



**REPUBLIC OF SERBIA**  
**PROTECTOR OF CITIZENS**

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Belgrade



Protector of Citizens  
Ombudsman

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Ref. No. 39107 Date: 30 October 2017

**OBSERVATIONS ON IMPLEMENTATION OF  
THE INTERNATIONAL CONVENTION ON  
THE ELIMINATION OF ALL FORMS OF  
RACIAL DISCRIMINATION IN THE  
REPUBLIC OF SERBIA**

**NHRI Submission**

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

- starting from the complaints hitherto received, handled and resolved, as well as the facts learned through continual monitoring and research of the exercise of human rights in the territory of the Republic of Serbia and cooperation with other authorities;
- having regard to the Concluding Observations of the Committee on Elimination of All Forms of Racial Discrimination relating to the Initial Report of the Republic of Serbia on implementation of the International Convention on the Elimination of All Forms of Racial Discrimination;
- taking into account The Second and Third Periodic Report of the Republic of Serbia on implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and aiming to avoid repeating the points already made therein;
- assured that full and unbiased evaluation of the level of respect for human rights is key for proper focusing of activities carried out by the Government and other entities to improve the existing situation, which is an ongoing issue,

hereby submits to the Committee on Elimination of All Forms of Racial Discrimination

## **OBSERVATIONS REGARDING THE IMPLEMENTATION OF THE CONVENTION IN THE REPUBLIC OF SERBIA<sup>1</sup>**

### **I. General Part**

#### **Population census**

##### **Recommendation paragraph 12**

1. Concerning the 2011 census, the Protector of Citizens issued the Opinion with a Recommendation<sup>2</sup> to the Statistical Office of the Republic of Serbia relating to the need to provide a sufficient number of census takers who could speak the languages spoken by the minorities in areas populated by national minorities and to the need to carry out the selection process for census takers’ instructors in a transparent manner. The Recommendation was issued following the oversight procedure of the legality and regularity of work of the Statistical Office of the Republic of Serbia, based on the complaint submitted by the National Council of the Hungarian National Minority and it pointed out that, in addition to the census forms in the languages spoken by the national minorities, it would be necessary to provide the option for the

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<sup>1</sup> With a reference to the Conventions’ articles, Committees’ Concluding Observations and the latest State Report.

<sup>2</sup> Available in Serbian [here](#).

citizens and the census takers to communicate in their mother tongues as well, which could only be achieved by selecting the census takers who could additionally speak a national minority language. It was recommended that the Statistical Office of the Republic of Serbia should, directly and through the local census commission and by the end of the selection process for instructors and census takers, take urgent additional activities which would include special calls to the citizens who could speak the languages of the national minorities to apply in the call, and also that it should take the affirmative action in the selection of census takers and instructors, so that the required representation of the census takers who could speak the minority languages spoken in these respective regions could be achieved among the census takers.

### **Refugees and displaced persons**

2. In the reporting period, the number of complaints submitted by refugees and internally displaced persons has not risen, but the complaints received are continuously pointing out to the necessity for improved efficiency in conducting the housing programs for refugees, along with the programs for economic strengthening of these persons, bearing in mind their social and economic position that is often difficult.

3. The Protector of Citizens would like to use this opportunity too to remind that he had addressed the Opinion to the Government of the Republic of Serbia on the need to immediately take all the necessary measures so that the Commissariat for Refugees and Migrations and the Refugee Housing Commission of the Government could conduct the relevant procedures and pass the final decisions concerning housing of refugees in the shortest time possible, by strictly complying with the rule of law and in the best interest of the citizens. Despite the fact that the Opinion was issued in December 2015, competent authorities have not provided any reply or notified the Protector of Citizens of any measures taken in this respect.

4. The process of closing down of the collective centres was not completed in 2016 either, despite the implementation of the Framework Agreement on the implementation of the regional program for permanent resolution of the housing needs of refugees between the Republic of Serbia and the Council of Europe Development Bank (CEB).<sup>3</sup>

5. The Protector of Citizens particularly points out to the difficult position of Roma persons who were internally displaced from the territory of the AP Kosovo and Metohia and who have been living in informal settlements without any utility infrastructure since 1999, and in the case of Cukaricka Suma (Cukarica Forest) settlement, based on information obtained from the investigations that are still in progress, there are socially disadvantaged families with individual members who still cannot exercise their basic human rights because they don't have their personal identification documents.

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<sup>3</sup> Official Gazette of the RS – International Agreements, No. 08/14.

## II. Information on Articles 1-7 of the Convention

### Article 2 - Legislative, judicial, administrative and other measures for achieving full and effective equality

6. Recommendations and proposals issued by the Protector of Citizens pertaining to the need to improve the legal framework for the realisation of national minority rights were taken into account in the text of the adopted Action Plan for the realisation of national minority rights, which was adopted with the Action Plan for Chapter 23 as a part of the negotiations on EU accession between the Republic of Serbia and the European Union.

7. Adoption of amendments to the Law on National Councils of National Minorities and to the Law on Official Use of Languages and Alphabets (or adoption of the new Laws) were envisaged, along with the amendments to the Law on Protection of Rights and Freedoms of the National Minorities, with a view to creating the legal basis for the registration of data on national affiliation of the employees with the public administration, which shall enable planning and monitoring of the implementation of measures with a view to realising the rights of the national minorities' members to their proportional representation among the administration employees. Bearing in mind that the time limits specified in the Action Plan for the implementation of the legislative measures have been exceeded, any justification for the expectation in respect to the adoption of an effective minority policy based on the agreement among all the participants therein on the type of adequate protection system for the national minorities and for the society as a whole, has been brought in question.

8. On March 3, 2016, the Government of the Republic of Serbia adopted the Strategy for the Social Inclusion of Roma in the Republic of Serbia in 2016 - 2025. The adopted Strategy for the Social Inclusion of Roma has, to a substantial degree, taken into account the findings and recommendations contained in the Report of the Protector of Citizens on the implementation of Strategy for the Improvement of the Position of Roma.<sup>4</sup> Primarily, recommendations of the Protector of Citizens on establishing a body tasked with Strategy management, on regulation of the role of pedagogical assistants and on the increase of their number, as well as the recommendation relating to the affirmative employment policy measures, were taken into account. The Strategy will serve as the basis for measures and activities' taking and it can make a significant contribution to further improvement of the condition and social and economic position of Roma. The situation with the human rights cannot, however, be resolved with the adoption of a normative framework only; the position of the members of Roma population and the structural poverty faced by them require efficient and comprehensive measures and commitment from the part of the state to implement them.

9. The Protector of Citizens is in particular pointing out that the Action Plan for Strategy Implementation was adopted one year behind the schedule. Due to the late adoption of the Action Plan, problems can potentially arise in realistic analyses of the effects of the

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<sup>4</sup> Report is in available in Serbian [here](#).

implementation of that measure, and it is very important that the Strategy measures, which were translated into activities and made operational by means of the Action Plan, be implemented as concretely as possible, by using the required budget means.

### **Recommendation paragraph 16 and 17**

#### **Paragraph 36 of the State Report**

10. Following the second direct elections for the national councils of the national minorities, amendments to the Law on National Councils of National Minorities were adopted, while taking into account the Recommendations of the Protector of Citizens<sup>5</sup>, which contributed to the democratic atmosphere and to the absence of any major illegalities or irregularities during the elections such as those which had been established during the elections held in 2010, in particular in relation to the procedures for citizens' registration in the special register of voters and in relation to protecting the personal data of the citizens.

11. The elections drew the attention to the necessity to legally regulate the issue of election campaigns' financing, as well as to update the special registers of voters belonging to the national minorities. The position of the Protector of Citizens, to which attention has been constantly drawn during the previous years, according to which maximum efforts are necessary to resolve the issue of (de)politisation and (de)partisation of the national councils and the adopted decisions, has been increasingly gaining support among the general public and among the national councils themselves.

12. Tsintsar national minority's request to establish a special voters' register has been denied, with the explanation that Tsintsars cannot be considered to be a national minority in the Republic of Serbia due to their small number. That explanation is highly questionable given that other small ethnic groups have already been granted the status of national minorities and that they have already established their national councils. It was specifically pointed out in the Opinion of the Protector of Citizens that the number of the national community members should not and may not serve as the only criterion for recognition of their collective right to establishing of a national council. In addition to that, the Protector of Citizens emphasized that, in appraising the number of a minority group members, account should be taken of the fact that a community with a smaller number of members has a more pressing need for the protection of their identity and for ensuring their survival.

#### **Paragraphs 38 and 39 of the State Report**

13. As regards the increase in the number of employees and the proportionate representation of the national minorities' members, timely and complete implementation of activities included in the Action Plan for the realisation of national minorities' rights should contribute to the improvement of the minority groups' protection, but also the institutional capacities of the public authorities, as well as to the removal of problems and obstacles that

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<sup>5</sup> Additional details are available [here](#).

have so far been established in the realisation of rights of the national minorities, to which the Protector of Citizens has been pointing out for years now.

14. However, it was already during the first year of Action Plan implementation that a significant falling behind the schedule has been noted in the implementation of planned activities, in particular of those that were expected to improve the legislative framework. Thus, until the date of submission of this Report, no amendments to the Law on Protection of Rights and Freedoms of National Minorities have been adopted, which were planned for the second quarter of 2016. It is due to this that the legal basis that would enable collection of data, i.e. maintenance of records on the national affiliation of the public administration employees is still missing. It is the precondition for prescribing affirmative measures and granting advantages to the national minorities' members in employment/layoffs in cases of same conditions, until the adequate employees' structure in the public sector on all levels of territorial organisation is achieved.

### **Article 3 – Prohibition of racial segregation and apartheid**

15. Direct receipt of complaints in Roma settlements throughout Serbia is a unique example of work relating to the protection and improvement of the rights of Roma. It is due to the small number of complaints submitted by Roma and due to the limited knowledge of their position and problems faced by them in exercising their human and civil rights that the Protector of Citizens has been organizing this type of work since 2011, which enabled the citizens of Roma nationality to directly and without any costs submit their complaints to the Protector of Citizens, but also to get informed about the procedures that they need to initiate in order to realize some of their rights before different administrative and judicial bodies and about the cases and manner in which they can address their complaints to the Protector of Citizens. Complaints that have been received over the previous six years indicate some significant improvements in the process of Roma integration, but also to some system deficiencies that have survived over a number of years now, some of the most important cases of which will be presented below.

#### **Recommendation paragraph 14**

##### *Displacement of the informal Roma settlement Belville in Belgrade*

16. Displacement of families from the informal settlement in the vicinity of Belville in 2012 was conducted by the city services of the City of Belgrade on the basis of the Action Plan for Displacement of Belville Informal Settlement, which was adopted by the City Council. The then competent Ministries of the Republic of Serbia – the Ministry of Labour and Social Policy and the Ministry of Human and Minority Rights, State Administration and Local Self-Government – did not participated in preparation or displacement procedure in the manner arising from the obligations of these Ministries based on the Law on Ministries and Strategy of Improvement of the Position of Roma in the Republic of Serbia.

17. During the displacement of settlement members, there were no infringements of human rights, and the competent City services conducted the displacement in a professional manner, with respect for the personal dignity of the displaced persons. In direct communication with the displaced citizens in the newly established Belgrade settlements, the Protector of Citizens was able to determine on his own that they, despite the fact that the container settlements to which they were moved were not a permanent or adequate solution, were living under incomparably better living conditions that also included adequate utility infrastructure as well.<sup>6</sup> The case concerning the displacement of this Roma settlement drew significant public attention from both the general and the international public and has, to a significant degree, contributed to embarking on the improvement of the legal framework in this area.

### *Housing*

18. It was back in 2011 that the Protector of Citizens issued the recommendations to the competent state authorities relating to the forced displacements of informal settlements. Five years later, with the adoption of the Law on Housing and Maintenance of Buildings, the legislature took into account the recommendations made by the Protector of Citizens to a significant degree. The Law regulates the procedure of moving out and relocation of citizens to adequate accommodation and the obligations of state and other authorities, as well as of the entities participating in implementation of procedures of moving out and relocation. The Law also regulates monitoring of the procedures of moving out and relocation, along with the measures for social inclusion following the conducted relocation. It was thus envisaged that, during the preparation of moving out with the plan for relocation, these activities must be done through consultations and cooperation with the persons affected with such relocations and with organizations working on the protection of human rights, and also that, in the procedure of drawing up and adoption of the plan document, an early public inspection and a public inspection are to be organized in order that the general public (both legal and natural persons) are informed about the plan solution, i.e. about the coverage of the settlement or a part of the settlement from which moving out needs to be conducted, as well as about the reasons and possible manners of such moving out.

19. During the adoption procedure of this Law, amendments of the Protector of Citizens were accepted to a significant degree, which pertained to the necessity to provide the required notifications and information, both the persons that are being moved out and relocated, and to those in the communities which the latter are being moved to. The very adoption of this Law is a step in the right direction, but it is only the implementation of the Law that will show whether and in what part thereof individual provisions of the Law need to be amended, or the planning of measures and mechanisms necessary for the protection and respect of human and minority rights in the procedure of citizens' moving out and removal, in particular in the cases involving the substandard settlements.

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<sup>6</sup> For additional detail, see the Special Report of the Protector of Citizens [here](#).

*The case involving putting up of a concrete wall around the Roma settlement in Krusevac*

20. Despite the significant legislative improvements in the field of housing, the Protector of Citizens is in particular drawing attention to the case involving putting up of a concrete wall around the Marko Orlovic Roma settlement in the town of Krusevac.

21. Following a conducted investigation into legality and regularity of work of the authorities that put up the said wall, the Protector of Citizens issued a Special Report with Recommendations<sup>7</sup> with the intention to draw the attention of the competent authorities and of the general public that even if undertaking of such an act, from the formal and legal point of view, is in compliance with the applicable legal regulations, it can result in ghettoization as a manifestation of segregation, which is opposite to the strategic choice of the State on carrying out of measures on Roma inclusion in the Republic of Serbia.

*Segregation in education*

22. Adoption of the Rulebook on more detailed criteria for recognizing forms of discrimination by the employees, child, pupil or a third party in an institution of education and upbringing is commendable. The Rulebook regulates the cases involving is segregation as a particularly serious case of discrimination in conducting the educational process, which is of significance bearing in mind data on the growing number of schools and classes with majority students belonging to the Roma nationality.

23. Cases brought before the Protector of Citizens, however, show that only the legal and regular work of all the competent authorities, clear instructions on the method and time limits for action and consistent implementation in practice of the relevant preventive solutions can prevent segregation as illegal and unacceptable social phenomenon.

24. The case of address by the director of a primary school in which almost all the pupils are of the Roma nationality is also indicative of that. On the other hand, neither the school, which has drawn attention of the competent authorities to this problem since 2013, nor the National Council of the Roma National Minority, have previously addressed their complaints to the Protector of Citizens. This is why this case is indicative of the fact that the inefficient and untimely actions are the first step in segregation, because, for example, in the school year of 2011/12, the number of Roma children was less than one half of the total number of pupils in this school; in 2016, however, the percentage of Roma children rose to 83%.

25. Parallel with segregation, in the same school, another process is in progress – there is a significant decrease in the total number of enrolled children, due to which only 11 pupils were enrolled in the first grade in the school year of 2015/16. Lower quality of achievement is evidenced as well, along with the lack of positive comparative peer behaviour, worse conditions of work due to the lack of investments in the school, which ultimately may lead to closing down of this school.

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<sup>7</sup> The Special Report with Recommendations is available in Serbian [here](#).

## **Article 5 – Rights guaranteed by the Convention**

### **Recommendation paragraph 19**

26. Resolving of the issue of the “legally invisible persons”, i.e. citizens to which their civil status and rights are not recognized because they have never been registered with the official records and because they do not have their personal identification documents has been, for more than a decade now, actively present in the work of the state authorities, international organisations and NGOs. In striving to contribute to the resolution of the issue relating to the status of people without a recognized citizenship status, the majority of which comprise of Roma persons, the Protector of Citizens signed the Agreement on Understanding in 2012 with the Ministry of State Administration and Local Self-Government and UNHCR with a view to resolving the problem of the “legally invisible persons”; the implementation of this Agreement was completed on December 31, 2016.

27. Based on the Agreement, over the past four years, training for judges, registrars, social workers, employees with the Ministry of Internal and for the representatives of the Roma civil society was organized which has, to a large degree, contributed to equalisation of practices of public authorities and to the improvement of their work. One thousand staff members from each administrative district in the Republic of Serbia took part in the training. Special Report of the Protector of Citizens was drawn up on the position of legally invisible persons, along with the “Guide for Judges on determining the time and place of birth in non-contentious proceedings”.

28. A campaign was carried out as well, to present the method for exercising the right to entry in the records of birth for persons born in Roma settlements throughout Serbia to the members of the Roma national minority.

29. Implementation of this Agreement produced positive results, contributed to the awareness of the necessity for urgent action and immediate resolving of the problem and enabled improved exercising of rights in the administrative procedures of entry in the records of birth, but also to other procedures pertaining to the entry of facts and data on birth, nationality, personal name, as well as to the registration of domicile at the address of the centre for social work and personal ID card.

30. Since the inception of implementation of this Agreement, according to the opinion of all the relevant actors in the country and abroad, significant results in this area have been achieved, among which the most important one is that the number of “legally invisible” Roma has been significantly reduced; since 2014, the Protector of Citizens has received only three complaints from the legally invisible persons. According to data, however, there are still some citizens and children who are still invisible for the system, which is a reason for the Protector of Citizens to continue monitoring the situation in the area relating to the entries in the official records and personal documents.

31. Signing of the Agreement on Understanding was preceded by the legislative initiative to amend the Law on Non-Contentious Procedure, which was adopted. Owing to these amendments to the Law, persons to whom their citizen status has not been recognized have been enabled to perform entries in the official records based on the Court decisions on determining the time and place of birth in a relatively quick and flexible procedure.

## **Article 7 – Measures in the area of education, culture and information**

### **(a) Education and teaching**

#### **Paragraph 54 of the State Report**

32. The Ministry of Education, Science and Technological Development took into account the proposals and initiative of the Protector of Citizens on systemic regulation of implementation of affirmative measure for enrolment of pupils and students of Roma nationality in high schools and colleges, both concerning the transparent and previously known procedure, and in the sense of monitoring and further support, with a view to achieving the purpose of this measure. Rulebook on standards and procedure for enrolment of students – members of the Roma national minority in high schools under more auspicious conditions with a view to achieving full equality has been adopted.<sup>8</sup>

33. With the amendments to the Professional Instruction for enrolment in the first year of studies in the study programs of the basic and integrated studies in institutions of higher education founded by the Republic of Serbia for the academic year of 2015/2016, the Ministry of Education, Science and Technological Development contributed to the improvements in application of affirmative measure for the students of Roma nationality. In addition to the free of charge preparatory classes for enrolments in universities, which can be used by the students of Roma nationality, the enrolment procedure has been modified and decision has been passed to support and finance the entire study period for the candidates who apply and who get enrolled into the study programs owing to the implementation of the affirmative measure.

### **(c) Information**

#### **Paragraph 58 of the State Report**

34. In 2015, privatisation of media was completed and the general public was informed about the problems faced in the implementation of the Law on Public Information and Media, in the sense that measures envisaged with a view to mitigating potential consequences of media privatisation, in particular pertaining to information in the languages of national minorities, had not been effectively applied. The general public was informed about various problems faced in the implementation of the Law and also that, as the media reported, problems occurred in practice which related to the implementation and results of the call for co-financing of media contents in the national minority languages. National Councils of the National Minorities

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<sup>8</sup> Official Gazette of the RS, No. 12/16.

pointed out to the Protector of Citizens that the expert commission of the Ministry of Culture and Information did not take into account their opinion on the projects participating in the call. Unfortunately, following the privatisation of media, some of the media which had for decades worked to develop professional capacities and broadcast programmes in the languages of national minorities were closed down. Among the reasons for that was that in some of these cases (such as, for example, in the case of Radio Zrenjanin), no transfer of shares to employees was conducted in media that had not been sold, contrary to the Law. The Protector of Citizens prepared a Special Report on information in national minority languages following the privatisation of media as well.<sup>9</sup>

### **III. Implementation of the Convention in the territory of the AP KIM**

35. The Protector of Citizens is still unable to exercise his competences in the territory of the Autonomous Province of Kosovo and Metohia, as provided by the Constitution and the Law. According to the available information and the issues raised in complaints, the citizens in Kosovo and Metohia, especially non-Albanians who live in enclaves, are still hostages of the ongoing political processes and face grave violations of human rights and freedom.

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<sup>9</sup> The Report is available in Serbian [here](#).