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**Protector of Citizens
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**SUBMISSION OF THE PROTECTOR OF CITIZENS OF
THE REPUBLIC OF SERBIA IN THE FRAMEWORK OF
THE FORTH CYCLE OF THE UNIVERSAL PERIODIC
REVIEW OF THE REPUBLIC OF SERBIA**

- NHRI SUBMISSION -

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ABOUT THE PROTECTOR OF THE CITIZENS

The Protector of Citizens has been the national institution for the protection of human rights in the Republic of Serbia (NHRI) since 2010. At the session of the Sub-Committee on Accreditation in October 2021, the Protector of Citizens was reaccredited as a national human rights institution in the "A" status.

The Protector of Citizens of the Republic of Serbia is an independent and autonomous government body introduced into the legal order of the Republic of Serbia in 2005 by the Law on the Protector of Citizens. The position of the institution was strengthened by the Constitution of the Republic of Serbia from 2006. The new Law on the Protector of Citizens was adopted on 3 November 2021. It was created in accordance with the international principles of protection and improvement of the ombudsman institution contained in the Venice Principles of the Council of Europe (especially in the section: election and termination of office, procedure and means of work).

The new Law on the Protector of Citizens stipulates that the Protector of Citizens performs the tasks of the National Independent Mechanism for monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities in accordance with the Law on the Ratification of the Convention on the Rights of Persons with Disabilities, the duties of the national rapporteur in the field of human trafficking in accordance with the Law on Ratification of the Convention on Action against Trafficking in Human Beings of the Council of Europe, as well as the tasks of the National Preventive Mechanism, which it has been performing since 2011 in accordance with the Law on Amendments to the Law on the Ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. Also, the Law on the Protector of Citizens provides that the Protector of Citizens has the position of a special body that protects, promotes and improves the rights of children.

The new Law on the Protector of Citizens contains provisions that enable a wider range of citizens to exercise their rights in proceedings before the Protector of Citizens by providing that a complaint on behalf of a natural person, with his consent, can also be submitted by an association that deals with the protection of human rights. A complaint due to a violation of a child's right can be filed by his parent or guardian, as well as an association that deals with the protection of children's rights, with the consent of the child's parent or guardian or with the consent of a child over the age of ten. A child can submit a complaint on his own if he has reached the age of 10. A child's complaint cannot be rejected if it was submitted before all available legal means have been exhausted before the administrative authorities and if it does not contain the information required for action and the complainant does not remedy the shortcomings within the five working days specified for supplementing the complaint.

The new law provides that a complaint can be submitted no later than three years from the violation of the citizens' right, that is, from the last action or failure to act of an administrative authority in connection with the violation of citizens' rights.

The new Law also provides that the Protector of Citizens establishes and maintains cooperation with civil society organizations, international organizations and mechanisms for the protection and improvement of human and minority rights. Despite the fact that this cooperation was explicitly stated only in the new law, the Protector of Citizens has since its establishment, in practice, developed close cooperation with relevant civil society organizations.

The Protector of Citizens, in the capacity of the National Preventive Mechanism, currently cooperates with six civil society organizations.

The Protector of Citizens is the first state body in the Republic of Serbia to include children in its work, through the establishment of the Youth Advisory Panel of the Protector of Citizens, which consists of children aged 12 to 18.

The parallel report of the Protector of Citizens for the Fourth Cycle of the Universal Periodic Review is based on relevant information on the state of human rights and the implementation of recommendations from the Third Cycle of the Universal Periodic Review.

Note: PoC will not address all topics in this contribution. This does not necessarily imply that the PoC believes those topics are sufficiently observed or that there is no reason for the Working Group to consider them.

INSTITUTIONAL ISSUES

(114.18) It is planned for the NPM to implement activities within the national independent mechanism for monitoring the implementation of the Convention on the Rights of Persons with Disabilities, related to the monitoring of the implementation of the provisions of the Convention under the mandate of the NPM. Also, with the Law on Foreigners from 2018, the competences of the NPM have been extended to the supervision of forced removal of foreigners. Bearing in mind the above, as well as the number and territorial distribution of detention institutions, there is a need for additional strengthening of the NPM staff capacities.

In accordance with the recommendations of the Sub-Committee on Accreditation (SCA), the Protector of Citizens recommends the following:

- Provide the Protector of Citizens with adequate and accessible premises for permanent accommodation of the institution.
- Provide higher salary coefficients for employees in the Secretariat of the Protector of Citizens in accordance with the work complexity and the responsibility that comes with working in an independent human rights institution of constitutional rank.
- Provide additional financial resources for carrying out the new responsibilities of the Protector of Citizens – the national rapporteur for human trafficking and the independent mechanism for monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities, including for full time permanent employment of staff for monitoring, follow-up and advancement, within the above mechanisms.
- Provide additional strengthening of human resources of the Protector of Citizens in order to carry out the work of a special body that protects, promotes and improves child rights.¹

CHILD RIGHTS

(113.4) In the previous period, the normative framework for the protection of children from sexual abuse and sexual exploitation was significantly improved, but the legal protection of children is still not fully aligned with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The criminal offences of *Incest* and *Extramartial union with a minor* do not belong to the group of criminal offences against sexual freedoms, but fall under criminal offenses against marriage and family, so there is no possibility of applying the Law on Special Measures to Prevent Criminal Offences against Sexual Freedoms of Minors. The prescribed punishment for perpetrators of the criminal offence of *Illicit Sexual Act*, committed against a child is inadequate, as it leaves the possibility for suspended sentence and the application of the institute of postponement of criminal prosecution.

(114.89) The system of protection of children from violence, abuse and neglect is more focused on response and protection. Prevention programs are rare and usually do not have a large scope. No comprehensive measures have been taken to prevent and suppress of children living and working on the street, and these children have not been provided adequate access to available services and measures to exercise their right to healthy living, nutrition, adequate accommodation, water, hygiene, education, health care and protection from violence, abuse, neglect and exploitation.

(113.34; 114.86) Inclusive education is still burdened with numerous problems. Full realization of the right of a child with developmental disabilities to quality and accessible education is not possible without precise regulation of work, financing and control of work of interdepartmental commissions, measures of additional support and manners of their realization and financing, as

¹ Article 2 of the Law on the Protector of Citizens.

well as obligations and responsibilities of competent authorities and the introduction of mechanisms of control and monitoring of the effects.

(114.91; 114.92; 114.93; 114.94; 114.95; 114.96) The prohibition of physical punishment has not been introduced into the legal system and support services have not been developed for parents to be informed and educated about alternative and far more effective educational methods. Protector of Citizens conducted a campaign for raising public awareness of the harm of physical punishment.

The Protector of Citizens recommends to:

- Adopt the definition of a child in line with the Convention on the Rights of the Child and ensure an equal degree of criminal legal protection for all persons under the age of 18.
- With Amendments to the Criminal Code, ensure that the Law on Special Measures to Prevent Criminal Offences against Sexual Freedoms of Minors is applied to all criminal offences that include sexual activities against and towards children and ensure equal criminal legal protection for children regardless of age.
- With Amendments to the Law on Public Order and Peace, ensure that children in street situations are not treated as perpetrators of criminal acts, but as victims of violence, abuse and neglect.
- With Amendments to the Law on Prevention of Domestic Violence, stipulate that children are victims of violence whenever they are exposed to domestic violence against a family member or close person.
- To a greater extent, use existing opportunities to protect children from secondary traumatization: refraining from multiple hearings of the child, hearing children using technical means to transmit images and sound, hearing children outside the courtroom and without the presence of parties.
- Prescribe a legal ban on physical punishment of children.
- Ensure that every child for whom the need for additional support in education has been determined, achieves it.
- Take measures so that educational institutions are able to qualitatively assess, plan and implement prescribed measures of additional and individualized support for students, as well as measures for the prevention of peer violence and continuous trainings of employees who participate in the creation and implementation of support and protection measures, taking into account the needs of students and individualization of work with students.
- Provide systemic family support services, which would largely prevent the displacement of children from biological families (family counsellor, parenting schools, counselling centres for young people).
- Develop specialized forms of foster care, in accordance with the children's needs.
- Establish services with social and health character that would adequately respond to the needs of individuals, especially children, without parental care with health problems, who need this combined service.

GENDER EQUALITY AND RIGHTS OF LGBTI PERSONS

(114.88; 114.87; 113.48; 113.35; 113.49; 113.50; 113.42; 113.45; 113.47; 113.51; 113.29; 113.46) Despite noticeable improvements in the system of protection against violence in family and intimate partner relations² in terms of information exchange and cooperation between authorities responsible for supporting and protecting victims, preventing and sanctioning domestic violence, more efficient and timely measures in cases of domestic violence, and acting officials better

² Since the beginning of implementation of the Law on the Prevention of Domestic Violence, 1 June 2017, "Official Gazette of RS", number 52/21.

recognizing violence and its forms, the following may still be observed: insufficient number of professional workers in social work centres and the absence of an integrated electronic record of data on domestic violence in all competent authorities.

(114.35; 114.12; 114.32; 114.36; 113.8; 113.9; 113.14; 114.29; 114.34; 114.33; 113.29) In the period from 2018 to 2021, the Pride Parade was held three times without incident (the Pride Parade was not held in 2020 due to the Covid – 19 pandemic). Numerous activities within EuroPride 2022 took place without incidents, but the walk was banned for security reasons by the Ministry of Interior, and was then held on a changed, shortened route with significant police security.

The Protector of Citizens recommends:

- To adopt:
 - Action plan for the implementation of the National Strategy for Prevention and Protection against Discrimination for the period 2022-2030;
 - Action plan for the implementation of the National Strategy for Prevention and Suppression of Violence against Women and Violence in Family and in Intimate Partner Relations for the period 2021-2025;
 - A law regulating same-sex unions;
 - A law regulating the legal consequences of adjusting (changing) gender and gender identity.
- To supplement and amend:
 - Law on Police, by prescribing an explicit prohibition of discrimination on the basis of sexual orientation;
 - Law on Financial Support for Families with Children, so that female entrepreneurs, farmers, agricultural insurance holders and women who perform temporary and occasional jobs are put in an equal legal position with employed women when exercising their rights during maternity leave and leave from work for child care;
 - The Family Law, by changing the definition of domestic violence, prescribing new protection measures for domestic violence victims: issuing orders for inclusion in psychosocial treatment or a specialized program for perpetrators of domestic violence and issuing orders for treatment of alcoholism and drug addiction;
 - Law on Prevention of Domestic Violence, to ensure that the law applies also to juvenile perpetrators of domestic violence in relation to the provisions that stipulate the obligation to carry out risk assessments, to discuss such cases in coordination and cooperation groups and to develop individual protection and support plans for victim.
- To provide with legislative and other measures:
 - full implementation of the Law on Gender Equality;
 - accessibility of health care services to all women and all children at all levels of health care;
 - permanent employment of Roma health mediators in the health care system;
 - incorporating LGBTI persons into local action plans of local self-government units, prescribing measures and activities for improving the position of these persons and allocating appropriate funds for their implementation;
 - implementation of the trans identity depathologization program, in accordance with the revision of the International Classification of Diseases (ICD 11) of the World Health

Organization;

- increased employment of women from vulnerable social groups,
- prevention and suppression of violations of the rights of employed pregnant women and mothers.

NATIONAL MINORITIES

(113.61) A certain number of national councils of national minorities still do not have enough knowledge about their powers, which is reflected in the realization of rights of the national minority they represent.

(114.103) The ethnic distance towards the Roma is not decreasing, although special measures have been created in the field of employment to motivate employers to hire Roma. Measures in the field of social protection are not harmonized with affirmative measures in the area of employment. Roma national minority community largely use all forms of material support (financial social assistance, one-time grants, free meals).

The Protector of Citizens recommends to:

- Conduct training for members of national councils of national minorities on the Law on National Councils of National Minorities in order to raise professional capacities and improve their work.
- Conduct training for health workers on anti-discrimination and position of the Roma community and measures of inclusion in the area of health.
- Develop institutional capacities for effective monitoring and implementation of planned measures and activities aimed at improving the socio-economic position of the Roma national minority.
- Develop new mechanisms to prevent segregation of Roma children in the education system.
- Improve existing mechanisms for providing housing for internally displaced Roma living in informal settlements.

RIGHTS OF PERSONS WITH DISABILITIES AND THE ELDERLY

(114.97; 113.54) The process of deinstitutionalization has not ended. A certain number of people with disabilities are still placed in residential institutions. The system of services and support for persons with disabilities and the elderly is still not sufficiently developed.

(113.38; 113.46; 113.11) Most common problems faced by the elderly are poverty and violence and neglect within the family, including disposal of property without their consent, dissatisfaction with exercising the right to material assistance. These problems are particularly existent in rural areas. Elderly women living in single households are in a particularly difficult position.

The Protector of Citizens recommends:

- To adopt
 - Action Plan for the implementation of the Strategy of Deinstitutionalization and Development of Social Protection Services in the Community for the period 2022-2026;
 - laws that introduce the institution of supported decision-making and extinguish the possibility of deprivation of business capacity.
- To provide with legislative and other measures:

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- intensification of activities to establish a sustainable system of services in the community: family support services, support services in reaching independence and family and family-like alternative care services in accordance with the needs of persons with disabilities and the elderly;
 - improved system of professional rehabilitation and promotion of employment of persons with disabilities and inclusion of a greater number of persons with disabilities in the labour market;
 - creation of accessible protocols on prevention of violence, abuse and exploitation, especially in social protection and health care institutions, implementation of trainings for coordination and cooperation groups on the specifics of violence to which persons with disabilities, especially women with disabilities, are exposed, and making shelters for victims of family violence (safe houses) and other victims of violence accessible to persons with disabilities and elderly;
 - complete accessibility to public institutions for persons with disabilities and all other persons.

PERSONS DEPRIVED OF THEIR LIBERTY

(113.35) In the past two years, prison staff trainings are conducted on the implementation of five new specialized programs for group work with prisoners. Further efforts should be focused on hiring a sufficient number of treatment officers and improving the treatment of persons deprived of liberty, which would, among other things, enable a mechanism for progression in treatment that would facilitate the transition of convicts to more favourable educational groups.

(113.12) In many institutions for penal sanctions enforcement, especially larger ones, the performance of the first medical examination, the method of documenting injuries, and informing the competent public prosecutor's office, have been significantly improved. The aforementioned contributed to the strengthening of the role of doctors in protection against abuse, i.e. in fight against impunity for torture. Some institutions have created work engagement programs for persons in custody, and there is a noticeable improvement in increasing the employment of convicted persons, which should be developed for the entire prison system. There is still a need to provide sufficient available activities to all persons in custody and convicted persons assigned to closed wards, as well as for them to stay during the day in common rooms with other convicts, i.e., persons in custody with whom the court has not restricted contact due to the conduct of criminal proceedings.

Despite the efforts to provide special rooms intended for storing temporarily confiscated items, these rooms need to be provided in all police stations. Equipping police interrogation rooms with technical equipment for audio and/or video recording has been initiated, but it is necessary to provide the aforementioned in all police stations, as well as to regulate more closely the conduct of police officers when conducting interviews in these rooms.

In the field of psychiatry, the improvement of material conditions is noticeable, but it is necessary to continue undertaking activities to improve the material conditions of accommodation in all institutions, so that they are fully in line with the current standards. It is noticeable that certain institutions improved the record keeping of data on the application of physical restraint measures, elaborated the available rehabilitation psychosocial activities and improved information on patients' rights and mechanisms of their protection. However, there is still a lack of continuous specialist educations for mid-level medical staff.

In a larger number of social welfare homes, material conditions and the information on rights and mechanisms of legal protection have been improved, and the practice of physically restraining

beneficiaries has been abandoned. There is still an insufficient number of staff to work with beneficiaries, which can adversely affect the quality of provision of health and psychosocial services. As in psychiatric hospitals and in large social protection institutions, a large number of long-term beneficiaries are still accommodated.

(114.85) It has been observed that in penal sanctions enforcement institutions there are some persons with mental disorders for whom it is necessary to provide accommodation and assistance corresponding to their needs, that is, to remove these persons from the regular prison regime and place them in an appropriate health institution, the Special Prison Hospital, possibly a health care unit within the institution, where conditions would exist for their treatment.

The Protector of Citizens recommends:

- To undertake activities aimed at training officials who deal with foreigners throughout the country related to assessing the fulfilment of conditions for making a decision on return in each specific case, in order to ensure compliance with the principle of non-refoulement.

HUMAN TRAFFICKING

(114.105; 114.106; 114.106; 114.107; 114.108; 114.109; 114.110; 114.111; 114.112; 114.113; 114.114) Timely identification of victims of human trafficking, multi-sector cooperation and exchange of information among competent institutions and bodies is a prerequisite for improving the protection of victims of human trafficking and the effective fight against this form of violence.

The Protector of Citizens recommends:

- With timely identification of victims of human trafficking, ensure adequate forms of support for the victims and access to services for recovery and reintegration.

FREEDOM OF EXPRESSION

(114.73, 114.77, 114.79) Journalists continue to work under economic pressure with low monthly incomes and unregulated work status. They are also exposed to verbal and, in certain cases, physical attacks, which are considered by the Government's Working Group for the safety of journalists, whose member is the Protector of Citizens. Verbal attacks on journalists and the media, usually in the form of threats, intimidation and insults, are common in the public space, especially on social networks, and in most cases without legal sanctions. Economic pressure is further exacerbated by SLAPP lawsuits.

The Protector of Citizens recommends:

- To amend and supplement the Law on Public Order and Peace so that, among other things, insults and attacks on journalists on social networks are sanctioned as misdemeanour.