



Protector of Citizens
Ombudsman

OBSERVATIONS ON IMPLEMENTATION
OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL
RIGHTS



REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS

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**OBSERVATIONS ON IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS**

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

- starting from the complaints hitherto received, handled and resolved, as well as the facts learned through continual monitoring and research of the exercise of human rights in the territory of the Republic of Serbia and cooperation with other authorities;
- having regard to the Second Periodic Report of the Republic of Serbia on Implementation of the International Covenant on Economic, Social and Cultural Rights and aiming to avoid repeating the points already made therein;
- having regard to the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights relating to the Initial Report on Implementation of the International Covenant on Economic, Social and Cultural Rights submitted by the Republic of Serbia and the list of issues relating to the Report;
- acknowledging the Committee's General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights;
- assured that full and unbiased evaluation of the level of respect for human rights is key for proper focusing of activities carried out by government and other entities to improve the existing situation, which is an ongoing issue,

hereby submits to the UN Committee on Economic, Social and Cultural Rights his observations regarding the implementation of the International Covenant on Economic, Social and Cultural Rights in the Republic of Serbia.

I. SUMMARY

With rising poverty and unemployment, there has been an increase in the number of claims towards the government. The Republic of Serbia struggles to provide to the most vulnerable social groups the minimum decent standard of living, sufficient social assistance, adequate health care, minimum education, support during pregnancy and maternity, sickness, disability, unemployment, lonely childhood and old age. Access of the most vulnerable groups to culture and scientific achievements, which are also guaranteed rights, is within the limits of the statistical margin of error.

Tens of thousands of citizens of Serbia are prevented from fully exercising their constitutionally guaranteed and legally protected rights to health care and old-age pension through compulsory insurance provided for by the law. These citizens are, *inter alia*, children, pregnant women, mothers on maternity leave, single parents with children under seven years old and the elderly, although these categories of citizens have health care guaranteed by the Constitution from public funds, if not provided otherwise. This is due to the fact that for years thousands of employers have not been fulfilling their statutory obligations to pay contributions to the health and pension fund. The competent public authorities are not taking any statutory measures against them, and due to applicable regulations, consequences are borne by employees and their family members. They are deprived of their right to full health care provided from the health fund and, most commonly, health care in general, because, most of the time, they cannot afford treatment without insurance.

Inefficient and selective control of contributions, apart from affecting the exercise of the right of employees and their families, has at least two additional negative effects on conscientious employees: collapsing equality on the market (unfair competition) and a contribution rate that is higher than what is considered to be an economic optimum.

The material basis for the exercise of economic, social and cultural rights should be found in the economy. The Protector of Citizens cannot contribute to its revival except to seek for more fair allocation of available resources and in accordance with the law, and to conclude that the state appears as a (privileged) player in the market competition too many times rather than staying out of it and directing its efforts towards creating equal, incentive, favourable and protected environment conducive for the operation of peer businesses on a free market.

Violations of economic, social and cultural rights have accounted for a major share of total violations of rights identified in the work of the Protector of Citizens. Thus, in 2011, as many as 46.92% or 1,708 of all violations concerned this group of rights, while in 2012 they accounted for 40.01% (1,790). Both the number of complaints received and the number of identified violations of rights have been increasing since the establishment of this institution in 2007.

II. SPECIFIC ISSUES

The equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3) and protection of family, mothers and children (Article 10)

Although the legal framework which governs the protection of women's rights and provides for the equality of women in Serbia is improved, thus eliminating gender inequality between women and men, a gap still exists between the normative standards and practice in this field.

Reports of public authorities and civil society organisations seem to indicate that the number of unemployed women continues to increase, that many women have been laid off without receiving back pay or back payment of compulsory insurance coverage for past years of service and with no opportunities for new employment. As a result, women accounted for the highest share of the unemployed population, especially women with disabilities, elderly women, women of Roma ethnicity and young, pregnant women and nursing mothers.¹

The need for higher representation of women in decision-making positions is still seen mostly as a declaratory, rather than substantive, commitment. The election of approximately 30% of female MPs to the National Assembly should be supported by measures which would ensure they are represented in at least that percentage also in the working bodies, state delegations,² among ambassadors, consuls etc., which is currently not the case. Regarding high-ranking public and professional positions, the representation of women has indeed declined. Thus, for example, at the time of submission of the State Report on Implementation of the Covenant, the incumbent Speaker of the National Assembly, President of the Constitutional Court and President of the Supreme Court of Cassation were all women. Today this is not the case, because all three offices are held by men. The reconstruction of the Government in 2013 effectively reduced the number of female ministers from five to only two.

Even though efforts to improve the position of women in the security sector were initially successful, the necessary measures for their substantive and full work engagement are lacking. Women are still unable to enrol in the Military High School. It has been observed that the quota system (minimum 20% women), which was necessary to allow women access to the traditionally

¹ For more information, see: <http://webrzs.stat.gov.rs/WebSite/>

² In February 2012 the Council of Europe adopted a Resolution calling on Member States to continually take measures to efficiently protect women's rights and improve their position in the societies of the Member States. Available at: www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0029&language=EN

male-dominated security sector, has adversely affected the position of women who wish to enrol in the Military Academy, because it is effectively used as a ceiling.

Use of gender-sensitive language is essential and constitutes an important step in the efforts to achieve gender equality. Gender-sensitive language is primarily an issue of social power and implies higher linguistic visibility of women and its consistent use in the media and in the political discourse would contribute substantially to higher visibility of women in the Serbian society. The Protector of Citizens recalls that the Committee of Ministers of the Council of Europe adopted in 1990 the Recommendation on the elimination of sexism from language³, which clearly voiced a need to change linguistic practices to make women socially visible in the official use of language. The Republic of Serbia has still not implemented these recommendations in its system of legislation and official communication (even) between public authorities.

According to the most recent surveys, forced marriages still occur in the Republic of Serbia, especially among the Roma, and often go hand in hand with human trafficking.⁴ The Protector of Citizens has also been informed by a civil society organisation of a non-marital relationship between two minors (aged 14 and 15 respectively) of Roma ethnicity. The issue of underage marriages in the Roma community cannot be seen – and by extension tolerated – as merely an issue of customary law, given its detrimental effects on the health, educational and economic status of a child. In this context, it should be recalled that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Serbia is a party, calls for all available measures to be taken in order to change or eliminate any customs or practices that constitute discrimination of women and girls. The economic crisis and poverty result in higher migration and this, in turn, increases the risk of citizens becoming the victims of human trafficking. It is virtually impossible to determine the number of victims and the scope of human trafficking operations. This is in part due to the lack of common criteria for victim identification among all stakeholders in the fight against human trafficking, but it is also due to the absence of an integrated data collection system that would be applied while respecting the privacy and protecting the identity of victims.

Gender-based violence is highly prevalent and often has tragic consequences. According to the figures highlighted by the Protector of Citizens in his Regular Annual Reports, in 2011 there were 46 cases of domestic violence in which the female partner was murdered, in 2012 there were 36 female victims murdered by their partners in domestic violence, while by the end of June 2013 there were already 22 women murdered by their partners, which is why the Protector of Citizens continued to focus on enforcement of those legislative provisions that protect the rights of women.

It has been observed that measures provided for by the law have not been implemented in practice and that, in cases where violence against women is reported, there is no appropriate inter-sectoral cooperation, just as there are not clearly defined rules that would govern the actions taken by the staff when domestic violence is reported. The General Protocol on Actions of and Cooperation between Institutions, Authorities and Organisations in Situations of Domestic and Partner Violence against Women⁵ provides in general terms for the course of action to be taken by competent authorities in case of domestic violence, but the competent ministries have not adopted the specific protocols on time. For this reason, in late 2012 the Protector of Citizens sent an Opinion with Recommendation to the Ministries of Internal Affairs; Labour, Employment and Social Policy; and Justice, in which he pointed out that those authorities failed to adopt their sector-specific protocols of action within the statutory period of one year after the adoption of the General Protocol. The Ministry of Internal Affairs and the Ministry of Labour, Employment and Social Policy submitted

³ Recommendation N0 R(90)4 of the Committee of Ministers to member states on the elimination of sexism from language. Available at: <https://wcd.coe.int/com/intranet>

⁴ For more information, see: V. Nikolić Ristanović et Al, *Diskriminacija žena na tržištu rada u Srbiji*, Viktimološko društvo Srbije, Belgrade, 2012 (in Serbian only).

⁵ General Protocol available at: http://www.gendernet.rs/files/dokumenta/Domaci/Opsti_protokol.pdf (in Serbian only).

their specific protocols to the Protector of Citizens in the first quarter of 2013, thus complying with the Recommendation. The Ministry of Justice and Public Administration, in cooperation with the EU Delegation to Serbia, began forming a working group to draft a sector-specific protocol and notified the Protector of Citizens thereof. The Protector of Citizens will continue to monitor compliance with this Recommendation.

In 2012, the Protector of Citizens renewed⁶ his Initiative to amend the Criminal Code in connection with gender-based violence, to which the Ministry of Justice and Public Administration responded that it would take the proposals of the Protector of Citizens contained in the said Initiative into consideration in the second stage of amending the Criminal Code.

The Protector of Citizens emphasises it is necessary to ratify the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence, in order to continue the already initiated process of harmonising the legal framework for the protection of women against partner violence, which was reaffirmed in the Conclusion of the National Assembly of the Republic of Serbia adopted following the examination of the Regular Annual Report of the Protector of Citizens for 2012.⁷ The Protector of Citizens welcomes the fact that the Government of the Republic of Serbia submitted to the National Assembly in June 2013 a Draft Law on Ratification of the said Convention, which was supported by the Parliamentary Committee on the Child Rights.

It is often claimed that one of the main priorities of the Republic of Serbia is to ensure that all relevant institutions and public authorities take action to propose, monitor and implement measures to promote childbearing, given the dramatically declining birth rate in Serbia in recent decades. However, pregnant women often face particular disadvantages. In practice they face more difficulties in search of employment and do not receive regular benefits during their pregnancy, maternity and child care leave. Thus, for example, the Protector of Citizens has been acted on complaints from pregnant women and nursing mothers who claimed they could not effectively exercise their recognised right to compensation of earnings during pregnancy, maternity and child care leave because their employers were unable to pay or attempted to avoid their obligation to pay those benefits. In the investigation of the regularity and legality of operations, the Protector of Citizens found that the labour inspectorate does not act economically and efficiently, although the Republic of Serbia allocates budget funding for this purpose. Another frequent problem, which is finally about to be addressed through amendments to the Labour Law, is the reluctance of employers to renew fixed-term employment contracts with pregnant women.⁸

The Protector of Citizens has continually been addressing the issue of health care and health insurance of women.⁹ Issues that have re-emerged include certification of health insurance cards for pregnant women and nursing mothers whose employers have not paid taxes and contributions, as well as the issue of female sole traders (pregnant women and nursing mothers) who are entitled to rescheduling of tax and contribution debt, but are unable to certify their health insurance cards. The Protector of Citizens also found during investigation that the Republic Health Insurance Fund violates the child's right to health insurance and health care in cases where children are left without certified health insurance cards because third parties (employers of their parents or family members through whom those children are insured) have not complied with their statutory obligation to pay insurance contributions. Following amendments of the Rulebook on Health Insurance Document and Special Document used for the Exercise of Health Care¹⁰, those children

⁶ The Protector of Citizens originally submitted the same initiative to the Ministry of Justice in October 2011, but the then-current Ministry provided no written answer.

⁷ "Official Gazette of RS" No. 57/13.

⁸ For more information, see the section of this Report dealing with the right to work and work-related rights.

⁹ Please note that, where identified issues concern more than one right, e.g. the right to work, the right to family protection and the right to health care, they are included in the section of this Report where they predominantly belong.

¹⁰ Rulebook Amending the Rulebook on Health Insurance Document and Special Document used for the Exercise of Health Care ("Official Gazette of RS" No. 96/12).

who are covered as family members of insured persons whose employers did not regularly pay health insurance contributions before 9 August 2011 will be entitled to use health care services on the basis of a health care certificate- However, this provision does not apply in cases where employers stopped paying their obligations after that date. The Protector of Citizens will continue to scrutinise the situation in this regard pending a permanent solution. The issue of health insurance of both pregnant and nursing women and children points to the government's inability to establish financial discipline and serves as a reminder that consequences of the government's failures should not be suffered by children and women, especially if they belong to particularly vulnerable groups such as pregnant women and nursing mothers.

An increasing trend has been observed in the number of complaints by both women and men in roughly equal numbers against unequal treatment in assisted biomedicine reproduction procedures financed by the Republic Health Insurance Fund (RHIF). Namely, this right cannot be exercised in cases where one partner has a child from a previous relationship, while the other is facing infertility issues; in cases where one of the partners in an already initiated procedure dies (i.e. if the male partner had his sperm frozen and signed a statement of consent to continuation of the procedure) and, finally, because of the lack of clearly defined and prescribed courses of action by competent authorities and institutions that would enable women to exercise this right before reaching 40 years of age.

The Protector of Citizens also recalls that the Commissioner for Protection of Equality, acting on complaints, found the provisions of general instruments governing the conduct of assisted biomedicine reproduction procedures to be discriminatory; the same conclusion was reached with regard to recognition of health insurance rights of female foreign nationals and the Commissioner pointed out that competent authorities had not taken measures to rectify the omissions. As a result, the citizens continue to seek redress from the Protector of Citizens, who, in accordance with his powers, investigates whether the authorities acted regularly and legally.

A newly-emerged issue involves women who are foreign nationals and are married to Serbian nationals. Namely, until they are granted Serbian citizenship, they do not have health insurance coverage under Serbian legislation in cases where their husbands are unemployed and/or claim social benefits.

In spite of the statistics which place Serbia among the countries with the highest rates of incidence and also the highest mortality from breast and cervical cancer¹¹, the Republic Health Insurance Fund, in its Rulebook on the Content and Volume of the Right to Health Care from Compulsory Health Insurance and Cost-Sharing in 2012, reduced the scope of the right to preventive gynaecological examinations paid by the Fund: instead of annually, these examinations can now be had once every three years with insurance coverage.

A number of parents contacted the Protector of Citizens asking for investigations into the cases of the so-called "disappeared babies". They claim their children, who had reportedly died according to what was said to the parents at birth clinics, were illegally taken from them and given to other persons. The parents were not given an opportunity to see or bury their allegedly deceased children and, many years later, they came across documents that raised doubts as to whether their children had actually died. The Protector of Citizens investigated a number of such cases, which in 2010 resulted in the Special Report on the cases of the co-called "disappeared babies", with recommendations. One of the recommendations was for the Republic of Serbia to pass a special law to enable the investigation of each such case, so as to provide the parents with an authoritative and factually based response regarding the fate of their children. Notwithstanding these recommendations and even certain activities taken by public authorities, no such law was passed and there have been no investigations into these cases.

¹¹ For more information, see: www.ecca.info/cervical-cancer/cervical-cancer-rates.html and www.screeningserbia.rs

Relying largely on the Special Report submitted by the Protector of Citizens in 2010, the European Court of Human Rights passed on 26 March 2013 a judgment in one of the cases of the so-called “disappeared babies”. In addition to indemnification of the applicant, the Republic of Serbia was ordered to take all appropriate measures within one year to secure the establishment of a mechanism aimed at providing individual redress to all parents in a similar situation; the Court took the view that the enactment of a special law, as recommended by the Protector of Citizens, would be the best way to do this. This judgement became final in September 2013 and that will be the beginning of the one-year period in which Serbia has to establish a mechanism that would, as far as possible, shed light on all similar cases reported by parents.

To improve gender equality and protection of family, mothers and children, the Protector of Citizens considers the following steps to be necessary:

1. The National Assembly should ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence.
2. The Ministry of Labour, Employment and Social Policy should develop specific measures for more effective protection of rights and improvement of the position of pregnant and nursing women and mothers in general as a particularly vulnerable group of women.
3. Competent ministries should monitor the implementation of strategies to improve the position of women and as well as activities set out in action plans implementing specific strategies.
4. The Ministry of Justice and Public Administration should prepare a Draft Law on Free Legal Aid to improve the position of a large number of women, including in particular victims of domestic violence.
5. The Criminal Code should be harmonized with the CoE Convention on the protection of children against sexual exploitation and sexual abuse and the CoE Convention on preventing and combating violence against women and domestic violence, in line with the Initiative made by the Protector of Citizens.
6. Optional Protocol to the Convention on the Child rights on a Communications Procedure (OPIC), signed by Serbia in February 2012, should be ratified.
7. Mechanisms should be put in place to enable monitoring of the number of children in the Republic of Serbia, in particular those in a vulnerable position or situation who are in need of government assistance and support.
8. Every child, who does not have insurance coverage as a family member of an insured person or does not exercise compulsory health insurance rights as a family member of an insured, person should fully benefit from the provisions of the law applicable to vulnerable groups exposed to an increased risk of disease incidence.
9. The Ministry of Labour, Employment and Social Policy should continually oversight the implementation of gender equality and equal opportunities in local self-government units and national-level authorities.
10. The Ministry of Justice and Public Administration and the Republic Secretariat for Legislation should propose measures for the introduction of gender-sensitive language into the operations of government authorities, including the writing of laws and other regulations.
11. Local self-governments should put in place gender equality mechanisms and take other measures to ensure the implementation of the Law on Gender Equality at the local level.

The right to work (Article 6) and work-related rights (Article 7)

Since the establishment of this institution, the Protector of Citizens has been receiving an ever-increasing number of complaints relating to violations of the right to work and work-related rights. Citizens have been addressing the Protector of Citizens with their grievances both in connection with job-seeking and hiring procedures and in connection with the implementation of laws and general regulations that govern labour relations. A considerable number of complaints related also to the manner of employment termination and the inability of former employees to exercise their work-related rights after termination. In the majority of cases the complaints related to violations of the Labour Law¹² by private-sector employers, while the number of those complaining against violations of their work-related rights by public administration, civil service or local authority employers was somewhat lower. It should be pointed out that the Protector of Citizens is not authorised to control the respect for citizens' work-related rights unless their employers are public authorities and/or holders of public powers.

From the received complaints it is evident that citizens largely believe that finding and keeping a job in Serbia is still down to party-political affiliation, kinship or other similar connections or corruption.

The Protector of Citizens has been asked to provide protection against workplace harassment based on membership in a political party. It has also been noted that many citizens complained of politicising both as regards employment and as regards termination of those who were declared "redundant".

Although the Labour Law limits fixed-term employment to one year, many employees have remained in this status for years on end. Apparently, in an effort to circumvent this provision of the Law, employers sign employment contracts which reassign fixed-term employees to other posts, while *de facto* keeping them on the same job. The Protector took notice of the fact that the Law Amending the Labour Law, focusing on additional protection for pregnant women and nursing mothers, was enacted in 2013.¹³ The already existing provision which stipulates that an employer cannot terminate an employee's employment contract during her pregnancy, maternity leave, child care leave or leave to take special care of a child has been reinforced with a provision stipulating that an employee under a fixed-term contract must have that contract renewed until the expiration of her leave entitlement.

Avoidance of registering workers for compulsory social insurance by employers, the so-called "unregistered work", has frequently been brought to the attention of the Protector of Citizens. In such cases, workers - who have no regular salary, no taxes and contributions are paid on their behalf and they lack even the most elementary of work-related rights - are facing a dilemma: whether to report their employer and risk losing their job or whether to continue working unregistered, with virtually no rights. Another issue is that the citizens, due to the fear of losing one's job, turn to the labour inspectorate or the Protector of Citizens only when they lose their job or when the only way to prove their rights is through litigation, which is time-consuming and costly.

The Protector of Citizens warns that the livelihood of many citizens is threatened because of non-payment or irregular payment of their salaries. Equally threatened are employees' entitlements to other benefits, such as salary compensation during temporary incapacitation, compensation for overtime work, night work, non-payment of jubilee rewards, non-payment of severance pay etc.

Although employers have a statutory obligation to provide compulsory social insurance coverage for their employees and pay the contributions, this obligation is frequently breached, which is why many citizens have not had social insurance coverage for their total years of service and are

¹² "Official Gazette of RS" Nos. 24/2005, 61/2005, 54/2009 and 32/2013.

¹³ Law Amending the Labour Law ("Official Gazette of RS" No. 32/2013).

consequently not entitled to receive pension. A special problem arises in cases where these obligations are not met and the employer has been deleted from the company register by one of the methods provided by the law. Quite often there are also court judgements which are in such cases effectively unenforceable, although the complainant's claim is upheld. Although the collection and control of payment of compulsory health, pension and disability insurance are duties of the government, employees are those who suffer the most because their employers fail to meet this obligation, in that they cannot receive pension or do not have access to health care.

In his public addresses, the Protector of Citizens has on multiple occasions called on the government to take more decisive actions against employers who do not pay contributions. He has also pointed to the inefficiency of the authorities in charge of control of the regularity and legality of employers' operations, as well as on the ineffectiveness of sanctions that are untimely (at a time when the citizen is no longer able to exercise his/her right) enforced against those employers that fail to comply with their obligation to pay contributions.

In its Conclusion adopted following the examination of the Regular Annual Report for 2012 submitted by the Protector of Citizens¹⁴, the National Assembly upheld the opinion of the Protector of Citizens, emphasising it "expects the Government to ensure, through economic revival and employment promotion measures, the exercise of the right to work and work-related rights as fundamental human rights and to put in place appropriate measures to develop the human resources and other capacities of the labour inspectorate and ensure its more efficient operation, to introduce more stringent supervision of collection and payment of compulsory health, pension and disability insurance by employers and to ensure that all offenders and punished to the full extent of the law."

The economic crisis which has marked this reporting period has also made employees very fearful of losing their job, as well as of possible consequences of illegal dismissal, a situation which was exacerbated further by the fact that many employers failed to meet their obligations.

It is a matter of utmost concern when the Serb population in Kosovo and Metohija is forced to suffer the consequences of unfair treatment at the hands of Serbian authorities. The Protector of Citizens found that Government officials had asked ethnic Serb citizens to resign from their jobs in the interim institutions of Kosovo and Metohija controlled by the government in Priština, promising to provide jobs for them in the institutions of the Republic of Serbia, in accordance with the conclusions of the Serbian Government. Tens of citizens heeded this advice and resigned, but the promise that had been made to them has not been kept, even after more than four years. Bearing in mind the ethical obligation stemming from the grave implications this unfair course of action has had on the lives of many citizens, the Protector of Citizens submitted an Opinion to the Government of the Republic of Serbia in which he called on it to exploit all legal means and, without any further delay, to assist, through the Office for Kosovo and Metohija and other public authorities, in the employment of those citizens who followed the advice given by the Serbian authorities and have been left jobless as a consequence.

The Protector of Citizens has also received a number of complaints from complainants who objected to the legislative provisions which effectively bar the reemployment of those employees of the Ministry of Internal Affairs whose employment contracts were terminated due to security-related obstacles. Namely, the provisions of the Law on Police¹⁵ which was in force until 2009 stipulated that the employment of a police officer or other employee can be terminated if, during his/her employment at the Ministry, security-related obstacles, within the meaning of the said Law, arise that would have rendered the employee ineligible for employment if they had existed at the time of his/her employment. In practice, this provision resulted in a situation where a police

¹⁴ "Official Gazette of RS" No. 57/13.

¹⁵ "Official Gazette of RS" No. 101/05.

officer was cleared of all wrongdoing by a court judgement, but could not return to work because he had been subject to a criminal proceeding, which constituted a security-related obstacle.

The Protector of Citizens has also received an increasing number of complaints against the actions of the labour inspectorate, usually because of insufficient efforts of that authority or its failure to take appropriate legal measures during inspection procedures.

It has been observed that the labour inspectorate tends to investigate only after receiving a report from an interested party, while *ex officio* investigations are much less frequent; as a result, irregularities in the field of labour relations are found untimely, at a time when the employee concerned is no longer able to exercise his/her rights and the labour inspectorate has no legal grounds for carrying out inspections (extended periods of frozen accounts, bankruptcy proceedings in which claims cannot be collected because the estate is insufficient, liquidations that had not been notified to the employees etc.). The said authority needs to step up its efforts to prevent violations of the right to work and work-related rights and provide timely protection for employees' rights. The inspectorate also needs to have more specific powers and greater accountability for any failure to take the necessary inspection actions or failure to exercise powers.

The Protector of Citizens deems it is:

1. Necessary to amend regulations in order to enable the exercise of employees' rights in cases where employers failed to settle their liabilities and pay contributions.
2. Necessary for the ministry in charge of labour, employment and social policy, in order to ensure more efficient operation of the labour inspectorate, to increase the number of inspectors, expand the inspectorate's scope of powers, improve the technical conditions for work and suggest legislative amendments, with a view to ensuring more efficient identification and punishment of informal employment.
3. Necessary for the labour inspectorate to step up its efforts and initiate proceedings *ex officio* where sufficient evidence points to the need to carry out inspections.

The right to establish and join trade unions (Article 8)

Although the Law on Serbian Army¹⁶ gave the officers and professional servicemen the right to establish and join trade unions as early as in 2007 (for the first time in the history of Serbia), in practice they have been unable to exercise this right because the Government has not adopted on time the relevant regulations to govern in more detail this right guaranteed by the law. The Protector of Citizens has highlighted the need to complete the normative framework as soon as possible and enable the Armed Forces personnel to enjoy one of the fundamental human rights, advocating the concept of Armed Forces personnel as "citizens in uniform".

In 2011, the Government of Serbia adopted a Decree¹⁷ allowing professional servicemen in the Serbian Army to freely establish trade unions. Pursuant to the said Decree, the employer, i.e. the commands, units and institutions of the Serbian Army that are professionally associated with the Ministry of Defence, must provide assumptions for the free operation of trade unions within them.

At present, the five existing trade unions¹⁸ in the Ministry of Defence and the Serbian Army have about 1,700 members in total. The Ministry of Defence and the Serbian Army employ about 40,000 people.

¹⁶ "Official Gazette of RS" No. 116/07 and 88/09, Article 14.

¹⁷ Decree on Trade Union Organisation of Professional Servicemen in the Serbian Army, "Official Gazette of RS" No. 29/11.

¹⁸ These are: Association of Free and Independent Trade Unions of Servicemen in the Serbian Army; United Serbian Trade Unions "Sloga" at the Military Medical Academy; United Serbian Trade Unions "Sloga" at the Ministry of Defence; Trade Union of Aircraft Technicians in the Serbian Army and the Military Trade Union of Serbia.

The Protector of Citizens has so far not received any complaints from professional servicemen in the Serbian Army alleging they had been held accountable or placed at a disadvantage in terms of working conditions or employment status or terminated from service due to their involvement in trade union activities.

The right to social security (Article 9)

The field of social welfare is a field where complaints are made by members of the most vulnerable, socially needy groups, who often face threats to their very livelihood. The Protector of Citizens is therefore of the opinion that public authorities and social welfare institutions should make every effort to act and decide on the rights of those persons efficiently, timely and within a reasonable timeframe. All the more so because untimely and inefficient work of social welfare entities creates social insecurity and puts the social security beneficiaries, as the most vulnerable categories of the population, in a state of social vulnerability.

The Protector of Citizens has frequently controlled the operations of social welfare centres pursuant to citizens' complaints and has identified a wide range of omissions, which shows the Ministry is not sufficiently effective in exercising its duties, that the oversight it carries out under the law is not sufficient and that the citizens do not have much trust in it.

The Protector of Citizens cannot omit to mention individual examples of utmost professionalism, selflessness and willingness to work in unreasonably difficult professional circumstances that are found in certain social welfare institutions.

Financial support to family and children

The position of families of children with developmental issues and children with serious and/or rare diseases is particularly difficult, which speaks of ineffectiveness of the form of support, provided under the Law on Social Security¹⁹, to unemployed parents who care for a child with developmental issues or disabilities or a sick child,²⁰ as highlighted by the Protector of Citizens in all of his Annual Reports.²¹ Families that directly take care of children in need of constant care receive nowhere near enough support from the society, which is necessary to ensure that children with developmental issues and disabilities remain in their families – a proclaimed objective of deinstitutionalisation and transformation of residential institutions for children in Serbia.

In May 2013, the Protector of Citizens submitted a Draft Law Amending the Labour Law and a Draft Law Amending the Law on Financial Support to Families with Children. These draft laws were prepared in consultation with parents of children in need of constant parental care and assistance, associations providing protection and advocacy for children with developmental issues and disabilities and severely ill children and associations advocating the rights and interests of persons with disabilities. More than 60,000 citizens supported the drafts with their signatures.

The said draft laws introduce new rights for parents of children with developmental issues and disabilities and severely ill children in need of constant care and support: shorter working hours for one of the parents of a child with developmental issues or disability or a severely ill child older than five years; no night work or redistribution of working hours without the parent's consent; benefits for unemployed parents who take care of a child in need of constant care and support. The

¹⁹ "Official Gazette of RS" No. 24/11.

²⁰ Article 94 paragraph 6 of the Law on Social Security: "One of the parents who is not employed and who has spent at least 15 years directly caring for his/her child who is entitled to increased caregiver allowance within the meaning of paragraphs 1 and 2 of this Article shall be entitled to special financial compensation in the form of lifelong monthly financial benefits in the amount of the lowest pension paid under employee insurance, once he/she reaches the statutory retirement threshold in accordance with the pension and disability insurance legislation, insofar as he/she has not already earned the entitlement to a pension."

²¹ Regular Annual Report of the Protector of Citizens for 2011, the Protector of Citizens, Belgrade, 2011, p. 57. Available at: www.ombudsman.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji

Protector of Citizens had in mind the fact that it is in the best interest of children with developmental issues and disabilities and severely ill children to be cared for by their parents, with accessible community-based services focused on including the child in the community and ensuring his/her independence to the maximum possible extent, which would at the same time enable the parents to work and achieve professional fulfilment, while providing livelihood and financial independence for themselves and their families. However, where services for children and families are unavailable, it is the responsibility of the state to provide support to those parents who themselves provide those services to their child. The state has a duty to provide additional support to the parents of children in need of constant care and support when care and support services cannot be provided within the framework of the existing system of community-based services (in the system of health care and social welfare, child care, education assistance and local community services), for as long as such services are unavailable.

In its Conclusion adopted following the examination of the Regular Annual Report for 2012 submitted by the Protector of Citizens²², the National Assembly underscored that it was necessary to develop a unified, centralised and standardised system for collecting and analysing data on the status of all categories of children, including in particular data on the number of children with developmental issues, disability or such degree of illness that requires permanent presence of their parents or other persons, as well as collection and analysis of the outcomes of implementation of relevant legislative arrangements in this field. In the same Conclusion, the National Assembly mandated the Government to inform it within one year of the actions taken by competent public authorities and holders of public powers at the national level pursuant to this recommendation.

The Law on Financial Support to Families with Children, which cites improvement of the standard of living of financially vulnerable families and children as one of its objectives, effectively prevents the claiming of certain benefits by children whose parents – in particular the mother – are foreign nationals. Even the entitlement to child allowance, which is a form of income that belongs to the child, cannot be exercised if the parent who provides immediate care to the child is a foreign national, even if the child is a Serbian national. A child can exercise this entitlement only if his/her parent has health insurance coverage through the Republic Health Insurance Fund and this entitlement will not be available to a child if the parent – for any reason, including third party negligence – cannot exercise the right to health insurance.

The Protector of Citizens has supported the initiative of the Autonomous Women's Centre to introduce an Alimony Fund which would provide financial support to children who do not receive alimony from the parent who is ordered by court to do so. The Protector of Citizens has forwarded this initiative to the Ministry of Justice and Public Administration, with a proposal to devise solutions that would enable efficient collection of debt from negligent parents.

Children without parental care

Unlike foster parenting, which is a form of temporary child protection and which has developed at a rapid pace in recent years, adoption as a form of permanent family care for a child has not been fully explored as an option. In the past seven years, the number of adopted children has not exceeded 147 in any single year and 2012 saw a dramatic decline in the number of adoptions – a total of 105 children.²³ According to the figures of the Ministry of Labour, Employment and Social Policy presented at the session of the Parliamentary Committee on Child Rights, many children under ten years of age spend year after year in foster families, although they are generally eligible for adoption or meet the necessary conditions to become eligible. At the moment, all custodial authorities in Serbia are reviewing the family law protection arrangements for children up to 10 years of age.

²² "Official Gazette of RS" No. 57/13.

²³ Data available on the webpage of the Republic Social Insurance Fund:

<http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/IZVESTAJ%20CSR%202012%20FIN1.pdf>, accessed on 23 September 2013 (in Serbian only).

Pension and disability insurance

The Protector of Citizens has been receiving increasing numbers of complaints from the citizens relating to the problems they face in the exercise of rights arising from pension and disability insurance *vis-à-vis* the competent organisational units of the Republic Pension and Disability Insurance Fund (RPDIF).

The majority of the complaints related to unjustifiably long procedures before first- and second-instance bodies of the RPDIF, most frequently involving failure to decide on pension applications, failure to decide on complaints and failure of first-instance bodies to pass decisions in repeated procedures. The RPDIF rectified the majority of these omissions after the Protector of Citizens initiated an investigation and complied with his recommendations.

As regards omissions concerning the imposition of a duty on pension recipients to pay back inaccurately calculated and disbursed amounts of their pensions, the RPDIF partly rectified them when its Managing Board passed a decision on debt write-off, subject to certain conditions, for those insurance recipients who received overpayments.

Registry records that are not up to date have also been found to be at the root of the imposition of a duty on pension recipients to pay back overpaid amounts of pension, as in some cases the overpayment was a direct result of errors in the registry records of RPDIF (miscalculated amount of pension or a note indicating that the pension in question was earned exclusively under Serbian regulations, without information on any part of the pension received from abroad etc.).

In April 2011, the Protector of Citizens found omissions that constituted breaches of good governance principles, which were evident from a number of procedural omissions and inefficient and unprofessional work; he therefore made a recommendation to the RPDIF.²⁴ It should be pointed out that, once the Protector of Citizens initiates an investigation of regularity and legality of operations, the RPDIF almost as a rule rectifies any irregularities that have been observed; however, identical omissions tend to be repeated time and again, which points to the conclusion that the RPDIF acts on a case-by-case basis and lacks systemic solutions for the problems.

“The Kosovo Pensions”

The issue of so-called “Kosovo pensions” merits attention. The Protector of Citizens received a large number of complaints from the citizens (about 150) who reside or resided in the territory of the Autonomous Province of Kosovo and Metohija, or whose overall or part of their pensionable service was made there. They have been prevented from exercising the right arising from pension and disability insurance since 1999. There are many more of them in addition to those who contacted the Protector of Citizens. Some of them had been receiving a pension that was suspended without any legal grounds, while some of them applied for a pension and never received any decision in response to their application.

In the investigation that was initiated pursuant to these complaints, the Republic Pension Insurance Fund responded that the exercise of the pension right by a certain number of beneficiaries was “only temporary restricted” pending the resolution of this issue as part of the overall issues and problems existing between the institutions of the Republic of Serbia and the International Interim Administration in Kosovo and Metohija.

In view of the judgement of the European Court of Human Rights in Strasbourg in the case *Grudić v. Serbia*, received complaints and facts determined during the investigations, as well as relevant regulations, the Protector of Citizens submitted an Opinion to the Government of the Republic of Serbia in which he stated that the RPDIF made omissions in its work because it suspended payment of pensions to the insured persons residing in the territory of the AP Kosovo and Metohija

²⁴ For more information see: www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/1345-2011-04-19-07-46-29 (in Serbian only).

who had been entitled to receive pension according to valid and enforceable decisions. The Opinion also recommended that the Government take all necessary and appropriate measures to ensure fair payment of pensions to the insured persons, which would contribute to the implementation of decisions of the European Court of Human Rights in Strasbourg and to settlement of all liabilities of the RPDIF pursuant to the valid decisions of this authority. This would enable the exercise of citizens' rights guaranteed by the Constitution of the Republic of Serbia and the European Convention on Human Rights. The amount owed by the Republic of Serbia on this basis is enormous.

The Protector of Citizens recalls he has no means of exercising his powers in the Autonomous Province of Kosovo and Metohija in the manner provided for by the Constitution and the Law. In accordance with operational paragraph 11(j) of UNSC Resolution 1244(1999), UNMIK has a duty to protect and promote human rights in Kosovo and Metohija. According to the available information and in particular the allegations put forth in the complaints, the citizens in Kosovo and Metohija, especially those of a non-Albanian ethnicity who live in enclaves, are being held hostage to ongoing political processes and are facing human rights violations on a scale that is inconceivable in the remainder of modern-day Europe.

In summary, the Protector of Citizens believes the following should be done:

4. The ministry in charge of labour, employment and social policy should timely, legally and effectively take all necessary measures in terms of exercise of oversight powers over the work of social welfare centres and to focus in particular on those measures that concern the protection of rights of vulnerable groups.
5. The RPDIF should improve its operations in order to become better equipped to handle the citizens' applications for the exercise of rights arising from pension and disability insurance, to improve mutual cooperation between its branch offices and to ensure more efficient cooperation with foreign pension funds.
6. There is an ongoing need to improve the operations of the RPDIF to ensure regular updating of records and improved cooperation with the public.

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

In recognition of the fact that "[t]he human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights"²⁵, which "cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments"²⁶, the Protector of Citizens has monitored the resettlement of informal (mostly Roma) settlements in Belgrade in 2012 with a keen interest.

Persons of Roma ethnicity, due to poverty, poor living conditions and unresolved status-related issues, as well as unjustifiably slow institutional progress in providing assumptions necessary for the protection of their ethnic identity, do not have the same opportunities to exercise the recognised "minority" rights as persons of other ethnic minorities.

The Strategy to Improve the Status of the Roma, adopted by the Government in 2009, helped up to a point in alleviating the poverty-related issues faced by the Roma, but there are no indications of any substantive contribution of the Strategy to the creation of legislative and factual assumptions for the elimination of those issues. Action Plans for implementation of the Strategy have not been adopted to this date and visible improvements in the status of the Roma have been observed in only a handful of local communities.

²⁵ Paragraph 1 of General Comment No. 4.

²⁶ Paragraph 9 of General Comment No. 4.

Addressing the issues associated both with poverty of the Roma population and with the *de facto* exercise of their right to protection of ethnic, linguistic and cultural identity will require: detailed planning, coordinated action and cross-linking of multiple public administration systems; oversight of the implementation of measures by local self-governments; designing of measures to ensure *de facto* equality etc. And yet, the administration has made no effort to develop the necessary organisational, human and financial resources. This observation is supported by the fact that the resettlement of the informal settlement near the Bellville complex in Novi Beograd, populated mostly by ethnic Roma²⁷ - similarly as in the cases of other informal settlements - was done without effective coordination and oversight by any executive government authority. For this reason it was not possible to ensure that such a complex activity, carried out practically in its entirety by city authorities, takes place in full compliance with all standards guaranteed by the Republic through national-level legislation. This has resulted in a number of issues faced both by the inhabitants of the newly-formed container settlements in Belgrade and by the City Administration of Belgrade and other local self-governments that have received the influx of the resettled persons, because they all lack the mechanisms necessary to ensure full social integration of the Roma.

After monitoring of the resettlement of the informal settlement near the Bellville complex²⁸ and after the recommendations made by the Protector of Citizens to the local self-governments that received the former inhabitants of those settlements, permanent housing has been provided for poor Roma families in the towns of Žabalj, Leskovac and Surdulica, while temporary housing has been provided in nine more local communities. The insistence of the Protector of Citizens that the resettlement of families to container settlements in Belgrade was not an integration measure, but a temporary solution, has motivated the City Administration to take measures to address the issues of the Roma community in compliance with the Strategy to Improve the Status of the Roma adopted by the Government of the Republic of Serbia.

The Protector of Citizens has also given recommendations to administrative authorities to regulate the actions taken by public authorities when resettling informal settlements and to provide the protection of human rights of the resettled citizens. These recommendations have not been implemented and the most telling response was that provided by the Ministry of Labour, Employment and Social Policy, which, although responsible for integration of the Roma in local communities in accordance with the Law on Ministries²⁹, believed it had provided assumptions for permanent integration of the resettled Roma by implementing the measures provided for by the Law on Social Security³⁰, which are provided through social welfare centres. As a result of such interpretation of social integration, the majority of the resettled Roma have now returned to Belgrade, even though no sustainable integration has been achieved even for those who were placed in the newly-formed container settlements according to the plan.

By participating in the work of the Managing Board which oversees the integration of the Roma who have been resettled from under the Gazela bridge and from the area near the Bellville community, the Deputy Protector of Citizens for National Minority Rights has given a substantial contribution to the establishment of more efficient planning and implementation of activities aimed at their social and economic integration. The insistence on establishing an efficient system of management of the social and economic integration process has resulted in the involvement of the Ministry of Labour, Employment and Social Policy in the process, in compliance with the Law, which created the assumptions for the establishment of a system of accountable management and monitoring of the whole process.

²⁷ The full text of the Report, with recommendations on resettlement of the informal Roma settlement near the Bellville complex, is available <http://www.pravamanjina.rs>

²⁸ The "Bellville" Report, *ibid.*

²⁹ "Official Gazette of RS" No. 16/11. and "Official Gazette of RS" No. 72/12.

³⁰ "Official Gazette of RS" No. 24/11.

It should be noted here that the Government of the Autonomous Province of Vojvodina has continually been working on building the organisational, human resources and financial capacities of its Roma Inclusion Office, which is in charge of planning, coordination and monitoring of implementation of measures designed to improve the status of the Roma. Furthermore, a special organisational unit tasked with addressing the employment issues faced by the Roma has been formed within the Secretariat of Economy, Employment and Gender Equality.

“Legally invisible” persons

Although the issue of “legally invisible” persons does not *stricto sensu* belong to the subject matter of this Report, it has emerged as a preliminary issue and precondition for resettlement of the informal settlement near the Bellville complex, as well as other settlement.³¹

Persons of the Roma ethnicity have faced the issues of identity recognition and registration with the birth registries, which was the reason for amendment of the Law on Non-Contentious Procedure on the initiative of the Protector of Citizens³², but they have also faced legal obstacles in the exercise of their human rights, which was the motivation for amendments to specific articles of the Law on Permanent and Temporary Residence of Citizens³³ and the Law on Identity Card³⁴, on the initiative of the Protector of Citizens.

The new legislative arrangements, referred to above, have given the “legally invisible” persons – those who have not succeeded in their attempts to include a record of the fact of their birth in the birth registry in a subsequent administrative proceeding – an opportunity to do so within a reasonable time in a court proceeding. Thus, “legally invisible” persons of age have been given an opportunity to apply for an identity card by registering the social welfare centre in the local self-government unit where they live as their place of residence, if there is no other place of residence they could register on the basis of title to a home, a home lease contract or any other legal basis.

By adopting these initiatives of the Protector of Citizens, the National Assembly and administrative authorities have created a legislative basis that sets an example not only for other countries of the region, but also for other European countries which, due to the increasing immigration inflow, face the issue of “legal invisibility” of citizens.

However, in order to translate good laws into good practice, it is necessary to develop the assumptions for their implementation, which has sadly not been the case, since it took the competent public authority more than one year – far beyond the statutory time limit – to draw up the Rulebook on the Form for Registration of Residence at the Address of a Social Welfare Institution or Centre³⁵. Social welfare centres have rather grudgingly accepted the tasks imposed on them by the Law and have tended to follow different practices, which causes legal uncertainty, aggravates the legal status of the citizens and effectively prevents them from exercising their rights. Acting on proposal put forth by the Protector of Citizens in a meeting, it was decided that the Ministry of Internal Affairs and the Ministry of Labour, Employment and Social Policy should, without delay, give appropriate instructions to police authorities and social welfare centres respectively to ensure that citizens can swiftly and efficiently exercise their right to register the address of a social welfare centre as their residence, receive instructions on the rights and responsibilities they assume upon receiving a decision on registration of residence or receive a clear explanation and a reference to available remedies if their application for registration of residence is rejected. The Ministries have not put in place the agreed measures within their spheres of competence in the agreed timeframe, which is why the Protector of Citizens issued a special Opinion to them. When deciding whether to include in the register of nationals a person who has

³¹ In accordance with paragraph 15 of General Comment No. 7.

³² “Official Gazette of SRS” Nos. 25/82 and 48/88 and “Official Gazette of RS” No. 46/95 – replaced by new law, 18/05 – replaced by new law and 85/12.

³³ “Official Gazette of RS” No. 87/11.

³⁴ “Official Gazette of RS” Nos. 62/06 and 36/11.

³⁵ “Official Gazette of RS” No. 113/12.

obtained a registration of the fact of their birth in a court proceeding, the Ministry of Internal Affairs is not bound by the court decision. This arrangement has effectively exempted the authority responsible for conferring nationality from the principle of compliance with court decisions and has subjected court decisions to extra-judicial scrutiny, i.e. scrutiny by an administrative authority. For this reason, in February 2013 the Protector of Citizens submitted to the National Assembly a proposal for the enactment of a Law on Non-Contentious Procedure which would repeal the Article which grants this right to the Ministry of Internal Affairs and prevent non-compliance of court decisions and their extra-judicial scrutiny by administrative authorities. This proposal is still in parliamentary procedure.

The Protector of Citizens has signed a Cooperation Agreement with the Ministry of Justice and Public Administration and the UN High Commissioner for Refugees which serves as the basis for his activities in connection with the improvement of work of public authorities and courts to ensure an efficient system for resolving the issues of identity recognition and exercise of human rights by the “legally invisible” persons. By participating in the training of judges and the staff of police authorities and precincts, the staff of registry offices and the staff of social welfare centres in connection with the recognition of citizens’ status issues (registration of residence, entry in a registry, identity documents), the Protector of Citizens has contributed to the passing of court decisions acknowledging the fact of a person’s birth in non-contentious procedure (more than 70 such decisions have been passed by 30 June 2013). The efforts made by the Protector of Citizens and the activities he has implemented under the said Agreement, including in particular the abovementioned training provided to social welfare centres and registry offices in all local self-governments in Serbia, have resulted in a significant reduction in the number of complaints against the actions taken by authorities in connection with the registration of the fact of birth in birth registries in subsequent proceedings (“legally invisible” persons).

The Protector of Citizens recommends the following course of action in order to overcome the identified problems:

1. The executive authorities should draw up a proposal of a relevant document which would regulate in detail the actions, the cooperation and the coordination of competent public authorities when informal settlements are resettled.
2. The Ministry of Justice and Public Administration should, in cooperation with other competent authorities, prepare and submit to the Government of the Republic of Serbia for adoption an Action Plan on Implementation of the Strategy to Improve the Status of the Roma;
3. The Ministry of Labour, Employment and Social Policy should reconsider its opinion that social integration of the Roma, as a vulnerable social group, is to be provided through social security measures. The Ministry should put in place measures to train its staff in working with socially vulnerable groups, taking account of the need to protect their human rights and respect the principles of good governance.

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

The predominant reason for lodging of complaints with the Protector of Citizens in the field of health care is the inability to exercise the right to health insurance due to the outstanding debt of the complainant’s employer for health insurance contributions; however, many complaints are also lodged in cases where insured persons are prevented from using health insurance because they did not make a choice of their chosen physician.

The Republic Health Insurance Fund (RHIF) refuses to renew the health insurance cards of those citizens who obtained the status of insured persons through employment or as family members of a person insured through employment, in cases where their employer failed to pay compulsory health insurance contributions. If on the one hand the employer does not meet its statutory

obligation towards the public fund founded by the state and does not pay the statutory contributions and on the other hand the relevant public authorities (RHIF and Tax Administration of the Ministry of Finance) do not exercise their statutory powers – do not exchange information on insurance payments and do not initiate the appropriate proceedings against the offenders, the law stipulates that the right to health care will be denied to the party who was guilty of no wrongdoing – the worker. The Protector of Citizens will attempt to change this stipulation by submitting an initiative for legislative amendments to the Government. That initiative has already garnered the support of both trade unions and employers' associations.

Additional work by medical doctors

One of the fields that have been in the focus of attention of the Protector of Citizens is the control of regularity and legality of activities carried out by health service providers when they provide health care services through additional work. The Protector of Citizens investigated regularity and legality of those activities pursuant to complaints and on his own initiative. To obtain relevant information and measure the scale of this practice, the Protector of Citizens carried out investigations in five health care institutions, which were chosen to reflect different levels of health care services – from primary to tertiary – and to be representative of different administrative districts.

In the investigation it was found that health care institutions organised and provided health care services through additional work without obtaining prior consent from the Ministry of Health; health care institutions signed additional work contracts with medical staff which otherwise worked under shorter working hours arrangements because of the health hazards inherent in their work conditions; health care institutions did not pay sufficient attention to provision of information to patients regarding the opportunities to exercise their right to diagnostic examination within the statutory period; the Ministry of Health did not act diligently upon requests made by health care institutions to determine their eligibility for providing additional work; civil servants in the Ministry of Health gave health care institutions verbal recommendations in connection with additional work that contravene the regulations which govern this field; the Ministry of Health had not harmonised the secondary legislation with the Law Amending the Law on Health Care³⁶ within the statutory period; the Ministry of Health failed to take action within its sphere of competent to examine the compliance of individual instruments adopted by health care institutions with applicable laws and secondary legislation; the Republic Health Insurance Fund entered into agreements with health care institutions for the provision of certain health care services covered by compulsory health insurance to insured persons through additional work in cases where those health care institutions are not eligible under the law to perform additional work; the Ministry of Health, the Republic Health Insurance Fund and the Institute for Public Health of Serbia did not sufficiently take into account the actual needs of health care institutions in terms of optimum staffing with medical doctors specialised in specific fields, which should serve as the basis for drawing up human resources plans for a financial year.

The investigation also highlighted an issue inherent in the concept and activities of the Protector of Patients' Rights, which is a key mechanism of protecting the patients' rights: namely, this position was generally staffed by lawyers who otherwise worked for the health care institutions concerned and handled the complaints of unsatisfied patients on top of their other "regular" work. It was also apparent that the scope of their work was rather vaguely defined. To address the identified issues, the Law on Protection of Patients' Rights was enacted in 2013 and significantly improved the protection of patients' rights: instead of a Protector of Patients' Rights, the relevant local self-government unit has to appoint a person who will act as an Advisor on Patients' Rights and form a Health Council. The Protector of Citizens gave his opinion on the Draft Law and actively monitors its implementation.

³⁶ "Official Gazette of RS" No. 88/10.

The procedures used for hiring additional doctors prevent health care institutions from responding swiftly and efficiently in case of increased volume of work, which makes efforts to match needs with the actual situation difficult.

To rectify the identified shortcomings, the Protector of Citizens has made recommendations to the Ministry of Health, the Republic Health Insurance Fund and all health care institutions. The Ministry of Health has been advised to take all available activities and measures to establish full protection of patients' rights, as well as the work-related rights of health care professionals, including in particular: to act diligently pursuant to requests made by health care institutions for specific approvals or consents required by the law; to issue written instructions to all civil servants employed at the Ministry to refrain from giving verbal recommendations to health care institutions in connection with certain issues related to their work, where such recommendations are contrary to positive legislation; to harmonise without delay its secondary legislation with the Law Amending the Law on Health Care within the statutory period; to draw up Rules of Procedure for Protectors of Patients' Rights and to ensure their continual education; and to inspect the compliance of specific instruments adopted by health care institutions included in the Health Care Institutions Schedule with applicable laws and secondary legislation. The Republic Health Insurance Fund has been recommended to check whether an individual health care institution complies with the statutory requirements before entering into agreements that directly or indirectly affect the rights of patients and health care professionals, as well as the spending of funds from the national budget of Serbia. The Protector of Citizens published the results of this investigation in a special report, which was incorporated in the Annual Report for 2011.³⁷

Activities taken by the Protector of Citizens in connection with the additional work of medical doctors have drawn much attention from the general public and the professional community. Some health care professionals have voiced their dissatisfaction with the recommendations made by the Protector of Citizens, with some physicians at the Cardiology Clinic of the Clinical Centre of Serbia (CCS) even going so far as to claim they were no longer sufficiently motivated to care for and treat patients with cardiovascular disorders because the elimination of additional work has reduced their income.

Deciding to investigate this issue on his own initiative, the Protector of Citizens held a meeting (in April 2013) with the Minister of Health, the Chairman of the Parliamentary Committee on Health and Family, the Director of the Anti-Corruption Agency and the Director of the Republic Health Insurance Fund. It was agreed *inter alia* that each of the authorities listed above should, within their respective spheres of competent, conduct oversight of the operations of the Cardiology Clinic of the Clinical Centre of Serbia and submit a full report with the findings of such oversight to the Protector of Citizens. To agree on specific technicalities in connection with the implementation of that agreement and coordination of oversight activities, working meetings were held between the staff of the Secretariat of the Protector of Citizens and the officials of the Republic Health Insurance Fund, the Anti-Corruption Agency and the health inspectorate of the Ministry of Health. Working meetings were also held with the management of the Clinical Centre of Serbia and the Cardiology Clinic in order to collect all necessary information.

The Ministry of Health has submitted its reports on the inspection carried out at the Cardiology Clinic of the Clinical Centre of Serbia, while the Protector of Citizens learned from the media that criminal charges were filed against 15 employees of the Clinical Centre of Serbia for abuses associated with additional work on the basis of the RHIF report of inspection of agreements entered into between the Clinical Centre of Serbia and the RHIF.

After receiving a communication from the Protector of Citizens, the RHIF submitted to this authority (in August 2013) a copy of the Report drawn up by the Inspection Department of the Directorate of the Republic Fund concerning the inspection carried out at the Clinical Centre of

³⁷ For more information see Annual Report for 2011, pages 94-114.

Serbia. The subject of inspection was the organisation and conduct of cardiology and cardiac surgery services through additional work in 2010, 2011 and 2012, as well as the provision of coronarography-catheterisation and primary percutaneous coronary intervention in the treatment of acute myocardial infarction between 1 January and 31 December 2012. At the time when these Observations on the Implementation of the Covenant were written, the Protector of Citizens was in the process of examining the report received from the RHIF.

At the time of writing of these Observations, the Protector of Citizens had no information on further actions and measures, if any, that the Director of the RHIF took after the preparation of the said Report and after the insurance supervisor proposed appropriate measures, i.e. he had no information on proceedings that may have been initiated before competent authorities, other than the information published in the media, which was also the communication channel of preference for the Clinical Centre of Serbia.

Electronic health insurance cards

Having in mind the Committee's General Comment on Article 12³⁸, the fact that principles of good governance imply *inter alia* the need to ensure rational spending and to avoid imposing unnecessary costs on the citizens, and in particular the fact that holding an appropriate document is a precondition for exercising the right to health care, the Protector of Citizens took a keen interest in the efforts to introduce electronic health insurance cards.

Namely, the Law on Health Insurance³⁹ and the Rulebook on Health Insurance Document and Special Document used for the Exercise of Health Care⁴⁰ provide for the existence of a national health insurance card (the so-called electronic health insurance card) as a health insurance document which proves the status of an insured person. This document is in fact a plastic card with the space for a contact microcontroller (chip) and the space for a machine-readable zone for automated readout which stores all visible data entered in the insurance documents, as well as all data held in the registry records in accordance with the said Law and its implementing regulations. According to the Law, the costs of issuing the card are borne by the insured person for himself/herself and members of his/her family. Exceptionally, these costs can be borne by the payer of contributions or by another legal entity or natural person, or the Republic Health Insurance Fund (RHIF) may accept to bear the costs of issuing the card.

In view of the difficulties faced by Serbian citizens in exercising the rights provided for in Article 12 of the Covenant, the Protector of Citizens raised the issue of justifiability of introducing a new health insurance card at this point in time. The Protector of Citizens and the competent government authorities publicly debated the necessity or otherwise of introducing these cards.

The Protector of Citizens was informed by the RHIF this was one of the commitments made by the Republic of Serbia in the process of EU accession. Upon consulting the EU regulations to which the RHIF referred and obtaining an opinion from the EU Delegation to Serbia, it was found that the introduction of such cards was not an EU requirement and that, indeed, not all Member States had electronic health insurance cards for their citizens. In EU Member States, the objective proclaimed by the said Law on Health Insurance is achieved by the "European Health Insurance Card", the name, appearance and (in particular) content of which are specifically regulated by EU legislation. This card is used by the citizens of one Member State who temporarily reside in another Member State and find themselves in need of health insurance. It is different from the national health insurance document, which is used internally and is governed by national legislation.

³⁸ Paragraph 2, item D.

³⁹ "Official Gazette of RS" Nos. 107/2005, 109/2005 - corrigendum, 57/2011, 110/2012 - Constitutional Court ruling and 119/2012

⁴⁰ "Official Gazette of RS" Nos. 68/2006, 49/2007, 50/2007 - corrigendum, 95/2007, 127/2007, 37/2008, 54/2008, 61/2008, 1/2009, 25/2009, 42/2010, 45/2010, 103/2010, 89/2011, 91/2011 - corrigendum, 34/2012, 78/2012, 81/2012 - corrigendum, 96/2012, 98/2012 - corrigendum and 114/2012

In an effort to bring this issue to the attention of the public and the competent institutions, the Protector of Citizens held a number of meetings with the RHIF, the Ministry of Health, the Commissioner for Information of Public Importance and Personal Data Protection and the Anti-Corruption Agency. On the initiative of the Protector of Citizens, a session of the Parliamentary Committee on Health and Family was held. In that session it was agreed to postpone the obligation to replace the health insurance card until 2016 and that the Ministry of Health should propose amendments to the Law as soon as possible to extend the deadline for issuing plastic health insurance cards from 2014 to 2016 or 2017.

The same session saw the unravelling of the controversy involving illegal pressures exerted by the Director of the Republic Health Insurance Fund on the Protector of Citizens, which have been widely publicised by the media. Namely, the Director of the Republic Health Insurance Fund announced to the media before the Committee session that in the future the procedures for removal from office would be initiated and the so-called “independent institutions” which dealt in “petty politicking” would not be tolerated, which was supported by similar statements of certain MPs from the largest ruling party during the Committee session. The Director of the Republic Health Insurance Fund is not vested with the power to propose the removal of the Protector of Citizens from office under the law, but he is, as the public is well aware, a member of the largest ruling party.

The following will be necessary in order to eliminate the identified shortcomings:

1. The Ministry of Health should improve its work to ensure diligence and improved communication with the public and to enable free and timely provision of information to service users and the public, both in direct communication and by phone, as well as by other means of communication which are technically available to it.
2. The Republic Health Insurance Fund and the Tax Administration of the Ministry of Finance should exercise their statutory powers to exchange information on insurance payments and initiate appropriate legal proceedings against offenders, to ensure that the insured persons are not unfoundedly deprived of the right to health care.
3. The Republic Health Insurance Fund should organise and regulate the operation of its branch offices in a manner which would ensure uniform courses of action in identical circumstances (by issuing instructions, exercising control powers etc.).

The right to education (Article 13)

Inclusive education

The Protector of Citizens stands by his firm belief that persons with disabilities are best educated within the general education system, in accordance with the principles of inclusive education and the opinion expressed in General Comment No. 5 (paragraph 35) of the Committee.

The Republic of Serbia has not yet established clear rules regulating procedures, mechanisms, means, duties and responsibilities for the exercise of the child’s right to inclusive education, while the existing rules are either not applied or are applied inadequately and selectively.

The prejudice against children with developmental difficulties and the views on the unacceptability of inclusion – regardless of the fact that, as a legally established principle of education, it is not a subject for debate – are common, not only among “laymen”, but also among those who are directly responsible for putting inclusion into practice.

Four years after the Law on the Foundations of the Education System entered into force, the education of children with developmental issues in the mainstream education system mostly directly depends on their parents’ abilities, skills and knowledge for confronting numerous

obstacles and also on the level of sensitisation, competences, skills and knowledge of education institutions' management and staff.⁴¹

By issuing opinions and recommendations to competent authorities, the Protector of Citizens pointed to the need to regulate and define in a uniform way the additional support measures and the manner of their funding, ensure timely actions of competent authorities, regulate the procedure for child needs assessment – including the method of operation, obligations and responsibilities of inter-sectoral committees and the modality of funding their operations and establish functional control mechanisms. Taking into account the expressed prejudices and stereotypes about the education and social inclusion of children with developmental issues, the Protector of Citizens emphasised the need for better and regular professional training of education institutions' employees and also for strengthening the support mechanisms for the inclusive education of children with developmental issues.

The Protector of Citizens observed that in early 2013 the amending of secondary legislation on provision of additional support to children and pupils and the work of inter-sectoral committees has been initiated, which means that the recommendations given by the Protector of Citizens also in his Annual Report for 2012 have been implemented.⁴²

The National Assembly supported by its Conclusion adopted following the examination of the Regular Annual Report of the Protector of Citizens for 2012⁴³ supported his proposals pertaining to the need to the consistent application of the principle of inclusive education, particularly from the aspect of the regulation of measures of additional support in education to pupils with developmental issues and also ongoing training for employees in educational institutions for practical skills and knowledge in work with children with developmental issues.

Textbooks

Looking into the issue of the child's right to education, the Protector of Citizens has identified omissions in operations of various authorities, which have direct impact on the quality of education and the exercise of the principles and objectives set by the law - from the use of textbooks which fully comply with the set standards, to education of pupils in the environment which encourages tolerance, equal possibilities, respect of diversity and respect of child's and pupils' rights.

Actions of competent authorities in procurement of textbooks for the project "Free Textbooks" are burdened with omissions, primarily because the adjustments of approved textbooks (in order to adjust them to conditions of the project) are performed without consultations with expert bodies formed with the aim to review and assess the quality of textbooks. On the other hand, actions of publishers in public procurement procedures, which offer presents to teachers who choose their textbooks and thus interfere with the regularity of procurement procedures and the selection of textbooks from which pupils will learn, are neglected and are not sanctioned.

The Parliamentary Committee for Education, Science, Technological Development and Information Society dedicated a special session to the issues in application of the Law on Textbooks and Teaching Materials and the procedure for approval of textbooks for primary and secondary schools. Taking into account the omissions in the procedure for approval of textbooks identified first by the Protector of Citizens and later also by the Anti-Corruption Agency, the Committee adopted the Conclusion that it was necessary to implement the recommendation by Protector of Citizens and the Anti-Corruption Agency in the new Law on Textbooks and Teaching Materials. This Draft Law was the subject of a public debate, where a number of objections were made by both professionals in this field (educators, publishers) and competent authorities.

⁴¹ From the Opinion of the Protector of Citizens with recommendations of 6 December 2012 available at: www.ombudsman.osobesainvaliditetom.rs/attachments/098_Microsoft%20Word%20-%2020475_14-2755-12-preporuka%20ministarstva%20final%20-%20ZA%20SAJT.pdf

⁴² See more: <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

⁴³ "Official Gazette of RS", No. 57/13.

Violence in schools

A number of recommendations issued by the Protector of Citizens (e.g. one third in 2012) pertain to omissions by schools and other authorities and institutions in protecting children from violence in schools (peer violence or violence by adults). Omissions are manifested, primarily, in schools' failure to apply regulations adopted with the aim of protecting pupils from violence, abuse and neglect, and also in the failure of authorities responsible for oversight of schools' work to ascertain whether and to what extent the schools observed these regulations and standards. By issuing recommendations, the Protector of Citizens pointed to schools' duties stipulated in the provisions of the Law on the Foundations of the Education System and the Rulebook on the Protocol for Institutional Response to Violence, Abuse and Neglect, as well as to the duty of inspection authorities to control whether schools observe these regulations and standards and to exercise the full scope of their legal powers once they find omissions in a schools' actions.

Taking into account also the attitude of the Committee on the "discipline in schools"⁴⁴, the Protector of Citizens considered with particular attention complaint on the alleged violence of employees in schools over children.

Thus, in a control of regularity and legality of operations of a school upon a complaint received by a citizen, the Protector of Citizens found that the Education Inspectorate failed to carry out an oversight inspection following the receipt of a report that a school employee had perpetrated physical violence against a child. In a subsequent joint inspection carried out by a national education inspector and a local education inspector, the regularity of the implementation of regulations adopted with a view to protecting children against violence was not controlled. Acting upon the recommendations of the Protector of Citizens, the local education inspectorate repeated the inspection, found the school's omissions in protecting children against violence and imposed measures on the school. In a follow-up inspection, which was also recommended by the Protector of Citizens, the education inspectorate found that the school fully complied with the instructions by the education inspector: the Team for the Protection of Pupils against Violence was formed, disciplinary measures were taken against the employee who had perpetrated violence and the school adopted an internal protocol governing the rules for responding in case of suspicion or awareness of violence against a pupil.

The Protector of Citizens also notes that "sharing" of a building by two or more schools is not rare in Serbia, which sometimes causes conflicts between them. As a rule, one school believes it is the "owner" of a facility and that the other school is "subtenant". They sometimes also recruit pupils and their parents for this "title dispute", whose requests are occasionally full of prejudice and discriminatory attitudes, intolerant and neglect the needs, the rights and the interest of other pupils. Unequal treatment of pupils in certain schools has a particularly bad influence on children in lower grades, who always have classes in the afternoon.

The case of primary school graduation examination in 2013

The end of school year 2012/13 was marked by the annulment of results of the primary school graduation examination, which includes examination in Serbian language/mother tongue and mathematics. The result of the primary school graduation examination is one of the key parameters for ranking for enrollment in secondary schools. One day after the first examination was held it was already clear that the test was distributed without authorization, was available on the Internet and sold illegally near schools. It was found that a female employee in a printing office where the tests were printed took out copies of the tests without authorization, thus violating the security procedures.

The Ministry decided not to take into account the points gained on the primary school graduation education in ranking of candidates for enrollment in secondary schools. It is clear that this decision,

⁴⁴ General Comment No. 5, paragraph 35.

although it was expected, changed the criteria for scoring of pupils, and thus also ranking for enrollment in secondary schools.

The case of unsuccessful primary school graduation examination was the reason for a number of complaints by children and their parents in connection with the work of the Ministry of Education, Science and Technological Development, as an authority responsible for ensuring lawful and regular conduct of the final examination.

The attention of the Protector of the Citizens was not drawn only to obvious illegalities and omissions of education authorities in addressing the emerging situation, but also refusal of competent authorities and their managers to accept responsibility for the omissions made, which will influence the entire generation of secondary school pupils during their education. Finally, the worrying attitude of the Ministry towards its own responsibility culminated by an attempt to ban public criticism and challenge expertise and competences of the Protector of Citizens and other authorities to give their opinion on the omissions which are without precedent in the history of the education system in Serbia.⁴⁵ The epilogue of the scandal with the primary school graduation examination is still unknown because the Ministry failed to respond when it was possible to eliminate or mitigate the consequences of omissions without causing additional damage to pupils. The Protector of Citizens, for the first time since this institution has been established, was unable to recommend measures for rectification of omissions because any recommendation would lead to additional violations of child's rights and would have consequences on children who already suffered the damage.

Working with children to eliminate stereotypes

The latest surveys⁴⁶ have shown that the highest prevalence of negative attitudes among children and youth (as high as 36%) is in relation to persons of different sexual preferences, which calls for urgent modification of the curricula and syllabuses, followed by rewriting of textbooks. One contributory factor to such situation is certainly the fact that the Law on Basic Elements of the Education System in the Republic of Serbia⁴⁷ does not contain an explicit prohibition of discrimination based on sexual preferences.⁴⁸

In order to improve the situation, the Protector of Citizens deems it is necessary to:

1. Provide for and define additional support measures for pupils with developmental issues in education, the manner of teaching and functioning of the education system, the manner of evaluating the needs of children and pupils, the formation and operation of inter-sectoral committees and efficient control mechanisms.
2. Ensure regular education sessions at the education institutions geared towards increasing the responsiveness of the staff towards children with developmental issues and adopting a set of practical skills and competences in working with those children.
3. Fully ensure expert supervision of the quality of textbooks and other teaching aids and their procurement in accordance with the law and the principles of sound administrative practice, coupled with firm sanctions against those who act illegally and/or negligently.

⁴⁵ Public polemics, i.e. all announcements and replies by Protector of Citizens and the Ministry of Education, Science and Technological Development in connection with the primary school graduation examination are available at the official website of the Protector of the Citizens: <http://www.ombudsman.rs/index.php/lang-sr/component/content/article/2938>

⁴⁶ Center for the Rights of the Child, *Report on the Exercise of Child Rights in the Republic of Serbia from the Viewpoint of Children and Youth*, Belgrade, December 2012, available at:

http://cpd.cmass3.info/en/home/news/_params/newsplus_news_id/1295.html

⁴⁷ "Official Gazette of RS" Nos. 72/09 and 52/11.

⁴⁸ See Article 44 of the Law on Basic Elements of the Education System in the Republic of Serbia.

4. Ensure efficient and timely initiation and conduct of procedures to determine personal liability of the school staff for any violation of the prohibition of violence, abuse and neglect, any breach of duty and any omissions in the implementation of measures to protect children against violence, abuse and neglect.
5. For the Ministry of Education, Science and Technological Development to fully stipulate detailed requirements in terms of education levels and types through its secondary legislation, in accordance with the applicable positive legislation.
6. For the Ministry of Education, Science and Technological Development to amend the Law on Basic Elements of the Education System in the Republic of Serbia by including a provision that would explicitly prohibit discrimination on the grounds of sexual preference.
7. For the Ministry of Education, Science and Technological Development to include in the curricula and syllabuses of primary and secondary schools, and then also in the relevant textbooks, appropriate content that would address all issues pertaining to the rights of the LGBT population in an acceptable, but professionally sound manner.

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

The constitutional protection afforded to national minorities enables persons from national minority backgrounds to exercise and protect their individual and collective rights, including those relating to the preservation of ethnic and cultural identity, which is in line with the Committee's opinion voiced in General Comment No. 21 regarding the right of every person to participate in the cultural life (paragraphs 32 and 33). The election and organisation of minority self-governments (national councils of national minorities), which take care of the culture, official use of language, education and information of national minorities, give them an opportunity to decide, through their elected representatives, on issues of relevant for the protection of their identity.

In practice there are issues and inconsistencies that act as obstacles both to full exercise and protection of the rights of national minorities and to effective work of public authorities in charge of granting those rights. The Protector of Citizens has highlighted these issues in his regular annual reports and in the recommendations and opinions issued to competent public authorities. Even with all the recommendations, these issues have still not been eliminated as of 2013. The Protector of Citizens has received information on the issues they face in connection with the exercise of their powers and the organisation of their work directly from the representatives of Albanian, Ashkali, Bunjevci, Bosniak, Bulgarian, Czech Croatian, German, Hungarian, Macedonian, Roma and Slovenian minority self-governments.

The majority of national councils face a situation where, due to the vague formulations contained in the Law on National Councils and National Minorities⁴⁹ or its incompliance with other laws (including in particular the Law on Culture⁵⁰), they are unable to exercise all powers they ought to be vested with, including in particular those in the field of culture and information and official use of language and script. The Protector of Citizens has been drawing attention to this issue since the first year of implementation of the Law on National Councils, immediately after the elections for national councils of the national minorities. Furthermore, the absence of a minority cultural policy and the use of public competitions as the only mode of financing minority culture at the national level (and with very low amounts at that) prevent adequate participation of national minorities in the cultural life and hamper their efforts to fully exercise their right to their culture.

Due to the manner in which funding is allocated, councils representing small national minorities face particular difficulties in their work. This has also widened the gap, which had already existed,

⁴⁹ "Official Gazette of RS" No. 72/09.

⁵⁰ "Official Gazette of RS" No. 72/09.

in the manner and level of exercise of national minority rights, depending on whether national councils are established in the Autonomous Province of Vojvodina or in other parts of Serbia.

On the other hand, the Protector of Citizens, acting pursuant to complaints received from the Albanian and Bosniak national councils, found there was no legal certainty that would guarantee full exercise of the recognised rights of national councils, because the Law on National Councils of National Minorities, which stipulates how local self-government units participate in the funding of national minority self-governments, is still not implemented consistently, even though four years have passed since its enactment. This is all the more relevant given that the national councils, among other things, use the funding they receive to co-finance programmes and projects in the fields of education, culture, information and official use of ethnic minority languages and scripts.

National councils have lodged complaints against the work of the municipalities of Preševo, Priboj, Prijepolje, Sjenica and the city of Novi Pazar, because even though the statutory requirements were met, those local self-governments failed to allocate funding for national councils in their budgets. In the course of the investigations, the Protector of Citizens sought and obtained information from the Office of Human and Minority Rights, which stated that, of the 51 local self-governments where statutory requirements for the formation of national councils were met, in 2012 only 16 of them acted in compliance with the law and allocated funding for the activities of the national councils in their budgets.

Publishing of newspapers and publications in the languages of national minorities is of particular importance for the preservation of linguistic and cultural identity and diversity. The Protector of Citizens has found that the Ministry of Culture failed to provide legal certainty in the implementation of the European Charter for Regional or Minority Languages and in the implementation of measures to protect and exercise the right to information of Albanian, Bosniak, Bulgarian and Roma ethnicities, because in the period between 2009 and 2011 it changed annually the mode of co-financing that was used to preserve at least one newspaper in the languages of each of those national minorities. Since 2012, government subsidies for the publication of those newspapers have been discontinued. The Protector of Citizens issued a recommendation to the Ministry in this regard, but it has not been implemented. As a result of such actions by the state, the national minorities listed above do not have access to equal legal protection as the national minorities in the Autonomous Province of Vojvodina, even though they are subject to the same legal system, which effectively prevents the citizens from receiving information in their language and about their culture from printed media.

In connection with the exertion of direct influence by persons from national minority backgrounds on decision-making in connection with the protection and preservation of ethnic and cultural identity, the Protector of Citizens is of the opinion that decentralisation of the system of minority self-governments, which would imply their election and organisation also at the local level and shedding of the burden of party-political influence on the election of their members and their decision-making, would contribute to the achievement of substantive self-government in culture and effective exercise of rights for persons belonging to of national minorities.

Acting pursuant to the received complaints, the Protector of Citizens carried out an investigation of the legality and regularity of actions taken by the Ministry of Culture and Information in the competition for the award of recognitions for outstanding contribution to the national culture and/or cultures of national minorities. Namely, many artists/experts voiced their dissatisfaction with the lack of decision-making criteria, uneven distribution of representatives of different fields among the winners and the fact that the entrants received no substantiated decisions for the award choices, but instead learned of the outcome of the competition from the media and through their professional associations. The Protector of Citizens has identified omissions in the competition procedure and pointed to the legal shortcomings of the Decree on Detailed Requirements for and Manner of Awarding Recognitions for Outstanding Contribution to National Culture and/or

Cultures of National Minorities.⁵¹ The omissions made by the Committee on the Award of National Recognitions in the Field of Culture are particularly embarrassing, because they speak of an inadmissible level of arbitrariness in the awarding of national recognitions which involve an ethical and a financial component.⁵²

In order to improve the existing situation, the Protector of Citizens considers that the Ministry of Justice and Public Administration should take the following steps in cooperation with other competent institutions:

1. Prepare amendments to the Law on National Councils of National Minorities, to provide legislative assumptions for the full direct involvement of members of national minorities in the election and operation of national councils, with a view to eliminating the issues that have surfaced in the implementation of the Law to this date;
2. Ensure both consistent official use of the Cyrillic script and equal use of ethnic minority languages and scripts;

It is also necessary for competent national authorities, each within their respective sphere of competence, to take legal and financial measures to afford, to the fullest extent possible, the members of national minorities whose national councils are established in Central Serbia protection and exercise of the rights that are relevant for the preservation of their ethnic and cultural identity, at a level comparable to that afforded in the Autonomous Province of Vojvodina.

⁵¹ "Official Gazette of RS" No. 36/10.

⁵² The recognition is awarded and disbursed to artists and culture experts in the form of lifelong monthly income.

