

Serbia

Protector of Citizens of the Republic of Serbia

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Serbian NHRI was reaccredited with A status in March 2015. The SCA encouraged the NHRI to advocate for the adoption, the formalisation and the implementation of a transparent and participatory selection and appointment process. Moreover, the SCA, while acknowledging the existence of good practices, recommended amendments to the law to ensure pluralism and more independence in the staff selection. Finally, the SCA has consistently encouraged raise the need for the NHRI to receive an adequate level of funding.

The Serbian NHRI was scheduled for accreditation in March 2020, but the session was postponed due to the outbreak of COVID-19.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Protector of Citizens notes that there have been no changes significant to the independent and effective operation within the national human rights institution's mandate, and that there have been no changes in the normative framework applicable to this institution.

References

- The Law on the Protector of Citizens, Official Gazette of RS No. 79/05 and 54/07 available at: <https://ombudsman.rs/index.php/o-nama/normativni-okvir-za-rad/126-2008-04-21-07-39-21> (in Serbian) and <https://ombudsman.rs/index.php/o-nama/normativni-okvir-za-rad/643-2009-10-27-16-01-21> (in English).

Human rights defenders and civil society space

The Protector of Citizens identified progress regarding freedom of assembly of LGBTI persons. Pride Parade and Pride Week activities aimed at promoting the status of LGBTI population have been running smoothly for many years, with the Protector of Citizens supporting these activities by directly participating therein. However, police security for these activities is still needed, due to the continued risk of violence and hate speech targeting LGBTI population that is still exposed to discrimination and violence. In the Annual Reports, the Protector of Citizens recommends that the Government, Autonomous Provinces and Local Self-Government Units ensure the full exercise of LGBTI persons' rights regarding freedom of expression and peaceful assembly, protection of their physical and mental integrity, education, employment, healthcare, social protection, legal regulation of life communities and legal outcomes of gender change and gender identity, as well as continuous implementation of measures and activities to raise public awareness on the necessity to respect the LGBTI persons' rights.

Serbia has not made any progress in the area of freedom of speech and expression in the previous year. In this social life sphere, especially in the domain of media freedom, we have witnessed numerous violations of rights and threats to media freedoms. The position and status of journalists and media workers is jeopardised not only by their poor material status, but also by pressure, abusive and inappropriate relations, direct threats and physical attacks by public authorities, private actors as well as other media actors.

A particularly worrying trend was registered in 2019 as regards discreditation and verbal threats on journalists working on television and online media (see also below on media pluralism). To help better assess and address the situation, the Protector of Citizens has signed in May 2020 an Agreement with representatives of 7 media associations and three newspaper trade unions to establish a Platform for recording cases of security threats and pressure on journalists and other media stakeholders. The Platform was created with the aim of establishing a more efficient mechanism for protecting the safety of journalists, because accurate records of each individual security threat and any form of pressure on journalists and media workers will contribute to more effective action of competent state authorities in cases when journalist safety is threatened.

This assessment of the media situation in Serbia has been confirmed by international reports. In its six-month report, published in November 2019, the European Commission pointed out that Serbia needs to advance freedom of expression, as cases of threats,

intimidation and violence against journalists, as well as political and economic influences on the media, are concerning.

References

- Annual Report (2019) of the Protector of Citizens (in Serbian), available at: <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>
- Non paper on the current situation regarding Chapters 23 and 24 for Serbia, November 2019, available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/non_paper_pg_23_24_19_sr.pdf

Checks and balances

The National Assembly has established a Commission for the Control of the Enforcement of Penal Sanctions which is tasked with observing the situation in the domain of enforcement of penal sanctions and proposing measures to rectify irregularities and measures to improve living conditions, treatment and protection of rights of persons deprived of liberty, while controlling the enforcement of penal sanctions and detention measures. According to the National Assembly's decision of 24 July 2018, new members of the Commission for the Control of the Enforcement of Penal Sanctions were elected; and two sessions were held in 2018 (in November and in December). No data suggests that this Committee has been in session during 2019 and this year.

Under its mandate to control the execution of criminal sanctions and remand, the Commission for Control of Execution of Criminal Sanctions is to review the state of play in the field of execution of criminal sanctions, propose measures to remedy irregularities and measures to improve the living conditions, treatment and protection of the rights of persons deprived of their liberty. The Commission shall submit a report on its work and the state of play in the field of execution of criminal sanctions to the National Assembly at least once a year, and by effective use of its mandate it would contribute to a more complete review of the state of play in the field and implementation of measures aimed at improving it.

The Protector of Citizens as an independent control institution and the National Preventive Mechanism (since 2011) shall act preventively, by visiting the facilities where persons deprived of their liberty are held or may be held, in order to deter state authorities and

officials from any form ill-treatment, as well as to direct state authorities to create accommodation and other living conditions in places of deprivation of liberty in line with applicable regulations and standards. These facilities, as the part of the system of mechanisms of external control of the work of executive bodies, and the actions of the judge for the execution of criminal sanctions, contribute to the improvement of the position and exercise of the rights of persons deprived of their liberty.

References

- Web page of the National Assembly of the Republic of Serbia:
<http://www.parlament.gov.rs/national-assembly.467.html>

Functioning of justice systems

Failure to execute judgments remains a problem that many citizens point to when addressing the Protector of Citizens. Although the Protector of Citizens is not mandated to control the courts' work, nor can it in any way interfere with court proceedings, in its annual reports this body highlights that non-execution of judgements has significant negative impacts on legal certainty and the rule of law, and particularly on the vulnerable groups' position. Numerous complaints in the area of child rights continue to call attention to the non-execution of judgements on entrusting child custody, that is, the judgements on the manner of regulating the parent – child personal relations.

In October 2019, the European Court of Human Rights pronounced a judgment holding the Republic of Serbia accountable for the applicant's inability to reunite with her children and to exercise parental rights, i.e. for violations of the right to family life. The adoption of this court judgment confirms the fact which the Protector of Citizens has pointed out for years in the annual reports - it is necessary to establish and ensure an effective system of adopting and executing court judgements concerning children's family-legal status, especially in situations of parental conflict and domestic violence.

The implementation of the Law on Free Legal Aid commenced on 1 October 2019, so it is not yet possible to analyse the effects of this Law's implementation. However, despite the repeated Recommendations issued by the Protector of Citizens, contained in the Protector of Citizens' previous annual reports, the Law on Free Legal Aid did not identify LGBTI

persons, facing grave violations of rights in different spheres of life, as a vulnerable category of beneficiaries.

The National Preventive Mechanism, on its visits to an institution for the enforcement of penal sanctions, concluded that the institution was not adequately prepared for the procedure of providing free legal aid and that it did not have the specified free legal aid application forms. The National Preventive Mechanism has recommended to the Administration for Enforcement of Penal Sanctions that all persons deprived of their liberty in the institutions for the enforcement of penal sanctions should have adequate access to free legal aid and the rights stipulated by the Law on Free Legal Aid, as well as to forms for filing a free legal aid request.

A considerable number of citizens address the Protector of Citizens regarding the duration of court proceedings. Citizens who use legal remedies provided for by the Law on Organisation of Courts and the Court Rules of Procedure show dissatisfaction believing that the envisaged monitoring mechanisms are not effective nor efficient, since, frequently, in situations where the competent authorities have deemed their complaints founded, the measures taken do not result in expected effects. In this regard, citizens most often express dissatisfaction with following situation: their complaints, especially those concerning the proceedings duration, are deemed founded by the court president, they are informed that measures were taken to expedite the proceedings, but the proceedings status still remains unchanged.

References

- Annual Report (2019) of the Protector of Citizens (in Serbian), available at:
- <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>
- Annual Reports of the Protector of Citizens available at:
- <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>
- The Law on Free Legal Aid, Official Gazette RS, no. 87/18
- Case of Milovanović v. Serbia available at:
- http://www.zastupnik.gov.rs/uploads/cr/presude/u-odnosu-na-rs/prikaz-presude-u-predmetu-milovanovic-protiv-srbije-broj-56065-10/milovanovic_p_56065_10ser.pdf (in Serbian)
- http://www.zastupnik.gov.rs/uploads/cr/presude/u-odnosu-na-rs/prikaz-presude-u-predmetu-milovanovic-protiv-srbije-broj-56065-10/milovanovic_p_56065_10eng.pdf (in English)
- The Law on Courts, Official Gazette RS no. 116/08, 104/09, 101/10, 31/11, 78/11, 101/11, 101/13, 106/15, 40/15, 13/16, 108/16, 113/17, 65/18, 87/18 and 88/18.
- Court Rules of Procedure, Official Gazette RS, 110/09, 70/11, 19/12, 89/13, 96/15, 104/15, 113/15, 39/16, 56/16, 77/16, 16/18, 78/18, 43/2019 and 93/19.

Media pluralism

Over the past year, the Protector of Citizens has repeatedly warned of more and more frequent and brutal attacks on the media, from attacks and threats on social networks, to preventing news crews from attending events and direct attacks on journalists and newsrooms, to one-day physical blockade of television building. Moreover, in the public statements, the Protector of Citizens reminded of both poor working conditions of media employees, working under unfavourable contracts and lack of developed mechanisms for journalists' safety protection, which does not contribute to strengthening media freedoms and forming responsible and independent media.

During previous year, journalists' associations reported different numerical data on attacks on journalists. The Independent Journalists' Association of Serbia (NUNS) recorded in its database 119 attacks on journalists, with pressure cases being dominant, as many as 80. The Journalists Association of Serbia (UNS) recorded 90 cases in its 2019 database in which journalists and media workers complained to the Association about attacks, pressures and threats, or these incidents were reported in the media. The Association also estimated that the number of attacks and pressures on journalists in 2019 increased compared to previous two years.

The Protector of Citizens has taken a step forward in promoting the freedom of media and rights of media workers by signing the Memorandum on establishing the “Platform for registering and monitoring cases of security threats and pressures issued to journalists and other media workers”. The Platform aims to establish a more efficient mechanism of protection of journalists and increase the efficiency of relevant authorities. The Platform was signed jointly by representatives of media associations and journalist associations and unions, together with the Protector of Citizens who was the initiator of this initiative and who will continue to monitor the rights of journalists and issue periodic reports on the issue.

References

- Annual Report (2019) of the Protector of Citizens (in Serbian), available at:
<https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>
- Official website of the Independent Journalists' Association of Serbia, available at:
<http://www.bazenuns.rs/srpski/napadi-na-novinare>
- Official website of Journalists' Association of Serbia, available at:
<http://www.uns.org.rs/desk/UNS-news/93323/uns-prosle-godine-90-napada-na-novinare-i-medijske-radnike.html>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 15 March 2020, a state of emergency was introduced due to the COVID-19 epidemic, which limited a certain scope of human rights. State of emergency has ended on 6 May, while certain safety measures remain in place.

During this period, the Protector of Citizens has put serious effort to stay open and accessible to citizens. the Protector of Citizens has visited temporary hospitals, reception centre at the border with Hungary for accommodating persons who enter Serbia, places that accommodate persons deprived of liberty, places visited by homeless persons and other places and where needed, issued recommendations to relevant authorities to comply with respective human standards. The Protector of Citizens put a special focus on rights of people belonging to vulnerable groups.

The Protector of Citizens has launched control investigations on citizens' complaints concerning the movement of caregivers assisting the elderly who are at particularly high risk of serious health consequences in the event of contracting the coronavirus, and whose freedom of movement is therefore for the most part restricted. Owing to the Protector of Citizens' intervention, persons who care for and assist the elderly were enabled to obtain special movement permits during the period of total confinement. In addition, upon initiative of the Protector of Citizens, victims of violence seeking protection were also allowed to move during this time without being prosecuted.

Furthermore, upon learning that certain local self-government units refuse to consider requests for movement permits during the prohibition of movement for the purpose of visiting a child pursuant to court decision, the Protector of Citizens warned local self-government units that a derogation from the guaranteed child rights to maintain personal relations with a parent with whom s/he does not live, pursuant to Article 64 and Article 202 of the Constitution of the Republic of Serbia in conjunction with Article 61 of the Family Law, is not allowed. The Protector of Citizens insisted that local self-government units, as well as all other competent state bodies, respect child rights and to consider parents' requests for movement permits submitted by those parents whose right to maintain personal relations was recognized by a final court decision. This initiative proved successful.

The Protector of Citizens monitored the respect of rights of those belonging to vulnerable groups and the availability of support services there are entitled to (service by personal assistants, personal companions of children and gerontology housewives for elderly). The Protector of Citizens addressed the respective authorities in cases when persons were being denied of any of the above listed services, that resulted in authorities taking appropriate actions.

The National Preventive Mechanism (NPM) introduced a special hotline and visited facilities where persons deprived of liberty are housed, in order to both act preventively on combatting and putting an end to torture and other cruel and inhuman treatment, and to oversee how measures to contain the spread of the coronavirus (COVID-19) are being implemented and how, in these circumstances, the exercise of the fundamental rights of persons deprived of their liberty is ensured. Letters, in which the NPM reiterated that the prohibition of torture and inhuman or degrading treatment or punishment is absolute and that protective measures taken by the state to contain COVID-19 must never result in any form of ill-treatment of persons deprived of liberty, were sent to all relevant administrative authorities.

A statement by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 20 March 2020 was forwarded to these bodies as well, outlining the principles related to the treatment of persons deprived of their liberty during the coronavirus pandemic. The CPT principles as well as the advice from the Subcommittee on the Prevention of Torture to Member States and National Preventive Mechanisms related to the coronavirus pandemic, adopted on 25 March 2020, are posted on the website of the National Preventive Mechanism and are available in both English and Serbian language.

Trials of persons accused of failing to comply with health measures during the epidemic are conducted using the Skype platform. In this respect, the Protector of Citizens issued an Opinion to the Ministry of Justice on the need to provide for electronic communication between the defence attorney and the defendant, without the presence of third parties, with supervision only by watching and not listening, without limiting the duration of communication to 30 minutes, in order to create the necessary conditions for conducting a confidential conversation and preparing the defence of the defendant. The Protector of Citizens pointed to the necessity to observe the defendant's rights and to the fact that the Constitution of the Republic of Serbia stipulates that upon declaration of a state of emergency or war, derogations from human and minority rights guaranteed by the Constitution are allowed only to the necessary extent, but that the Constitution does not in any way permit derogations regarding the right to a fair trial.

In addition to the aforementioned activities concerning the citizens' movement, trials via electronic means of communication, prevention of torture and other cruel and inhuman treatment, the Protector of Citizens conducted a range of other activities. Among other things, the Protector of Citizens controlled the conditions of accommodation and treatment of persons in temporary COVID-19 hospitals. Owing to the intervention of the Protector of Citizens, faster testing for coronavirus of persons accommodated in temporary COVID-19 hospitals was ensured resulting in more adequate treatment or sooner discharge from hospitals of persons found not to be infected.

National preventive mechanism has issues a Thematic report "Application of CPT principles relating to the treatment of persons deprived of their liberty in the context of corona virus disease (COVID-19) pandemic".[1]

NPM has also visited institutions accommodating migrants, refugees and asylum seekers, in order to check their status, living conditions and the treatment they were receiving. In two reception centers NPM observed that the accommodation status was overloaded and

issues recommendation to relevant authorities. NPM noted the increase of conflicts in one center and turned to the Ministry of Internal Affairs asking for constant presence of police officers, after which the police forces confirmed the Center is being protected by this authority.

The Protector of Citizens monitored the conditions in reception centres established for the accommodation, nutrition and medical care of nationals of the Republic of Serbia returning from abroad who do not have a registered address or registered place of residence, as well as for those persons who are deemed by border doctors to be medical i.e. sanitary risk.

As soon as the news about the appearance of the contagious disease COVID-19 appeared in gerontology centers, in several Homes for Care of Elderly and Diseased Seniors, family accommodation facilities, and reception centers for children and youth, the Protector of Citizens has initiated procedures regarding relevant institutions formed by the Republic of Serbia, i.e. the local self-government units. While several procedures are pending, as the authorities have yet to respond to the Protector of Citizens' inquiry, in one case the Ministry of Labour, Employment, Veteran and Social Affairs has informed the Protector of Citizens that it has prohibited the work of the institution, because it failed to observe the instructions on implementing necessary measures in epidemiological situation caused by appearance of contagious disease COVID-19.

In addition, the Protector of Citizens has taken measures regarding local self-government units, with the aim of providing existential living conditions for Roma settlements residents - primarily drinking water and water for maintaining hygiene, food and sanitary packages. The Protector of Citizens noted that the fact that the majority Roma settlements residents, in nearly six hundred settlements existent in Serbia, do not have access to water and electricity is overlooked during the coronavirus epidemic. The Roma are among the most vulnerable groups due to a range of unsound living circumstances, ranging from poor hygiene and housing conditions to frequently non-existent sources of income. These existential problems, which they face on a daily basis, have been augmented since the outbreak of the coronavirus epidemic in Serbia, because very few of them are able to comply with protective measures. As many Roma families live below the poverty line, it is necessary to provide them with additional support from society and the state. The Protector of Citizens issued a Special report with recommendations for local self-governments "Roma settlement conditions during the state of emergency and application of safety measures due to corona virus pandemic".[2]

The Protector of Citizens introduced additional hotlines for information on COVID-19, one of them dedicated to those in need of psychological assistance, provided by a colleague, a professional psychologist.

References

- <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6658-report-on-protector-of-citizens-activities-during-covid-19>
- <https://www.ombudsman.rs/attachments/article/6627/Report.pdf>
- <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6608-19>

Most important challenges due to COVID-19 for the NHRI's functioning

Responding to citizens' needs, the Protector of Citizens has organized the work seven days a week and introduced additional hotlines for communication with citizens. Since the declaration of COVID-19 epidemic, the Protector of Citizens has carried out a series of activities aimed at protecting human rights amid a state of emergency and coronavirus epidemic. The recommendations for authorities are included in the Special Report on the work of Protector of Citizens during corona virus pandemic.

References

- Protector of Citizens' official website, available at: <https://www.ombudsman.rs>