

SECOND-CLASS RIGHTS

Social Rights in the Light of Austerity Measures

SERBIA, 2012 – 2020

IMPRESSUM

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INTRODUCTION

The report before you is the result of an analysis conducted by the A 11 – Initiative for Economic and Social Rights with regard to the exercise of key economic and social rights, from the right to social protection and housing, through to the right to health care and other so-called second generation human rights.

The A 11 Initiative is an organization dedicated to the protection, promotion and fostering of economic and social rights, with a particular focus on the rights of individuals from vulnerable, marginalized and discriminated groups and communities. Through direct contact with these most vulnerable individuals, A 11 collects data on violation of economic and social rights. This report is the result of integration of data collection and the analysis of regulations relevant for the protection of economic and social rights as well as measures, activities and outcomes of those public policies affecting the realization of the economic and social rights of the most vulnerable citizens.

Bearing in mind the effects of the global economic crisis, independent human rights bodies' reports pointing to an increasing number of citizens' complaints about the realization of economic and social rights, as well as measures of the fiscal consolidation measures introduced in the Republic of Serbia in 2012, the reference framework used to demonstrate the status of economic and social rights in this report is based on Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the: "Covenant"). The said Article prescribes as follows:

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."⁴

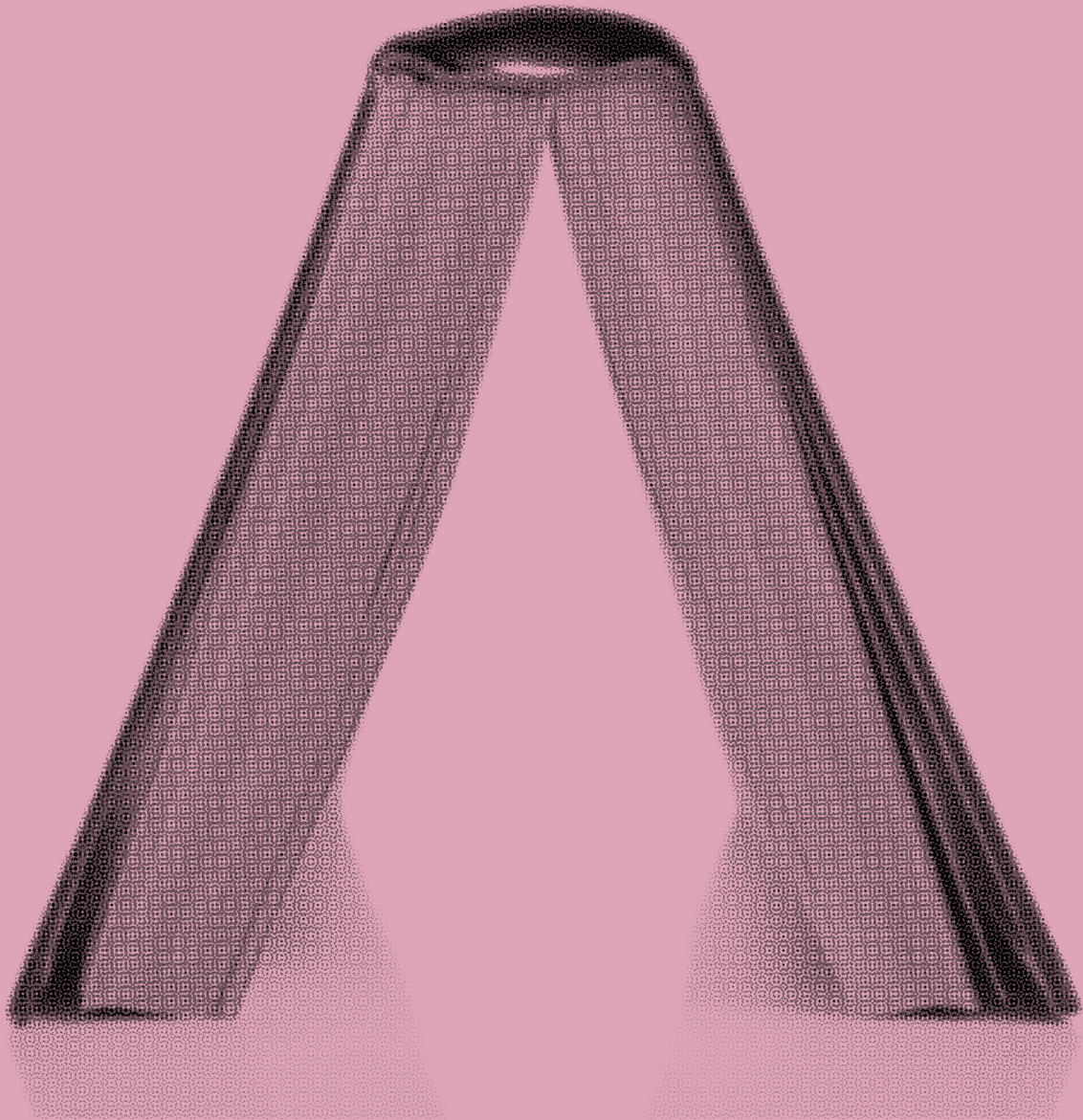
The rationale for choosing this approach comes from the fact that obligations of the states referred to in Article 2 (1) of the Covenant have been recognized as fundamental for comprehensive understanding of the nature of states' obligations stemming from the Covenant by the United Nations Committee on Economic, Social and Cultural Rights i.e. the institution in charge of monitoring the fulfillment of states' obligations stemming from the utmost important document on economic and social right protection.²

In this report we opted to implement the *violations approach*, therefore it will not contain a particular overview or detailed assessment of positive measures undertaken with respect to the exercising of economic, social and cultural rights. Although we recognize that, in certain areas, measures or regulations that could have an impact on the promotion of economic, social and cultural rights have been adopted, due to the methodological approach, these measures and regulations are not subject to special consideration in the report.

A particular focus of this report is on the aftermath of the global economic crisis and the impact of fiscal consolidation measures (austerity measures)³ on the exercise of the right to social protection, health care and housing by citizens from the most vulnerable categories. The issue of informal work and mandatory work for beneficiaries of financial social assistance, due to the specific nature of this area and the focus of the report, is not covered in detail here, although it is included in the economic rights.

This report will be updated once a year with new data on the situation in the field of economic and social rights.

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- 1 SFRY became a member of the Covenant in 1971, while the Republic of Serbia acceded by notification of succession on March 12, 2001.
 - 2 For more information on the nature of the obligations of states under this article, see: United Nations, Committee on Economic, Social and Cultural Rights, Fifth Session (1990)*, General Comment no. 3: The Nature of States Parties' Obligations (Article 2, paragraph 1 of the Covenant). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCE-SCR%2fGEC%2f4758&Lang=en
 - 3 For the purpose of this report, austerity measures are measures adopted by the state in the area of macroeconomic, fiscal and foreign-debt policies, aimed at reducing the budget deficit and overcoming consequences of the global economic crisis. Due to their nature, those measures affect the most the exercising of economic and social rights.



PREREQUISITES FOR EXERCISE OF ECONOMIC AND SOCIAL RIGHTS

According to the latest data, half a million people in the Republic of Serbia cannot meet their basic needs; 7.1% of citizens of the Republic of Serbia consumes less than RSD 12,286 monthly per consumer unit.⁴ Poverty is much more frequent in rural than in urban areas and is particularly pronounced among those with low education levels, or who are outside the labor market, or with six or more household members. According to the Social Inclusion and Poverty Reduction Unit “In 2018, the value of the Gini coefficient increased by 2.56 pp (from 25.89% to 28.45%)⁵. As reported by the Serbian Statistical Office, in 2018 the at-risk-of-poverty rate was 24.3% or some 1,800,000 citizens. In spite of the aforementioned, the Republic of Serbia does not have a comprehensive poverty reduction strategy. In the absence of a comprehensive strategy, various “sectoral” strategies are relevant to the issue of poverty reduction and the exercise of the economic and social rights of particularly vulnerable categories of population.

Some of the crucial changes to the regulations in relation to austerity measures concerned both the reduction of budget expenditures for economic and social rights and the increase in tax rates. In autumn 2012, the Law on Amendments to the Law on Value Added Tax⁶, increased the general VAT rate from 18% to 20%, while with amendments to the Law that entered into force as of January 1, 2014, the lower value added tax rate applied to some basic food products, text books, newspapers, drugs, fuel, etc. increased from eight to ten percent⁷. The said changes are an obvious example of austerity measures having particular adverse effects on the poorer citizens⁸, primarily due to the fact that value added tax is regres-

sive i.e. it places an increased economic strain on lower-income citizens since the same tax rates apply to lower-income citizens and citizens with above average income.⁹

Furthermore, the austerity measures required amendments to the Law on Property Tax¹⁰, introducing the so-called **poverty tax**; imposing the tax burden on beneficiaries of social housing and housing intended for refugees and internally displaced persons if provided with a lease contract for more than a year. One of the key changes important for the realization of economic and social rights is the reduction of pensions for a large number of pensioners in Serbia. The pension reduction was introduced by the Law on Temporary Regulation of the Method of Payment of Pensions¹¹ passed in 2014 and the law ceased to be valid on September 30, 2018. In August 2015, the Law on the Method of Determining the Maximum Number of Employees in the Public Sector¹² was adopted, which, with the extension of the originally planned validity period, was in force until December 31, 2019.

Data from the Ministry of Public Administration and Local Self-Government indicate that the number of permanent employees decreased by 37,900 in the period from the introduction of the ban on employment in the public sector at the end of 2013 until the end of 2016.¹³ Lack of an ex-ante gender impact assessment at the time of adoption of the said measure, has particularly affected the position of women, primarily because of proportionally larger number of women employed in the public sector. Data from the Serbian Statistical Office show that women account for almost 80% of employees in

4 Social Inclusion and Poverty Reduction Unit, Assessment of Absolute Poverty in Serbia in 2018. Available at: http://sociojalnoukljudivanje.gov.rs/wp-content/uploads/2019/10/Ocena_apsolutnog_siromastva_u_2018_lat.pdf

5 Ibid.

6 Official Gazette of RS, no. 93/2012.

7 Official Gazette of RS, no. 108/2013.

8 For more information on the assessment of the increase in the value added tax, see also: Center for Economic and Social Rights, Institute for Economic Justice, SECTION27, *Joint Submission to the Committee on Economic, Social and Cultural Rights on the occasion of the review of South Africa's first period report at the 64th Session*, October 2018, para 37–39. Available at: <https://www.cesr.org/sites/default/files/CESR-S27-IEJ%20submission%20FINAL-FINAL.pdf>

9 For more information on the tax fairness, see: M. Đorđević, Satisfying the Principle of Fairness in Consumption Tax, *Economic themes* (2015) 53 (1): 39–52.

10 Law on Amendments to the Law on Property Tax, Official Gazette of RS, no. 47/2013.

11 Official Gazette of RS, no. 116/2014 and 99/2016.

12 Official Gazette of RS, no. 68/2015, 81/2016 – Decision CC RS and 95/2018.

13 FemPlatz and A 11 – Initiative for Economic and Social Rights, *The impact of economic reform policies on women's human rights, Submission to the Independent expert on foreign debt and human rights Mr. Juan Pablo Bohoslavsky* p. 3, available at: <https://www.a11initiative.org/wp-content/uploads/2018/09/report-femplatzA11.pdf>

centers for social work, over 70% in the education system and some 70% in the justice system.¹⁴ The ban on employment in the public sector has therefore disproportionately affected the position of women in the labor market, especially those coming from multiple discriminated groups. Likewise, this ban also caused women to move into even more precarious jobs, with precarious employment, and income and poor working conditions.¹⁵

The Law on Dual Education was adopted in 2017, and it was amended at the beginning of 2020.¹⁶ The said Law was adopted with the aim of training as many students as possible for vocational jobs for which they prepare for, through gaining skills and abilities of specific educational profiles to make them more competitive in the labor market upon graduation. By its nature, the dual education system is only applicable in vocational schools, and students involved in dual education receive a remuneration of at least 70% of the minimum wage for their work engagement (learning by doing).

SYSTEM OF PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Along with aforementioned changes to the normative framework, the system of protection of economic and social rights has not been improved, nor have fiscal consolidation measures followed the obligations of the state either under Article 2 (1) of the Covenant on Economic, Social and Cultural Rights, or the interpretative standards developed by the United Nations Committee on Economic, Social and Cultural Rights with regard to the fulfillment of state obligations at the time of fiscal consolidation measures. In the past years, this has led citizens to complain to independent state bodies in charge of the protection of human rights, mainly about violations of economic, social and cultural rights. In its annual report, the Commissioner for the Protection of Equality¹⁷ states that out of the total number of submitted complaints, complaints in the area of labor and employment are the second most numerous and account for 20.8%, while the social protection accounts for 13.1% of the total of filed complaints, indicating that one third of all filed complaints relates to the economic and social rights discrimination. Similarly to the Commissioner for the Protection of Equality, the Protector of Citizens states in its regular annual report that by far the largest number of complaints filed by citizens is within the jurisdiction of the Department for Economic and Property Rights – 36,55%. The same report states that 14.47% of complaints falls under the jurisdiction of the Department for Protection of Social and Cultural Rights.¹⁸ Although the Department for Protection of Economic and Property Rights, as the name suggests, receives complaints related to property i.e.

civil issues, it is obvious that the largest number of individual complaints received by the said institution relate to the area of economic, social and cultural rights.

Apart from protecting economic, social and cultural rights before independent state human rights bodies, such as the Commissioner for the Protection of Equality and the Protector of Citizens, and protecting those rights before domestic judicial and administrative authorities, citizens in Serbia do not have access to any international body for the protection of economic, social and cultural rights that, after exhaustion of all available legal remedies in Serbia, could have jurisdiction to protect them. In the system of human rights protection at the regional level, before the Council of Europe, the Republic of Serbia has not acceded to the Protocol to the European Social Charter which provides for a system of collective complaints. Additionally, in the United Nations system for the protection of human rights, Serbia has not signed or ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which would allow individuals to address the United Nations Committee on Economic, Social and Cultural Rights in situations where, after exhausting all available domestic remedies, they have not received protection of their endangered economic, social or cultural rights.

THE INITIATIVE TO SIGN AND RATIFY THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Given the importance of economic, social and cultural rights, as well as the increasing number of citizens filing complaints to protect these rights, the issue of signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights is important for the future strengthening of the above rights. Therefore, it is important to emphasize that at the last cycle of the Universal Periodic Review of the exercise of human rights, which was conducted before the United Nations Human Rights Council, out of 190 recommendations, the Republic of Serbia rejected fifteen of them concerning the improvement of the situation in the area of human right protection. Among those fifteen rejected recommendations, there is one inviting the Republic of Serbia to sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. This international treaty is crucial for the protection of economic and social rights, which is why A 11 Initiative at the end of 2018, in accordance with Article 4 of the Law on Conclusion and Execution of International Treaties¹⁹, submitted an initiative to initiate the procedure for conducting negotiations and concluding that international treaty. The Office for Human and Minority Rights of the Government of the Republic of Serbia, to which the initiative was addressed, after finding

14 Serbian Statistical Office, Women and Men in the Republic of Serbia, Belgrade 2017.

15 For more information, see: FemPlatz and A 11 – Initiative for Economic and Social Rights, *The impact of economic reform policies on women's human rights*, Submission to the Independent expert on foreign debt and human rights Mr. Juan Pablo Bohoslavsky, available at: <https://www.a11initiative.org/wp-content/uploads/2018/09/report-femplatzA11.pdf>

16 Official Gazette of RS, no. 101/17,

17 Commissioner for the Protection of Equality, *Summary of the regular annual report of the Commissioner for the Protection of Equality for 2018*, p. 12, March 2019. Available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2019/05/Srb-Skraceni-izvestaj-1.pdf>

18 Protector of Citizens, *Regular annual report of the Protector of Citizens for 2018*, p. 13–14, March 2019. Available at: <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>

19 Official Gazette of RS, no. 32/2013.

that it was not competent for the matter, forwarded the said initiative to the Ministry of Labor, Employment, Veteran and Social Issues, which rejected the initiative **without any explanation**. Due to the importance of this international treaty for the promotion of the protection of economic and social rights in the Republic of Serbia and the establishment of new mechanisms that would improve the work of the public administration and judicial authorities competent for the protection of the said rights, it remains unclear why the Government of the Republic of Serbia refuses to at least open a dialogue on the matter of its adoption.²⁰ Together with fifty-one civil society organizations, the A 11 Initiative invited the Government of the Republic of Serbia to open a dialogue on the state of economic and social rights in Serbia and to inform the public of the reasons why it refused to sign the said document.²¹ At the time of publication of this report, the Government did not respond to that invitation.

directly apply guaranteed human and minority rights. In the context of economic, social and cultural rights, this would entail the direct application, above all, of the provisions of the Revised European Social Charter and of the International Covenant on Economic, Social and Cultural Rights. However, to date, apart from one exception²², there are no known cases of direct application of these international treaties. This is confirmed by the national report on the implementation of the International Covenant on Economic, Social and Cultural Rights, which does not explicitly cite cases in which the Covenant was directly applied. Instead, the state in its report solely states that there are court decisions that emphasize that they are based on the provisions of the Covenant.²³

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

Article 18 of the Constitution prescribes direct implementation of guaranteed human and minority rights. Moreover, the same provision of the Constitution lays down that provisions on human and minority rights shall be interpreted in conformity with applicable international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation. In this respect, it could be argued that domestic judicial, quasi-judicial and administrative authorities are obliged to

20 For more information on benefits from signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, see: A 11 – Initiative for Economic and Social Rights, *Benefits from Signing and Ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, June 2019. Available at: https://www.a11initiative.org/wp-content/uploads/2019/06/S%CC%8Cta-nam-donose-potpisivanje-i-ratifikacija-Opcionog-protokola-uz-Me%C4%91unarodni-pakt-o-ekonomskim-socijalnim-i-kulturnim-pravima_final.pdf

21 For more information: A 11 – Initiative for Economic and Social Rights, *51 civil society organizations against further deterioration of economic and social rights in Serbia*, available at: <https://www.a11initiative.org/45-organizacija-civilnog-drustva-protiv-daljeg-urusanja-ekonomskih-i-socijalnih-prava-u-srbiji/>

22 The metropolitan municipality Zemun suspended the procedure of forced eviction of the Grmeč informal settlement by issuing the decision based on the direct implementation of Article 11 of the International Covenant on Economic, Social and Cultural Rights. Available at: <http://www.yucom.org.rs/opstina-zemun-obustavila-prinudno-iseljenje-neformalnog-romskog-naselja-grmec/>

23 *The third Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, paragraph 4, 11 July 2019, UN Doc. E/C.12/SRB/3. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFE-ovLCuW54MWm13CZ4%2bVqIQ1kU7YRzwVhwBtDioXlo2YDaajGO%2fHjsI7H7pbfxizL3SKjOkh7b71aTPLM%2bqhvmUGgBoa-ju%2fjMBQm2uPAFdIH%2bJvJLl>



CRITERIA FOR ASSESSING THE CONSISTENCY OF THE AUSTERITY MEASURES WITH THE STATES' OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

As noted above, since 2012, the Republic of Serbia has adopted a number of legislative and other measures to reduce the budget deficit. According to the international human rights law, such measures, even when necessary due to the need to overcome the consequences of crises, wars and lack of public resources to exercise economic and social rights, must comply with the state's obligations under Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights. Therefore, it is necessary to analyze the adoption of these measures from the aspect of fulfillment of the key obligation that states have - the obligation to make *maximum use of available resources with a view to achieve progressively the full realization of economic and social rights*.

In its practice, the UN Committee on Economic, Social and Cultural Rights has developed several interpretive standards for assessing the compliance of the introduction of such measures with the obligations stemming from the aforementioned Article of the Covenant. First of all, in assessing the fulfillment of a state's obligations under Article 2 (1) of the Covenant, it is necessary to take into account the minimum core obligation. Bearing in mind that considerable resources are often required to achieve economic and social rights, the minimum obligation for each individual right obliges states to provide at least "minimum essential levels of each of the rights".²⁴ Failing to ensure the minimum essential levels of each of the rights is considered *prima facie* failing to discharge obligations under the Covenant, whereas the burden of proof to justify such situations rests on the states.²⁵ Although states have a wide margin of appreciation when faced with financial constraints, the Committee underlines the fact that "even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society must be protected".²⁶ This means that, even in situations where austerity measures are adopted and

budget allocations are reduced to exercise economic and social rights, the most vulnerable categories of the population must be specially protected.

Considering that the austerity measures introduced by a series of changes to the regulations in Serbia are justified by the lack of resources and the need to reduce the budget deficit and achieve macroeconomic stability, it raises the question of whether these retrogressive measures are in line with the Committee's interpretation of the states' commitments. Namely, in the case of retrogressive measures, it is up to the states to prove that the decisions to adopt those measures have been taken after careful consideration.²⁷ The assessment whether states comply with obligations when adopting retrogressive measures is based on the assessment of all rights guaranteed in individual states and maximum use of available resources. The following are objective criteria for the final assessment of the measures: 1) the country's level of development; 2) the severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant; 3) the country's current economic situation, in particular whether the country was undergoing a period of economic recession; 4) the existence of other serious claims on the State party's limited resources; 5) whether the State party had sought to identify low-cost options; 6) whether the State party had sought cooperation and assistance or rejected offers of resources for the purposes of implementing the provisions of the Covenant.²⁸

In 2012, the UN Committee on Economic, Social and Cultural Rights specifically addressed the issue of protecting and exercising economic and social rights in the context of the economic and financial crisis. The letter addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties due to consequences of global economic crisis, underlined that all states should avoid taking decisions which might lead to the denial or infringement

24 United Nations, Committee on Economic, Social and Cultural Rights, Fifth session (1990)*, General comment no. 3: The Nature of States Parties' Obligations (Article 2, paragraph 1 of the Covenant), paragraph 10.

25 M. Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic Social and Cultural Rights* (Intersentia, 2003), p. 367.

26 United Nations, Committee on Economic, Social and Cultural Rights, Fifth session (1990)*, General comment no. 3: The Nature of States Parties' Obligations (Article 2, paragraph 1 of the Covenant), paragraph 12.

27 Committee on Economic, Social and Cultural Rights, An Evaluation of the Obligation to Take Steps to the „Maximum of Available Resources” under the Optional Protocol to the Covenant, statement, 10 May 2007, UN Doc. E/C.12/2007/1, paragraph 9.

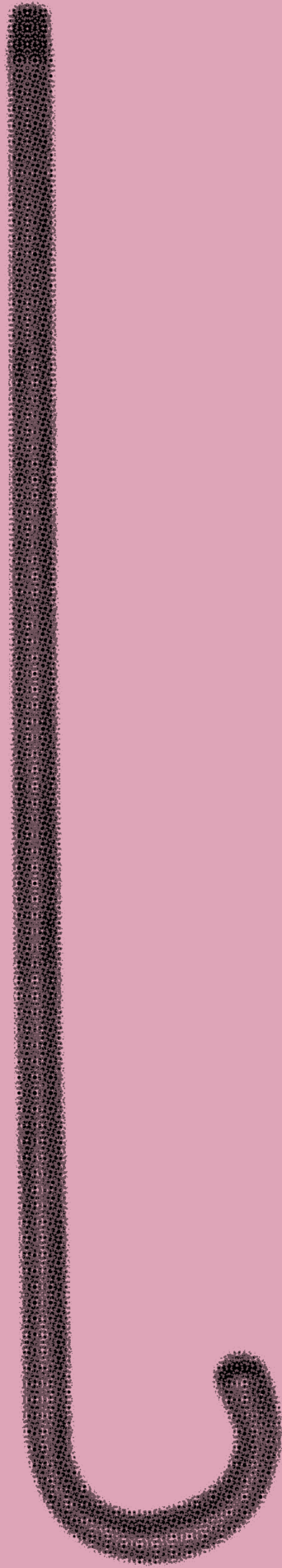
28 Committee on Economic, Social and Cultural Rights, An Evaluation of the Obligation to Take Steps to the „Maximum of Available Resources” under the Optional Protocol to the Covenant, statement, 10 May 2007, UN Doc. E/C.12/2007/1, paragraph 10.

of economic, social and cultural rights.²⁹ Moreover, although the letter states that States parties have a margin of appreciation within which to set national policies, that due to savings may affect fulfillment of economic and social rights, states should comply with certain guidelines. Those guidelines include: 1) the policy to be introduced must be **temporary**; 2) the policy must be **necessary and proportionate**; 3) the policy **must not be discriminatory** and must comprise all possible **measures to support social transfers** to mitigate inequalities that can grow in times of crisis; 4) the policy must **identify the minimum core content of individual rights** or social protection floor, similar to that developed by the International Labor Organization.

Bearing in mind the aforementioned criteria that the Committee on Economic, Social and Cultural Rights takes into account in assessing the fulfillment of states' obligations under the Covenant, it is important to note that some of the key issues on which the Committee will have a dialogue with the Republic of Serbia in the next reporting cycle cover the compliance of fiscal consolidation measures with the state's obligations under Article 2 (1) of the Covenant. The List of Issues passed by the Committee in October 2019 stressed the issue of ways in which fiscal consolidation measures comply with the criteria of that body in charge of human right protection.³⁰

29 A.G. Pillay, Letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fSUS%2f6395&Lang=en

30 Committee on Economic, Social and Cultural Rights, List of Issues in relation to the third periodic report of Serbia, 12 November 2019, UN doc E/C.12/SRB/Q/3.



SOCIAL WELFARE AND PENSION INSURANCE

“Two thousand dinars for the lady.”³¹

It is indisputable that living in poverty and social exclusion is a violation of human dignity. The minimum expected of states is to show that poverty reduction and social exclusion are embedded in all relevant areas of public policies.³² However, in its conclusions for Serbia for 2017, the European Committee of Social Rights found that the current situation in Serbia was not in line with the obligations arising from the European Social Charter (revised) with regard to protection against poverty and social exclusion, due to the lack of an adequate comprehensive and coordinated approach to combating poverty and social exclusion.³³ This is supported by the fact that there is no comprehensive poverty reduction strategy, nor this issue is addressed effectively and systematically.

In view of this, changes to the fundamental law in this area – Law on Social Protection³⁴ – would have to be followed by wide consultations and harmonization of views of professionals and practitioners, with the aim of improving the situation in this area. Those changes were announced more than five years ago, and in February 2015 the consultation process with civil society organizations began.³⁵ However, in July 2018, the Ministry of Labor, Employment, Veteran and Social Issues published the Draft Law on Amendments to the Law on Social Protection, which almost completely failed to include amendments proposed by civil society organizations, while incorporating certain solutions in clear contradiction with the Constitution and international obligations of the Republic of Serbia. The

latest version of the Draft Law on Social Protection was published in July 2019, and the relevant ministry organized a consultation meeting with interested experts and public on the “updated harmonized draft law”. Although the enactment of the new regulations does not envisage cases where “consultations” are held regarding the content of the future legislation, a key drawback of the updated draft law is that the problems raised by citizens’ associations and professionals remain unaddressed. During the public hearing, the ministry in charge simply refused to address the comments made by associations dealing with the protection of social rights.

NON-TRANSPARENT DRAFTING PROCESS AND WEAKNESSES OF THE DRAFT LAW ON AMENDMENTS TO THE LAW ON SOCIAL PROTECTION

The Draft Law on Amendments to the Law on Social Protection (hereinafter referred to as the “Draft”) was prepared in an insufficiently participatory process³⁶, and numerous civ-

31 See *Insajder na lokalu (Local Insider): Idyll in Jagodina (30 January 2018)*, available at: <http://rs.n1info.com/a360729/Video/Info/Insajder-na-lokalu-jagodinska-idila-30.1.2018.html>, 28 May 2018.

32 See European Committee of Social Rights, *Conclusions 2017: briefing documents*, 23 January 2018. Available at: <https://rm.coe.int/press-briefing-elements-conclusions-2017n/168077fedf>

33 European Committee of Social Rights, *Conclusions 2017 – Serbia – Article 30 – Right to be protected against poverty and social exclusion*, available at: <http://hudoc.esc.coe.int/eng?i=2017/def/SRB/30/EN>, p. 4. <https://rm.coe.int/press-briefing-elements-conclusions-2017n/168077fedf>

34 Official Gazette of RS, no. 24/2011.

35 In cooperation with the Ministry of Labor, Employment, Veteran and Social Issues, the Government Office for Cooperation with Civil Society organized a meeting with representatives of civil society organizations on 10 February 2015. The idea was to publish all proposals of CSOs and to provide written answers if certain comments are not integrated in the Draft Law or are integrated partially. See: Office for Cooperation with Civil Society, *Report on the meeting held with the Ministry of Labor, Employment, Veteran and Social Issues and civil society organizations*, available at: https://civilnodrustvo.gov.rs/upload/old_site/2015/02/Izvestaj-sa-radnog-sastanka-socijalna-zastita-18.2.2015..pdf

36 See Call on withdrawal of the Draft Law on Amendments to the Law on Social Protection, available at: <https://ukljucise.tragfondacija>.

il society organizations and individuals requested its withdrawal and the launching of the public discussion on social protection priority reforms.³⁷

The most serious shortcomings of the draft law include **the introduction of measures in violation of the Constitution and the state's international obligations in terms of the prevention of forced labor and discrimination**, i.e. the introduction of provisions contained in the Decree on Measures of Social Inclusion of Beneficiaries of Financial Social Assistance³⁸ (hereinafter referred to as the "Decree"), imposing to vulnerable citizens the discriminatory obligation violating their dignity under threat of losing or reducing the financial social assistance.³⁹ Due to the introduction of these discriminatory provisions, at the end of 2014 the Protector of Citizens and several civil society organizations requested the Constitutional Court to assess constitutionality of the disputable Decree. Fifty-seven civil society organizations supported the request that was then sent to the Government of the Republic of Serbia aimed at immediate suspension of the implementation of the Decree. Disregarding these initiatives and requests as well as incorporation of measures contained in the Decree into the draft law renders participation of public in the process of adoption of the regulation senseless. In addition to the non-transparent drafting process, a number of changes that the regulation could introduce would lead to a violation or impairment of the rights of beneficiaries of financial social assistance.

Article 39 of the said draft law also sets out powers of the centers for social work in processing personal data of beneficiaries of financial social assistance too broadly. Thus, it stipulates that the centers for social work may review conditions for exercising rights of beneficiaries, if, **in whatever way**, they become aware of the facts significantly affecting conditions for exercising the entitlement (italic introduced by authors). Particularly controversial is item 9, paragraph 2 of Article 39, which provides for the collection of data on the stay of individuals or their family members abroad for more than 15 days. According to domestic regulations, **no official records are kept on the citizens' temporary residence abroad lasting longer than 15 days (and shorter than 90 days)**.⁴⁰ Only if they stay abroad for more than 90 days, they are obliged to report that to the Ministry of Internal Affairs and official records of such persons are kept. Yet, the draft law provides centers for social work a possibility to keep official records on movement of citizens, which not only represents disproportional interfering with citizens' rights and violation of the right to privacy under Article 8 of the European Convention

on Human Rights, but the collection of such information is contrary to the prohibition of discrimination, because only one category of citizens (beneficiaries of financial social assistance) would be subject to records on temporary stay abroad lasting less than 90 days.⁴¹

The version of the draft law published in July 2018, as well as the latest version from July 2019, would not remove the above shortcomings in the area of social protection to which attention has been calling for years⁴², but it would contribute to further violation of rights of beneficiaries of financial social assistance and undertaken international obligations, such as the prohibition of discrimination and forced labor.⁴³

[org/](#), 7 August 2018.

37 As many as 506 civil society organizations and individuals supported the initiative for withdrawal of the draft law through the online platform launched by several civil society organizations. Most of the shortcomings indicated in the initiative were not solved in the latest draft law, published in July 2019.

38 Official Gazette of RS, no. 112/2014.

39 For more information, see the subheading „Decree on Measures of Social Inclusions of Beneficiaries of Financial Social Assistance“.

40 Central Register – Register on personal data managed by the Ministry of Internal Affairs, available at: <https://registar.poverenik.rs/r/bdb4d40c-70b6-4641-a26c-7f65fe850d23>

41 For more information on principles and shortcomings of the draft law, see A 11 – Initiative for Economic and Social Rights, Comments on the draft Law on Amendments to the Law on Social Protection, available at: https://www.a11initiative.org/wp-content/uploads/2019/08/Komentari-na-ZSZ-jul-19-A11-Inicijativa_compressed.pdf

42 Ibid, see also Praxis, Praxis - meeting regarding the Amendments to the Law on Social Protection, available at: <http://www.praxis.org.rs/index.php/sr/praxis-in-action/social-economic-rights/social-welfare/item/893-praxis-na-radnom-sastanku-povodom-izmena-zakona-o-so-cijalnoj-za%C5%Altiti>

43 For more information on shortcomings of the draft law, see A 11 – Initiative for Economic and Social Rights, Comments on the draft Law on Amendments to the Law on Social Protection, available at: https://www.a11initiative.org/wp-content/uploads/2019/08/Komentari-na-ZSZ-jul-19-A11-Inicijativa_compressed.pdf

LAW ON FINANCIAL SUPPORT FOR FAMILIES WITH CHILDREN AND LAW ON THE AMENDMENTS TO THE LAW ON FINANCIAL SUPPORT FOR FAMILIES WITH CHILDREN

After having worked for three years on its adoption, the new Law on Financial Support for Families with Children⁴⁴ was adopted in December 2017. Positive novelties include provisions stating that the maternity benefit will be paid directly to new mothers, instead of paying it to the employers' account, as well as extending categories of women entitled to the maternity benefit – in addition to women employed under employment contract and self-employed women, for the first time women owners of agricultural farms or those women employed under the temporary and casual employment contract, copyright contract and temporary service contract will be entitled, as well.⁴⁵

Due to the **lack of compliancy of certain legal provisions with anti-discriminatory regulations and the Constitution of the Republic of Serbia**, in March 2018, the Commissioner for the Protection of Equality submitted to the Ministry of Labor, Employment, Veteran and Social Issues an initiative to amend Article 17, paragraphs 2 and 6, and Article 18, paragraph 2 of the Law.⁴⁶ The initiative pointed out that the aforementioned articles, in terms of the conditions for exercising the right to benefits on the basis of child birth and child special care, put insured women in agricultural business at a disadvantage compared to persons insured based on other business activities with no objective and reasonable justification (insured women in agricultural business are obliged to be insured for 24 months, while for women generating income based on employment, self-employment, temporary service contract and other basis envisaged by Article 17, paragraph 1, the con-

dition is that they have been receiving income for the period of 18 months prior to the child birth). Moreover, the initiative required to change the article envisaging that the benefits on the basis of child birth and child special care may also be granted to father of a child, if the child's mother is not alive, if she has abandoned the child or if she is not able to take immediate care of the child for justified reasons, indicating that such provision represents gender-based discrimination.

When it comes to the **parental allowance**, the Law on Financial Support for Families with Children envisages that mother is entitled to the parental allowance, while this right may be granted to father if mother is a foreign citizen, if she is not alive, if she has abandoned the child or is deprived of parental right, or if she is not able to take immediate care of the child for justified reasons. The new law brings positive changes as it stipulates that father may exercise the right to parental allowance even if mother is not a citizen of the Republic of Serbia, which was not possible under the old version of the law.⁴⁷ However, it is true that cases in which fathers are entitled to receive the allowance have been extended, but this provision is still defined too narrowly which may still disadvantage the children. Also, such a solution puts children whose mothers are stateless or domestic citizens, but without registered residence and identity card, at a disadvantage. The consequences of such a solution can be seen in the example of Sanja and her family.⁴⁸

Sanja has been living in Bor for five years where she gave birth; however, she does not have a place of residence registered, no personal identification number, or identity card. She was born in Djakovica and registered into the registry of births that were destroyed; only a few years ago she was able to register in the renewed registry books and to get birth and citizenship certificates. However, due to complicated procedures, she has not been able yet to register her residence or obtain her ID. As a result of lack of documents, she did not have the right to the parental allowance for two older children. She recently gave birth to her third child but cannot apply for the parental allowance for him either. She takes care of her children, but without the necessary documents and registration, she is not eligible for the parental allowance. The child's father has all the necessary documents but cannot apply because the conditions under which the father can claim the parental allowance are not met: if the mother is not alive, if she has abandoned the child or if she is not able to take immediate care of the child for justified reasons.⁴⁹

44 Official Gazette of RS, no. 113/2017 and 50/2018. The Law entered into force on 25 December 2017 and was amended by the Law on Amendments to the Law on Financial Support for Families with Children (Official Gazette of RS, no. 50/2018, 29 June 2018), while the implementation started on 1 July 2018. For more information on the process of adoption of the Law on Financial Support for Families with Children, see column in Danas newspaper, B. Selaković, available at: <https://www.danas.rs/kolumna/bojana-selakovic/magija-zakona/>, 25 May 2018. More information on unfairness of certain provisions of the Law, lack of compliance with international obligations and negative novelties reducing the current scope of rights, see M. Reljanović, *Law on Financial Support for Families with Children*, Pešćanik, 25 June 2018, available at <https://pescanik.net/zakon-o-finansijskoj-propasti-porodice-sa-decom/>, and M. Reljanović, *(Re) capitulation 2017*, Pešćanik, 20 December 2017, available at <https://pescanik.net/re-kapitulacija-2017/>.

45 For more information, see I. Drča, *Comments on the new Law on Financial Support for Families with Children*, 29 December 2017, available at: <https://www.pravniportal.com/komentar-novog-zakona-o-finansijskoj-podrsci-porodici-sa-decom,25.05.2018./>, 25 May 2018.

46 The initiative is available at: <http://ravnopravnost.gov.rs/rs/inicijativa-za-izmenu-zakona-o-finansijskoj-podrsci-porodici-sa-decom/>

47 The introduction of this solution was preceded by the decision of the Constitutional Court regarding the initiative for constitutionality assessment; notwithstanding the fact that unconstitutionality of the law provision imposing as a precondition of entitlement to parental allowance the citizenship of mothers was not determined, it was pointed out that “the Constitutional Court finds that the motion is justified when stating that the prescribed condition of citizenship of mothers, as a primary right holders in the case of the parental allowance, indirectly places children from mixed marriages in a disadvantage”.

48 Names used in this report are modified.

49 The problem may be the fact that the father is often unable to acknowledge paternity unless the mother holds ID card, and for that reason he cannot apply because he cannot prove a relationship with the child. For more information, see: Praxis, *Preventing State-*

The new Law on Financial Support for Families with Children will not bring any novelty in cases like this. In addition to putting parents in a different position, such a solution will have unfair consequences to children in whose interest this right is guaranteed. Regarding the method of payment of benefits during maternity and childcare leave, the Law prescribes novelties that could discourage payment of contributions and encourage informal work for higher earners⁵⁰.

Less than a month before the envisaged entry into force of the Law on Financial Support for Families with Children, the regulation was amended in emergency procedure.⁵¹ The Law on Amendments to the Law on Financial Support for Families with Children **introduced a number of negative and discriminatory changes that limit or completely exclude access to certain types of material support for marginalized groups.** Firstly, reduction of the maternity leave benefit amount in some cases is so drastic that, in addition to the fact that parents are losing the financial security, it completely renders senseless payment of health insurance contributions.⁵² As a result, a series of protests were held by the Initiative „Mame su zakon – Moms Rule“, pointing to inadequate legal solutions. Although shortly after the protests the Government of the Republic of Serbia announced that the disputed provisions will be amended, it had not occurred by the time this report was published.

Among negative changes is a provision that introduces new conditions for exercising the right to parental allowance and stipulates that all children in the family must be fully vaccinated and attend school regularly, while pre-school children need to attend preparatory pre-school programs. If even only one of the children in a family is not immunized or does not attend school or preschool preparatory program regularly, the family is not entitled to the parental allowance. Given many difficulties Roma children face when it comes to school enrollment, compulsory immunization, or proving vaccine status, these conditions will make ineligible Roma children from the most vulnerable families to parental allowance.

Data of the Serbian Statistical Office and UNICEF show that in Roma settlements there are only 12.7% fully vaccinated according to the national immunization calendar for children aged 24–35 months, compared to 70.5% of children in general population.⁵³ The situation is similar with school attendance. Only 5.7% of Roma children attend an early childhood education program. The gap in pre-school attendance between Roma and non-Roma children in Serbia is wider than in any other Western Balkan country.⁵⁴ Compulsory education completion rate among Roma girls is only 57%, compared to 93% among non-Roma girls and 95% among non-Roma boys.⁵⁵

Only a legislator who is completely ignorant of the position of the most vulnerable national minority in Serbia would assume that such additional conditions for exercising the right to parental allowance would not affect members of the Roma national minority disproportionately. Considering that these changes are not simultaneously accompanied by campaigns or provision of information to citizens about the importance and obligation of immunization and education, and that citizens are not warned about the sanctions that may follow, it seems to us that the sole **aim of these provisions is to reduce the number of families entitled to this right, and not to ensure better immunization or education coverage.** Data on the coverage of Roma children by compulsory education, pre-school preparatory programs and immunization show to whom these new conditions preclude the right to the parental allowance to a large extent. Regulations that have unjustifiably different effects to a group that differs by race, color or national or ethnic origin, according to the Committee on the Elimination of Racial Discrimination, **indicate that there is racial discrimination.**⁵⁶ This situation is also in stark contrast to the recommendations of numerous international institutions and bodies monitoring the implementation of international treaties ratified by Serbia, which require additional measures to be taken to overcome the discrimination that Roma face in accessing economic and social rights^{57,58}

lessness Among Children – Remaining Problems in Serbia, 7–8, available at: https://www.praxis.org.rs/images/praxis_downloads/Sprecavanje%20apatridije%20medju%20decom%20-%20preostali%20problemi%20u%20Srbiji.pdf. This problem could be solved by passing guidelines for public guardians regarding situations when mothers with no documents need to agree with a paternity admission. They could be identified based on two identity witnesses.

50 Mario Reljanović, Law on Financial Ruin for Families with Children, op. cit.

51 Law on Amendments to the Law on Financial Support for Families with Children, published in the Official Gazette of RS, no. 50/2018, 29 June 2018, entered into force on 30 June 2018 and applies as of 1 July 2018.

52 For more information, see M. Reljanović, Law on Financial Ruin for Families with Children, op. cit. In some cases, monthly maternity allowance amounts to less than RSD 1,000. See Paragraph, *Considering the introduction of the floor limit for the maternity allowance*, available at: <https://www.paragraf.rs/dnevne-vesti/100918/100918-vest4.html>. See also the column, „Offensively low maternity minimum, a state on the move“, available at: <http://www.kolumneinfo.com/2018/09/uvredljivo-nizak-minimalac-za-porodilje.html>.

53 Serbian Statistical Office and UNICEF, 2014, *Serbia Roma Settlements Multiple Indicator Cluster Survey, and Serbia Multiple Indicator Cluster Survey on Roma Women and Children*, Final Report, Belgrade, Serbia: Serbian Statistical Office and UNICEF, iv, xvii, xix, 61.

54 UNDP, Roma at a Glance, Serbia, April 2018, available at: https://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_SERBIA_Roma.pdf

55 Ibid.

56 Committee on the Elimination of Racial Discrimination, General Recommendation 14, Definition of Racial Discrimination (Forty-second session, 1993), U.N. Doc. A/48/18 at 114 (1994), paragraph 3.

57 See, for example, Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of Serbia*, 10 July 2014, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW54MwM13CZ4%2b-VqIQ1kU7YRw1%2bWWofd2tBOLmHCPVP18p98WsDiiW2OUQ17gVnJpVvPoFywjLvYmxKtrPdaw9Jxg584vl%2fbhj137FbLTrIpx>, 9/8/2018, paragraph 12. Moreover, when reviewing the latest Serbian report on the implementation of the Convention on the Rights of the Child, Committee on the Rights of the Child raised deep concern about the stigmatization and discrimination faced by Roma, including Roma children as well as about difficulties in accessing social protection; Serbia was requested to undertake measures to facilitate access to social protection.

58 On the remaining deficiencies of the Law on Amendments to the Law on Financial Support for Families with Children, see M. Reljanović, Law on Financial Ruin for Families with Children, available at: <https://pescanik.net/zakon-o-finansijskoj-propasti-porodice-sa-de>

In October 2018, A 11 – Initiative for Economic and Social Rights submitted to the Constitutional Court an initiative to review the constitutionality of Article 25, paragraphs 1-6 of the Law on Financial Support for Families with Children⁵⁹. The initiative was filed because the impugned provisions were contrary to the principle of social justice referred to in Article 4, paragraph 1 and Article 194, paragraph 1 of the Constitution, which guarantees that the legal system in the Republic of Serbia shall be unique, as well as with Articles 21, 58, 69 and 76 of the Constitution, which stipulate prohibition of discrimination, property rights, rights to social protection, as well as prohibition of discrimination against national minorities. Taking into consideration that the implementation of disputed provisions of the Law may preclude thousands of Roma family from receiving the parental allowance, which enables extremely poor Roma to ensure the existential minimum, A 11 Initiative requested the Constitutional Court to pass decision to suspend the implementation of provisions of the said Law based on Article 56, paragraph 1 of the Law on Constitutional Court. In March 2019, A 11 Initiative submitted a petition to the Constitutional Court due to the fact it failed to take any action in that respect. By the time this report was published, the Constitutional Court not only did not respond to the constitutionality assessment initiative, but did not respond to numerous letters indicating the need for more expeditious actions.

DECREE ON MEASURES OF SOCIAL INCLUSION OF BENEFICIARIES OF FINANCIAL SOCIAL ASSISTANCE

Amendments to the Law on Social Protection could have significant negative effects, such as prescribing the work obligation to able-bodied beneficiaries of financial social assistance.⁶⁰ Such an obligation was already introduced in 2014 by the Decree on Measures of Social Inclusion of Beneficiaries of Financial Social Assistance.⁶¹ The aforementioned regulation, contrary to the prohibition of forced labor and discrimination, under the threat of reduction or abolition of financial social assistance, stipulates the obligation of the social assistance beneficiaries to “earn” the received social assistance. Although the term contains the phrase “social inclusion”, **the Decree contributes to further mar-**

ginalization of vulnerable individuals as it leads to the violation of dignity and humiliation in the recipients of financial social assistance, who are forced to carry out jobs they cannot choose and are imposed only on them, on the assumption that they abuse the social security system.⁶² Another possible outcome (if social assistance beneficiaries reject the imposed obligations) is the loss of livelihoods and even deeper poverty, which in no way can contribute to their social inclusion.

Due to the introduction of unjust and unlawful obligations that discriminate against beneficiaries of financial social assistance and impair their dignity, at the end of 2014, several initiatives were submitted to the Constitutional Court to review the constitutionality of the disputed Decree⁶³; Protector of Citizens also submitted a motion for assessment of constitutionality. Although more than five years have passed since the initiation of these proceedings, the Constitutional Court’s decisions are still pending. It is important to emphasize that the shortcomings of the Decree could not be remedied by incorporating the obligations envisaged by the Decree into the law, as such obligations would still contravene the Constitution and the international obligations of the state in relation to the prevention of forced labor and discrimination. Introducing such solutions into the law would only continue to stigmatize and violate the rights of beneficiaries of financial social assistance, which is currently taking place under the Decree.

PRACTICAL IMPLEMENTATION OF THE DECREE ON MEASURES OF SOCIAL INCLUSION OF BENEFICIARIES OF FINANCIAL SOCIAL ASSISTANCE

Pursuant to the Decree, the centers for social work conclude a protocol on cooperation with educational institutions, branches of the National Employment Service, health institutions, local self-government units and other bodies and public enterprises (hereinafter referred to as: “operators”). Then, with the able-bodied beneficiaries of financial social assistance, the centers for social work conclude an agreement on the individual activation plan, which, inter alia, specifies the obligations of the beneficiaries, the planned activities, i.e. the type of work on which they will be engaged, as well as the deadline for reporting on realization of agreed activities. It also states **the consequences of failing to comply with the agreement** – in case of unjustified failure to fulfill obligations or agreed actions, the center for social work will reduce the financial social assistance to the able-bodied beneficiary by 50%. In case of repeated unjustified non-fulfillment of obligations, i.e. agreed actions, the center for social work issues a decision on termination of the right to financial social assistance.

[com/](https://www.pravniportal.com/), as well as I. Drča, (II)legal and (un)justified conditioning of rights to the parental allowance, available at: <https://www.pravniportal.com/nezakonito-i-neopravdano-uslovljavanje-prava-na-roditeljski-dodatak/>, 9 August 2018. See also A 11 – Initiative for Economic and Social Rights, *Exercising of Economic and Social Rights of Internally Displaced People in Serbia*, Belgrade, 2018, available at: https://www.a11initiative.org/wp-content/uploads/2019/01/A11_zavrzni-izvestaj_SR_web-compressed.pdf, 29–30.

59 The initiative is at the Constitutional Court under the reference number UZ 223/2018. The initiative is available at: <https://www.a11initiative.org/wp-content/uploads/2019/01/Inicijativa-za-pokretanje-postupka-ocene-ustavnosti.pdf>

60 See, for example, Insider, “Earning” social assistance equals forced labor, available at: <https://insajder.net/sr/sajt/tema/1867/>

61 Official Gazette of RS, no. 112/2014.

62 See, for example, Insider, “Earning” social assistance equals forced labor, available at, op. cit.

63 Initiative for assessment of constitutionality of the Decree submitted by Lawyers’ Committee for Human Rights (YUCOM), Autonomous Women Center and Regional Center for Minorities, available at: <http://www.yucom.org.rs/upload/Zahtev%20nevladinih%20organizacija%20upucen%20Vladi%20Republike%20Srbije%20-%20Saop%C5%A1tenje.pdf>. Initiative for assessment of constitutionality of the Decree submitted by Praxis and SKRUG, available at: <http://www.praxis.org.rs/index.php/sr/praxis-in-action/social-economic-rights/social-welfare/item/828-praxis-and-skrug-request-that-the-constitutional-establish-incompliance-of-the-regulation-with-the-constitution-and-the-law-on-social-protection>.

9.436

beneficiaries of financial social assistance were forced to do unpaid work under the threat of losing or reducing their social protection rights.

From February to September 2018, A 11 Initiative was conducting a survey on the implementation of the Decree in 129 centers for social work, of which 113 responded. Although some centers, in an attempt to implement the Decree on Measures of Social Inclusion of Beneficiaries of Financial Social Assistance, found this by-law to be inapplicable, 65% of the centers for social work responding to the survey adopted individual activation plans.

The survey determined that from the day the Decree entered into force until the end of June 2018, **at least 9,436 beneficiaries of financial social assistance were forced to do unpaid work under the threat of losing or reducing their social protection rights.**

As for the type of work, beneficiaries of financial social assistance **were involved in snow cleaning, grass mowing, cleaning railway stations, helping at removing garbage and other activities** which do not require any qualification and do not help beneficiaries acquiring skills or experience to increase their employability. Moreover, most of the centers for social work (as many as 92) do not have data on the number of beneficiaries who got employment as a result of the application of the Decree i.e. through the implementation of measures of social inclusion of beneficiaries of financial social assistance, which indicates that a large majority of those centers for social work do not monitor the impact of the implementation of the Decree.

The criteria used by centers for social work when determining the manner in which beneficiaries of financial social assistance are to be engaged are unclear and arbitrary. In most of the cases, centers for social work failed to answer that question, while centers that answered stated “preserved working ability” or “needs of employers” as criteria important for selection of work for beneficiaries. Besides, among criteria, centers stated also family circumstances of beneficiaries and existence of a bus line or organized transportation to the place of work.

The above responses regarding criteria for engagement of beneficiaries and the fact that most of the centers for social work do not keep records on the number of beneficiaries who have succeeded in getting employment and the types of jobs they are engaged in as a part of the „activation“ program confirms that the imposition of such obligations on beneficiaries of financial social assistance, in addition to violating the ban on forced labor, **is inappropriate and does not contribute to increasing employability.** Public works, as an active labor market measure, specifically aimed at increasing the employability of vulnerable

groups, have not proven to be effective in improving employability⁶⁴, so it is difficult to expect such effects from activities sporadically implemented under the Decree, without monitoring their effects. Moreover, the explanatory note to the Draft Law on Amendments to the Law on Social Protection stated that “this type of support has not produced results so far”⁶⁵. That is why it is unclear why, in addition to the fact that social inclusion measures did not produce the expected results, their introduction in the new Law on Amendments to the Law on Social Protection is insisted upon.⁶⁶

The uneven and sporadic implementation of the Decree is another problem. Namely, while some centers for social work failed to apply the Decree at all, others forced hundreds of beneficiaries to “earn” their financial social assistance. The manner of exercising the right to social assistance depends on the place of residence of the applicants, which may also violate the right to equal protection of the rights guaranteed by Article 36, paragraph 1 of the Constitution of the Republic of Serbia. The essential problem, however, remains the fact that the obligations imposed on beneficiaries of financial social assistance under the Decree are contrary to the Constitution and international obligations of the state in relation to the prevention of forced labor.

OBSTACLES TO EXERCISING THE RIGHT TO FINANCIAL ASSISTANCE

Major shortcomings in the field of social protection are solutions that make it difficult for individuals from vulnerable groups to access financial assistance or that reduce its amount, which undoubtedly have negative impacts on the principle proclamations about the poverty reduction and social inclusion.

DURATION OF FINANCIAL SOCIAL ASSISTANCE AND MISSED EARNING

In examining the fulfillment of the commitments undertaken by the Republic of Serbia on the basis of the European Social

64 One of the factors limiting the effects of public works is the fact that the experience gained by participating in public works does not result in a greater chance of finding and retaining a more permanent job. See Branka Anđelković, Pavle Golicević, *Process Evaluation of Public Works Conducted in Serbia in 2008 and 2009*, Belgrade, Social Inclusion and Poverty Reduction Unit, April 2010.

65 Explanatory note to the Draft Law on Amendments to the Law on Social Protection, available at: <https://www.minrzs.gov.rs/javni-poziv-za-ucesece-u-javnoj-raspraf66ffdf7554e7.html>, 9 August 2018.

66 For more information on collected survey data, see: A 11 – Initiative for Economic and Social Rights – *In focus: Four years of forced labor in Serbia, results of the implementation of the Decree on Measures of Social Inclusion of Beneficiaries of Financial Social Assistance*, available at: https://www.a11initiative.org/wp-content/uploads/2018/10/Uredba_SR.pdf

Charter (revised), the European Committee of Social Rights, in its conclusions for 2017 and 2016, found that the situation in Serbia was not in accordance with Article 13 of the Charter, since the amount of social assistance to which socially disadvantaged individuals are entitled to is clearly inadequate and does not go beyond the poverty line.⁶⁷ The amount of financial social assistance in Serbia is often not sufficient to cover basic costs, such as social housing rental costs and utility bills⁶⁸, and such a situation and position of socially disadvantaged individuals are exacerbated by **interruptions in receiving financial social assistance**. Namely, Article 85, paragraph 3 of the Law on Social Protection envisages that able-bodied people or families in which the majority of members are able to work are entitled to **financial social assistance for up to nine months during the calendar year**. Due to the above provisions, during remaining three months some families are left with no income at all.

Difficulties faced by able-bodied beneficiaries of financial social assistance are illustrated by the example of families from the settlement Jabučki Rit who receive financial social assistance for nine months, and for the remaining three months they do not have the means for basic subsistence.⁶⁹ In addition to the regular three-month interruption in receiving financial social assistance, these families experience delays during the re-application for the social assistance, which usually lasts for three months; during that period they remain with no income. Although they retroactively receive the delayed amount, these families point out that by that time their debts (plus interests) are too high and they cannot afford to pay them. As a result, some families in the settlement have utility debts that have triggered enforcement proceedings against them, and electricity was cut off to a family of eight. In the period when they do not receive financial social assistance, these families apply for one-off financial assistance in order to try to provide livelihood and pay bills (which, unlike social assistance, they receive throughout the year). However, they were told by the competent centers for social work that they could apply for one-off financial assistance once they receive decision re-approving the financial social assistance. The one-off assistance is granted to persons who suddenly or due to extraordinary circumstances find themselves in a state of social need. Such a situation may be experienced by families or individuals that are not beneficiaries of the financial social assistance and the right to one-off financial social assistance is not closely related to beneficiaries of the right to social financial assistance.⁷⁰

In social housing buildings in Zemun, in Kamendin settlement, the rents and utility bills are much higher than in Jabučki Rit, and some tenants have been living without electricity for years

and under threat of forced eviction.⁷¹ Data provided to A 11 Initiative by the Belgrade Electric Power Company show that of 499 social housing flats in Akrobate Aleksića Street, over 12% have electricity supply cut off due to unpaid bills. In Zemun polje, in Dušana Maderčića Korčagina Street, 4.9% of social housing beneficiaries are without electricity supply. It is not difficult to conclude what are the consequences of interruptions in receiving financial social assistance for families whose financial social assistance amount is barely sufficient to pay the bills. The time limit of financial social assistance further exacerbates the situation of individuals who have fallen into poverty and are unable to provide resources for basic needs.

As with interruptions in receiving financial social assistance, when it comes to the calculation of **missed earnings** (which the beneficiaries did not make, but according to the opinion of the centers for social work could have generated)⁷² there is an unfair assumption that beneficiaries should be blamed for their vulnerability and that probably they have or should have informal jobs. Thanks to this category of missed earning, centers for social work have discretion right to determine the income that beneficiaries of financial social assistance could have achieved if they had had employment, and to reduce financial social assistance by that amount, although beneficiaries of financial social assistance did not generate any income.

From the standpoint of non-discrimination and the principles of social justice, it is unacceptable to assume that everyone is able to earn a certain amount of money, that everyone who is able to work can earn income sufficient for themselves and their families for three months, that, if they fail, they should be blamed, and may be denied the right to financial support, regardless of the severity of poverty. Such restrictions on the right to financial support are disproportionately affecting individuals who have already experienced multiple discrimination and poverty. Given the consequences that interruptions in provision of financial social assistance and the attribution of missed earning have on socially disadvantaged persons, it is necessary to repeal provisions that reduce already insufficient amounts of financial social assistance.

A particular problem represents arbitrary decisions on opportunity costs. There was one case in which it was determined that missed earning amounted to as much as 15,000 dinars.⁷³ Such high amount of missed earning was calculated based solely on the fact that the applicant was able-bodied; there was no explanation or assessment of objective chances of that person to generate the above income. Such treatment constitutes a drastic misuse of the system of free evaluation of evidence⁷⁴ and vio-

67 European Committee of Social Rights, *Conclusions 2017 – Serbia – Article 13 Paragraph 1 – Adequate assistance for every person in need*, available at: <http://hudoc.esc.coe.int/eng?i=2017/def/SRB/13/1/EN>

68 For example, bills or utilities received by people renting social housing units in Kamendin in Zemun exceed the amount of their total monthly income i.e. financial social assistance. See A 11 – Initiative for Economic and Social Rights, *Report based on the questionnaire prepared by the Special rapporteur on the right to adequate housing on the occasion of the preparation of her forthcoming report to the General Assembly on the issue of informal settlements and human rights*.

69 Interviews with beneficiaries of social housing in the settlement Jabučki Rit held on 21 February 2018.

70 It is confirmed in the opinion no. 011-00-997/2008-09 dated 25 December 2008 of the Ministry of Labor, Employment, Veteran and Social Affairs. The opinion refers to the previous Law on Social Protection, but both types of financial support are similarly defined in the current law, as well.

71 For more information on problems faced by social housing beneficiaries, see under the chapter „Housing“.

72 Centers for social work calculate missed earnings and calculation and opinion of the centers are used as evidences required to exercise the right to financial social assistance. See Article 102 of the Law on Social Protection and Regulation on Forms Required to Exercise Rights to Financial Social Assistance (Official Gazette of RS, no. 39/2011).

73 Copy of the decision is in the possession of the A 11 Initiative.

74 In compliance with Article 102 of the Law on Social Protection, opinions and findings of centers for social work determining missed earnings serve as evidences required for exercising the right to financial social assistance. The Law on General Administrative Proce-

lation of the principle of truth, resulting in the denied right to financial social assistance.

The draft law failed to delete provisions on calculation of missed earning and time-limited financial social assistance, despite the fact that the UN Committee on Economic, Social and Cultural Rights after reviewing Serbia's latest report on the implementation of the International Covenant on Economic, Social and Cultural Rights, stressed that interruption in receiving financial social assistance represents one of the key issues that are not in compliance with obligations under Article 9 of the Covenant.⁷⁵

OBLIGATION OF BENEFICIARIES OF FINANCIAL SOCIAL ASSISTANCE TO FILE A LAWSUIT FOR SUPPORT

Among obstacles faced by socially vulnerable people in accessing social protection is the obligation to file a lawsuit for support against next of kin prescribed by Article 84 of the Law on Social Protection.⁷⁶ Beside posing a large burden in terms of the lawsuit filing procedure, another problem for applicants is the fact that they are not willing to submit a lawsuit against next of kin.

The abovementioned can be illustrated by the example of Petar and Jelena.

“I am ashamed of suing my children, I could never do that.”

Petar and Jelena are internally displaced from Kosovo and used to be beneficiaries of financial social assistance until January 2018; financial social assistance was the only source of income. In February 2018, Petar was informed that it is necessary to file a lawsuit against his three sons; otherwise his application will be rejected. Petar stressed that his sons have families on their own and barely enough income to satisfy their needs. He was afraid that by filing a lawsuit against his sons, he would permanently damage relationship with them and their families or jeopardize their livelihood and create difficulties

dure stipulates the principle of free assessment of evidence, which means that the authorities shall at their discretion determine which acts are to be admitted as evidence on the basis of a conscientious and careful assessment of each piece of evidence individually and the body of evidence as a whole, as well as on the basis of the outcome of the entire procedure (Article 10 of the Law on General Administrative Procedure). However, such an evidence admission system requires protection from possible abuses (see Constitutional Court of Serbia, UŽ. 3109/16, 26 October 2017). The assurance that the authority will evaluate the evidence impartially lies in its duty to provide reasonable reasons to corroborate decisions. However, when assessing missed earnings, centers for social work mainly neglect that obligation and decide arbitrary without proper statement of reasons to clarify how missed earnings are assessed.

75 Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of Serbia*, 10 July 2014, *op. cit.*

76 For more information on explanation how the obligation to file a lawsuit renders the access to financial social assistance harder and fails to fulfill objectives of its introduction, see N. Bodiroga, *Right to financial social assistance of beneficiaries entitled to maintenance*, Belgrade, November 2013, available at: https://www.praxis.org.rs/images/praxis_downloads/Pravo%20na%20novcanu%20socijalnu%20pomoc%20korisnika%20koji%20ima%20pravo%20na%20izdrzavanje.pdf

77 N. Bodiroga, *Right to financial social assistance of beneficiaries entitled to maintenance – legal analysis of Article 84 of the Law on Social Protection*, *op. cit.* A meeting was held on October 2, 2015 with representatives of civil society organizations to discuss announced amendments to the Law on Social Protection; CSOs stressed in that occasion that one of deficiencies is the obligation to file a lawsuit against next of kin. See *Report from the meeting organized by the Ministry of Labor, Employment, Veteran and Social Issues with civil society organizations*, *op. cit.* Draft Law on Amendments to the Law on Social Protection passed in July 2018 envisages that in addition to a court ruling on support, a court settlement or proof that the procedure for determining the obligation to provide support has been initiated, evidence may be submitted that an administrative settlement has been reached at the center for social work in charge. However, an administrative settlement will not be applicable in a large number of cases where relatives who are under the obligation to provide support do not live in the country or if the beneficiaries even do not know their address. This will not simplify the procedure for exercising the right to financial social assistance. Moreover, judging by the text of the Draft Law on Amendments to the Social Protection Act of 2019, it seems that the introduction of the possibility of concluding an administrative settlement has also been abandoned.

78 Official Gazette of RS, no. 87/2011.

79 For more information on registration of residence for individuals lacking legal grounds for residence and related obstacles, see Praxis, *Residence registration in RS – review of remaining challenges*, Belgrade, December 2014, available at: https://www.praxis.org.rs/images/praxis_downloads/Prijava_prebivalista_u_RS_-_kratka_analiza_preostalih_izazova.pdf. See also, Praxis, *Determining the time and place of birth, citizenship right and residence registration – review of remaining challenges*, Belgrade, December 2017, p. 28–32.

and high costs. He decided not to file a lawsuit although he was warned that he will not be entitled to financial social assistance. Petar explained his decision by saying: „ I am ashamed of suing my children, I could never do that.“ In April 2018, his application for financial social assistance was rejected because he failed to submit evidence on lawsuit against his sons. Neither him nor his wife are able-bodied, they are both over 65 and seriously ill; after rejection of the application for financial social assistance, they are left with no livelihood.

Considering severe consequences faced by the poorest citizens, it is necessary to delete Article 84 of the Law on Social Protection because it burdens courts unnecessarily, harm family relations, and impose on citizens applying for financial social assistance burden disproportionate to the potential unburdening of the state which could be achieved by determining the bargain amounts of subsistence.⁷⁷

DIFFICULTIES REGARDING RESIDENCE REGISTRATION

Although the objective of the Law on Permanent and Temporary Residence passed in 2011⁷⁸ was to enable registration of residence to individuals lacking legal grounds⁷⁹, impossibility to register residence represents an obstacle rendering access to rights, including right to social protection, harder to vulnerable people.

The A 11 Initiative visited Orlovsko naselje, a settlement in Belgrade, and met an internally displaced family, returnees under readmission agreement, living with no electricity and no water in a building that is too small and does not meet any need of the family with a pregnant woman, a baby under two and a cancer patient. The shack they live in has not been legalized and therefore it is not possible to register residence there; family members have not heard of a possibility to register residence at the address of the center for social work. Although living in extreme poverty, they do not receive any kind of financial support.

By providing a possibility to register residence at the address of the center for social work, the Law on Permanent and Temporary Residence has facilitated access to fundamental social and economic rights to marginalized groups, but some people still do not know about this option. On the other hand, those who are aware of this possibility often have difficulties to apply for the residence registration. Namely, in order to initiate the procedure, applicants are required to write an application and statement showing soundness of the application i.e. showing that it is not possible to register residence elsewhere. When organizing field visits and working with vulnerable people, the A 11 Initiative often meets people that cannot write an application to register residence or a statement, and therefore they are left unregistered and with no access to numerous other rights, including the social protection right.

Difficulties with residence registration are faced also by beneficiaries of social housing and housing for refugees and internally displaced persons. Specifically, only tenants and/or beneficiaries and members of their households listed in the lease agreement may register residence in these apartments. New household members cannot register residence without an annex to the original lease agreement. People unable to solve this problem are often left without the right to health or social protection. During a field visit to Kostolac settlement, in three out of 12 families, beneficiaries of social housing started common-law families, but their common-law wives and their children, including one infant, were not able to register residence because they had not been listed in the lease agreement as family members.

Ramadan is an internally displaced person to whom, within the framework of housing program for internally displaced persons and vulnerable population, a prefabricated house in Kostolac was leased. In July 2017, he approached the Požarevac City Administration, where he has his lease agreement concluded, and asked to register the residence of a new family member, that is, his son's common-law wife, but never received any response. In April 2018, he applied for financial social assistance, expecting that financial social assistance would be recognized at least to those household members provided with registered residence. An officer of the center for social work refused to receive the application explaining that some of family members do not have residence registered in Kostolac. Despite the obligation of the authorities to receive all applications and decide upon, verbal rejection of applications and the attitude of officials in the centers for social work are among common problems cited to the A 11 Initiative by socially disadvantaged people as an obstacle to access social protection rights.

VIOLATION OF THE PRINCIPLE OF GOOD GOVERNANCE

The current practice shows significant number of typical examples of violation of the principle of good governance. Usually they refer to verbal rejection of applications, arbitrary implementation of regulations, lack of compliance with deadlines to decide in procedures before the centers for social work, etc.

ILLEGAL ACTIONS OF CENTERS FOR SOCIAL WORK – VERBAL REJECTION

80 See SIGMA principles of public administration, Area – Service Delivery – Principle 4, available at: <http://www.sigmax.org/publications/Principles%20-ENP-Eng.pdf>

81 Praxis also calls attention to the violation of the obligation to collect documents ex officio. See Praxis, *Determining the date and place of birth, right to citizenship and permanent residence registration – analysis of remaining obstacles*, op. cit., p. 34–36.

OF APPLICATIONS AND VIOLATION OF OBLIGATION TO COLLECT EVIDENCES

Despite efforts to improve the efficiency and service role of government bodies through the process of public administration reform, vulnerable groups are still faced with obstacles in exercising social protection rights i.e. illegal and inefficient actions by officers of centers for social work.

In Kostolac settlements, several families complained to the A 11 Initiative saying they do not receive financial social assistance due to the fact that their applications were rejected verbally, with an explanation that they are able-bodied or that some members of their households are able-bodied and that they should go to work instead of applying for financial social assistance. People living in a Roma settlement in Požarevac are mainly not beneficiaries of financial social assistance despite the poverty they live in. Those who tried to submit applications complain that their applications were rejected verbally by officers of centers for social work providing different explanations. For example, an application for financial social assistance was rejected because applicant's son is able-bodied. Those socially vulnerable Roma managed to exercise their social protection rights only after submitting statements in the procedure for protection against discrimination initiated by the A 11 Initiative. Upon submission of a complaint due to the discrimination of internally displaced Roma in Požarevac in procedures before the center for social work, the center invited witnesses that earlier had given certified statements, put pressure and required them to change their statements. The Commissioner for the Protection of Equality determined that the center for social work in Požarevac violated provisions of the Law on the Prohibition of Discrimination and all witnesses in the process managed to achieve their social protection rights.

Citizens in Požarevac state that they cannot contact the center for social work during the displayed working hours, but it is necessary to make a telephone appointment and wait for about 20 days for the „appointment scheduled for submission of applications“. The inability to contact the authority during displayed working hours and imposition of additional conditions in practice is contrary to the principles of the public administration and obligation of authorities to disclose accurate information and clear guidelines on services provided as well as on rights and obligations of beneficiaries.⁸⁰ The fact that citizens have to wait for 20 days just to submit application is a problem especially for those applying for one-off financial assistance because of the urgent and sudden expenses.

Despite the obligation of the authorities to gather evidence ex officio, some beneficiaries of financial social assistance presented to the A 11 Initiative lists they received at the centers for social work, indicating documents they are required to obtain.⁸¹ Based on the experience gained during field visits and interviews with social assistance beneficiaries, it has been concluded that **some centers for social work avoid their obligation to collect documentation ex officio** by claiming that the procedure will take much longer if the authorities

are to gather evidences. Some centers for social work gather *ex officio* only the evidences to be obtained from authorities whose headquarters are not in the same place in which the party lives. However, practice shows that the center for social work in Bor does not provide evidences even when parties are forced to travel to distant places. This is often a problem for IDPs, who have to travel to places where the registry or police offices are located - Niš, Vranje, Kraljevo, Kruševac, Kragujevac, Jagodina and Leskovac. For example, to one family from Bor, with which the A11 Initiative cooperated, the application for financial social assistance was rejected because it failed to obtain all documents required by the center for social work within the set deadline, although the center was obliged to procure all data from official records *ex officio*.

LONG-LASTING PROCEDURES

Inefficient procedures conducted by the centers for social work are among difficulties. Processing an application submitted by V.Č. for financial social assistance to the center for social work „Solidarnost“ Pančevo lasted for five and a half years; therefore in June 2017, the Constitutional Court found **violation of the right to a trial within a reasonable time**.⁸² The reasoning of the Constitutional Court's decision states that „decision on the application of the applicant requiring financial social assistance was not decided upon because the applicant of the constitutional complaint 'was contacted' after submitting the application for the purpose of filling in the application for financial social assistance and submission of necessary documentation, but the applicant failed to respond; consequently the center for social work concluded that the application has never been submitted“. The Constitutional Court emphasized that the center for social work was obliged to decide officially and to submit decision to the applicant.⁸³ Despite the aforementioned obligation of the authorities, some socially vulnerable people are still not able to exercise their right to financial social assistance due to verbal rejection of the application and inefficient procedures of the centers for social work. Similar difficulties are faced by J.S. The procedure concerning her application for financial family allowance lasted five years; after five years the final decision was still not rendered; the Constitutional Court decided that the center for social work violated the right to a trial within a reasonable time.⁸⁴

The position of parties in administrative proceedings, including beneficiaries of financial social assistance, was further exacerbated after the entry into force of the Law on the Protection of the Right to Trial within a Reasonable Time⁸⁵, since that law provides protection only to parties in court proceedings. Parties in administrative proceedings regarding exercising of rights that may be of existential importance, such as financial social assistance, do not have the opportunity to file a complaint and require acceleration of procedure envisaged by the Law on the Protection of Right to Trial within a Reasonable Time in cases of inefficiency of authorities. An

additional cause for concern is data from the Republic Institute for Social Protection indicating that **the number of staff in centers for social work has been reduced, while the number of beneficiaries increased**.⁸⁶

“TWO THOUSAND FOR THE LADY“ – ARBITRARY DECISION MAKING ON SOCIAL PROTECTION RIGHTS

The violation of the basic principles of the administrative procedure happened in Jagodina when deciding on **one-off financial assistance**. Namely, in that town the one-off financial assistance was awarded in a situation when several socially vulnerable citizens gathered in premises of the Jagodina city administration and the former mayor of Jagodina, Dragan Marković Palma, interviewed gathered citizens on reasons for applying for financial assistance, number of family members, and decided on the spot on their applications and the amount of one-off assistance to be awarded.⁸⁷

Although in certain situations there is a possibility of making a verbal decision, the way in which financial support was granted in this case goes against all the rules of administrative procedure, including the provisions on the decision-making authority; there was no legal remedy for parties that are not satisfied with the decision, and there is also an issue regarding how the funds are spent. The states have wide latitude in designing measures in the area of social policy. However, once the legal regime is in place and individual rights are guaranteed under domestic law, the manner in which they are exercised must comply with positive rules and rules of procedure that protect citizens from arbitrariness. In the above example, granting the right to one-off financial assistance in Jagodina grossly violated the key principles of good administration: legality, fairness, equal treatment, proportionality, and lawful use of discretionary powers. In the above example, the established legal regime was replaced by the arbitrary decision-making, without giving reasons for the decision, without specifying the regulations that are the legal basis for decision-making, without stating the facts decisive for reaching a decision, without any legal remedy. Such a procedure does not guarantee citizens any objectivity or impartiality. Moreover, in order to qualify for financial assistance, socially vulnerable people had to publicly disclose details of their material status and family life, which was then broadcasted on television. Such treatment is not only contrary to the principle of respect of the integrity and dignity of beneficiaries, as one of the basic principles of social protection, but also represents an unjustified interference with the sphere of private and family life. As a result, by doing so, the exercise of the right to financial social assistance is reduced to alms, not to the right belonging to every citizen who finds himself or herself in a state of social need.

82 Constitutional Court, Decision no. UŽ-5337/2015, 8 June 2017.

83 Ibid.

84 Constitutional Court, Decision no. 6193-2013, 10 February 2016.

85 Official gazette of RS, no. 40/2015.

86 Republic Institute for Social Protection, *Report on operations of centers for social work for 2016*: „In comparison with the previous year, the total number of staff in centers for social work was reduced by 18%, while the number of beneficiaries increased by 4%“, p. 8, available at: http://www.zavodsz.gov.rs/PDF/izvestaj2017/CSR%202016_final.pdf

87 See *Local insider: Jagodina idyll (30 January 2018)*, available at: <http://rs.ninfo.com/a360729/Video/Info/Insajder-na-lokalu-Jagodinska-idi-la-30.1.2018.html>, 28 May 2018.

REDUCTION OF PENSIONS – ARBITRARY, ILLEGAL AND WITH NO VALID BASIS

As already mentioned, the pension reduction was introduced by the Law on Temporary Regulation of the Method of Payment of Pensions⁸⁸ passed in 2014, as one of the most important measures aimed at reduction of budget deficit of the Republic of Serbia. The Law prescribes progressive reduction of pensions for all pensioners whose pensions exceeded 208 euro; the cutback affected around 40% of pensioners in the Republic of Serbia. Despite the fact that these pensions are contributory benefits and that the entitlement to this benefit is linked with the payment of contributions which pensioners were paying throughout their years of service, no compensation mechanism was established. Reductions of pensions were introduced *ex lege*, automatically.⁸⁹ No legal remedy was provided for. Pension cuts were introduced unselectively, without considering individual circumstances of each case and impact of this reduction on enjoyment of other rights.

As reduction of pensions was introduced by the law, in general manner, without issuing individual decisions subjectable to judicial or administrative review, pensioners were denied the right to legal remedy. This is in contradiction with the requirement that the withdrawal, reduction or suspension of benefits should be subject to due process and obligation to provide access to effective judicial or other appropriate remedies and adequate reparation.⁹⁰

As there was no right to legal remedies in individual cases, initiatives for assessment of constitutionality of the Law were submitted to the Constitutional Court.⁹¹ In October 2015, the Constitutional Court passed a ruling dismissing the initiatives.⁹² Later, when budget deficit was reduced and dozens of new initiatives for assessment of constitutionality of the Law submitted, the Constitutional Court was avoiding to issue a decision for more than three years i.e. as long as the Law remained in force. Two judges of the Constitutional Court expressed their opinion and pointed out that the court was avoiding ruling on the initiatives submitted later, with no reasonable explanation.⁹³

The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of the existing

social security coverage.⁹⁴ The fact that pension cuts in Serbia lasted for four years, without periodical reviews suitable to determine if reductions were still justified, necessary and proportionate, imposes a conclusion that these restrictions were arbitrary and unreasonable. Furthermore, there was no participation of affected group in examining this measure and its alternative.

CONCLUSION

The social protection system, although burdened with many weaknesses, questionable efficiency and insufficient number of employees with many competences, has undergone numerous changes that diminish the guaranteed level of entitlements and make it difficult to obtain social benefits, especially for those most at risk, since the introduction of austerity measures. It began with the adoption of the Decree on Measures of Social Inclusion of Beneficiaries of Financial Social Assistance and continued with the announced amendments to the Law on Social Protection, as well as amendments to the Law on Financial Support for Families with Children.⁹⁵ If this negative trend of marginalization of beneficiaries of financial social assistance and the currently dominant approach to social protection continue, it is possible to expect the introduction of a so-called *workfare*, a system in which beneficiaries of social benefits have to „work off“ social transfers they are entitled to. Such solutions are in no way in conformity with the constitutional guarantees or obligations of the Republic of Serbia under the international treaties it has ratified.

88 Official Gazette of RS, no. 116/2014 and 99/2016.

89 For more information on this topic, see, for example, Opinion of judge Dragan M. Stojanović on the Decision of the Constitutional Court, case no. IUz-531/2014.

90 UN Committee on Economic, Social and Cultural Rights, Right to Social Security (Article 9) (thirty ninth session, 2007), UN Doc. E/C/12/GC/19 (2008).

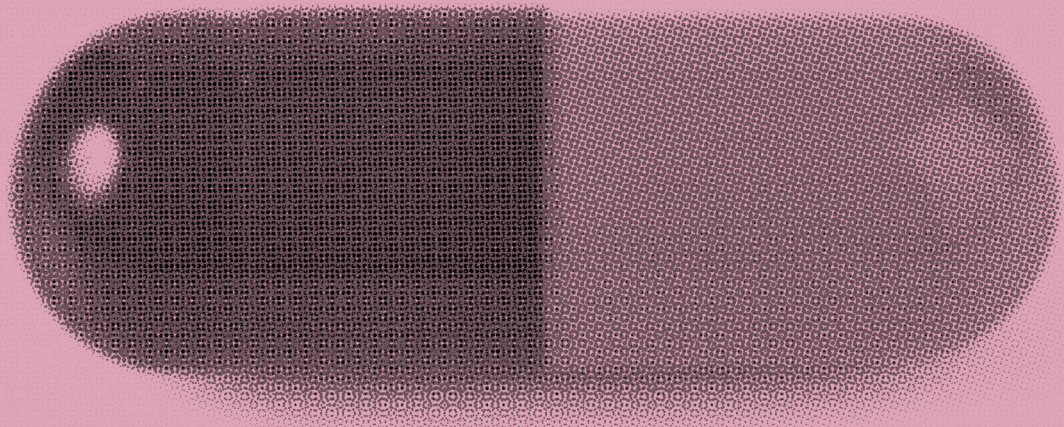
91 For more information, see Opinion of judge Bosa Nenadić on Decision of the Constitutional Court, case no. IUz-531/2014.

92 Constitutional Court, Decision on rejection of the initiative, IUz-531/2014.

93 Constitutional Court, Decision on suspension of the constitutionality assessment, IUz-351/2015. See, Agreed opinion of judge Tamaš Korhec and opinion on Decision of the Constitutional Court no. IUz-351/2015 of judge Milan Škulić.

94 UN Committee on Economic, Social and Cultural Rights, Right to Social Security (Article 9) (Thirty ninth session, 2007), UN Doc. E/C/12/GC/19 (2008).

95 Although the primary goal of the Law on Financial Support for Families with Children is not poverty reduction, but boosting birth rate, this report reviews also provisions of the above Law due to undoubtful effects on poor children and inadmissible exclusion of the most vulnerable children.



HEALTH PROTECTION

“You can kill me, and I still would not know on what twenty percent of the budget set aside for healthcare is being spent. That is a huge amount of money.”⁹⁶

Some of the measures and changes to the regulations that have taken place in Serbia in recent years have been aimed at improving health and facilitating access to health care for members of marginalized or particularly vulnerable groups. However, despite gradual and important progress, such as better coverage with health insurance and reduction in infant mortality⁹⁷, regional health inequalities persist⁹⁸, immunization coverage remains drastically lower in Roma settlements as well as the early infant mortality rate.⁹⁹ In addition, individuals from groups identified as particularly vulnerable or at increased risk of disease remain without the possibility of applying for health insurance.¹⁰⁰ Access to primary and preventive health care is denied or rendered significantly difficult when socially vulnerable people are not covered by health insurance, which inevitably affects their health condition.

Health mediators, whose introduction was one of the most successful initiatives aimed at improving the health of Roma, still do not have their jobs systematized¹⁰¹, although this obligation was foreseen in the Action Plan for Chapter 23¹⁰² and the Strategy for Social Inclusion of Roma in the Republic of Serbia from 2016 to 2025. Their number is insufficient, and their monthly income is lower than the national minimum. The research conducted by the Protector of Citizens shows that the Ministry of Health does not recognize the need, does not take any action or plan to regulate the position of health mediators in the health system in a sustainable and durable way.¹⁰³ Such an approach of the Ministry of Health minimizes the effects of those measures which have proved to be very important for improving the position of Roma persons in the health system and raises the question of potential discrimination against Roma health mediators.

96 See: Beta, Vučić: *God knows where goes huge amount of money allocated for health*, available at: <https://beta.rs/politika/113141-vucic-bog-otac-ne-zna-gde-ode-ogroman-novac-za-zdravstvo>

97 Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of Serbia, CRC/C/SRB/CO/2-3, 7 March 2017, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7y-hsvbbsmSbdrUo%2fjYBx5OfDhOO7%2bQBbV19wXsq7oeQOPr3yRlBxmI03VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmn8AqXDGwXEMbLLLjQ%2bPng>, para. 26.

98 Ibid, 45.

99 Data of the Serbian Statistical Office and UNICEF show that in Roma settlements there are only 12.7% fully vaccinated children according to the national immunization calendar of children aged 24–35 months, compared to 70.5% of children in general population. The mortality rate of Roma infants and children up to five years of age is approximately two times higher than the average in the Republic of Serbia. Statistical Office of the Republic of Serbia and UNICEF, 2014. *Serbia Multiple Indicator Cluster Survey ON Roma Women and Children, Final Report, Belgrade, Serbia: Serbian Statistic Office and UNICEF*, iv, xvii, xix, 61.

100 Conclusions of the Committee on the Rights of the Child from 2017 state that the inadequate health insurance coverage affecting a considerable portion of the rural population and vulnerable groups, continues to hinder access to basic health-care services. Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Serbia*, CRC/C/SRB/CO/2-3, 7 March 2017, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7y-hsvbbsmSbdrUo%2fjYBx5OfDhOO7%2bQBbV19wXsq7oeQOPr3yRlBxmI03VRQ0E1ojTHB4LQ132IHm6hUqzJFgcBHRPmn8AqXDGwXEMbLLLjQ%2bPng>, 6/ / . 2018, paragraph 45.

101 Protector of Citizens, *Special report of the Protector of Citizens on Reproductive Health of Roma Women with Recommendations*, April 2017, available at: <http://www.ombudsman.rs/attachments/article/5536/Poseban%20izvestaj%20ZG%20Rep%20zdravlje%20Romkinja%2011.pdf>, p. 13.

102 Action plan for Chapter 23 envisages introduction of health mediators into the occupational system and completion of the job systematization in the IV quarter of 2016.

103 Protector of Citizens, *Special report of the Protector of Citizens on Reproductive Health of Roma Women*, op. cit., 3.

RIGHT TO HEALTH CARE AND HEALTH INSURANCE FOR CHILDREN, PREGNANT WOMEN AND NEW MOTHERS

Observations made by the Committee on the Rights of the Child provided on February 2017 illustrate to the great extent the situation in terms of the right to health and access to health care for marginalized groups in Serbia. The Committee for the Rights of the Child expressed particular concerns regarding Roma mothers and young children who are particularly vulnerable and continue to have limited access to adequate maternal and general health care, resulting in high mortality rates, early births and low rates of immunization against childhood diseases.¹⁰⁴

While the Committee notes progress in terms of reduction of child mortality rate, it is seriously concerned that the **infant mortality rate remains above the European Union average**. It is further concerned about high levels of malnutrition and stunting affecting the Roma community, with poverty and social isolation further exacerbating the situation.¹⁰⁵

A number of measures have been taken to facilitate access to health care for vulnerable groups, with particular reference to children, pregnant women, mothers during maternity leave, Roma without permanent residence and other particularly vulnerable people or groups at increased risk of disease.¹⁰⁶ However, lack of consistency between by-law and main regulation, illegal actions of branch offices of the Republic Health Insurance Fund (hereinafter referred to as the “RHIF”), complicated procedures for health insurance application and deregistration continue to make it difficult to access health insurance and health care for groups that should receive particular protection and are entitled to the health insurance.

In November 2013, the Law on the Exercising of Rights to Health Care of Children, Pregnant Women and New Mothers¹⁰⁷ was passed, regulating exercising of right to health care for the abovementioned groups in case they are not able to exercise that right based on the law governing health insurance. Thanks to the above law, children, pregnant women and new mothers may exercise their right to health care on the basis of the health insurance card, regardless of its validity. In order to be entitled to the health care, besides having the health insurance card, it is necessary for pregnant women and new mothers to have a report by a specialist determining pregnancy or discharge note after delivery, while children need only a document stating the date of birth or unique personal identification number.¹⁰⁸ Yet, the above law regulates the access to health care only for people who have the health insurance card¹⁰⁹, but due to unpaid contributions or other reasons, it is not valid. The scope of the law does not cover children, pregnant women and new mothers who do not have health insurance card at all.

Although the Law on the Exercising of Rights to Health Care of Children, Pregnant Women and New Mothers regulates the access to health care to those people who already have the health insurance card (regardless whether it is valid), the access to health care should be ensured to other children, pregnant women and new mothers as well, aimed at fulfilling obligations of Serbia under international treaties and recommendations of bodies monitoring the implementation of those obligations.¹¹⁰

In real life, however, children, pregnant women and new mothers from marginalized groups are still facing difficulties

104 Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Serbia*, op. cit., paragraph 45.

105 Ibid.

106 Constitution of the Republic of Serbia, Law on Health Protection, Law on Health Insurance, Law on the Exercising of Rights to Health Care of Children, Pregnant Women and New Mothers and Labor Law recognize children, pregnant women and new mothers during maternity leave as particularly vulnerable groups. Aimed at facilitating access to health insurance and health care, Roma without registered permanent or temporary residence are recognized in regulations governing the exercising of rights to health insurance as a particularly vulnerable category.

107 Official Gazette of RS, no. 104/2013.

108 Republic Health Insurance Fund, *Implementation of the Law on the Exercising of Rights to Health Care of Children, Pregnant Women and New Mothers*, available at: http://www.rfzo.rs/download/zakoni/Instrukcija_obrasci_trudnice.pdf

109 Although the term „health insurance card“ is used in the legislation, the report will use the term „health card“.

110 In February 2017, the Committee on the Rights of the Child recommended to the Republic of Serbia to ensure the availability of and equitable access to quality primary and specialized health care for all children in the country, and strengthen efforts to ensure that access to adequate health care, including prenatal care for uninsured pregnant women, is extended to families living in the most vulnerable situations, particularly those living in marginalized and remote areas. The Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Serbia*, op. cit., paragraph 46.

regarding the access to health care, even when it comes to giving birth, which qualifies as an emergency and emergency health care is guaranteed to all people that do not qualify for the health care otherwise.¹¹¹

CHARGING FOR CHILDBIRTH AND MEDICAL TREATMENT

A particular problem in the field of health care is charging or attempting to charge for costs of childbirth to women not covered by the health insurance.

CHARGING FOR CHILDBIRTH COSTS

Zara contacted the A 11 Initiative because of problems her daughter and niece had in exercising health care rights. Zara's niece gave birth in May 2018 in the Zemun maternity hospital and she did not have health insurance card. As she said, she was requested to pay childbirth costs and was threatened that the hospital will contact the center for social work that will take her child away. The center for social work actually got involved in this case, but by helping her to leave the hospital without paying childbirth costs.

Zara's daughter Ana is now about to give birth. She is not registered in the birth registry and has no personal document, including health insurance card, and therefore the family is afraid of receiving high bill for childbirth. They have been told that they are not required to pay childbirth costs. However, pregnant women without health insurance card uninformed about their health care rights are afraid of being asked to pay for childbirth costs. An even greater problem is the fact that staff in certain health care facilities illegally attempt to charge women without health insurance card for childbirth costs by telling them that they will not be able to take their new-born children from the hospital. Of particular concern is that such problems occur in maternity wards, including Zemun hospital, that must have been informed about rights of pregnant women not provided with documents or health insurance card. In 2015 in the process of controlling the legality and regularity of work of the Zemun Clinical-Hospital Center, the Protector of Citizens identified deficiencies in operations of this institution due to the fact that the hospital tried to charge childbirth costs to a Roma patient belonging to a particularly vulnerable group and without health insurance documents.¹¹² In May 2018, the same health institution tried to charge childbirth costs to a patient in a situation for which the Protector of Citizens had already send

recommendations on how to proceed.

It is positive that the law provides that pregnant women, children and mothers during maternity leave can exercise their right to health care even if they are not provided with valid health insurance card. However, for particularly vulnerable groups such as Roma children, pregnant women, and undocumented mothers, the problem is not that there is no basis for their insurance or the fact that their health insurance document is not valid. The problem is that they do not have the documents necessary to apply for health insurance. Persons who do not have the necessary documents or registration of residence (which, despite the great progress made in recent years, is not uncommon among Roma population) are denied access to health care, despite being recognized as a particularly vulnerable group (due to their characteristics, status or age) requiring facilitated access to health care.

The Special Report of the Protector of Citizens on the Reproductive Health of Roma Women confirms that "there are still cases that Roma do not exercise health insurance rights because they are not registered in the register of births or do not have registered residence. Although the number of such cases has been reduced [...], it is not negligible and affects Roma women and children, in particular. In most of the cases, Roma are entitled to register residence at the address of the center for social work, but there are exceptions."¹¹³

CHARGING COSTS FOR MEDICAL TREATMENT

Article 131, paragraph 1, item 4, line 5 of the new Health Insurance Law¹¹⁴ regulates that the insured persons shall have at least 65% of health service costs covered by the mandatory social insurance for "diseases the early detection of which is subject to targeted preventive checks or screening, in compliance with the national program, when the insured person failed to undergo preventive screening or justify her/his absence, and the disease has been identified in the following screening cycle". Actually, this provision introduces **sanctions to individuals failing to attend preventive screening**. Although it is undisputable that preventive screenings and early detection is of utmost importance for successful treatment, in particular for some cancer types, there is a question of justification of prescribing sanctions to individuals failing to attend preventive screening. Besides, there is a question whether the above provisions of the Health Insurance Law are in compliance with the state's obligations under Article 12 of the International Covenant on Economic, Social and Cultural Rights.¹¹⁵

In situations where people cannot afford to pay the remaining 35% of costs of colon, cervical or breast cancer treatment¹¹⁶, the consequence may be a complete failure to treat those diseases that leads to a fatal outcome.¹¹⁷ Considering

111 Article 17, paragraph 1, item 9 of the Health Care Law (Official Gazette of RS, no. 25/2019), governs that the Republic of Serbia shall provide, as the general interest in health care, emergency medical care to persons of unknown residence, as well as other persons that are not entitled to emergency healthcare in conformity with other regulations.

112 Protector of Citizens, Recommendation 6-4-10/15, del. br. 416, 9 January 2015, available at: http://www.ombudsman.rs/attachments/3645_preporuka%20KBC%20Zemun.doc

113 Protector of Citizens, *The Special Report of the Protector of Citizens on the Reproductive Health of Roma Women*, op. cit., 11.

114 Official Gazette of RS, no. 25/2019.

115 Article 12 of the Covenant prescribes that states recognize rights of all people to the best physical and mental health.

116 According to some data and surveys, the average costs of cancer treatment per patient in first six months amount to some EUR 6,950.

117 Savana Norman, a student from the Duke University and a participant of the 2019 Duke Engage program provided research assistance to the A 11 Initiative on this issue.

that mandatory screening check-ups refer to women to greater extent than men (mandatory screening check-ups cover women from 50 to 69 years of age for breast cancer, women from 25 to 64 years of age for cervical cancer and men from 50 to 74 years of age for colon cancer), there might be an issue of disproportional negative impact to women who failed to attend the screening check-ups and who cannot afford to pay 35% of treatments. According to some studies, the average cost of newly diagnosed cancer per patient in the first six months is \$ 7,676.¹¹⁸ This means that for the average patient, the cost of treatment in this case can go from just over five times the average salary (in case he or she earns an average salary) up to the annual income (in case she/he works for the median salary).

Therefore, the above mentioned provision of the Law on Health Insurance is in direct contradiction with provisions referred to in paragraphs 12 (b) and 18 of the General Comment 14 of the UN Committee on Economic, Social and Cultural Rights, prescribing state's obligation to ensure affordable health services, facilities and products and to ban discrimination and ensure equal treatment of all individuals, in particular those coming from the most marginalized groups. Its deletion, if accompanied by a comprehensive information campaign to promote screening, targeted specifically at those who are less informed, would probably not have any negative effects on early detection of cancer. On the contrary, it would increase the availability and affordability of health services, especially for those who are the most vulnerable.

TREATMENT OF PATIENTS WITH MULTIPLE SCLEROSIS

In the context of limited resources for the progressive realization of economic and social rights, including the right to health care, the key question is how to set priorities. According to data from MS Platform Serbia, out of fourteen registered multiple sclerosis medications, only four can be provided by the Republic Health Insurance Fund.¹¹⁹ These are so-called first-generation drugs not suitable for treating all forms of the disease, especially those considered more aggressive. It has been assessed that only 12% of patients in the Republic of Serbia are receiving the therapy provided by RHIF.¹²⁰ Some of the typical justifications regard solely the question of the price of medications of higher quality that are more suitable for the treatment of all forms of multiple sclerosis.¹²¹ Considering that it is not known that consultations were conducted in the health sector on setting priorities for the use of scarce resources, as well as the fact that about 88% of patients remain practically untreated, this situation is not consistent with the obligations of the state under Article 12 of the Covenant guaranteeing the right to health.

RIGHT TO HEALTH INSURANCE FOR ROMA WITHOUT REGISTERED PERMANENT OR TEMPORARY RESIDENCE

Pursuant to Article 16, paragraph 1 of the Law on Health Insurance¹²², persons of Roma nationality without a permanent or temporary residence in the Republic of Serbia due to their traditional way of life are considered to be insured, if they are not entitled to health insurance in other ways or as the insured family members. In practice due to the lack of harmonization of by-law regulation with the Law on Health Insurance, there was only a short period of time, from July 2010 to March 2012 that those people were able to register for health insurance without permanent or temporary residence registration. Prior to 2010, they were required to file a proof of residence, and after March 2012 they had to attach proof of registration of residence at the address of the center for social work. The latest change was caused by the adoption of the new Law on Permanent and Temporary Residence of Citizens. The aforementioned law finally creates a possibility to register residences in cases when people do not have a legal basis to do so. However, additional aggravation of the procedure of the health insurance registration and the introduction of the obligation to file residence registration proof is not justified, primarily due to the fact that the residence registration is a long-lasting process, and some people from marginalized groups are neither informed about the residence registration procedure nor able to initiate it without legal aid. More importantly, the introduction of such an obligation is contrary to the Law on Health Insurance, which explicitly refers to persons without permanent or temporary residence. Failure to comply with the Law on Health Insurance has serious practical consequences.

“If you don't have a health insurance card, go to private practice.”

Uka was an internally displaced Roma, without temporary or permanent residence registered. He got throat cancer and had surgery at the Serbian Clinical Center. After the surgery, unless he needed emergency medical care, he did not have access to health care, due to the fact he was not able to apply for health insurance because lacking the registered residence. He did not register his permanent residence because he lived in an illegal shack, with no legal basis of housing, and he was not aware that he was able to register residence at the address of the center for social work. The A 11 Initiative found out about his problems in the course of a field visit to the settlement he used to live in. At that time, documents and health insurance applica-

118 Aleksandar Dagović and Klazien Matter Walstra, compilers. Resource use and Costs of Newly Diagnosed Cancer Initial Medical Care. Available at: mattioli1885journals.com/index.php/Europeanjournalofoncology/article/view/3640/3187

119 Answer by the Ministry of Health no. 9-00-00017/2019-06 dated 17 July 2019 on MP's question made by Tatjana Macura on 27 June 2019.

120 In its reply to the request for access to information of public importance no. 07-33/19-2 dated 25 March 2019; the Republic Health Insurance Fund states that out of the total of some 9,000 patients with multiple sclerosis in Serbia assessed based on hospital records by the MS Platform, there are 1,083 treated at the expenses of the HIF.

121 For more information, see: *Insider, Little big stories, Medicine for Medicine*, available at: <https://www.youtube.com/watch?v=HQGnA-4ODpvc&t=1040s>

122 Official Gazette of RS, no. 25/2019.

tion were prepared in compliance with Article 16, paragraph 1, item 5 of the Law on Health Insurance¹²³, referring to patients with malignant diseases. At the same time, with the help of the non-governmental organization Praxis, which provides free legal aid to undocumented persons, Uka's son initiated a residency registration procedure for Uka. Unfortunately, Uka passed away before he was able to apply for health insurance.

Difficulties faced by Uka in accessing health care indicate that the issue of the exercising right to health insurance for Roma without permanent or temporary residence registered is still important. They are recognized in the Law on Health Insurance as a special category of the insured.¹²⁴ However, due to absurd requirements defined in the by-law regulation, in order for these people to apply for health insurance, they need to have registered residence (at the address of the center for social work). Significant number of Roma people are still not able to fulfill this requirement.¹²⁵

The Strategy of Social Inclusion of Roma states that affirmative measures introduced under the Law on Health Insurance allowed registration for health insurance to persons of Roma ethnicity without any identity documents and based on a statement by two witnesses. However, undocumented Roma persons have never been able to exercise the right to health insurance on the basis of witnesses' statements. There was a short period of time (from July 2010 until March 2012) during which Roma persons without registered residence were able to exercise the right to health insurance on the basis of a statement about their factual place of residence and Roma ethnicity. In addition to statement about their Roma ethnicity and habitual residence they were obliged to provide documents such as birth and citizenship certificates. Undocumented people have never been allowed by health insurance regulation (or in practice) to register for health insurance based on statements of two witnesses.

Apart from the Strategy of Social Inclusion of Roma, the Report of the Republic of Serbia on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women¹²⁶ reiterates the same incorrect statement that undocumented people of Roma ethnicity are entitled to apply to health insurance based on statements of two witnesses. It is incorrect to state that access to health insurance is provided, in a very simplified way, to Roma without documents who actually do not have access to health insurance at all and therefore face great difficulties in accessing health services and facilities.

HEALTH INSURANCE DEREGISTRATION AND EXAMINATION OUTSIDE THE HOME BRANCH OFFICE

When submitting an application for health insurance, RHIF branch offices require that the insured individuals perform deregistration from the mandatory social insurance in a branch office where they were previously registered. This requirement is a problem for people who have moved and changed their place of residence and are unable to travel to their previous place of residence, either because of the cost of travel or illness.

For more than two years, three sisters from a settlement in the Palilula municipality had difficulties in accessing health care because they were unable to de-register the health insurance in the previous place of residence. Their mother was ill and did not have money to travel to Novi Sad to do the de-registration, and she did not know how to do it otherwise. When they were ill, the mother could not take them to the doctor or she was forced to choose which one of the sisters to take to a private doctor, because she could not afford to pay for all three of them. The A 11 Initiative requested in writing de-registration for them and only after de-registering from Novi Sad, they were able to register for health insurance and to receive health care in the current place of residence.

Valentina, a victim of domestic violence, and her three children were not able to register health insurance in the place of residence because she was unable to de-register health insurance in the place of the previous residence. Apart from the fact she could not afford to travel to the place she used to live (more than 200km from the current place of residence), Valentina did not dare to travel to the place she left because she had to leave her violent husband.

The A 11 Initiative addressed the RHIF in this matter requesting simplification of the procedure when changing the place of residence. It suggested forwarding guidelines to RHIF branch offices on the procedure to follow in cases when changing the place of residence; in order not to burden citizens with unnecessary costs, loss of time and other difficul-

123 Pursuant to Article 16, paragraph 1, item 5 of the Law on Health Insurance, the insured people, in terms of the law, are persons affected by certain diseases, including malignant diseases, if they fail to meet requirements to be entitled to the health insurance referred to in Article 11 of the Law or if such persons do not exercise entitlements deriving from compulsory health insurance as an insured person family member.

124 Article 16, paragraph 1, item 11 of the Law on Health Insurance regulates that the insured, in terms of the law, are persons of Roma nationality without a permanent residence or domicile due to traditional way of life if they do not fulfill requirements for entitlement defined by the law or if such persons do not exercise entitlements deriving from compulsory health insurance as an insured person family member.

125 Protector of Citizens, *Special report of the Protector of Citizens on Reproductive Health of Roma Women*, op. cit., 17; Protector of Citizens, *Special report of the Protector of Citizens on Reproductive Health of Roma Women with recommendations*, November 2019, 50–51; A 11 – Initiative for Economic and Social Rights, *Realization of Economic and Social Rights of Internally Displaced Persons in Serbia*, p. 14–17.

126 Fourth periodic report submitted by Serbia under article 18 of the Convention, 18 October 2017, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSRB%2f4&Lang=en, paragraph 63.

ties. The RHIF replied that when citizens change their place of residence, they need to register with the mandatory health insurance without the need of previous de-registration and that all branch offices are aware of this procedure, so there is no need for RHIF to send instructions.¹²⁷ The RHIF requested citizens file complaints in cases when branch offices act differently. Although RHIF showed willingness to solve issues by acting upon complaints, citizens who are not familiar with the fact that RHIF branch offices should not request health insurance de-registration after changing the place of residence, will continue facing difficulties and are not aware that they can file a complaint or do not know how to do so. The A 11 Initiative continues to be contacted by citizens with the same problem, and some of them have official health insurance documents where the staff wrote down a note stating that they need to „deregister from the health insurance“ or submit „health insurance deregistration“. It is obvious that there are some irregularities in the work of some branch offices when it comes to the procedure regarding changing the place of residence and not all of them are aware of the fact that health insurance de-registration is not required.

Difficulties caused by health insurance de-registration would be easier if health care services were easily accessible to citizens outside the place of residence. Primary health care services should be available to insured people outside the home branch office, as well. Previously, the Rulebook on Methods and Procedure of Exercising Rights to the Mandatory Health Insurance prescribed the need for registration of temporary residence (hereinafter referred to as the “Rulebook”). Nevertheless, this condition is not valid any more¹²⁸, therefore citizens are entitled to primary health care services outside the home branch office based on the valid health insurance card (the registration of temporary residence is no longer required). Pursuant to Article 47 of the Rulebook, the insured people residing temporarily outside the place of permanent residence, are entitled to health care services in primary health care facilities in a place of their temporary residence, without changing their chosen doctor; health care services shall cover diagnostic and treatments, drug prescription and medical and technical aids prescribed monthly. Such health care shall be accessed based on the valid health insurance card, and right to drug prescriptions and medical and technical aids prescribed monthly are exercised by giving a statement that the chosen doctor did not prescribe the above drugs/aids for that period. Although there is no obstacle to exercise the right to primary health care outside the place of permanent residence, in practice citizens are faced with difficulties.

Ana is a Roma woman who complained to the A 11 Initiative about the access to health care outside the place of residence. She had problems, because the primary health care center in Banovo Brdo, in the municipality of Čukarica, refused to admit her to the gynecological ward because she has her residence registered in Jagodina. She was admitted finally after insisting and stressing that she was in lot of pain.

Moreover, a couple of citizens from Čukarička šuma settlement in Belgrade stated to the A 11 Initiative that due to the floods at certain point they were forced to go to the Banovo Brdo primary health care center instead in Žarkovo.¹²⁹ Although both health care facilities are located in the same municipality (Belgrade municipality of Čukarica), they faced difficulties in the primary health care center Banovo Brdo because their medical records were not there and the staff refused to admit them in addition to being extremely rude.

The above examples indicate the need to inform better both citizens but also health care facilities on rights to health care services outside the place of home branch office.

HEALTH CARE QUALITY AND ACCESSIBILITY

Accessibility of healthcare institutions can affect, to a great extent, the marginalised population’s access to healthcare services and their health status. The residents of Jabučki Rit, a settlement in the territory of the Palilula Municipality in Belgrade, have complained to the A 11 Initiative that, although they had an outpatient clinic in the immediate vicinity, the clinic did not have a paediatric ward.¹³⁰ “When the children get sick, we have to go all the way to Padinska Skela and we have to change two transports. Weekends are the worst, because the buses do not run that often and you have to wait a long time”, explained one resident. On weekends, the bus lines that run near the settlement operate once every hour. The remoteness and traffic isolation of this settlement, constructed as housing for the displaced persons evicted from the Belvil informal settlement in New Belgrade, significantly impedes access to services and rights, including access to healthcare services for children.

In addition to the distance to health institutions, another problem is that the settlement is not accessible for ambulance vehicles. In the Čukarička šuma settlement, two people told the A 11 Initiative that ambulances were not able to enter the settlement because there was no paved road, because of mud.¹³¹ At the beginning of 2017, ambulance vehicles were unable to access the settlement also due to the barriers, i.e., wooden posts installed in the road designed to prevent motor vehicles from accessing the settlement.¹³² The residents of the informal Roma settlement in the vicinity of the Vinča Landfill faced similar difficulties as well. The residents of the settlement pointed out that the only access to the settlement was closed in May 2018, when the Public Utility Company “City Waste Disposal” workers further strengthened the earthen rampart that had been erected earlier in order to create a barrier between the settlement and the entrance into the Landfill grounds. The rampart prevented ambulance vehicles from accessing the settlement. At that time, there were four babies, five seriously ill persons, and one pregnant

127 Republic Health Insurance Fund, doc. 02/4 no. 180/1391/18-3, 3 October 2018.

128 See Article 3 of the Rulebook on Amendments to the Rulebook on Methods and Procedure of Exercising Rights to the Mandatory Health Insurance, Official Gazette of RS, no. 80/2010, 1/2013, 108/2017 and 82/2019 – separate law.

129 Interviews with residents of Čukarička šuma settlement from 7 February 2018.

130 Interviews with residents of Jabučki Rit settlement from 21 February 2018.

131 Interviews with residents of Čukarička šuma settlement from 7 February 2018.

132 For more information about the installed barriers, see Praxis, *New Barriers for Residents of Čukarička Šuma Informal Settlement*, available at: <http://praxis.org.rs/index.php/sr/praxis-in-action/status-and-socioeconomic-rights/item/1160-nove-barijere-stanovnicima-nefor-malnog-naselja-%E2%80%9E%E4%8Dukari-%E4%8Dka-%E5%Atuma%E2%80%9C>

woman with disabilities living in the settlement.¹³³

Blocking the entrance to Roma settlements and constructing housing for vulnerable Roma families in remote locations reduces the opportunities for eliminating the public health status inequalities and undermines the efforts aimed at facilitating access to healthcare services for vulnerable populations. Healthcare service accessibility is limited also for the rural population. Healthcare services are scarce, rural area health institution coverage is inadequate, and many rural women's health is highly compromised. The marginalised populations - Roma women, elderly women, women with disabilities, and illiterate women are in a particularly difficult position.¹³⁴

One of the problems faced by the population is a **long wait time for health checks**.¹³⁵ Pursuant to Article 66 of the Rulebook on Manner and Procedure for Exercising Compulsory Health Insurance Rights (hereinafter referred to as: RMPECHIR), healthcare institutions are required to schedule specialist consultative and diagnostic examinations for which there is no waiting list prescribed, within maximum 30 days. Insured persons can have all healthcare services that a healthcare institution is not able to provide within 30 days provided in another (private) institution, and the cost of services is to be reimbursed by the health insurance fund branch. In order for an insured person to be eligible for the reimbursement, he/she has to have the healthcare institution sign off and stamp the date of the scheduled examination on his/her medical referral form or issue a written confirmation of the inability to provide this service to him/her (the so-called PZ form).¹³⁶ However, in practice, people are generally not able to obtain the aforementioned evidence from healthcare institutions, and consequently they cannot claim the reimbursement.¹³⁷ In accordance with RMPECHIR, healthcare institutions usually have only one person authorised to sign off PZ form certificates (the director of the healthcare institution or the person authorised by him/her), and if that person is absent, patients have difficulty or are denied the right to reimbursement of healthcare costs. Another problem is that the population is not adequately informed about this possibility and the conditions for reimbursement of the costs of healthcare services that could not be provided within

30 days.¹³⁸ Finally, the aforementioned option applies only to those **health services that are not subject to the so-called waiting lists**.¹³⁹ As a result, reimbursement is not possible for services such as magnetic resonance imaging, and patients still have to wait for a long time for the examination (often more than a year) or bear the cost of that expensive diagnostic method from their own pocket.

MEASURES FOR TREATMENT OF CHILDREN ABROAD AND TREATMENT OF RARE DISEASES

“The fund for treatment of children exists, but people are unaware of it”.¹⁴⁰

The treatment of patients, especially children, who need treatment abroad due to the inability to provide them appropriate treatment in Serbia is a long-standing problem.¹⁴¹ Although the situation has improved since the establishment of the Budget Fund for Treatment of Diseases, Conditions or Injuries that Cannot Be Successfully Treated in the Republic of Serbia,¹⁴² considering that in 2018 funds for the treatment of children are still raised through SMS messages¹⁴³ and humanitarian organisations,¹⁴⁴ it can be concluded that the funds available in the Fund are either insufficient or not used sufficiently, as a result of a vague procedure or because the parents of sick children have not heard of or have not been referred to this Fund. The Minister of Health stated in September 2018, on the occasion of fundraising for the treatment of four-year-old D. T., that the treatment of children had been systematically addressed, but that that had yet to come to life in practice.¹⁴⁵

133 Interviews with residents of Vinča Landfill settlement from 28 May 2018.

134 Commissioner for the Protection of Equality, *Regular Annual Report of the Commissioner for the Protection of Equality for 2017*.

135 See, for example, Belgrade Centre for Human Rights, *Human Rights in Serbia in 2017*, 348–34, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2018/03/Ljudska-prava-u-Srbiji-2017.pdf>

136 RHIF, *Reimbursement of Costs for Healthcare Services with More than 30 day Wait Time*, available at: <https://www.rfzo.rs/index.php/osiguranalica/refundacija>

137 See People's Parliament, Letter to Ministry of Health from 14 August 2013, available at: <http://www.parlament.org.rs/files/Inicijativa-Pravilnik-prava-iz-zdravstvenog-osiguranja.pdf>

138 Nearly 60% of people included in the primary healthcare services satisfaction survey, conducted by the European Movement in Serbia and the Centre for European Policies in December 2018, have not heard of the possibility that when a public healthcare institution is unable to provide a specific healthcare service within 30 days, the insured person has the right to have the service provided in a private institution and have the costs reimbursed. See European Movement in Serbia and the Centre for European Policies, *Citizens' Satisfaction with Public Primary Healthcare service - Survey Findings*, available at: <http://www.mojauprava.rs/wp-content/uploads/2017/11/USAID-Zdravstvo-analiza-rezultata-FINAL.pdf>, p. 8.

139 For the complete list of services for which waiting lists are established, see Article 64 of the Rulebook on Manner and Procedure for Exercising Compulsory Health Insurance Rights.

140 Danas, Lončar: *The fund for treatment of children exists, but people are unaware of it*, available at: <https://www.danas.rs/drustvo/loncar-fond-za-lecenje-dece-postoji-ali-ljudi-ne-znaju/>, 15 October 2018.

141 Belgrade Centre for Human Rights, *Report on Human Rights in Serbia in 2017*, Belgrade, 2018, available in Serbian at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2018/03/Ljudska-prava-u-Srbiji-2017.pdf>, p. 346.

142 See <http://fond.gov.rs/>.

143 See, for example, reports on fundraising for the treatment of underage D. T., *Disclosure, The State Treats Children with People's SMS Messages*, <https://www.raskrikavanje.rs/page.php?id=258>, 15 October 2018.

144 Support for children in need of treatment abroad is provided by the foundations “Support Life” and “Be Humane”.

145 See, for example, Nova ekonomija, Lončar: *We have resolved children's treatment systematically, but people are not applying for it*, avail-

It is estimated that there are approximately 450,000 people suffering from rare diseases in Serbia, and approximately 75% of rare diseases affect children.¹⁴⁶ One of the problems is that the local healthcare system does not usually cover diagnostics, medicines and other forms of healthcare for people suffering from rare diseases because they are expensive, non-standard and relevant only to a small fraction of the population.¹⁴⁷ Most medicines cannot be purchased at the cost of RHIF,¹⁴⁸ and to address that situation, the Ministry of Health announced in February 2018 the adoption of a strategy for rare diseases.¹⁴⁹ In December 2019, the announced document was adopted in a form of the Program on Rare Diseases in the Republic of Serbia for the period 2020-2022.¹⁵⁰

DISCRIMINATION IN EXERCISING HEALTHCARE RIGHTS

Out of the total number of discrimination complaints filed with the Commissioner for the Protection of Equality in 2017, 5.1% of complaints related to discrimination in the health sector. In 2018, the number of complaints that related to discrimination in that sector increased to 6.1%.

According to a survey conducted by the European Movement in Serbia and the Centre for European Policies in December 2016, Roma, the poor and the unemployed are perceived as the three groups with a more limited access to the required healthcare services relative to the general population (40% believes the population with the most limited access to be the poor, 33% the unemployed, and 30% believes it to be Roma).¹⁵¹

The *Special Report of the Protector of Citizens on the Reproductive Health of Roma Women* also points to discrimination against Roma in the health sector, emphasising that Roma women are still discriminated against in the healthcare system, which is particularly reflected in the way they are treated by healthcare institutions and healthcare workers. In addition, that same report notes the example of the Nis maternity hospital, which has two Roma rooms, i.e., rooms used to accommodate exclusively Roma women.¹⁵²

The difficulties faced by Roma women in the health sector are illustrated by the recommendation of the Protector of Citizens in the proceeding initiated upon the complaint of G. B. vs. Clinical Hospital Centre Zemun in 2015.¹⁵³ In the course of the proceeding, in addition to establishing that the healthcare institution unlawfully attempted to charge childbirth expenses, discriminatory treatment by the hospital staff has also been noted. During official discussions with the representatives of the Protector of Citizens, the hospital staff made discriminatory statements about members of the Roma ethnic minority, such as “all Roma are problematic, it is not just this family”, “Roma have all the rights guaranteed”, and “Who will protect us from such patients?”. In addition, when referring to members of the Roma ethnic minority, the healthcare institution staff used the term “Gypsies”.¹⁵⁴

Discriminatory views, lack of understanding of the affirmative action measures, and lack of awareness about the anti-discrimination framework are present also among the representatives of the Ministry of Health. Thus, in an official discussion with the representatives of the Protector of Citizens, a representative of the Ministry of Health showed a fundamental misunderstanding of the affirmative action measures, noting, regarding the status of health mediators: “We are hiring someone on ethnic basis. That is discrimination against others”.¹⁵⁵

As one of the main survey findings in the report, the Protector of Citizens notes that “discrimination against Roma women in the health sector persists. [...] In the Ministry of Health there is a misunderstanding of the specific position of Roma women, the reasons why it is necessary to improve the health mediators’ services and the difference between discrimination and affirmative action measures”.

During a survey conducted in 2019 to inform the *Special Report of the Protector of Citizens on Implementation of Strategy for Social Inclusion of Roma*, there were discriminatory statements made in primary healthcare centres about Roma, such as “They dislike water” and “Roma come to the health centre with their babies covered in mud”.¹⁵⁶

A survey by the Commissioner for the Protection of Equality on the status of elderly women in Serbia indicates that elderly women face discrimination when using emergency

able at: <http://novaekonomija.rs/vesti/vesti-iz-zemlje/lon%C4%8Dar-le%C4%8Denje-dece-smo-re%C5%A1ili-sistemski-ali-se-ljudi-ne-pri-javljuju>, 15 October 2018.

146 NORBS, Round table “Rare diseases – following steps”, <http://www.norbs.rs/aktivnosti/okrugli-sto-retke-bolesti-naredni-koraci/>.

147 National Association of People with Rare Diseases, *Discrimination against People with Rare Diseases*, available at: <http://www.norbs.rs/diskriminacija-osoba-sa-retkim-bolestima/>

148 See, for example, Paragraph, *National strategy for rare diseases is under preparation*, <https://www.paragraph.rs/dnevne-vesti/200415/200415-vest5.html>.

149 N1, *Serbia is preparing a strategy for treatment of rare diseases*, <http://rs.n1info.com/a366840/Lifestyle/Zdravlje/Srbija-priprema-strategiju-za-lecenje-retkih-bolesti.html>.

150 Official Gazette of RS, No. 86/2019

151 See European Movement in Serbia and the Centre for European Policies, *Citizens’ Satisfaction with Public Primary Healthcare Service – Survey Findings*, available at: <http://www.zdravlje.gov.rs/downloads/2017/April/analiza.pdf>, p. 6.

152 Protector of Citizens, *Special Report of the Protector of Citizens on the Reproductive Health of Roma Women Including Recommendations*, op. cit., 15, The *Special Report of the Protector of Citizens on Implementation of Strategy for Social Inclusion of Roma* points to a high level of prejudice and discriminatory attitudes towards the Roma community and cites examples of discriminatory treatment of Roma in healthcare institutions. See *Special Report of the Protector of Citizens on Implementation of Strategy for Social Inclusion of Roma Including Recommendations*, op. cit., p. 54.

153 Protector of Citizens, Recommendation 6-4-10/15, del. No. 416, from 9 January 2015, op. cit.

154 Ibid.

155 Ibid.

156 *Special Report of the Protector of Citizens on Implementation of Roma Men and Women Social Inclusion Strategy Including Recommendations*, op. cit., p. 54.

room services.¹⁵⁷ The majority of the elderly persons who reported that they had been discriminated against experienced discrimination in the healthcare settings.¹⁵⁸ Women with disabilities are discriminated against in all areas of public and private life and face various obstacles, including obstacles in the healthcare system.¹⁵⁹

Until recently, discriminatory views could also be found on the official website of the Zemun Primary Healthcare Centre, where in the section “About Us”, as one of the main challenges faced by that health institution, it was stated that “there is a large Roma population in the Zemun Municipality”. Although this content has been removed from the web site after the Initiative A 11 filed a complaint with the Commissioner for the Protection of Equality, the fact that such a formulation was used on the healthcare institution’s website indicates an inappropriate attitude towards members of the Roma ethnic minority, which could serve to discourage them from using healthcare services.

CONCLUSION

Despite progress that has been made in providing a better access to healthcare services, health insurance remains inaccessible to those who are exactly the most vulnerable, such as persons who do not have identity papers or residence, and those are almost exclusively members of the Roma ethnic minority. In addition to the limited access to health insurance, members of vulnerable populations also face difficulties such as discrimination and insensitivity or the ill-treatment by the staff in healthcare institutions. Novelty introduced by the new Law on Health Insurance and the introduction of sanctions for people who fail to show up for the compulsory screening examinations make it even more difficult for the poor and already marginalised people to access healthcare services. Treatment of patients suffering from illnesses that require significant financial resources has yet to be regulated.

In order to reduce the health status inequalities and provide access to healthcare services for the particularly vulnerable populations, one of the first preconditions is precisely ensuring that they have the compulsory health insurance coverage. To that end, there is a need also to revise the Law on Exercising the Right to Healthcare for Children, Pregnant Women and New Mothers to ensure that it explicitly guarantees the right to primary and specialised healthcare for every child, pregnant woman and new mother, including those who do not have any identity papers. In addition, sanctions for those who fail to show up for compulsory screening examinations need to be abolished to ensure that everyone is able to exercise their right to healthcare.

157 Commissioner for the Protection of Equality, *Regular Annual Report of the Commissioner for the Protection of Equality for 2017*, Belgrade, March 2018, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2018/03/RGI-2017_PZR_FINAL_14.3.2018-1.pdf, p. 45.

158 *Ibid.*, p. 106.

159 Biljana Janjić, Dragana Ćirić Milovanović, *Even the walls have ears here, testimonies by women with mental disabilities about gender-based violence in residential institutions*, Initiative for Rights of Persons with Mental Disabilities – MDRI – S, Belgrade, August 2017, p. 8. Available at: https://www.mdri-s.org/wp-content/uploads/2017/09/Ovde-i-zidovi-imaju-usi_za-sajt.pdf

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HOUSING

“Education and health workers could also expect affordable housing.”¹⁶⁰

The adoption of the Law on Housing and Building Maintenance¹⁶¹ could be singled out as the key change at the normative level in the housing sector. The adoption of this umbrella law has rendered ineffective the Law on Housing and the Law on Social Housing. The procedure for the adoption of the law was not followed by a broad public debate on housing, which is an important issue, and consequently some of the solutions have proved to further aggravates the already difficult housing situation. However, it has to be underlined that the law provides, to a certain extent, improved protection for residents of informal settlements, in the course of the procedures in which they face forced evictions.¹⁶² The law, in the chapter entitled “Eviction and Resettlement”, stipulates that evictions are to be carried out only when it is not possible to leave the settlement in its existing location. In addition, in cases of eviction, all residents of those settlements who do not own another residential property and who do not have sufficient means to secure accommodation are guaranteed the right to be resettled to a suitable accommodation. The law also prescribes the procedure for the adoption of decisions on the need for resettlement, which is preceded by consultations with the residents affected by the eviction and a number of other procedural rules. However, what is lacking is more precisely specified conditions for the provision of adequate housing, especially from the aspect of legal security of tenure, which is the central aspect of the right to adequate housing under Article 11 of the Covenant.¹⁶³ Previous practice in conducting evictions and resettlement procedures in informal settlements is scarce. However, the procedure of eviction of the informal settlement near the Vinča Landfill, which was home to secondary raw material collectors, has demonstrated difficulties

in terms of enforcing the regulations and non-compliance. This was primarily due to the lack of adequate consultations with the residents of the settlement, the eviction conducted in the winter,¹⁶⁴ and the fact that not all residents of the settlement were eligible to adequate housing, and those who exercised that right were resettled to apartments with electricity arrears, unaware of the level of rent and other housing costs.¹⁶⁵ In addition, the residents of that settlement did not conclude any lease agreements with the Belgrade City Administration, and consequently they do not have a secure tenure in the accommodation that was provided to them.¹⁶⁶

FAILURE TO PRIORITISE HOUSING NEEDS TO BE ADDRESSED

Article 136, paragraph 2 of the Law on Housing and Building Maintenance provides that the National Housing Strategy is to be adopted within 12 months from the entry into force of the new Law. At the time of publication of this report, more than two years after the timeline for the adoption of that document that should set the priority housing needs to be addressed, that strategy has not been adopted yet. Meanwhile, in accordance with other housing decisions, considerable resources have been invested to address the housing needs of some population categories. Thus, the Law on Special Conditions for the Implementation of the Housing Construction Project for Members of Security Forces¹⁶⁷ prescribes special conditions under which members of the Ministry of Defence, the Serbian Armed Forces,

¹⁶⁰ Novosti, Mihajlović: *Education and health workers could also expect affordable housing*, available at: <https://bit.ly/2U4iBic>

¹⁶¹ Official Gazette of RS, No. 104/2016.

¹⁶² With regard to forced evictions, this report analyses primarily the evictions carried out by the administrative authorities under the Law on Housing and Building Maintenance. Due to their specificities and the approach used in this report, evictions conducted by public bailiffs are not the subject of this analysis.

¹⁶³ United Nations Committee on Economic, Social and Cultural Rights, Sixth Session (1991), General Comment No. 4: Right to Adequate Housing (Article 11, paragraph 1 of the Covenant), paragraph 8a.

¹⁶⁴ United Nations Committee on Economic, Social and Cultural Rights, Sixteenth Session (1997), General Comment No. 7: Right to Adequate Housing (Article 11, paragraph 1 of the Covenant): Forced Eviction, paragraph 15.

¹⁶⁵ Interviews with residents of the informal settlement near the Vinča Landfill who were evicted, March 2019.

¹⁶⁶ On this occasion, A 11 Initiative filed a complaint on 25 March 2019 with the Protector of Citizens, and on 18 April 2019 a notice was received that the Protector of Citizens had initiated the review of the legality and regularity of the work of the Belgrade City Administration. To date, this procedure is still pending.

¹⁶⁷ Official Gazette of RS, No. 41/2018 and 54/2019.

the Ministry of Internal Affairs, the Security Information Agency, and the Ministry of Justice - Directorate for the Enforcement of Criminal Sanctions, as well as former members of the security forces who have acquired the pension right in one of these government agencies can buy apartments at preferential rates. The law stipulates that **the construction of affordable housing is of general interest for the strengthening of the National Security System in the Republic of Serbia**. The reasoning of the law stipulates that slightly **more than EUR 64,000,000** will be allocated for its implementation. While it is undisputed that some members of the security forces also have housing needs, the key issues in this case are how the available resources are invested and how the housing priorities are identified. In the context of limited resources for the progressive implementation of the economic and social rights, that is the crucial issue with regard to the application of Article 2 of the Covenant. Singling out one group of public administration employees and putting them in a more favourable position than all other population categories, starting from the unemployed, refugees and displaced persons, homeless persons, Roma living in informal settlements, without electricity, water and basic infrastructure services, to other poor and vulnerable populations, in the light of limited resources and the fact that affordable housing for other populations is underinvested, shows a complete lack of strategic consideration on how the state could fulfil its obligations under Article 11 of the International Covenant on Economic, Social and Cultural Rights. Consequently, it is particularly important to highlight the claims in the report of the United Nations Special Rapporteur on the right to adequate housing, highlighted in the report published after her visit to Serbia. In the report, which provides an overview of the housing situation and recommendations for addressing the identified problems, the Special Rapporteur noted that “failing to address the link between a small income, unemployment and a chronic lack of housing policies may lead to a housing crisis of far-reaching proportions”.¹⁶⁸

AFFORDABILITY OF HOUSING

According to the most recent data published in December 2019, 66% of households in Serbia estimate that the total cost of housing is a significant financial burden.¹⁶⁹ Below-average income households are particularly at risk, and those living in social housing are not spared the high cost of housing either. Thus, for example, in Kamendin, the largest social housing settlement built in Belgrade, a large number of families had faced such high levels of rent and utility fees collected by Infostan that the City of Belgrade has cancelled their lease agreements. According to independent estimates, at least eighty households live in constant fear of forced evictions due to such high cost of social housing.

Vladislav has been living in a social apartment in Kamendin since 2003. Due to his low pension and high cost of housing, at one point he was no longer able to pay regularly the Infostan bills. As a result, his lease agreement was cancelled, but in the

meantime, a new agreement was concluded, so that at the time of this report, unlike most other residents who have had difficulties paying their bills on a regular basis, he still had a valid legal security of tenure for the social apartment he had been living in with his family. Vladislav is seriously ill and suffers from multiple chronic diseases. Due to these arrears, the enforcement procedure has been instituted against him, and two thirds of his pension now goes to settle the arrears in the enforcement procedure. In January 2019, his apartment was caught on fire and as a result of that, electricity was cut off. He is now unable to connect to electricity because, according to the procedure applied by Belgrade Power Distribution Company Elektrodistribucija, a re-connection to electricity is possible only with the consent of the owner of the apartment (City of Belgrade). Meanwhile, Vladislav cannot even get a discount on the Infostan utility bills because, according to the Emergency Measures for Protection of the Most Vulnerable Population,¹⁷⁰ the discount is granted only to those users who regularly pay their bills. Because of all that, Vladislav's monthly income is lower than the amount he has to spend on utility bills.

DISCRIMINATION AGAINST ROMA IN THE PROVISION OF SOCIAL HOUSING IN OVČA

In the summer of 2018, protests against the construction of apartments for 22 Roma families with a total of 102 members began in the Ovča settlement in Belgrade. These social housing units were envisaged to be constructed under the Let's Build a Home Together project supported by the EU, which foresaw addressing the housing needs of Roma and Roma displaced from the Belvil informal settlement in New Belgrade. As the project was in the final stages of completion, the social housing building for 22 Roma families was the last one to be constructed. At that point, upon learning that the plan was to construct a building for Roma, local communities organised protests and sent letters of protest to various organisations and state authorities. The letter stated, among other things, that the resettlement of Roma would “disrupt the coexistence of the residents” in the settlement, and that the arrival of 102 Roma men and women would be a forced change of the ethnic composition in an environment inhabited by ethnic minorities, as stipulated in Article 78 of the Constitution, which provides for the prohibition of forced assimilation. As a result of the protests, the City of Belgrade abandoned the construction of the social apartments, and the Roma who had previously submitted applications for allocation of social housing in the settlement and subsequently received decisions on the allocation of social housing were left unable to resolve their housing need in this way. These Roma families remained living in the container settlements around Belgrade, while a minority of them agreed to for their housing need to be solved in a form of

168 United Nations Special Rapporteur on the right to adequate housing, *Report on Missions to Serbia and Kosovo*, 26 February 2016, UN doc. Number A/HRC/31/54/Add.2, paragraph 53.

169 Eurostat, *Financial burden of the total housing cost - EU-SILC survey*, available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_mdcd04&lang=en

170 Official Gazette of City of Belgrade, No. [19/95](#), [13/96](#), [22/98](#), [10/99](#), [14/99](#), [21/99](#), [9/2000](#), [21/2000](#), [14/2001](#), [19/2001](#), [26/2001](#), [1/2002](#), [11/2002](#), [29/2002](#), [2/2003](#), [17/2003](#), [33/2003](#), [1/2004](#), [12/2004](#), [38/2004](#), [15/2005](#), [27/2005](#), [27/2006](#), [9/2007](#), [39/2007](#), [41/2007](#), [42/2008](#), [31/2009](#), [1/2010](#), [25/2010](#), [39/2010](#), [5/2012](#), [41/2012](#), [67/2012](#), [33/2013](#), [78/2013](#), [27/2014](#), [36/2014](#), [41/2014](#), [104/2014](#), [38/2015](#), [67/2016](#), [135/2016](#), [108/2017](#), [131/2018](#) and [131/2019](#).

a village house with a yard bought for them in a village in Serbia.

POVERTY TAX

In July 2014, the amendments to the Law on Property Taxes¹⁷¹ introduced the so-called poverty tax - property taxes paid by the tenants of social housing and housing for refugees and internally displaced persons. As this is a tax that is imposed on already particularly socially and housing vulnerable populations, which is exactly why they had been granted the right to lease of the social apartments in question, shortly after the adoption of that legal solution, the issue was raised regarding its constitutionality and fairness. Although ever since the adoption of the law many had pointed to the unconstitutionality of its provisions, in May 2015, an initiative for a review of the constitutionality of the said legal solution was submitted.¹⁷² By the date of publishing of this report, **the Constitutional Court has not yet ruled on the initiative.**

Nevertheless, hundreds of refugees, displaced persons and social housing users are forced to pay the annual property tax because their right to lease the social housing units they were provided with as a way of addressing their housing needs is considered a property right. In addition, such a solution contradicts the obligations of the state under Article 11 of the Covenant, which refers to **affordability** as one of the key conditions that such housing has to meet.¹⁷³ During her last mission to Serbia, the United Nations Special Rapporteur on the right to adequate housing stated that the issue of housing affordability for below-average income households was one of the key issues in that area.¹⁷⁴ At the same time, she recommended that the Republic of Serbia should abolish that tax and establish a housing subsidy system to ensure that no one is pushed into homelessness due to housing arrears.¹⁷⁵ The refugees from the former Yugoslav republics face an additional problem in this regard. Specifically, in addition to having to pay this tax, they are unable to exercise the right to a tax credit, that is, to a deduction of the property tax on the property in which they live. This is because the competent Ministry of Finance interprets Article 13 of the Law on Property Taxes in such a way that it does not accept other evidence of occupancy of the property that is subject to taxation. The only "valid" evidence that the refugees trying to exercise their right to a property tax deduction in these cases can submit is a permanent residence registration. Many of them cannot obtain a permanent residence registration because they do not have a permanent residence in the Republic of Serbia, as they only have temporary residence, and their personal documents are regulated under the Law on Refugees. According to Article 18 of the Law on Refugees, after they acquire citizenship of the Republic of Serbia and initiate the procedure for registration of permanent residence in the Republic of Serbia, they lose their refugee status by the decision of the Commissariat for Refugees and Migration. As a result, the refugees from the former Yugoslav republics may

choose to either waive their right to a tax credit or lose their right to accommodation in refugee housing.

Mirko is a refugee from Croatia. He had applied for the competition for solving refugee housing needs and was granted the right to accommodation in an apartment built for this purpose in a city in Serbia. After some time, he received a decision on property tax issued to him by the Public Revenue Authority. After having appealed to the appeals authority, Mirko also filed a lawsuit with the Administrative Court. All these authorities confirmed the previously taken view that he was obliged to pay the full amount of property tax. Following his constitutional complaint, in which he pointed out that that violated his right under Articles 6 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 1 of Protocol 1, and Article 1 of Protocol 12, the Constitutional Court rejected his constitutional complaint, finding it to be the so-called low value case. The Constitutional Court did so considering that "the allegations and reasons for the constitutional complaint are of such a nature that they do not indicate that the complainant suffered a substantial monetary loss by the impugned judgment".¹⁷⁶

The problems that Mirko is facing with regard to unaffordable housing in apartments intended for low-income and particularly vulnerable populations, such as refugees and internally displaced persons, are shared also by hundreds of other households in Serbia. The solution to their problems is not in sight.

CONCLUSION

Considering the current situation in the housing sector, as well as the decades-long housing crisis that exists in Serbia, the fact is that a solution for the accumulated problems in this area needs to be found urgently, and that a special attention needs to be given to the most housing vulnerable populations. As this has been lacking for years, and considering that, in the meantime, legal solutions have been adopted that further aggravated the situation of the poorest and most vulnerable populations, the predominant approach to the right to housing cannot be expected to change in the foreseeable period. What is of particular concern in this situation is that by identifying priorities in an adequate manner, many problems that make it difficult for people to exercise their right to adequate housing could be solved also with the existing financial and other resources that are available.

171 Official Gazette of RS, No. 26/2001, 42/2002 – Federal Constitutional Court Decision, 80/2002, 80/2002 – separate law, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 – Serbian Constitutional Court Decision, 47/2013, 68/2014 – separate law and 95/2018.

172 The Constitutional Review Initiative was submitted by the Lawyers' Committee for Human Rights – YUCOM. For further information, see: <http://www.yucom.org.rs/podneta-inicijativa-za-ocenu-ustavnosti-odredbe-zakona-o-porezi-ma-na-imovinu-koji-uvo-di-porez-na-siromastvo/>

173 United Nations Committee on Economic, Social and Cultural Rights, Sixth Session (1991), General Comment No. 4: Right to Adequate Housing (Article 11, paragraph 1 of the Covenant), paragraph 8c.

174 United Nations Special Rapporteur on the right to adequate housing, *Report on Missions to Serbia and Kosovo*, 26 February 2016, UN doc. Number A/HRC/31/54/Add.2, paragraphs 33–37.

175 *Ibid.*, paragraph 100 (c).

176 Constitutional Court Judgement UŽ – 2102/2018 dated 11 September 2019.

CLOSING REMARKS

The issues raised in the report illustrate not only the violations of the Republic of Serbia's obligations under the International Covenant on Economic, Social and Cultural Rights, but also the lack of consideration of the most vulnerable populations in the legislative or policy-making processes. Although there had been situations previously when the most vulnerable populations were put into additionally unfavourable position, the austerity measures introduced since 2012 have continued that tendency. As a reminder, not one of the regulations or public policy changes referred to in this report was adopted after an assessment of the impacts on exercising the economic and social rights of not only the poorest and most vulnerable populations, but also the general population. As a result, and in the absence of a perspective in which the economic and social rights would be considered (at least equally) important as other rights in the human rights corpus, the consequences of the austerity measures have been disastrous. They are a reminder of the urgent need to amend the regulations on whose application we report, and more importantly, to make a radical turn and start respecting the economic and social rights, above all the obligations relating to the maximum use of the available resources to ensure progressive realization of the economic and social rights of all people. This turn has to be made on several levels - from informing the people that their economic and social rights have been violated and how they are being violated, to capacity strengthening in the administration authorities, the judiciary and independent human rights bodies. Finally, the necessary change will occur when the economic and budget policy processes are linked to the obligations of the state under the Covenant on Economic, Social and Cultural Rights.

In the absence of effective safeguards to protect these rights, the victims of the violations of those rights, who are tens of thousands, if not hundreds of thousands, will still be denied protection, thereby becoming second-class citizens, just as the economic and social rights in the Republic of Serbia are considered second-class rights.

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