State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Serbia
Serbia

Protector of Citizens (Ombudsman) of the Republic of Serbia

Impact of 2021 rule of law reporting

Follow-up by State authorities

The National Assembly of the Republic of Serbia adopted the new Law on the Protector of Citizens on 3 November 2021, after the Protector of Citizens pointed out the need to improve the legal framework governing the work of the institution, inter alia, in his contribution to the ENNHRI Rule of Law Report for 2021.

References


Impact on the Institution’s work

The ENNHRI report from 2021 represents a very useful overview of the work and practices of national human rights institutions and thus, it represents an incentive to improve the work of the institution of the Protector of Citizens.

Follow-up initiatives by the Institution

The focus of the Protector of Citizens during 2021 was on its accessibility for citizens during the pandemic and on the process of re-accreditation as a national human rights institution before the GANHRI Sub-Committee on Accreditation.

NHRI’s Recommendations to National and European policy makers

The Protector of Citizens recommends to strengthen the recognition of NHRIs as indicators of the state of human rights and the rule of law at the national and regional levels.

Independence and effectiveness of the NHRI

The Protector of Citizens notes that the adoption of the new Law on the Protector of Citizens has significantly strengthened the independence and efficiency of the institution.

International accreditation status and SCA recommendations
The Serbian Protector of Citizens was last re-accredited with A-status in October 2021 (1). The SCA noted that while a draft law partially addressed concerns with respect to the selection and appointment process of the Protector, there were still concerns that the process would not be fully participatory. The SCA encouraged the NHRI to continue to advocate for the formalization and application of a process that includes requirements in this regard.

The SCA encouraged the NHRI to continue to address all violations of human rights and to ensure effective follow-up so that the State makes the necessary changes to ensure that human rights are clearly protected. It further encouraged the NHRI to ensure that its position on these issues are made publicly available, as this will contribute to strengthening the credibility and accessibility of the institution for all people in Serbia. Additionally, it encouraged the NHRI to continue to formalize its working relationships and cooperation with a wide range of civil society organization and human rights defenders.

Finally, the SCA notes that the new draft enabling law provides additional responsibility for the NHRI, including as the National Rapporteur on human trafficking and the National Monitoring Mechanism under the CRPD. The NHRI informed of the importance of being able to attract staff with relevant and specific expertise needed to fulfil the existing and new mandates. In this regard, the SCA encouraged the NHRI to continue to advocate for additional funding to ensure it can carry out its new mandate, as well as to attract and retain adequately qualified and experienced staff through competitive and attractive salaries.

References


Regulatory framework

The Protector of Citizens of the Republic of Serbia continues to function on a constitutional basis. The Serbian NHRI has a mandate to contribute to access to justice for individuals, including through complaints handling and awareness-raising.

The Protector of Citizens initiates procedures following complaints of the citizens or on his own initiative. In addition to the right to initiate and conduct proceedings, the Protector of Citizens has the right to act preventively by providing good services, mediating and giving advice and opinions on issues within his competence, in order to improve the work of administrative bodies and improve the protection of human rights and freedoms.

He is authorized to submit to the National Assembly, i.e., the Government and the administrative authority, an initiative to amend laws and other regulations and general
acts, if he considers that the violations of citizens' rights are a result of deficiencies of such regulations, as well as to initiate the adoption of new laws, other regulations and general acts, if he considers it significant for exercising and protecting citizens' rights. Also, in the process of drafting of regulations, he is authorized to give his opinion to the National Assembly, i.e., the Government and the administrative authority on draft laws and other regulations if they concern the issues relevant for the protection of citizens' rights.

He is also authorized to initiate proceedings before the Constitutional Court to assess the constitutionality and legality of laws, other regulations and general acts.

He is authorized to recommend in writing the dismissal of an official, i.e., to initiate disciplinary proceedings against an employee of the administrative authorities who is responsible for the violation of rights of a citizen or made an omission which caused material or other serious damage to that citizen.

As mentioned above, on 3 November 2021, the National Assembly of the Republic of Serbia adopted a new Law on the Protector of Citizens, which contains international principles for the protection and promotion of the ombudsman institution contained in the Venice Principles of the Council of Europe (in the part related to the election and termination of office, procedure and means for work).

The new law expands the competencies of the Protector of Citizens. Namely, it is envisaged that the Protector of Citizens, in addition to the work of the National Mechanism for the Prevention of Torture, also performs the work of the National Independent Mechanism for monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities, as well as the work of the National Rapporteur in the field of trafficking in human beings, in accordance with the Law on Ratification of the Convention on Action against Trafficking in Human Beings of the Council of Europe. Furthermore, the Protector of Citizens has the position of a special body that protects, promotes and improves the rights of the child, thereby building on the long-term successful work of this institution in this area. Since the new Law on the Protector of Citizens stipulates that the Protector of Citizens also performs the work of the National Independent Mechanism for monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities and the work of the National Rapporteur on Trafficking in Human Beings, the Protector of Citizens requested to be provided with funds from the current budget reserve for the employment of four employees in 2022 for an indefinite period of time, as senior advisors who would be engaged in these job positions.
The new Law will improve the efficiency of the work of the Protector of Citizens in acting on complaints by defining shorter deadlines for completing the procedure from the moment of receiving the complaint, as well as the responsibility and transparency of the work of administrative bodies, primarily through provisions related to shortening the deadline for the response of authorities within a procedure initiated by the Protector of Citizens.

The new Law envisages greater transparency and involvement of the public in the election of the Protector of Citizens and Deputy Protectors of Citizens, by regulating the procedure of election by public invitation more closely. The Protector of Citizens is elected for a term of eight years, without the possibility of re-election to this position.

The new Law on the Protector of Citizens contains provisions that enable a wider circle of citizens to exercise their rights in proceedings before the Protector of Citizens. A complaint on behalf of a natural person, with his consent, may be filed by an association dealing with the protection of human rights. Complaints about the violation of a child’s right can be filed by his or her parent or guardian, as well as by an association that deals with the protection of children’s rights, with the consent of the child’s parent or guardian or with the consent of a child older than ten. A child can file a complaint on his/her own if he/she has reached the age of ten.

The novelty introduced by the new Law is that the Protector of Citizens may undertake procedural and other actions in proceedings before state and other bodies and organisations, when he is authorized to do so by special regulations. For instance, an Article 15 of the Law on Determining the Facts on the Status of New-Borns Suspected to Have Gone Missing from Maternity Wards in the Republic of Serbia stipulates that the Protector of Citizens may submit the proposal for establishing the facts on the status of a new-borns suspected to have gone missing from maternity wards in the Republic of Serbia, on behalf of parents and other authorized persons. However, since the entry into force of the new Law on the Protector of Citizens – November 2021, there have been no examples of undertaking procedural and other actions in proceedings against state and other bodies and organisations.

The new Law also envisages that the Protector of Citizens establishes and maintains cooperation with civil society organizations, international organizations and mechanisms for the protection and promotion of human and minority rights.

In addition to strengthening the independence of the Protector of Citizens, the new Law stipulates that the Protector of Citizens adopts a general act on the organization and systematization of the work of the expert service in accordance with the budget funds
allocated for his work. The Protector of Citizens shall notify the National Assembly of the adoption of a general act, within 15 days from the day of its adoption.

In accordance with the recommendations of the Sub-Committee on Accreditation of GANHRI, the Protector of Citizens remains committed to the continuous improvement of the functioning of the institution in accordance with the Paris Principles.

**Enabling and safe space**

The Protector of Citizens believes that there is room for improvement when it comes to state authorities’ awareness of the NHRIs’ mandate, independence and role, and their efforts to support the Protector’s work.

For example, as regards resources, the existing premises in which the Secretariat of the Protector of Citizens is located do not have adequate capacities to correspond to the number of employees or enable efficient organization of work. The Protector of Citizens has repeatedly pointed out to the competent authorities the need to provide adequate premises for the permanent accommodation of the institution.

During 2021, the Protector of Citizens received 41 requests from lawmakers to give opinions on draft laws and proposals of other acts that the Government proposes to the National Assembly and the President of the Republic of Serbia. However, out of the total number of requests, 19 requests contained a request of the lawmaker for the Protector of Citizens to submit an opinion as soon as possible. The deadlines in which the Protector of Citizens was requested to act were usually shorter than the ones prescribed by the Rules of Procedure of the Government, which the Protector of Citizens repeatedly pointed out to the lawmaker. Namely, when determining the deadline for submitting opinions, certain lawmakers included both working and non-working days, although the Rules of Procedure of the Government explicitly stipulate that only working days are counted in the deadline, not non-working days. Also, in a number of cases, the certain lawmakers stated that the opinion needed to be submitted urgently, so that the material would be ready for the next session of the Government.

The Serbian NHRI confirms that the addressees of its recommendations are legally obliged to provide a timely and reasoned reply. According to the new Law on the Protector of Citizens, public authorities are obliged to, within a deadline that cannot be shorter than 15 or longer than 90 days from the day of receiving the case report, submit a notification to the Protector of Citizens on whether and how they acted on the recommendation, i.e., on the reasons why they did not act on the recommendation.

If the administrative authority does not submit a notification to the Protector of Citizens within the set deadline, if it does not act on the recommendation or only partially fulfils it,
as well as if it does not fulfil the recommendation to dismiss the official responsible for violation of rights or does not initiate disciplinary proceedings against the employee responsible for the violation of rights, the Protector of Citizens informs the National Assembly of the Republic of Serbia about it, as well as the Government of the Republic of Serbia and the public.

Measures necessary to protect and support the NHRI against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place. The new Law on the Protector of Citizens stipulates that the Protector of Citizens and his deputies enjoy the same immunity as Members of Parliament. The National Assembly shall decide on the abolition of the immunity of the Protector of Citizens and his deputies, by a majority vote of all Members of Parliament.

**NHRI’s recommendations to national and regional authorities**

The Protector of Citizens recommends the competent authorities:

- to provide premises for the appropriate, permanent accommodation of the institution of the Protector of Citizens;
- to establish an effective mechanism for monitoring the implementation of the recommendations of the Protector of Citizens.

**Human rights defenders and civil society space**

**NHRI’s role in promoting and protecting civil society space and human rights defenders**

Working with civil society organizations, as a national human rights institution, the Protector of Citizens promotes their recognition, and draws attention to the importance of the work of human rights defenders and the development of civil society to strengthen compliance with the rule of law principle.

The Protector of Citizens regularly implements joint projects and initiatives with civil society organisations and participates in events organized by civil society organisations and the human rights defenders. The Protector of Citizens concludes bilateral agreements with certain civil society organisations in order to further improve, formalize and concretize cooperation. Representatives of civil society organisations participate in the work of the NPM. Also, representatives of civil society organisations are members of the Council of Protector of Citizens.
Checks and balances

Trust amongst citizens and between citizens and the public administration

The Protector of Citizens notes that the state administration authorities acted on about 83% of the recommendations from the control procedures of this independent state body. However, when it comes to trust between citizens and the state administration, the Protector of Citizens believes there is room for its further strengthening, primarily through timely action on citizens’ requests.

NHRI’s as part of the system of checks and balances

Acting on a judgment of the European Court of Human Rights in the case *Zorica Jovanović v. Serbia* (application no. 21794/08), the Republic of Serbia adopted the Law on Establishing Facts on the Status of New-borns Suspected to have Disappeared from Maternity Hospitals in the Republic of Serbia in 2020, which stipulates that the Protector of Citizens is authorized to submit, on behalf of parents, proposals to the competent courts for establishing the facts on the status of new-born children suspected of having disappeared from maternity hospitals in the Republic of Serbia. After the entry into force of the Law, the Protector of Citizens appealed to the competent courts to take into consideration the Decree of the Government of Serbia on deadlines in court proceedings during the state of emergency, declared on 15 March 2020, after which the deadline for submitting proposals, prescribed by law (six months from the date of entry into force of the law), was extended for another 47 days. In accordance with his powers, the Protector of Citizens has so far submitted four such proposals to the competent courts.

References


NHRI’s recommendations to national and regional authorities

The Protector of Citizens recommends the competent authorities to strengthen the role of NHRI’s in the system of checks and balances through the authorization of special regulations for undertaking procedural and other actions in proceedings before state and other bodies and organizations.

Functioning of the justice system

The Protector of Citizens notes that citizens indicate delays in court proceedings and the handling of complaints. Where complaints are assessed by the competent authorities as
justified (especially as regards the length of proceedings), citizens further regret that the measures taken do not give the expected results. In these cases, citizens turn to the Ministry of Justice. The Ministry of Justice has constructively engaged in the legally prescribed cooperation with the Protector of Citizens in connection with the handling of citizens' complaints on the work of judicial bodies. Citizens most often express dissatisfaction with the handling of complaints and petitions regarding the work of courts submitted in accordance with the provisions of the Law on Organisation of Courts and the Court Rules of Procedure, as well as the handling of complaints and petitions regarding the work of public prosecutor's offices, submitted in accordance with the Rulebook on administration in public prosecutor's offices. The Ministry remedied deficiencies on complaints, on the basis of which the Protector of Citizens initiated control proceedings. However, in some cases, it was necessary for the Ministry of Justice to repeatedly address the competent judicial authorities to deliver the report on the merits of the complaint and submit a response to the complainant, which calls into question the effectiveness and efficiency of prescribed oversight mechanisms.

The Protector of Citizens, in performing the function of the National Mechanism for the Prevention of Torture (NPM), further notes that in the proceedings for the detention of a person with a mental disorder in a psychiatric institution without his or her consent, the problematic practice of courts appointing psychiatrists employed in the same hospital where the person whose detention is being decided on is hospitalised has not yet been abandoned.

**Media freedom, pluralism and safety of journalists**

**Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression**

In 2021, the Protector of Citizens completed the technical development of a single database on attacks and pressures on journalists, which he set up in May 2020 together with seven media associations and three journalists' unions in order to better protect media workers and prompt more effective actions of the competent state authorities.

At the meeting of the Working Group of the Government of the Republic of Serbia for the protection and security of journalists in August 2021, the Protector of Citizens, as a member of the Working Group, presented the Platform for recording attacks and pressures on journalists, which will be filled with data on attacks and pressures on media representatives of various media and journalist associations and connected to the SOS hotline for reports of attacks on journalists.
This unique database of attacks on journalists, which contains seven categories and more than 40 subcategories classified by type of attack, includes classified data submitted to the Protector of Citizens by the Journalists’ Association of Serbia. The Protector of Citizens plans to enter the data of the Independent Journalists’ Association of Serbia into this database as soon as this guild organisation submits its classified data on attacks and pressures on journalists. It is expected that after entering the remaining classified data, this platform could be publicly available.

The goal of forming this database of pressures and attacks on journalists is to create a single data platform that would enable a faster and more efficient reaction of the Protector of Citizens to the actions of the competent authorities on reported cases of violations of the freedom of media and freedom of expression. Also, data from the database on measures taken would be publicly available at any time in order to eliminate potential harmful consequences for the safety of media workers.

In addition, the Protector of Citizens drafted the Law on Amendments to the Law on Public Peace and Order, which was presented to the Working Group of the Government of the Republic of Serbia for the security of journalists in December 2021. These amendments apply to journalists, as well as to all other citizens, whose adoption would make cases of violence, threats and insults on the Internet and social networks punishable, on any basis. At the meeting of the Working Group, it was agreed that these proposals will be the subject of wide public discussion in the coming period (1).

In addition to the Working Group, the Protector of Citizens, Zoran Pasalic, MSc, spoke about these issues on 29 December 2021 in the plenum of the National Assembly during the consideration of the Regular Annual Report of the Protector of Citizens for 2020, as well as about the need to regulate this area in the next year, which is now unregulated, and in order to stop and sanction all violence, threats and insults that are committed through social networks.

The Protector of Citizens expressed regret in the Annual Report for 2021, as regards physical attacks on journalists, that after two years of conducting the trial for the attack on the journalist Milan Jovanović from Grocka, whose house was set on fire in 2019, there is still no final court epilogue.

In another case, concerning the physical attack on radio host Daško Milinović in April 2021 in Novi Sad, the two attackers and the instigator of the attack were sentenced to prison by a first instance decision in December of the same year. On the occasion of this attack, the Working Group for the Security of Journalists of the Government of the Republic of Serbia held an emergency meeting, at which all types of attacks and threats to the security of
journalists were condemned and where it was stressed that mechanisms for the protection of journalists must be strengthened.

Within three days, the competent authorities determined from which Instagram profile the death threats were sent to the TV presenter Marko Vidojković, and the Ministry of Interior announced that it would submit a request to Interpol for the identification of the requested person.

In mid-October 2021, the police in Valjevo arrested the person responsible for sending the death threats via social networks to Marko Vidojković and the co-author of their show, Nenad Kulačin.

Regarding the threats received by journalist Jelena Zorić in front of the Special Court in Belgrade, which she reported to the Criminal Police Directorate, the main hearing was held, while in the case of journalist Snežana Ćongradin, who received threats on social networks, the Independent Journalists' Association of Serbia filed criminal charges with the Special Prosecution Office for High Tech Crime.

References


NHRI’s recommendations to national and regional authorities

The Protector of Citizens recommends the competent authorities:

- To improve the position and status of journalists and media workers by improving their financial standing and ensuring economic stability.

- In order to ensure and improve freedom of expression, to empower journalists and media workers to report to guilds or to the Protector of Citizens all forms of pressures and attacks, whether it is a case of, among other things, censorship, poor working status or removal from/refusal to access to a press conference.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Protector of Citizens has observed this year, too, as already reported last year, a noticeable increase in the number of complaints in the field of economic and social rights, especially concerning the area of social protection and employment. The Protector also
notes that violations of these rights have particularly affected members of vulnerable
groups, so the state's response to mitigating the effects of the pandemic should primarily
be focused on members of vulnerable groups, especially in the field of economic and
social rights.

Actions taken by the NHRI to promote and protect rule of law and human rights in
the crisis context

Since the beginning of the pandemic, the Protector of Citizens has been closely
monitoring the state of human rights and, in accordance with the situation, has been trying
to ensure the accessibility and visibility of the institution for all citizens who believe that
their human rights are endangered. In 2020, a Special Report on the state of human rights
during the state of emergency was published (1), and just as in 2020, the Protector of
Citizens continued to meet with relevant international and regional actors in the field of
human rights protection during the pandemic in 2021 as well.

In January 2021, the Protector of Citizens participated in an online meeting of Balkan
region ombudspersons, organized to exchange experiences on the current situation, the
experiences of the ombudspersons in the context of the pandemic and to discuss the
status of the “Network of National Ombudspersons of the Balkan region”. In September
2021, the Protector of Citizens hosted the High Commissioner for Human Rights of the
Russian Federation and the Ombudsman of the Republic of Uzbekistan. At these bilateral
meetings, the perspectives of future cooperation and challenges in the protection of
human rights during the pandemic were discussed.

Representatives of the NPM participated in meeting dedicated to the realization of the
mandate of the NPM in the conditions of the COVID-19 pandemic.

Representatives of the Protector of Citizens participated throughout the year in the works
of the European Network of Ombudspersons for Children (ENOC), presenting activities of
the Protector of Citizens at regular meetings and conferences of this network, and
exchanging information with other ENOC members on current challenges and examples of
good practice in the field of realization and protection of children's rights.

As part of the regional initiative Child Rights Impact Assessment (CRIA), which is
implemented in partnership with the European Network of Ombudspersons for Children
(ENOC), during 2021, the Protector of Citizens conducted an analysis of the impact of
measures and regulations to prevent the spread of COVID-19 on the rights of the child,
primarily the rights of the child to maintain personal relations with the parent with whom
he or she does not live and the rights of children with disabilities to a social protection
service – day care. The main findings and conclusions of the research are presented in a Special Report published in late February 2022 (2).

References


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

On 14 February 2022, the Protector of Citizens was not allowed to carry out an unannounced visit to the Institution for Adults and Elderly "Gvozden Jovancicevic" in Veliki Popovac, which was foreseen in its 2022 Visit Plan as NPM. The NPM team consisted of employees of the Department of the National Mechanism for the Prevention of Torture, a representative of the Helsinki Committee for Human Rights in Serbia, as well as a psychiatric specialist. The aim of the visit was supposed to be the assessment of the position of beneficiaries of social protection services in home accommodation, such as adults and the elderly with intellectual disabilities. In front of the entrance to the institution, the NPM team talked to the director of the institution, who contacted the relevant ministry and the Institute for Public Health in Pozarevac, and informed the team members that it was not possible to access the facilities and make the visit, since there were six beneficiaries in the institution who were positive to COVID-19, while six employees were in home isolation.

This ban was imposed even though the Protector of Citizens, fulfilling its mandate as the NPM, informed the Ministry of Labour, Employment, Veteran and Social Affairs several times during 2020 and 2021 that the NPM will perform visits to social welfare homes, with full respect for all legally prescribed preventive measures, using full protective equipment and adapting their working methods to the new situation, respecting the principle of "doing no harm". The visit was not allowed, although the Ministry was informed of all the obligations that our country has undertaken by adopting the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as that the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment and punishment is an obligation established by international law, which cannot be derogated from, even in the circumstances of a pandemic and epidemic.
The Ministry was also reminded about the advices of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment related to the coronavirus pandemic, adopted on 25 March 2020, in which this body took a clear position that national mechanisms for the prevention of torture should continue to enforce their mandate, i.e., to undertake visits with a preventive character even during the pandemic, respecting the necessary restrictions on the manner in which visits are carried out and with reduced social contact.

The Protector of Citizens also reports that the NPM was prevented from performing an announced visit to the Institution for Mentally Ill Persons "1st October" in Stari Lec, since the institution obtained the opinion of the Public Health Institute in Pancevo, which stated that the visit should be postponed until the epidemiological situation in the South Banat District and the institution itself improves. Also, the opinion states that the visit is possible only on the basis of a court order, which indicates ignorance of the mandate of the NPM.

The Protector of Citizens reminds that in performing the activities of the NPM, he may freely visit all places and institutions where persons deprived of their liberty are or may be found, and that preventing him from exercising his mandate in social protection institutions represents a violation of legal regulations, international standards and the obligation of administrative bodies to cooperate with the Protector of Citizens, which as a consequence makes it impossible to control the respect of basic rights of persons in social protection institutions and deter state bodies and officials from actions that could have the character of abuse.

NHRI’s recommendations to national and regional authorities

In its Special Report on the activities during the state of emergency, the Protector of Citizens issued numerous recommendations to the national authorities in order to improve their work in such crisis situations as the COVID-19 pandemic (1).

The Protector reflected on how to address crisis situations (such as the pandemic) and ensure adequate state authorities’ actions that respect the rule of law and human rights (especially of persons from vulnerable groups). For instance, the Serbian NHRI stresses the need to ensure timely access to information and to carry out consultations with the Protector of Citizens and civil society organisations on the impact of measures that limit the realisation of human rights.

References

Other relevant developments or issues having an impact on the national rule of law environment

NHRI’s recommendations to national and regional authorities

The Protector of Citizens recommends the competent authorities:

- To plan and take economic policy measures without endangering the rights of members of vulnerable social groups and in a way that will not reduce the achieved standards in the exercise of their rights;
- To introduce content on human rights, tolerance, non-discrimination and diversity in all levels of the educational system;
- To ensure the systematic implementation of training on human rights, especially the rights of citizens in a particularly vulnerable position;
- To provide the widest possible coverage of employees in public authorities through training;
- To provide a system for monitoring the effectiveness of training and the application of acquired knowledge in work;
- To provide sufficient human, technical and financial resources for the protection of women and children from violence.