



**REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS**

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B e l g r a d e



**Protector of Citizens
Ombudsman**

Ev.No. 24785 date: 29 June 2017

**SUBMISSION OF THE PROTECTOR OF
CITIZENS OF THE REPUBLIC OF SERBIA IN THE
FRAMEWORK OF THE THIRD CYCLE OF THE
UNIVERSAL PERIODIC REVIEW OF THE
REPUBLIC OF SERBIA**

- NHRI SUBMISSION -

June 2017

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ABOUT THE PROTECTOR OF CITIZENS (OMBUDSMAN)

The Protector of Citizens of the Republic of Serbia (hereinafter: PoC) is an independent and autonomous public authority, introduced in the legal system of the Republic of Serbia in 2005 under the Law on the Protector of Citizens. The position of this institution was substantially reinforced by the Constitution of the Republic of Serbia of 2006, which made the Protector of Citizens a constitutional category, in line with best international practices. Since 2011, in accordance with the Law amending the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Protector of Citizens has been designated as the National Preventive Mechanism.

PoC is mandated to control the legality and regularity of operations of public authorities with respect to the exercise of individual and collective rights of citizens and to protect and promote human and minority freedoms and rights.

PoC is the National Human Rights Institution of Serbia, established and functioning in accordance with the Paris Principles. It has been accredited as an A-status National Human Rights Institution by the Global Alliance of National Human Rights Institutions. It regularly reports to the UN treaty bodies and cooperates with the special procedures mandate-holders.

PoC regularly submits its Annual Report to the National Assembly. The Annual Report contains general and specific assessments and information on the respect of the rights of citizens (including in particular human and minority rights), deficiencies identified in the work of public authorities, proposals for improvement of citizens' position vis-à-vis public authorities and account of the activities carried out and the costs incurred by the Protector of Citizens. Every annual report contains a specific sections devoted to the rights of particularly vulnerable groups. All annual reports are available in English at www.ombudsman.rs.

PoC has established very close cooperation with prominent civil society organization and individual experts in all areas of human rights, including through the work of its several Advisory Panels, established for the promotion of the rights of particularly vulnerable groups.

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. A larger number of topics are covered in the complementary matrix attached to this contribution.

OBSERVATIONS OF THE PROTECTOR OF CITIZENS OF PARTICULAR IMPORTANCE FOR THE ENJOYMENT OF HUMAN RIGHTS IN SERBIA

Note: All numeric references in this document (example: Rec. 131.7) given immediately after the paragraph numbers are related to the recommendations given to Serbia in the Second Cycle of the UPR, as presented in the Report of the Working Group (A/HRC/23/15).

I. INSTITUTIONAL ISSUES

1. (Rec. 131.7) Despite the formally expressed intention to strengthen the mandate and independence of the PoC, in the past period, the state has jeopardized his independence and working conditions in various ways, including through a media campaign the highest state officials took part in.
2. (132.3) The amendments to the Law on the PoC that have been announced for years are still not adopted.
3. (132.4) The financial, organizational and functional independence of the PoC was jeopardized by the imposing of additional administrative procedures, both for the allocation of budgetary funds and the recruitment of new employees.
4. (132.2) The position of the National Preventive Mechanism for Torture (NPM) has also not been strengthened, despite a clear need. The PoC prepared an initiative for the increasing of staffing of the NPM Secretariat, necessary for the fulfillment of the mandate envisaged by the UN OPCAT.
5. (131.9) Instead of further strengthening the position of the PoC, as an A status NHRI, the state is considering the establishment of a special ombudsman for the rights of the child, which would lead to institutional dissipation, not contributing to the strengthening of the legal security of citizens. The above opens the issue of establishing special ombudsman for gender equality, for persons with disabilities, military ombudsman, NPM as a separate body, etc.
6. Therefore, the PoC recommends the following:
 - To adopt amendments to the Law on the PoC to strengthen its mandate and independence. The recommendations received by the PoC during his accreditation as NHRI in 2015 should be taken into account in drafting the amendments to the Law;
 - To adopt amendments to the Job Systematization Act of the Secretariat of the PoC, which will especially strengthen the human resources in the NPM Secretariat;
 - To abandon the idea of establishing an Ombudsman for the rights of the child, but to strengthen the capacities of the PoC in the field of the rights of the child.

II. THEMATIC ISSUES

The Rights of the Child and Gender Equality

7. (131.20; 131.21; 132.38; 132.39; 132. 47; 132.25) The protection of women against violence is not efficient enough.¹ The basic problem - the lack of application of regulations and standards and the lack of establishment of discipline in their application - has been standing for years and it is not being resolved.
8. (132.81. 131.17) Although the Pride Parade took place for the third time in a row, it required significant engagement of police forces due to the high security risk for the Pride Parade participants. The rights of LGBTI persons to the protection of their physical and

psychological integrity, to education, employment, health and social protection, the legal regulation of life partnerships and the legal consequences of sex adjustment (change) are not fully ensured.

9. (132.53; 132.55; 131.24; 132.46) Children who live and work on the streets are not in the agenda of state authorities, nor is there a system in place to prevent and combat the living and work of children on the street, despite the recommendations of the PoC.² These children's lives, health and safety are at risk every day, they are at the highest risk of becoming victims of trafficking and exploitation, they are not educated, and often have no access to health and social care. The Law on Public Law and Order does not treat children involved in child begging, prostitution and other forms of exploitation as victims yet are still criminalized as perpetrators of offenses. Children do not receive support, rehabilitation and reintegration services, nor are there any records on them.

10. Poverty risk rate in Serbia is increasing.³ The number of children who are social welfare beneficiaries increased by 22% in last four years. In 2015, 61% of social protection beneficiaries were financially vulnerable citizens⁴, with the greatest share of children with financial disadvantages - 62.2%.⁵ Austerity measures further aggravated the situation of children, especially Roma children who largely lived in absolute poverty even before the economic crisis.

11. Therefore, the PoC recommends the following to the State:

- To confirm Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure;
- To adopt:
 - Legal prohibition of physical punishment of children in all environments;
 - The definition of a child compliant with the Convention on the Rights of the Child;
 - National Strategy for the Prevention and Protection of Children against Violence and the Action Plan;
 - The Law on Gender Equality in line with international standards of gender equality and the principle of equal opportunities;
 - The law governing same-sex partnerships;
 - A law regulating the legal consequences of sex and gender identity adjustment (change);
 - Rules of conduct and sanctions for holders of public office for discriminatory and hate speech;
 - National Strategy for the Prevention and Suppression of Domestic Violence and Partnerships and the Action Plan;
- To amend:
 - The Law on the basics of the education system, to explicitly prohibit discrimination based on sexual orientation and gender identity;
 - Criminal Code with explicit criminalization of crimes of racism and intolerance based on sexual orientation and gender identity;
- To ensure with legislative and other measures:
 - mandatory training for judges, prosecutors and police, and for those employed in the health, education and social protection systems on

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- protection of children, particularly those living and working on the street, women against violence, and LGBTI persons;
- comprehensive and effective protection of women and children, victims of violence;
 - violence prevention measures and a network of services for women victims;
 - mandatory application of measures for the protection of children, victims of secondary victimization, access to justice adapted to children and rehabilitation and reintegration services for children;
 - equal criminal legal protection of children regardless of age;
 - treatment of children living and working on the street as victims of exploitation, abuse and neglect, improvement of their position through education, provision of health and social protection and prevention of life and work of children on the street;
 - accessibility of health services to all women and all children at all levels of health care services;
 - improvement of the position of women from rural areas;
 - a network of services for LGBTI persons, especially for youths and those without a home;
 - education of children and youth on sexual and reproductive health and the position and rights of LGBTI persons at all levels of education;
 - increase of the inclusion of young people in secondary and higher education;
 - a network of support services and counseling services for parents;
 - investigation of missing babies cases and the execution of the ECHR Verdict Zorica Jovanovic v. Serbia;
 - quick and efficient execution of court and other decisions on the rights and the position of the child;
 - increase of the representation of women in managerial positions and equal evaluation of their work;
 - increase of employment, especially women and youth;
 - prevention and suppression of employees' rights violations;
- To prepare and start awareness raising national campaigns on:
 - the harmfulness of physical punishment and positive parental practices;
 - gender equality;
 - position and rights of LGBTI persons;
 - Protection against violence against women and children.

The Rights of National Minorities

12. (132.25) PoC considers that it is necessary to develop preventive measures and activities in order to prevent the growing phenomenon of segregated classes and schools, in which most of the students are Roma, as well as the measures of desegregation.

13. (132.8.) PoC points out that it is only by virtue of the law that it would be possible to provide legal security and the registration of a child in the Birth Register regardless of the status of the child's mother who does not have identity documents.

14. (132.90) PoC draws attention again to the fact that without additional measures of support at the national level, it is not possible to provide the same level of practicing the rights of national minorities depending on whether the seat of the national councils of national minorities or the representation of a certain minority is in central Serbia or in AP of Vojvodina.

15. (132.95) Socio-economic status of the Roma national minority requires development of institutional capacities and an efficient monitoring and implementation of planned measures and activities.

16. (132.99) PoC points out that it is necessary to improve the quality of teaching the Serbian language in minority languages education, and to introduce the teaching of the language of the national minority with elements of culture, as the language of the social environment, for students of Serbian nationality, in order to develop tolerance and better understanding.

17. (132.101) PoC believes that the planned deadline for closing the collective centers must be finally respected, because only then the housing issue for these citizens will be resolved.

The Rights of Persons with Disabilities and Elderly

18. (132.86) Despite the efforts to improve the position of persons with disabilities by improving the legal framework, they still have difficulties in exercising even elementary rights. Although a special Law on the Prevention of Discrimination against Persons with Disabilities was adopted, discrimination based on disability is still one of the most frequent forms of discrimination in Serbia. In addition to the low awareness of the situation of persons with disabilities, it is quite certain that the form of legal protection provided for by this Law in the event of discrimination - the initiation and conduct of the court proceedings - which usually lasts very long in Serbia, very much contributes to this.

19. (132.6) The unemployment rate of persons with disabilities is big, which is, among other things, a consequence of the lack of harmonization of the education system and the needs of the labor market. Persons with disabilities have difficulties exercising their rights in health insurance, the right to education, rights from pension and disability insurance, which, together with all the above, makes them a multiple socially vulnerable group.

20. (132.87) Although the regulations envisage more support services to allow children with disabilities to have unobstructed access to education, in practice the access is very limited and only partially provided, which is the consequence of both the financial situation in the country and the units of local self-government to which this obligation is mostly transferred, as well as insufficiently precise assessment of the situation, needs and capabilities.

21. There is no effective concept of deinstitutionalization that foresees creating living conditions of persons with mental and/or intellectual disabilities in the local community.

22. Persons with autism are in a particularly difficult position, as the social protection system insufficiently recognizes them. Services to the beneficiaries and their families are provided sporadically and the professional capacities of the employees who should be dealing with this area is at a very low level.

23. (132.84) Elderly people, as a particularly vulnerable group, are exposed to multiple violations of their rights, starting from the exercise of their rights in the field of pension insurance, to the rights in the field of social and health care. As a result of austerity, some

services for the elderly were canceled and/or reduced. A large number of elderly people are also exposed to some form of violence, abuse and discrimination.

24. PoC considers it necessary to:

- Establish a database of available support services for persons with disabilities and collect statistical data on persons with disabilities sorted by age, sex, gender, type of disability, nationality, type of housing, as well as procedures in cases of discrimination and/or violence against these persons;
- Develop a clear and precise plan for the implementation of the process of "deinstitutionalization", and implement it systematically and fully on the whole territory of the state;
- Establish an independent monitoring mechanism for the implementation of the UN Convention on the Rights of Persons with Disabilities;
- Provide a financially sustainable system of services for persons with disabilities and the elderly;
- Improve the legal framework and implement measures to increase the employment of persons with disabilities;
- Provide conditions for a better and fuller inclusion of children with developmental difficulties in the education system;
- Establish a more effective protection system in the case of discrimination against persons with disabilities.

Judiciary

25. The Law on Free Legal Aid should be adopted as soon as possible. The lack of legal of this area is a barrier to the access to justice for the members of vulnerable groups and financially deprived citizens who are not able to hire lawyers, that is, when legal assistance services are not established in individual local self-government units or citizens do not trust their work.⁶

26. (132.60) It is necessary to change the manner of election of judges and public prosecutors in the announced amendments to the Constitution, in order to ensure their complete independence.

27. It is necessary to reduce the number of laws are adopted by urgent procedure, because their number is inappropriately high.

28. It is necessary to provide effective mechanisms for oversight of the work of professional executors and notaries and to ensure their accountability.⁷ The fees and remuneration to which the members of the said professions are entitled may jeopardize the existence of citizens of poor financial status. Therefore, when prescribing the amount of fees and remuneration for their work, the general economic and social conditions of life should be taken into account.

The Rights of Persons Deprived of their Liberty

29. (133.4. and 133.3) The provisions of the Criminal Code relating to torture and ill-treatment need to be aligned with the definition of torture under Article 1 of the UN Convention against Torture.

30. (132.74. and 132.49) In the past period, efforts of competent authorities aimed at improving the treatment of prisoners, persons who were assigned police detention, detainees, as well as those sentenced to imprisonment, are noticeable. It encourages that the number of complaints and claims of physical abuse of persons deprived of their liberty has

considerably decreased. Although there are numerous improvements in accommodation conditions, activities in this regard need to be intensified. It is a matter of concern that there are still cases of failure to provide health care services. Increasing the effectiveness of internal oversight mechanisms would certainly contribute to ensuring the respect for the rights of persons deprived of their liberty.

31. It is necessary to improve the regulations related to the determination and execution of the security measure of compulsory psychiatric treatment and confinement in a medical institution. Persons with severe mental disorders who have committed a particular act with elements of a crime that do not pose a particular social danger should not be prosecuted under the Criminal Procedure Code, but should be placed and kept in a psychiatric institution on the basis of the Law on Protection of Persons with Mental disorders.

32. It is necessary to improve the provisions of the Law on the Execution of Prison Sentences for Crimes of Organized Crime by harmonizing them with current standards and recommendations addressed to Serbia by the European Committee for the Prevention of Torture.⁸

33. (132.100. and 132.101) It is commendable that migrants are not detained because they have illegally entered and/or have been illegally staying in Serbia. Also, asylum seekers are not deprived of their liberty.

Freedom of Opinion and Expression

34. (132.31. and 132.77) The overall environment in Serbia is not suitable for the full exercise of the right to freedom of expression. The so called state's exit from the media, i.e. their privatization, was perceived as an opportunity by businessmen who had no previous experience in the media, who had purchased radio and TV stations in different cities throughout Serbia. In these circumstances, the public is concerned of truthfulness and objectivity of the media content.

35. Pressure on the media is visible in various ways, from open to hidden forms. The PoC has continuously warned the public of threats to journalists, the suppression of media freedom, censorship and self-censorship.

Right to Peaceful Assembly

36. (132.81) After the previous Law was declared unconstitutional, in 2016, a new Law on Public Assembly was adopted; the PoC considers this act to be more of a limiting the freedom of assembly than affirming it. The PoC's opinion is that spatial and temporal restrictions on freedom of assembly envisaged by the Law are not in accordance with the Constitution, and recommends that it be fundamentally changed.

Endnotes

- ¹ The recommendations of the Protector of Citizens are available at:
www.rodnaravnopravnost.rs/attachments/article/229/preporuka%20nasilje%20zbirna.doc.
- ² The Protector of Citizens, *Child Begging in the Republic of Serbia*, 2011, available at:
http://www.ombudsman.org.rs/attachments/071_Prevention%20of%20Exploitation%20of%20Children%20in%20South%20East%20Europe.doc
- ³ In 2013 poverty rate was 24.5%, while in 2017, it is 25.5%. Data from the Statistical Office of the Republic of Serbia, available at: <http://www.stat.gov.rs/WebSite/Default.aspx>
- ⁴ Statistical Office of the Republic of Serbia, *Beneficiaries of Social Protection in the Republic of Serbia*, 2015, available at: http://www.stat.gov.rs/WebSite/repository/documents/00/02/35/90/SZ10-325-2015_engl.pdf
- ⁵ The National Institute for Social Protection, *Children in the Social Protection System*, 2015, available at:
<http://www.zavodsz.gov.rs/PDF/izvestaj2016/deca%20u%20sistemu%20socijalne%20zastite%202015.pdf>.
- ⁶ The Protector of Citizens has been stressing the need to adopt this law in his regular annual reports to the National Assembly.
- ⁷ The Protector of Citizens has expressed his opinion on the problems and some of the negative effects that emerged after the beginning of the work of professional executors and public notaries, in his Opinions sent to the Ministry of Justice in 2014. Subsequently, certain fees were reduced and the monitoring of the work of members of the mentioned professions was more closely regulated.
- ⁸ European Committee for the Prevention of Torture, *Report to the Government of Serbia on the Visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, Inf (2012) 17, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680697c4f>.