in order to improve the work of administrative bodies and improve the protection of human freedoms and rights, and 41 opinions based on the legal provision to, in the process of preparing regulations, give an opinion to the Government and the National Assembly on draft laws and other regulations, if they regulate issues that are important for the protection of citizens' rights.
- issued to the competent authorities a large number of recommendations that relate in whole or in part to the protection and promotion of economic, social and cultural rights. Out of a total of 642 recommendations, which in whole or in part refer to the protection and promotion of economic, social and cultural rights, 241 were accepted, 64 were not, while 337 are still within the deadline for action or acting upon them is being monitored.
- published six special reports¹ which in whole or in part refer to the review of the situation in the field of economic, social and cultural rights. In most cases, these special reports are based on research conducted, they identify the situation in a particular area and, accordingly, contain recommendations for rectifying shortcomings in the work of bodies so that citizens can enjoy their economic, social and cultural rights.

Regarding paragraph 3 of the List of Issues: Please inform how the member state guarantees the independence of the Office of the Protector of Citizens, as well as the real impact of the work of the Protector of Citizens on respect for the Covenant's rights, including information on legislative initiatives, monitoring activities and interventions on behalf of victims of violations of the rights from the Covenant.

On 3 November 2021, the National Assembly of the Republic of Serbia adopted a new Law on the Protector of Citizens, which contains international principles for the protection and promotion of the Ombudsman Institution contained in the Venice Principles of the Council of Europe (in the part related to the election and termination of office, investigation and means of work).

The new Law, among other things, improves the efficiency of the work of the Protector of Citizens in dealing with complaints, as well as accountability and transparency of administrative bodies, primarily through provisions relating to shortening the response time of bodies under the investigation initiated by the Protector of Citizens.

Provisions of the Law which further strengthen the independence of the Protector of Citizens:

- The Protector of Citizens is elected for a term of eight years, without the possibility of re-election to this position.
- Deputy Protectors of Citizens are appointed by the Protector of Citizens after a public competition announced by the Protector of Citizens within 15 days from the day of taking office.
- Funds for the work of the Protector of Citizens are provided in the budget of the Republic of Serbia. The Protector of Citizens prepares a proposal for the financial plan for the next year and, in accordance with the law governing the budget system, submits it to the ministry responsible for preparing the budget of the Republic of Serbia. The proposal of the financial plan of the Protector of Citizens should contain a proposal of the schedule and use of funds for exercising the competencies of the Protector of Citizens provided by this law. The annual funds for the work of the Protector of Citizens should be sufficient to enable him to perform his function

¹ For example, the Special Report of the Protector of Citizens on the Official Use of the Bulgarian Language and Script has been translated and published in Bulgarian.

effectively and efficiently, as well as to be in line with the macroeconomic policy of the Republic of Serbia. Funds for the work of the Protector of Citizens cannot be reduced, unless the reduction of funds for work is also applied to other beneficiaries of budget funds.

- The Protector of Citizens issues a general act on the organization and systematization of the job positions in the Secretariat in accordance with the budget funds allocated for its work. The Protector of Citizens shall notify the National Assembly of the adoption of the general act within 15 days from the day of its adoption.

For the part of the question related to data on legislative initiatives, monitoring activities and interventions on behalf of victims of violations of the rights from the Covenant, see the previous answer.

II. Issues related to the general provisions of the Covenant (Articles 1-5)

Maximum available resources (Article 2 (1))

Regarding paragraph 4 of the List of Issues: Please explain how the member state is assessing the impact of savings and similar measures since 2014 on the enjoyment of the rights guaranteed by the Covenant in respect of persons living in poverty and at risk of poverty and whether these measures meet the criteria given in the letter from the Chairman of the Austerity Committee of 16 May 2012.

Regulations restricting employment in public institutions² have had negative consequences for the provision of children's services, as they have suspended the application of regulations governing standards of professional work with children and employment norms in institutions providing services to children (health, social protection, education, etc.). The mentioned regulations have also negatively affected the exercise of the rights of other vulnerable social groups, such as victims of violence in the family and in intimate partner relationships, persons with disabilities, the elderly, LGBTI persons.

In October 2020, the Protector of Citizens issued a recommendation to the Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Finance, which again recommended urgent employment of professionals in social protection centres throughout the Republic of Serbia, in order to enable full application of professional standards and the adequate conduct of centres. Following this recommendation, at the beginning of 2021, the competent Ministry secured the consent of the Government of Serbia to employ a total of 187 new professional workers for an indefinite period of time, of which 108 would be employed in social protection centres, and the remaining 79 professional workers would be employed in other (residential and other) social protection institutions.

Non - discrimination (Article 2 (2))

Regarding paragraph 7 of the List of Issues: Please provide information on the impact of measures taken to combat crime and attitudes towards people with disabilities, LGBT people and people living with HIV, especially in the areas of employment, health, education and family life.

LGBTI people are still often exposed to discrimination, violence, prejudice and stereotypes, as a result of which they very often face attacks, threats, hate speech and other serious violations of rights in various spheres of life.

The law regulating same-sex unions and the law regulating the legal consequences of adjusting (changing) gender according to gender identity have not yet been adopted, nor have amendments to the Criminal Code been made which would also criminalize crimes based on sexual orientation and gender identity.

Amendments to the Law on Free Legal Aid³ have not yet been made, which would introduce LGBTI people as categories of beneficiaries in a vulnerable position.

Amendments to the Law on Textbooks⁴ have not yet been made, which would explicitly prohibit discrimination on the grounds of sexual orientation and gender identity and content that

² Law on Amendments to the Law on Budget System, which introduced a ban on employment in the public sector, "Official Gazette of RS", No. 108/13, which is still in force and the Law on Determining the Maximum Number of Employees in the Public Sector, "Official Gazette" RS ", no. 68/15 and 81/16 – decision of the CC.

³ "Official Gazette of RS", number 87/18.

⁴ "Official Gazette of RS", number 27/18.

encourages the formation of prejudices and stereotypes, which the Protector of Citizens has repeatedly pointed out in his annual reports.

The newly adopted Law on Gender Equality prohibits discrimination based on sexual orientation and gender characteristics, but not the discrimination based on gender identity, although the Protector of Citizens in the process of preparing this legal solution pointed out the importance of this provision, given the high vulnerability of trans people.

Amendments to the Law on Prohibition of Discrimination from 2021 provide better protection for persons of different sexual orientation and prescribe a prohibition of discrimination based on gender characteristics. When it comes to protecting the rights of intersex people, in accordance with the recommendation of the Protector of Citizens and comments during the preparation of these legal solutions, the new Law on Prohibition of Discrimination and the Law on Gender Equality both contain a provision which explicitly prohibits discrimination against intersex people, that is, discrimination based on gender characteristics.⁵⁶

Despite the recommendations of the Protector of Citizens, no specific special measures have been prescribed to improve the position of LGBTI people and other vulnerable groups, although LGBTI people are often exposed to threats, violence, hate speech and hate crimes, nor have the amendments to the Law on Police prohibited discrimination on the grounds of sexual orientation.

In accordance with the opinion of the Protector of Citizens, the Strategy for Prevention and Protection of Children from Violence for the period from 2020 to 2023 recognizes LGBTI children as children from vulnerable groups who are at risk of violence due to their sexual orientation and gender identity. However, contrary to the suggestions of the Protector of Citizens, the Strategy does not provide for a sufficient number of activities dedicated to the protection and promotion of LGBTI children.

Respecting the views of the Protector of Citizens, in 2021 the Government of the Republic of Serbia harmonized the Rulebook on detailed conditions, criteria and manner of selection, testing and assessment of reproductive cell and embryo donors with adopted standards of human rights and non-discrimination when it comes to LGBTI people.

Roma

Regarding paragraph 8 of the List of Issues: Please provide information and data on the impact of the implementation of the Roma Inclusion Strategy (2016-2025) and its Action Plan. Please describe the mechanisms established to guarantee the significant participation of the Roma population in the implementation of the Strategy and in its supervisory coordinating body.

The Action Plan for the implementation of the Strategy for Social Inclusion of Roma Men and Women for the period 2017-2018 has expired, and the adoption of a new one is delayed, making it difficult to implement activities and measures at the local level.

As one of the independent bodies designated to monitor the implementation of the Strategy for Social Inclusion of Roma Men and Women in the Republic of Serbia and its Action Plan, the Protector of Citizens continuously monitors the implementation of measures and points out

⁵ In the Third Cycle of the United Nations Universal Periodic Review, the Republic of Serbia received a recommendation to include in its regulations the protection of LGBTI persons from discrimination based on intersex status.

shortcomings in the implementation of measures. In this regard, the Protector of Citizens in 2019 published a Special Report on the Implementation of the Strategy for Social Inclusion of Roma Men and Women with recommendations.⁷ In relation to the findings from the previous report on the implementation of the Strategy for the improvement of position of the Roma, there is some, insufficient progress made by public policy measures related to the improvement of position of the Roma. The capacities of local self-governments as well as the awareness of their role in the process of inclusion of Roma men and women have been strengthened, but insufficiently for the effective implementation of measures.

Although the legislative framework in the field of housing has been significantly improved by the adoption of the Law on Housing and Building Maintenance⁸, special support is needed to local governments in the field of housing and making guidelines for drafting documents and procedures for the resettlement of Roma settlements.

In the field of education, some progress has been made when it comes to the inclusion of Roma children in the education system, especially in the preschool program. However, accurate records of the number of Roma children in the system are not being kept. Despite great efforts and implemented activities, the problem of segregation persists in the education system with a tendency to increase the number of schools attended exclusively by Roma children.

Of particular importance is the issue of resolving the status of health mediators who, even after ten years of their introduction, work under temporary employment contracts, and the number of mediators in health centres is insufficient. Health workers do not have enough knowledge about the measures envisaged by the Strategy and Action Plan, and often do not recognize the importance of specially designed measures to improve the health of the Roma population.

When it comes to measures of active employment policy of hard-to-employ categories, which include the Roma population, it should be pointed out that measures in the field of social protection are not harmonized with affirmative measures in the employment field. Beneficiaries of financial social assistance are mostly not active job seekers, and jobs offered to them through the National Employment Service are not adequate because these employment measures generally do not meet the needs of the Roma community (jobs are mostly temporary, etc.).

Records on the number of beneficiaries of social protection services of Roma nationality are not kept by all social protection centres, but available data show that the socio-economic situation of the Roma community is still very difficult and that all forms of material support are widely used (cash social assistance, one-time help, free meals).

Refugees, asylum seekers, migrants, returnees and displaced persons

The Protector of Citizens believes that, although some progress has been made, it is necessary to more efficiently implement programs for the housing of refugees, and especially programs for their economic empowerment. Internally displaced Roma from the Autonomous Province of Kosovo and Metohija are in a particularly difficult position, representing one of the poorest categories of the population in the Republic of Serbia, as almost 50% of internally displaced Roma still live below the poverty line. In certain situations, they cannot even exercise the right to financial social assistance if they are provided with accommodation in a collective centre. Namely, the Ministry of Labour, Employment, Veteran and Social Affairs has taken the position

⁷ Available at: <https://pravamanjina.rs/attachments/article/705/Poseban%20izvestaj.pdf>.

⁸ "Official Gazette of RS" number 104/16.

that residents of collective centres are not entitled to financial social assistance, since they have been provided housing.

For internally displaced Roma, an additional problem in accessing health care is the inability to register residence in informal collective centres and informal settlements. Namely, internally displaced persons, based on the status of an internally displaced person, could acquire the status of insured persons and apply for health insurance in their place of residence if they have registered residence.

The Protector of Citizens' observations on the position and exercise of rights of migrants are also presented in the part of the report related to the right to the highest achieved standard of health.

With regard to paragraph 10 of the List of Issues: Please provide information on the steps that the member state has taken to ensure that the Asylum Office applies a fair and efficient asylum procedure, as recommended by the Committee in its previous concluding observations.

Protector of Citizens, in the capacity of the NPM, in the period 2019-2021, did not monitor the asylum procedure, but the approach to asylum, and presented his observations in that context. It notes that a small number of migrants who are in reception centres want to enter the asylum procedure. Unlike in the previous period when the NPM visited these centres, not all migrants are being registered, but only those who intend to seek asylum in the Republic of Serbia.

Registration is performed at local police stations. However, not all those registered as potential asylum seekers also apply for asylum. In the Shelter for Foreigners in Padinska Skela and at the "Nikola Tesla" Airport in Belgrade, there is a possibility of registering foreigners who have expressed their intention to seek asylum, and in the premises, following the recommendations of the NPM sent to the competent authorities, information about the association that provides legal assistance during the asylum procedure has been displayed. Airport "Constantine the Great" in Niš does not have the equipment required for registration, in connection with which the NPM sent a recommendation, and in the room for accommodation of foreigners who were denied entry, after the recommendation of the NPM, information on legal aid providers has been displayed.

The Law on Asylum and Temporary Protection⁹ provides for the possibility of conducting the entire asylum procedure at the border crossing under certain conditions – to provide the applicant with adequate accommodation and food and that the request can be rejected as unfounded or denied. However, the practice of conducting the procedure at the border crossing has not been introduced due to insufficient capacities on the ground.

Regarding paragraph 11 of the List of Issues: Please describe the impact on social protection services, the Grants Agreement and the initiatives mentioned in paragraphs 64, 65 and 223 of the Member State Report on Economic, Social and Cultural Rights, including conditions in reception centres, for minors without escorts, refugees, asylum seekers, migrants in irregular situations and internally displaced persons. Explain the geographical scope and the envisaged dissemination of these initiatives across the member state, especially in border regions and migration centres. Please also provide information on the support given to civil society organizations when providing assistance to these groups.

⁹ "Official Gazette of RS", number 24/18.

Conditions in reception centres

As the NPM, the Protector of Citizens has repeatedly pointed out inadequate conditions in the room for accommodation of foreigners who were denied entry to the airport at the "Nikola Tesla" airport in Belgrade and recommended the competent authorities to provide the room in accordance with applicable standards and living conditions that include fresh air. At the beginning of November this year, the NPM was informed that the new facility at the airport has started operating and the NPM plans to visit it by the end of this year.

Conditions in the open-type centres for the reception and care of migrants are generally satisfactory.¹⁰

During the ban on migrants leaving the reception and care centres in 2020, which was justified by the state authorities as the intention to prevent the spread of the coronavirus, the NPM visited two reception centres in Adaševci and Obrenovac. They then determined that the number of persons accommodated in these centres has increased, given that during the state of emergency, migrants who were outside the centres were accommodated in them, and, among other things, pointed out to the competent authorities that such prolonged treatment may cumulatively reach the threshold of inhuman and degrading treatment.

Accommodation of unaccompanied migrant minors

Two asylum centres have been designated for unaccompanied minor migrants – Bogovađa and Sjenica, under the jurisdiction of the Commissariat for Refugees and Migration, as well as five institutions of the home type, three of which are under the jurisdiction of the state, that is, the Ministry of Labour, Employment, Veteran and Social Affairs, and two are run by humanitarian organizations. Unaccompanied migrants spend some time in the first reception centre where they applied, before being transferred to an institution intended for them, where they get another guardian. Accommodation facilities in the visited institutions under the jurisdiction of the state are in relatively good condition in terms of hygiene and conditions in them.

The facilities managed by humanitarian organizations are houses with a yard. The rooms are mostly double and the conditions in them are extremely good.

Having in mind the quality of reception and support that the institutions of the home-type provide to unaccompanied minor migrants, the Protector of Citizens assessed that accommodation in institutions of this type is in their best interest, so he recommended the Ministry of Labour, Employment, Veteran and Social Affairs to continue investing and to the fullest extent possible support the functioning of the accommodation of unaccompanied minor migrants in social institutions of the home type and homes run by humanitarian organizations.

Equal rights for men and women (Article 3)

The position of older women in rural areas

The Protector of Citizens draws attention to the fact that older women in rural areas who live in families are most often dependent on other family members in meeting their needs, given that they often do not have property rights to real estate and movable property, income, nor is their access to community-based services adequately provided in places where traffic and public

¹⁰ On 14 November 2021, there were 13 active centres (asylum centres and reception-transit centres).

transport structures are not in place. They are often exposed to neglect, gender-based violence and domestic violence.

Accordingly, and in accordance with the recommendation of the Committee on the Elimination of All Forms of Discrimination against Women from 2019, the Protector of Citizens and the association "Power of Friendship – Amity" organize forums¹¹ in rural areas aimed at raising awareness of older women and familiarize them with mechanisms of protection available to them, including the powers of the Protector of Citizens.

The position of Roma women

Exclusion from education, early school leaving, early marriage, multiple pregnancies with little time between them, inaccessibility of information and financial and other dependence on older family members and partners continue to characterize the lives of a large number of Roma women.

Although the legal framework for exercising the right of Roma women to reproductive health has been improved, and the work of health mediators has significantly contributed to increasing the number of health insured Roma women and Roma children who use health services, information on reproductive health is not sufficiently available. Activities on the prevention of reproductive health and education of Roma women on reproductive health are not carried out systematically, but mainly through projects of civil society organizations. The Ministry of Health has not regulated the position of health mediators in a sustainable and lasting way, nor have counselling services for young Roma men and women been developed.

Monitoring the implementation of the Law on Combatting Domestic Violence

A special report of the Protector of Citizens on the work of groups for coordination and cooperation in the city of Belgrade¹² was prepared in 2020 in order to monitor the implementation of the Law on Combatting Domestic Violence and the actions of competent authorities in cases of domestic violence and their work within coordination and cooperation groups. The main findings of the report indicate that since the beginning of its implementation, the Law on Prevention of Domestic Violence has brought improvements in the system of protection against violence in the family and in intimate partnership relations, primarily in terms of communication between bodies responsible for recording cases, preventing and sanctioning domestic violence. Also, taking measures in these cases has become more efficient and timelier, and the acting officials better recognize violence and its forms. However, there are still shortcomings in the implementation, the elimination of which is necessary to establish a more efficient and effective systemic protection of victims of violence. The lack of professional staff in the social protection centres represents a serious problem, as well as the lack of a single electronic record of data on domestic violence in all competent authorities, but also the lack of a central record of domestic violence.

¹¹ Within the project "Improving the Safety of Women in Serbia", implemented by the United Nations Agency for Gender Equality and Women's Empowerment in cooperation with the Ministry of Interior, and with the support of the Norwegian Embassy in Belgrade.

¹² Available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6804-p-s-b-n-izv-sh-z-sh-i-ni-gr-d-n-r-du-grup-z-rdin-ci-u-i-s-r-dnju-n-p-druc-u-gr-d-b-gr-d>.

Right to work (Article 6) and right to fair and favourable working conditions (Article 7)

In the field of labour and labour relations, the Protector of Citizens notes that citizens most often complain about harassment at work, arbitrariness and illegality when making a decision on termination of employment, non-payment, i.e., irregular payment of wages and non-payment of social security contributions. In fear of losing their job, employees usually report their dissatisfaction only when they lose their job and when proving their rights is possible only in a court procedure that takes a long time and assumes material costs. Also, a large number of workers cannot collect their employment claims (salaries and contributions), bearing in mind that these are employees of companies that have faced restructuring and bankruptcy and whose accounts have been blocked. Based on the received complaints, the Protector of Citizens also noticed that employees do not use the existing legal possibilities for the protection of their rights sufficiently enough, such as addressing the Republic Agency for Peaceful Settlement of Labour Disputes, the labour inspection, seeking judicial protection.

In accordance with the recommendations of the Protector of Citizens from the Special Report on the implementation of the General and Special Protocols for the Protection of Women from Violence, the National Employment Action Plan for 2019¹³ envisages active employment policy programs and measures which prescribe subsidies for employment of victims of domestic violence. However, the Rulebook on the detailed content of data and the manner of keeping records in the field of employment¹⁴ does not explicitly stipulate that the status, as one of the personal pieces of information on the unemployed person on which records are kept, should include the fact that the unemployed person is a victim of domestic violence.

Despite the fact that the Law on Professional Rehabilitation and Employment of Persons with Disabilities was adopted in 2009, persons with disabilities continue to face employment problems, as well as poverty and social exclusion.

Violation of the right to privacy

In the control procedure conducted against the Republic Geodetic Authority, a failure in the work of that body was determined to the detriment of 228 employed civil servants, because during the decision to work from home due to the declared state of emergency and the COVID-19 contagious disease pandemic, a collective decision was made for all employees, the integral part of which was a list of employees with chronic diseases. By sending the mentioned decision to all employees via official email, together with the list of employees suffering from chronic diseases and by stating the diseases in the manner the employees have transmitted them to the employer, the dignity and right to privacy of civil servants has been violated, as well as the provisions of the Law on Personal Data Protection. In order to eliminate the observed shortcomings, recommendations¹⁵ were sent to the Republic Geodetic Authority, which have not yet been acted upon.

¹³ Available at: <https://www.minrzs.gov.rs/sr/dokumenti/predlozi-i-nacrti/sektor-za-rad-i-zaposljavanje/nacionalni-akcioni-planovi-zaposljavanja-0>.

¹⁴ "Official Gazette of RS", no.15/10, 7/19 and 51/19.

Safety and health at work

In 2020, the Protector of Citizens, on his own initiative, initiated an investigation to control the work of the Labour Inspectorate of the Ministry of Labour, Employment, Veteran and Social Affairs, regarding the actions of inspection bodies in controlling the application of all prescribed measures and recommendations with the aim of preventing the spread of the COVID-19 contagious disease at the “Jura” Corporation – in its plants in Niš and Leskovac. The Protector of Citizens determined that the conducted inspections and the undertaken inspection authorizations did not ensure a safe and healthy work procedure in the supervised entity, nor did they fulfil the preventive role that they had. Accordingly, the Protector of Citizens, by issuing an opinion to the competent authority, pointed out the need to strengthen the inspection supervision in the coming period.

The position of workers from Vietnam

After learning from the media about suspicions of a difficult situation and inadequate living conditions of Vietnamese workers working on building a car tires factory in Zrenjanin, representatives of the Protector of Citizens, together with representatives of the Zrenjanin Police Administration, visited the facilities where the workers are housed. Namely, the Sector for Emergency Situations of the Ministry of Interior inspected the facilities where the workers are accommodated and immediately passed a decision banning the use of two facilities for housing, as well as holding LPG bottles and diesel fuel barrels, which were found there, because of the danger that may arise from them.

Representatives of the Protector of Citizens also talked to workers and representatives of the company that hires workers from Vietnam, and found out that all hired foreign workers have a proper registration of residence. The Protector of Citizens demanded that the workers be provided with better accommodation conditions, and representatives of the Zrenjanin Police Administration informed the Protector of Citizens that the Higher Public Prosecutor's Office in Zrenjanin was informed about everything in order to determine whether any crimes were committed. The Protector of Citizens was also informed that the Labour Inspectorate of the Ministry of Labour, Employment, Veteran and Social Affairs performed supervision, as well as that the Centre for the Protection of Victims of Trafficking in Human Beings, as an independent institution for social protection, took measures within its competence.

Regarding this case, the Protector of Citizens has requested information from the Labour Inspectorate and the Centre for the Protection of Victims of Trafficking in Human Beings about the activities undertaken in this case, as well as from the Ministry of Interior on the situation determined during the supervision of the implementation of the decision prohibiting the use of two residential buildings.

The right to organize a union (Article 8)

Regarding paragraph 21 of the List of Issues: Please provide up-to-date information on the new draft law on strikes and explain how the member state consulted relevant stakeholders (including trade unions and civil society) and, if it didn't, what are its plans in this regard. Please also provide details on what the safeguards are for union membership under this new law.

Supporting the efforts of the proposer to improve social dialogue in order to protect social, economic and employment rights, the Protector of Citizens sent an opinion to the Ministry of

Labour, Employment, Veteran and Social Affairs on the Draft Law on Strikes¹⁶ in 2018, pointing out the need for certain provisions to be amended, specified and harmonized with the Labour Law.

The right to social security (Article 9)

Pension and disability insurance

In the field of pension and disability insurance, the Protector of Citizens notes that the largest number of citizens' complaints still relate to the "administrative silence", i.e., untimely action on submitted requests for exercising the right to a pension. Also, the timeliness of the Republic Pension and Disability Insurance Fund is evident in terms of handling cases in which the Protector of Citizens initiates the investigations of control over the work of this body. Citizens often addressed due to failure to make a decision on the final amount of their pension, since due to lack of data on the entire length of service and salaries, which is especially noticeable for the last decade of the 20th century, citizens are not able to achieve the right to a full pension. In each individual case, the Protector of Citizens, through obtaining information from other bodies (Tax Administration, Historical Archives, National Bank of the Republic of Serbia, Treasury Administration), tried to contribute to determining the years of service for periods not entered in the registry records of the Republic Pension and Disability Insurance Fund. Citizens also expressed dissatisfaction with the failure to act on their requests due to the fact that proceedings are underway before the Administrative Court regarding their previously submitted requests related to another legal matter. Due to the long duration of proceedings before the Administrative Court, citizens cannot exercise rights that are not conditioned by the decision of that body.

Although the Law on Pension and Disability Insurance¹⁷ has undergone a number of amendments, the initiative of the Protector of Citizens has not yet been acted upon, which, among other things, proposes to introduce a special right to temporary cash benefits (disability benefits) for insured persons with limited working capacity due to an injury at work, while they are not employed.

Farmer insurance

During 2019, the Protector of Citizens received a number of complaints from citizens who pointed out that a certain number of persons, only on the basis of the fact that the members of their household are persons who are owners of an agricultural holding, have been unjustifiably indebted for pension and disability insurance contributions for many years without being informed about it. Namely, the current Law on Pension and Disability Insurance did not adequately define the term insured farmer, did not prescribe criteria for acquiring and terminating the status of an insured farmer, did not clearly regulate the procedure for applying for insurance, determining the status of an insured person, deregistering insurance and terminating the status of an insured person, as well as suspending the status of an insured person and numerous other issues of importance for the exercise of farmers' rights to pension and disability insurance. The Protector of Citizens sent an opinion to the Ministry of Labour, Employment, Veteran and Social Affairs that it is in the interest of citizens that it prepares amendments to the Law on Pension and Disability Insurance as soon as possible, which would define the concept of an insured farmer on the basis of real parameters, the concept of family

¹⁶ Available at: <https://www.ombudsman.rs/attachments/article/5802/Nacrt%20zakona%20o%20strajku.pdf>.

¹⁷ "Official Gazette of RS", no. 34/03, 64/04 – other law, 85/05 – other law, 63/06 – decision of the CC of the RS, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14, 142/14, 73/18, 46/19 – decision of the CC, 86/19, 62/21.

household members, the conditions under which family household members are insured on the basis of agriculture, and which would regulate the procedure of acquiring or determining and terminating the status of an insured farmer, and all other relevant issues that are related to an insured person in a way that reduces the space for free interpretation and discretionary decisions of the competent fund.

The rights of veterans, military invalids, civilian invalids of war and their families

Acting on citizens' complaints regarding the manner in which the right to disability allowance is regulated, the Protector of Citizens submitted to the National Assembly an initiative to amend the Law on Pension and Disability Insurance in order to enable the right to disability allowance to be exercised by military invalids who have acquired the right to a pension, and have not yet reached the age of 65, i.e., for them to be on an equal footing with other categories of military invalids recognized by law as potential beneficiaries of this right – military invalids who have reached 65 years of age (whether retired or not), military invalids in employment and unemployed military invalids. The initiative has not yet been acted upon.

Compensation for pregnant women and mothers

The problem of violations of the rights of pregnant women and mothers by unscrupulous employers is still largely present. The authorities did not fully act on the recommendations of the Protector of Citizens sent at the end of 2018 due to shortcomings in the work of the authorities in cases when the employer does not fulfil its legal obligation to calculate and pay the salary compensation to the mother. The authorities pointed out that mostly misdemeanour and criminal charges are filed, but also that the penal policy is mild, and that it is not uncommon for the report not to be acted upon due to the obsolescence of misdemeanour/criminal proceedings. Neither the Labour Inspectorate nor the Tax Administration receive feedback on the fines imposed, the number and amount of fines, so the effects of such conduct remain unknown. Complaints submitted to the Protector of Citizens indicate that the problems of exercising the rights of mothers caused by the actions of unscrupulous employers still remain unresolved, so in 2020 the Protector of Citizens issued new recommendations to the competent authorities. Also, the Protector of Citizens is of the opinion that effective and timely cooperation of competent authorities with the Labour Inspectorate would ensure that employers who violate the law are effectively sanctioned, that it would establish legality in their work, as well as that it would prevent further violations of law and circumventing state authority.

*Position of persons with disabilities and
other vulnerable social groups that need social care*

The Protector of Citizens submitted to the National Assembly amendments to the Law on Games of Chance in order to ensure full and unhindered realization of the rights of persons with disabilities and other vulnerable social groups that need social care by explicitly guaranteeing that part of the income received from games of chance will be directed into the budget for financing the work of organizations of persons with disabilities and improving the quality of their lives. Funds received from the games of chance are an important source that can greatly contribute to improving the position of persons with disabilities and other vulnerable social groups that require social care. The National Assembly of the Republic of Serbia accepted the suggestions of the Protector of Citizens.

Protection of family and children (Article 9)

Financial support for families with children

The provisions of the current Law on Financial Support to Families with Children, as well as the Draft Law on amendments to that regulation from 2021, do not enable entrepreneurs, farmers, persons with agricultural insurance and women who perform occasional and temporary jobs to exercise the right to salary compensation in the same amount and duration as employed women. Therefore, the Protector of Citizens sent an Opinion to the competent authorities in which he stated that it is necessary to amend the provisions of the Law that relate to the compensation of other income, so that employed women, entrepreneurs, farmers, women with agricultural insurance and women performing temporary and occasional jobs, are in an equal legal position with employed women when exercising their rights during maternity leave and leave due to childcare.

Furthermore, the Protector of Citizens pointed out that the provision of the Law regulating the institute of parental allowance needs to be amended so that the situation when the mother is a stateless person will be envisaged as a basis for the father to exercise the right to parental allowance, with the aim of ensuring that this right will be exercised regardless of the legal status of the parents and given the fact that this right can already be exercised by a mother who is a foreign citizen and has the status of a permanent resident foreigner, for a child born in the territory of the Republic of Serbia.

The Protector of Citizens reiterated that the Law does not recognize the needs of children whose one or both parents are persons with disabilities in terms of exercising the right to compensation for stay in a preschool institution, which puts them in an unequal position in relation to other socially vulnerable children without parental care, children with mental disabilities and handicapped children, as well as children of beneficiaries of financial social assistance, for whom it is prescribed that they may exercise this right, and sent an opinion to amend this provision of the Law, which the competent Ministry did not accept.

Foster care

The Protector of Citizens, on the basis of conducting several investigations on his own initiative regarding the protection of the rights and best interests of children who are in foster care, determined that even after 13 years from the adoption of the Rulebook on foster care¹⁸ and ten years since the adoption of the new Law on Social Protection¹⁹, the foster care in the Republic of Serbia is not even closely developed to the extent to which the normative framework envisages and enables it.

The Protector of Citizens, acting on his own initiative, determined, inter alia, that only one of the seven established centres for family accommodation and adoption²⁰ (hereinafter: the centres)

¹⁸ "Official Gazette of RS", number 36/08.

¹⁹ "Official Gazette of RS", number 24/11.

²⁰ The Decree of the Government of the Republic of Serbia on the network of social protection institutions determined the network of social protection institutions that provide accommodation services of the home type and centres for family accommodation and adoption established by the Republic of Serbia, i.e., the autonomous province. The mentioned Decree envisages that in the entire territory of the Republic of Serbia, 8 centres for family accommodation and adoption will perform activities in the field of family accommodation and adoption. The aim of establishing the centres is to establish specialized social protection institutions that will provide assessment and planning services, counselling and support to relatives, foster and adoptive families.

performs activities in the field of foster care in the entire territory for which it was established; that the centres provide direct support for less than half of the total number of children in family accommodation and for less than half of the total number of foster families in the country²¹; that the foster families cannot respond to all the challenges that foster care brings, especially when it comes to caring for children with disabilities, behavioural problems and children in adolescence; that there was a reduction in the number of foster families, as well as those who are interested in foster care, as well as that there is a lack of support programs for making young people independent and finding them employment after leaving the foster care system.

In order to improve the existing foster care system in the Republic of Serbia and ensure comprehensive protection of children in family accommodation, the Protector of Citizens sent recommendations to the competent authorities, among other things, to urgently establish all foster care support centres and to provide an adequate number of professional workers, which would enable adequate support for children and foster families, as well as to start working on the development of specialized forms of foster care (family accommodation with intensive and additional support, occasional and urgent family accommodation), to provide continuous, specialized training for employees in family accommodation and adoption centres, as well as to strengthen the support for children and young people through independence and employment programs.

Children on the street

The Ministry of Labour, Employment, Veteran and Social Affairs refused to act on the recommendation of the Protector of Citizens to invalidate the work order from 2018 sent to all social protection centres in the Republic of Serbia, according to which they are to confiscate all children living and working on the streets from their parents or guardians, in an urgent procedure, initiate court proceedings for the deprivation of parental rights, prohibit contact between parents and children, impose protection measures against violence and file criminal charges against parents. At the end of February 2020, the Protector of Citizens determined that the competent Ministry acted contrary to the United Nations Convention on the Rights of the Child by sending the work order, significantly narrowing the level of realization of children's rights in the Republic of Serbia, and directing social protection centres to perform illegal actions. The Protector of Citizens believes that the automatic taking away of children is not a solution, and that instead, the activities of the system must be aimed at finding and rectifying the causes that led to the fact that children found themselves on the street, and not the consequences.

Determining the facts about the status of new-born children suspected of having disappeared from maternity wards in the Republic of Serbia

According to the Law on Establishing Facts on the Status of New-borns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia, adopted in 2020 by the Republic of Serbia following the ruling of the European Court of Human Rights in this case, the Protector of Citizens is authorized to submit to the competent courts proposals for establishing the facts on the status of new-born children suspected of having disappeared from maternity wards in the Republic of Serbia. Having in mind that after the entry into force of this law, due to the pandemic of the COVID-19 contagious disease, a state of emergency was declared on the territory of the Republic of Serbia, the Protector of Citizens appealed to the competent courts to take into account

²¹ This data indicates that more than half of the children in family accommodation and also more than half of the foster families do not have specialized support.

the Decree of the Government of Serbia on deadlines in court proceedings during the state of emergency declared on 15 March 2020. After that, the deadline for submitting the proposal for initiating the procedure prescribed by this law (six months from the day the law came into force) was extended for another 47 days. In accordance with its mandate, the Protector of Citizens has so far submitted to the competent courts four such proposals for establishing the facts about the status of new-born children suspected of having disappeared from the maternity ward several decades ago.

The right to an adequate standard of living (Article 11)

Regarding paragraph 21 of the List of Issues: Please provide current information on the implementation of the new Law on Social Protection and the Economic Reform Program for the period 2019-2021 and how they contribute to reducing the risk of poverty in the member state.

Although the Ministry of Labour, Employment, Veteran and Social Affairs announced that a new Law on Social Protection will be drafted, based on professional practice and experience, in order to improve the social protection system in the Republic of Serbia, the Law on Social Protection from 2011 is still in force.

The right to adequate housing

Living conditions near mines

In 2019, the Protector of Citizens sent an opinion to the Ministry of Environmental Protection and the Ministry of Mining and Energy regarding exceeding the threshold values of sulphur-dioxide in the air at emitters in the town of Bor, which endangers the health and lives of locals living in the exploitation zone of the Veliki Krivelj, Bor and Cerovo mines. After the control procedure, the Protector of Citizens pointed out that it is necessary to intensify the inspection over the copper mine in Bor and the actions of its new owner, the company "Serbia ZIJIN Bor Coppe" g.o.o. Bor, as well as for the city of Bor to adopt a short-term action plan to reduce air pollution as soon as possible.

In 2019, the Protector of Citizens sent an opinion to the Ministry of Environmental Protection and the Public Utility Company Elektroprivreda Srbije regarding the exposure to huge amounts of dust and noise of locals living near the "Kolubara" Mining Basin. After the control procedure, the Protector of Citizens pointed out that it is necessary for the Ministry of Environmental Protection to conduct a comprehensive inspection and establish whether the limit values have been exceeded, because of mining and energy activities, and that PE EPS must take all necessary measures to enable the relocation of the remaining locals living in the immediate vicinity of the "Kolubara" Mining Basin as soon as possible.

In 2020, the Protector of Citizens sent an opinion to the city of Bor regarding the insecurity of the residents of the settlement Sever, which is located on the edge of the old open-cast mine, where due to the daily works and blasting, their residential buildings have been damaged and their safety endangered. After the control investigation, the Protector of Citizens determined that it is necessary to resettle the remaining residents of the settlement "Sever" as soon as possible, and that the city of Bor should take all necessary and available measures to provide the necessary funds for the construction of new housing units.

Legal protection of property

In 2019, the Protector of Citizens sent a recommendation to the Ministry of Defence regarding the address of the Association of Military Homeless People of Serbia, which pointed out that the rights of beneficiaries of the temporary accommodation in the hotel "Bristol" were violated due to non-compliance with legal procedure, that the level of achieved and used rights has been reduced, as well as that they have been prevented from using heating and electricity supply. After the conducted control procedure, numerous omissions in the work of the Ministry were identified: some beneficiaries of temporary accommodation were offered accommodation in an apartment without providing information on the number of the apartment, floors, structure and square footage, which is why these persons were not able to consider the offer and decide on it; By its Decision, the Ministry of Defence has placed in an unequal position the beneficiaries of temporary accommodation who have retired after the adoption of this decision in relation to the beneficiaries who have retired before its adoption; The Ministry of Defence offered some beneficiaries temporary accommodation in various locations, even though they are members of a family household. The sent recommendations have not yet been acted upon.

The Protector of Citizens sent a legislative initiative to amend the Law on Housing and Maintenance of Buildings, so that the provision which prescribes the new way of calculating the monthly rent of tenants for an indefinite period of time, for citizens, endowments and foundations, would not endanger the living standard of tenants or the possibility of moving out of the apartment due to termination of the contract by the owner, due to the inability of tenants to pay rent amounts, as well as to precisely regulate the possibility of the owner entering the apartment to see how the apartment is being used, without unnecessarily violating the peaceful enjoyment of rights and the privacy of tenants. The submitted legislative initiative has been acted upon.

In 2020, the Protector of Citizens sent an opinion with recommendations regarding the address of the beneficiaries of the "Program of Housing and Permanent Integration of Refugees in Serbia – SIRP", who pointed out that the program does not provide for the right to purchase apartments, which puts them in an unequal position in relation to other refugees, as well as that they have the status of tenants of apartments for a certain period of time, that they are paying rents which are being calculated for them, as well as the fact that in this way, their permanent integration has not been achieved. After the conducted control procedure, the Protector of Citizens, among other things, determined that there is a certain degree of legal insecurity in the area of housing and that the model of renting these apartments for apartment beneficiaries from the "SIRP" program does not provide the permanent integration of refugees. The recommendation has not yet been acted upon.

Access to electricity for owners of illegal objects

The Protector of Citizens sent an initiative to the Ministry of Construction, Transport and Infrastructure to amend the Law on Legalization of Buildings due to the knowledge that a large number of citizens face the problem of inability to connect to the electricity distribution network, because they have apartments built in illegal residential buildings (for which the legalization procedure is being conducted) and for which the investor did not timely, i.e., before the entry into force of the amendments to the Law on Legalization of Buildings, on 6 November 2018, submit a request for connection to the distribution system or, although submitted, it has not yet been decided on before the entry into force of the mentioned amendments of the law. Accordingly, the

Protector of Citizens is of the opinion that a certain group of citizens has been brought into an unequal position in relation to other owners of illegal buildings who are in the same legal situation, i.e., for whom the legalization procedure is conducted in accordance with the Law on Legalization. The initiative has not yet been acted upon.

Living conditions in informal settlements

A large number of inhabitants of informal settlements, of which there are close to six hundred in the Republic of Serbia, do not have access to water, electricity or the Internet and are not able to maintain basic hygiene. While visiting ten informal Roma settlements during the state of emergency caused by the COVID-19 infectious disease pandemic, the Protector of Citizens noted that hygienic conditions were poor in most settlements, that access to electricity was very limited, and that families with access to electricity often lacked the means to regularly pay their bills, so due to debt, the electricity is often turned off. These existential problems that the inhabitants of informal Roma settlements face on a daily basis have increased after the proclamation of the COVID-19 pandemic, because few of them are able to respect the protection measures for the population.

Right to water

Availability and accessibility in informal settlements

During the visit to Roma settlements, the Protector of Citizens noticed that all visited settlements have a problem with water supply, especially drinking water, and that most residents are forced to bring water in balloons from fountains or from other facilities near their place of residence. Accordingly, the Protector of Citizens recommended to the local self-government units on whose territories the Roma settlements are located to provide regular water supply and access to drinking water to all residents of the settlement, and if there are no technical conditions for providing water in the settlement, it is necessary to ensure the constant presence of water tanks, especially in the event of a re-emergence of infection.

The right to the highest achieved standard of health (Article 12)

The Protector of Citizens notes that the pandemic of the COVID-19 infectious disease has imposed great challenges on the health care system in the Republic of Serbia, and access to health care has become far more complex for many citizens. Complaints received during this period indicate the difficult functioning of mechanisms for the protection of patients' rights due to the pandemic. An increase in the number of complaints was noticed, in which the complainants pointed out the alleged omissions in the treatment of their relatives, which, in their opinion, resulted in a fatal outcome. At the same time, through the complaints, they expressed suspicion about the procedures of quality control of provided health services in health institutions and were referred to the Ministry of Health in order to initiate the procedure of external control of quality of the work of experts. A large number of citizens' complaints related to delays in the provision of health care and non-urgent health interventions. In connection with this problem, a number of citizens pointed to the alleged denial of the right to use health care at the expense of compulsory health insurance and the inability to reimburse the costs paid for health care provided to them in a private health institution, because they could not receive the service in a health care institution from the Plan of Health Care Institutions Network.

Health protection of women from particularly vulnerable groups

There is still a big problem of maintaining the hormonal status of trans people, women who have had a hysterectomy, menopausal women, or all women who have low oestrogen levels. Acting on his own initiative, the Protector of Citizens took measures against the Ministry of Health, the Republic Health Insurance Fund and the Republic Expert Commission for Transgender Conditions of the Ministry of Health in order to solve this problem. Thanks to the actions taken on the Protector of Citizen's own initiative, the proposal to supplement the Drugs List with drugs that provide the appropriate hormonal status to trans women and all women who are deficient in the hormone oestrogen, was sent to the Commission for Medicines of the Republic Health Insurance Fund. After this, in 2021, the Protector of Citizens sent an Opinion to the Commission for Medicines that it is necessary to supplement the Drugs List, and the Steering Committee of the Republic Health Insurance Fund should confirm the amended drugs list, supplemented with drugs for establishing the appropriate hormonal status of trans women. The Protector of Citizens has been notified that the Opinion was acted upon.

As the National Preventive Mechanism, the Protector of Citizens, in the Thematic Report *Human, Sexual and Reproductive Rights of Women with Disabilities in Social protection Institutions*, especially pointed out that there are not enough medical and nursing staff members necessary to work with beneficiaries, that there is no special form for informed consent of beneficiaries to the introduced/subsequently introduced medical measures, that in some institutions, the women beneficiaries are not adequately informed about the methods of prevention of sexually transmitted diseases and unwanted pregnancies, with the aim of preserving reproductive health, as well as that regular, systematic gynaecological examinations are not being organized.

Regarding the issue from the List of Issues (paragraph 24): Please provide current information on the Mental Health Protection Strategy (2019-2026), as well as the steps taken by the member state to amend the Law on the Protection of Persons with Mental Disorders so that it prohibits involuntary interventions and treatment. Please provide information on how deinstitutionalization and community services development are envisaged by the Strategy.

Mental health protection

The Protector of Citizens is of the opinion that it is necessary to immediately develop a network of community mental health care services that will provide comprehensive mental health care, with the least possible restrictions and as close to the family as possible, strengthen the existing specialized services at health institutions and provide continuous education of employees in the area of mental health. The lack of funds for the protection of mental health and the lack of data on the percentage of these funds in relation to the funds allocated for health care as a whole must not serve as a justification or be an obstacle to necessary investments in preserving and improving the mental health of citizens. However, it is encouraging that the importance of establishing community mental health care centres is recognized in the Mental Health Protection Program in the Republic of Serbia for the period 2019-2026.

During its visits to certain institutions, the Protector of Citizens, in the capacity of the NPM, determined that the forms used upon admission frequently encompassed both the accommodation and treatment i.e. an overall consent to all future medical measures. In the reports on the visits, the institutions have been particularly explained that the consent to hospital treatment and consent to proposed medical measure are two separate issues and that it was

necessary to harmonize the procedures and forms for the admission of persons with mental disorders for treatment with the applicable regulations and standards so that the patient provides his/her consent to hospitalization separately from the consent to specific proposed medical measure(s). Acting upon the NPM recommendations, the visited institutions have taken activities to improve their acting in terms of: informed patients' consent to proposed medical measure, drafting specific forms for informed consent of patients to subsequently introduced medical measures in order to disable giving overall consent to medical measures, drafting a plan of education at the level of nursing workers and expanding the psychosocial rehabilitation plan in accordance with patients' individual needs and adapted to their capabilities.

In late December 2021, a public debate on the Law on Amending the Law on the Protection of Persons with Mental Disorders was finished and the Protector of Citizens took part in it in performing the tasks of the NPM. The NPM notes that individual suggested solutions indicate that the protection of people with mental disorders improved. This primarily refers to the provisions suggesting to delete the measure of isolation of persons with mental disorders, a need that the NPM had been pointing out bearing in mind the positions of international human rights protection instruments – UN Committee against Torture –the isolation of persons with severe or acute mental disorders is not permitted²² and the Special Rapporteur for Torture –the isolation of those persons, regardless of the duration, constitutes cruel, inhuman or degrading treatment²³, as well as the fact that the application of isolation does not constitute practice in psychiatric institutions in the Republic of Serbia. Furthermore, there has been a very significant change towards eliminating the possibility that a person with mental disorders be "voluntarily" hospitalized with the consent of a close family member, since such a consent cannot be considered the will of a person with a mental disorder, nor does he/she have any protection mechanisms against possible ill-treatment.

The Protector of Citizens notes that on 15 December 2021, the National Assembly adopted the Law on Protection of the Rights of Beneficiaries of Temporary Accommodation Services in Social Welfare, in which the suggestions and recommendations of the Protector of Citizens were implemented to a great extent.

Regarding the issue from the List of Issues (paragraph 25): Please provide information on the measures taken and envisaged to guarantee universal health insurance and unhindered access to health care and services, especially for the Roma, refugees, asylum seekers, migrants in irregular situations, displaced persons, persons deprived of their liberty and cancer patients.

Health care for migrants and asylum seekers

The Protector of Citizens, as the NPM, has been pointing out the shortcomings in the provision of health care in the Shelter for Foreigners in Padinska Skela for several years, and considers this the most important problem regarding the living conditions of foreigners in the Shelter. There are no permanent medical staff members in this institution, so medical examinations, including the first examination and discharge examinations, are performed in nearby health institutions, only when it is necessary, i.e., at the request of a foreigner or after the assessment of a police officer that someone needs an examination. Police officers take care of taking the prescribed therapy,

²² UN Committee against torture Report, Session 47 and 48, UN Doc A/67/44 (2012).

²³ Report of the UN Special Rapporteur on Torture for 2012, UN Doc A/22/53 (2013).

and medical records are kept in cases, among other documents related to the stay of foreigners in the Shelter.

Health care for persons deprived of their liberty, including women and minors, in institutions for the enforcement of penal sanctions

The Protector of Citizens, in the capacity of the NPM, regularly checks the scope of health care provided to persons deprived of their liberty in institutions for the enforcement of penal sanctions. All institutions have dispensaries, and larger ones have hospitals. The institutions employ medical staff, in smaller institutions they are mostly medical technicians, while doctors are hired from local health institutions, under additional work contracts with the institutions. Larger institutions employ general practitioners and specialist doctors. For examinations and interventions that cannot be provided within the capacity of a certain institution, persons deprived of liberty are sent to the Special Prison Hospital in Belgrade, the only institution of this type within the network of the institutions for the enforcement of penal sanctions, or to another health institution. Only certain, larger institutions have a dental office and offer services of a dentist. Since 2016, centralized procurement of medicines has been introduced and centralized procurement of medical equipment for all institutions is being implemented.

In the PCI for women in Požarevac, the only women's prison in Serbia, the institution has one doctor who specializes in gynaecology, who comes to visit regularly three times a month, and if necessary, at other times (on call). There is a gynaecological clinic in a special room in the Institution, which is equipped with a standard gynaecological table with all the accompanying equipment, as well as an ultrasound device. In this office, regular gynaecological examinations are performed, as well as ultrasound examinations of the breasts. Systematic examinations, as well as the Papanicolaou test, are performed every six months. In the "Maternity ward" special department, pregnant women and mothers with children are provided with complete assistance from professional staff. Breastfeeding mothers are provided with enhanced nutrition, a mandatory milk meal, as well as additional fruit meals.

In the Juvenile Detention Facility in Kruševac, primarily intended for juvenile perpetrators of criminal offenses, medical examinations in the field of general medicine are performed, oral and ampoule therapy is given and dressings are performed, and residents are referred for treatments or interventions outside the Facility to a nearby health institution when it is necessary to perform a specialist medical examination, including examinations by a paediatrician, orthopaedist, gynaecologist, etc.

All institutions in which persons deprived of their liberty are located have enabled vaccination and revaccination of persons who are in them, and to this day, a large number of persons deprived of their liberty have received all doses of the vaccine.

Lack of medical staff in institutions for the enforcement of penal sanctions

When it comes to the health care of persons deprived of their liberty, one of the main problems is the lack of medical staff in institutions. It was noticed that there is little interest of doctors to work in institutions, and the engagement of doctors from local health institutions through additional work has not proved to be a completely satisfactory solution, given the numerous obligations that the doctor has in institutions. Also, there are only a few institutions that have the ability to provide a 24-hour presence of the medical staff. In addition, the Protector of Citizens in the

capacity of the NPM has so far most often recommended more frequent presence of psychiatrists in institutions.

Treatment of psychoactive substance addicts deprived of their liberty

In institutions, the position or treatment of psychoactive substance addicts is difficult for several reasons. First of all, in some institutions, there is no developed detoxification program upon admission to the institution, so most of these people cannot start their treatment in the institution itself, i.e., only those who started treatment in the community before coming to the institution may be on substitution therapy²⁴. This can result in a pronounced demand for drugs, because if a person is not introduced to substitution therapy while at his/her freedom, and in addition does not have psychological support, it can be assumed that he/she will try in every way to get drugs. The Protector of Citizens, in the capacity of the NPM, believes that it is necessary to improve access to treatment with opiate substitutes in institutions by creating conditions for all persons who have a problem with addiction to psychoactive substances, and for whom a psychiatrist in the institution assesses the need to introduce substitution therapy, may be referred to the competent health institutions for an opinion and for making a decision on the introduction of this therapy.

Health care of persons with mental disorders deprived of their liberty

For several years now, the Protector of Citizens, as the NPM, has recommended to the Administration for the Enforcement of Penal Sanctions to ensure that all persons with mental disabilities serving prison sentences are removed from the regular prison regime and provided with health care appropriate to their need for treatment, in an inpatient health unit within the institution, a special prison hospital or in another appropriate health institution, considering that these persons have no place among the rest of the prison population. Also, a recommendation was sent that the Ministry of Justice should, in cooperation with the Ministry of Health, organizationally remove the Health Care Service from the Administration for the Enforcement of Penal Sanctions. These recommendations have not yet been acted upon.

Right to education (Articles 13 and 14)

Inclusive education

The Protector of Citizens draws attention to the fact that the segregation of Roma children in education is a problem that persists. Amendments to the Law on Fundamentals of the Education and Upbringing System, which enable parents to choose the desired school when enrolling their children in primary school, and not the school in the territory of the local self-government where they reside, have led to non-Roma parents in some areas not enrolling their children in schools where a large number of Roma students attend classes.

The Protector of Citizens notes that although the Ministry of Education, Science and Technological Development has carried out various activities to prevent the segregation of Roma children and the formation of separate classes, practice has shown that this problem persists despite the measures taken.

²⁴ Treatment using substitution therapy is available in health care institutions from the primary to the tertiary level of protection, where the health services in the institutions belong to the Ministry of Justice and not to the Ministry of Health.

Regarding paragraph 27 of the List of Issues: Explain the impact of the Strategy for the Development of Education in Serbia until 2020 on the access of children with disabilities to education, including those living in institutions, and on the promotion of different classrooms in regular schools.

Inclusive education is mostly conditioned by the development of additional support services for children and students, which have only been fully regulated in recent years and established almost everywhere²⁵, but there is still a lack of monitoring and quality control of these services.

The Protector of Citizens was actively involved in the development of an inclusive educational process through numerous control procedures, as well as through legislative initiatives, the application of mediation powers and the provision of advice and good services. In recent years, this body indicates that the services of additional support within educational institutions have not been sufficiently developed. The number of professional associates (pedagogue psychologists, pedagogical assistants, special educators, etc.) in schools is not nearly enough to establish and develop additional support services for children and students. The number of students in the classes is too large to implement an educational process based on an individualized approach and respect for the needs of each child and student. The accessibility of the facilities of educational institutions is still at a rudimentary level. Also, there is no monitoring of the effects of the provided services, which were recommended by the Interdepartmental Commission.

A significant number of children are still enrolled in the so-called special schools which further contributes to their exclusion from the community. Also, there is still an unjustifiably large number of children belonging to the Roma minority and children from marginalized groups among children in special schools. The competent Ministry of Education, Science and Technological Development has not yet ensured that children with disabilities are not classified in separate classrooms or facilities, thus being further separated (segregated) from their peers. Because of this, the Protector of Citizens has sent recommendations for the elimination of omissions in the work of educational bodies, but they have not yet been acted upon.

With the adoption of the Law on Dual Education, the principles of inclusive education have been suspended to some extent because they prescribe health ability as a condition for schooling students in certain educational profiles, while the Law on Dual Education has prescribed that the loss of health ability is a reason for the termination of education in the enrolled educational profile.

Additional support services are not sufficiently developed. Children living in poverty, children of the Roma nationality, children living and working on the streets, children with emotional and/or behavioural difficulties do not have access to effective services that will encourage children and families to study, as well as additional counselling and support services during schooling (inns, shelters, learning assistance and support services, full-day and half-day stays and similarly organized structured activities) in order to prevent the dropout of these groups from further education.

²⁵ Individual educational plans (IEPs) in schools, services of personal companion and pedagogical assistants, as well as the procedure of issuing an opinion of the Interdepartmental Commission on exercising the right to some of the services.

In particular, there is no progress in terms of the coverage of these children with preschool education (in the school year 2019/2020, according to the data of the Republic Bureau of Statistics, the coverage of all children under three years of age in preschool institutions was 24%). In addition, non-compliance with standards and norms in practice in some regions, especially in Belgrade, both in terms of space and the required number of educators and too many children in kindergarten groups "seriously jeopardizes the quality of care and educational work, reduces safety of children and endangers their personal and social development"²⁶. Namely, in certain regions the capacities are used over 100%, i.e., the number of children in educational groups far exceeds the legal pedagogical norm (in some educational groups up to 50 children with three educators in the same educational space are enrolled). At the same time, it represents an obstacle to the inclusion of children with disabilities, children living in poverty and children of Roma nationality in pre-school education, although it is prescribed that they have priority when enrolling.

The available additional support services have also not been sufficiently developed in the health care system, and they are important for the education of children and the quality of their education: developmental counselling and other services intended in cases of speech and developmental disorders, as well as psychological, pedagogical and special education support for children. Only in recent years, the employment of speech therapists in preschool institutions has been partially regulated.

The Strategy for Education until 2030 was adopted, an integral part of which is the Action Plan for the period from 2021 to 2023, the full implementation of which could positively affect the access of children with disabilities to education, given that it respects and values the achieved results, but also includes topics that were not part of the existing strategic framework, and the implementation of which began in the previous period²⁷. It remains to be seen what its effects will be in practice.

The right of everyone to participate in cultural life (Article 15)

Powers of national councils of national minorities

In 2020, the Protector of Citizens published a Special Report with recommendations entitled *Analysis of the situation in the field of exercising public powers of national councils of national minorities for the period from 2014 to 2018*. Data collected during this survey indicate that national councils exercised the most powers in education and official use of language and script. There are powers that no national council has used in the previous period, and they mostly become active when they are asked for an opinion at the level of local self-government units, ministries or provincial bodies. Furthermore, the councils do not show enough initiative to address issues in areas where they have public powers, and some of them cannot even use certain powers because they do not have a standardized language or the language of a national minority has not been introduced into official use. Also, a number of national councils of national minorities do not have media that inform in the language of the national minority, while most of them do not have a functioning

²⁶ Ex post analysis of the implementation of the Education Development Strategy in the Republic of Serbia until 2020 (https://www.mpn.gov.rs/wp-content/uploads/2021/02/3-Ex-post-analiza_0202.pdf).

²⁷ Improved infrastructure and network of institutions in pre-university education and upbringing, higher education and institutions of the pupil and student standard – which means increasing the number of educational institutions that meet the criteria of technical equipment, which are accessible to employees and students with disabilities, and institutions that meet the criteria of spatial conditions).

website, so it can be concluded that the community itself does not have enough information about the existence of councils, their activities and powers. The Protector of Citizens points out that in the process of creating policies, strategies as well as in the decision-making process and creating activities aimed at preserving the collective identity, councils do not have established mechanisms for contact with the community, and a small number of them have a strategic approach in their work and there are few of them that define their goals by developing strategies.

It is also noticeable that a number of national councils of national minorities do not have enough knowledge about their powers, and in situations where there are objective possibilities to use them, they do not have the professional capacity to implement them in practice. Also, the lack of financial as well as administrative and technical capacity certainly affects the quality of work of the councils, and thus the exercise of the rights of the national minority they represent.

The Protector of Citizens believes that, in addition to raising the capacity of national councils of national minorities, contact and work in the community is also important and, consequently, the availability of information on the role and public powers of national councils in the community they represent, but also in the majority of population.

The right to official use of language and script

In 2021, the Protector of Citizens published a Special Report on the official use of the Bulgarian language and script with recommendations. The results of the research showed that, although there are no legal obstacles or obstacles in the conduct of local services for members of the Bulgarian national minority to submit a request for administrative proceedings in their own language, no local government unit where Bulgarian is in official use has received such requests in the period January-May 2021. The right to register a personal name in the Bulgarian language and script is almost not exercised, so in the basic, i.e., regular registration procedures in the registry books in all local self-government units, there were no such requests, while for subsequent registration of a personal name, only in Dimitrovgrad there were eleven requests.

However, what is common for all local self-government units covered by the research is that none of them prominently pointed out the necessary information on the right of persons belonging to national minorities to conduct proceedings before administrative bodies in their own language where it is in official use, but also notifications on the right to register a personal name in the language and script of a national minority.

Although in all local self-government units, representatives of the city and municipal administration point out that they orally inform the parties about these rights, it remains unclear whether they provide such information to all parties. Therefore, the Protector of Citizens drew attention to the fact that it is necessary for these notices to be displayed in visible places in the building of the city or municipal administration (bulletin boards), but also for these notices to be available on city and municipality presentations. When it comes to displaying boards with the names of municipalities, bodies, settlements, streets and other toponyms, the Protector of Citizens notes that there is noticeable improvement in this area, that funds for replacing boards are planned and that boards that are not bilingual are regularly replaced.

**The Protector of Citizens proposes that the Committee recommends
the following to the state:**

1. To plan and take economic policy measures without endangering the rights of members of vulnerable social groups and in a way that will not reduce the achieved standards in the exercise of their rights;
2. To amend without delay the regulations that limited employment in public institutions, in order to provide an adequate number of health workers (paediatricians and doctors of other specialties, medical technicians), professionals in social protection institutions and professional associates in educational institutions (psychologists, pedagogues, speech therapists, special educators, etc.), which meet the needs of children;
3. To ensure the availability of developmental counselling and services of psychological, pedagogical, speech therapy, special education and other professional support to every child, as well as counselling for adolescents to every young person, in order to achieve effective preventive health care for children and the youth;
4. To change the regulations on employment in education in order to provide the number of health workers, professional workers and professional associates in educational institutions that meets the needs of children and ensures adequate implementation of the inclusive educational process;
5. To ensure, through amendments to the Law on Fundamentals of the Education and Upbringing System that the costs of preschool education of children are borne or predominantly borne by local self-government units, the Autonomous Province and the Republic, in order to make this level of education accessible to all children;
6. To form without delay all planned centres for family accommodation and adoption and to provide an adequate number of employees in these institutions, in order to enable full application of professional work standards and adequate conduct of centres in order to fulfil state obligations in exercising and protecting the rights of children without parental care;
7. To introduce content on human rights, tolerance, non-discrimination and diversity in all school curricula; to ensure the systematic implementation of training on human rights, especially the rights of citizens in a particularly vulnerable position; to provide the widest possible coverage of employees in public authorities in the sense of trainings; to provide a system for monitoring the effectiveness of trainings and the application of acquired knowledge in work;
8. To adopt a new anti-discrimination strategy and accompanying action plan for the next period, given that the Strategy for Prevention and Protection against Discrimination and its action plan expired in 2018;
9. To ensure that the bodies of all local self-government units explicitly include LGBTI people in local action plans and prescribe measures to improve the position of these people, as well as to allocate appropriate budget funds for these activities;
10. To fully align the Criminal Code with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;

11. To adopt the accompanying Action Plan to the Strategy for Prevention and Combating Gender-Based Violence against Women and Domestic Violence for the period 2021-2025; to provide comprehensive and effective protection for women and children victims of violence;
12. To provide human, technical and financial resources for the implementation of protection of women and children from violence;
13. To ensure strict application of regulations and labour standards in the protection of women and children from violence;
14. To ensure that domestic violence is adequately sanctioned;
15. To provide full protection and rehabilitation of the victim;
16. To establish accountability for employees and managers in public authorities for failures in providing protection against violence;
17. To provide a network of services for women and children victims of violence;
18. To improve the prevention and protection of persons with disabilities and the elderly from violence and abuse, with a focus on women with disabilities and older women, including the development of accessible protocols on the prevention of violence, abuse and exploitation, especially in social and health care institutions, training for groups for coordination and cooperation on the specifics of violence to which persons with disabilities are exposed, especially women with disabilities, as well as to make the Shelters for Victims of Domestic Violence (safe houses) and all other services for victims of violence accessible to women with disabilities and older women;
19. To provide mandatory training for employees in social protection centres on protection against violence and implementation of the Law on Prevention of Domestic Violence;
20. To ensure that the competent authorities effectively and timely monitor the work of the media and take measures in cases of violations of regulations in the media;
21. To improve the professional rehabilitation and encouragement of employment of persons with disabilities through legislative and other measures and to include a larger number of persons with disabilities in the labour market;
22. To analyse expenditures, improve the use and increase transparency of spending the Budget Fund for Professional Rehabilitation and Encouragement of Employment of Persons with Disabilities in the period 2009-2021 and to make these data available to the public;
23. To intensify activities on deinstitutionalization and transformation of residential institutions for children in order to reduce the number of children in this accommodation, as well as to increase investments in order to establish new support and community assistance services for families with children with disabilities and to ensure pluralization of providers of these services;
24. To intensify activities to establish support services for children with disabilities, Roma children, poor children and children on the street in order to include them in the community and in the regular education system.