



Joint Submission to the GANHRI Sub-Committee on Accreditation (SCA) on the occasion of re-accreditation of Serbian National Human Rights Institution

Belgrade, 15 October 2019

Introduction

1. A 11 – Initiative for Economic and Social Rights and CRTA (Centre for Research, Transparency and Accountability) have the honor to submit its Joint Submission to the GANHRI Sub-Committee on Accreditation (SCA) on the occasion of re-accreditation of the Serbia's National Human Rights Institution (Protector of Citizens, *Zaštitnik građana*).
2. [A 11 - Initiative for Economic and Social Rights](#) is a non-profit, non-partisan and non-governmental organization based in Belgrade, which promotes and protects the rights of individuals from vulnerable, marginalized and discriminated groups, with the focus on economic and social rights. The A 11 Initiative monitors the implementation of public policies, national and international regulations and recommendations of UN Treaty and Charter-based bodies, and documents, reports and litigates cases of human rights violation.
3. [CRTA](#) (Centre for Research, Transparency and Accountability) was founded in 2002 as a citizens' association which gathers people with broad experience in the areas of citizen activism, journalism and politics. Since 2011, CRTA has been involved in various policy and research activities aimed at ensuring relevant information about practices in exercising rule of law and good governance principles of accountability, transparency and civic participation from the side of the Government, the Parliament and other public institutions and officials in Serbia. While opening and initiating public discussion about these issues among relevant stakeholders, findings and results of CRTA's policy work serve as evidence in both CRTA's and other CSOs' advocacy aimed at supporting the rule of law and enhancing political accountability and openness of institutions in Serbia. These are also utilized to inform relevant stakeholders, particularly members of the international community, about the state of play regarding the rule of law and good governance in Serbia and provide credible facts and evidence to feed into democracy development strategies and reports. In this regard, CRTA's research and policy analyses and findings have been quoted and emphasized through the EU Serbia Progress Reports, State Department reports, while its amendments to the European Parliament Resolution regarding free and fair elections and functioning parliamentary democracy have most recently been adopted by the EU Parliament.

4. In this report, the submitting organizations would like to raise several issues relevant for the re-accreditation of the Protector of Citizens¹. These are the following: a) The procedure of appointing the new Protector of Citizens; b) Financial independence of the Protector of Citizens; c) Appointment of Protector of Citizens' Deputies; d) (Lack of) reactions of the Protector of Citizens in different cases relevant for the protection of human rights of persons deprived of liberty and criminal suspects; e) Legislative and other initiatives of the Protector of Citizens relevant for the protection of economic and social rights; f) Lengthy proceedings in front of the Protector of Citizens.

Procedure for the appointment of the new Protector of Citizens

5. The election of each holder of function of the Protector of Citizens has so far been accompanied by controversies. **The procedure of appointing the new Protector of Citizens in 2017 raised considerable doubts on the possible politicization of this institution.** The procedure for appointing candidates for the Protector of Citizens was not transparent, it was carried out without any public debate, which eliminated the possibility to publicly discuss the candidates. The parliamentary committee in charge of the process scheduled their session the morning after the ruling majority party proposed their candidate. The four candidacies have been discussed only in the parliamentary committee, without a wider public debate. In addition, the substantive role of the civil society in the process of selection of candidates and foreseen in the Paris Principles, has not been recognized neither in the law nor in practice. Mr. Pasalic was endorsed as the candidate for the position by the parliamentary committee despite the fact that his candidacy has not been supported by the civil society organisations, and that he obtained solely the support of the ruling majority. On the other hand, the candidates with relevant experience and support of more than 80 civil society organizations dealing active in the area of the human rights protection, have not been elected.² Mr. Pasalic was appointed as the new Ombudsman solely with the votes of the ruling majority, and without a single vote of the opposition.
6. This situation leads to the conclusion that the current legal framework fails to prescribe standards that need to be respected during the election of the Protector of Citizens, which can contribute to greater independence and authority of the institution and which primarily implies the necessity of dialogue

¹ Terms 'Protector of Citizens' and 'Ombudsman' will be used in this report interchangeably.

² Belgrade Centre for Human Rights, *Stanje ljudskih prava u Srbiji 2017 (The state of human rights in Serbia 2017)*, pp. 29 - 30.

prior to election, a larger number of candidates and openness of the very process to meaningful participation of the civil society organizations.

7. Moreover, the **potential connection of Mr. Pasalic with the ruling political party of Serbian Progressive Party (SNS - Srpska napredna stranka)** have been indicated at the occasion when Mr. Pasalic presented the Regular Annual Report of the Protector of Citizens for 2018 in the Serbian Parliament, at the 25th Special Sitting of the National Assembly on July 11th, 2019.³ The beginning of the session devoted to the consideration of the report of the Protector of Citizens was marked by an unusual debate, in which the Speaker of the Parliament, Ms. Maja Gojkovic, in her capacity as a Member of Parliament criticized the Chairman of the sitting, Mr. Vladimir Marinkovic, and the Protector of Citizens, Mr. Pasalic, for postponing the beginning of the session to 13.00 hrs (instead of the usual 12.30 hrs), for which she did not give an approval. This situation was clarified only later during the discussion by the Member of Parliament and the Head of the Parliamentary Group of the Serbian Progressive Party, Mr. Aleksandar Martinovic, who took responsibility for himself, explaining that he did not convey well the information that he had agreed to a later start of the session with Mr. Pasalic.⁴ This unusual situation leads to the question why the Protector of Citizens talked with Mr. Martinovic personally in order to arrange the timing for the beginning of the session, instead of with the General Secretariat or the Cabinet of the Speaker of the National Assembly.

Financial independence of the Protector of Citizens

8. Judging by the current legal framework in Serbia, financial independence regarding budget and the staff of the Protector of Citizens – as a pre-requirement for the existence of independent authority for the protection of human rights – is not in place. This also raises the question whether the functioning of the institution is in accordance to the principle prescribing that the national institutions shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. Even though the Ombudsman's independence has been guaranteed by the Constitution and the Law on the Protector of Citizens, the independence and efficiency of the institution are undermined by the provisions of other regulations. First, due to provisions of the Law amending the Law on the Budget

³ For more details, please see: <https://bit.ly/33xiMbf>

⁴ The searchable transcript of the session is available in Serbian, at the Open Parliament platform: <https://otvoreniparlament.rs/transkript/7681?page=2>

System,⁵ for every new employment the Ombudsman is obliged to obtain the approval of the National Assembly Committee for Administrative and Budgetary Issues, regardless of the fact that the Personnel Plan and the budget of the Republic of Serbia have envisaged and ensured the funds for such employment.⁶ This solution indicates an insufficient level of independence, as it is necessary for independent institutions to be able to select their employees when they are in need of such persons, according to the workload and the available funds. Since the very need to request such approval indicates certain decline of the level of independence, the Law on the Budget System substantially affects the Law on the Protector of Citizens and the work of this institution. Even though there is no financial control that might affect the independence of the institution, the above-mentioned system of approval limits the independence Serbian Protector of Citizens.

9. The Ombudsman itself indicates the need to strengthen the constitutionally proclaimed independence of the Ombudsman.⁷ Furthermore, in **Regular Annual Report of the Protector of Citizens for 2016**, it is **stated that, despite Parliament's declared commitment to strengthening the capacity of the Ombudsman, obligation to obtain approvals on basis of the Law amending the Law on the Budget System and on basis of the Law Determining the Maximum Number of Employees in the Public Sector, causes a serious concern in practice to the extent that these measures represent a threat to independence and efficiency of the Ombudsman.**
10. Regarding the selection of personnel, the independence of Ombudsman is also limited by the Law on Civil Servants⁸. Article 156 stipulates that Personnel Plans in state authorities shall be approved by the ministry responsible for financial issues. Therefore, the Ombudsman needs the Personnel Plan to be approved by the Ministry of Finance. Although this mechanism for the control of the number of employees in the public sector refers to all state authorities, in case of independent institutions this solution is not in line with their special status and the need to entrust them with full independence relative to the executive power.⁹

⁵ Official Gazette of RS, no. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 - correction., 108/2013, 142/2014, 68/2015 – other law, 103/2015, 99/2016, 113/2017, 95/2018, 31/2019 and 72/2019.

⁶ For more details see also Ombudsman, *Regular Annual Report for 2016*, pp. 44-46.

⁷ Ombudsman, *Regular Annual Report for 2016*, p. 46. These observations are still relevant since there were no changes in legislation or practice aimed at strengthening the independence of Ombudsman.

⁸ Official Gazette of RS, no. [79/2005](#), [81/2005](#), [83/2005](#), [64/2007](#), [67/2007](#), [116/2008](#), [104/2009](#), [99/2014](#) and [94/2017](#)

⁹ Sigma, Monitoring report: The Principles of Public Administration, Serbia, November 2017, available at <http://www.sigmaxweb.org/publications/Monitoring-Report-2017-Serbia.pdf>, p. 99.

11. Furthermore, the Rulebook on the Internal Organisation and Job Classification in the professional service of the Ombudsman¹⁰ has a large impact on the work of the institution. New Rulebook on Internal Organisation and Job Classification in the Service of the Ombudsman was adopted in December 2018. According to the new classification determined by this Rulebook, functions of National Preventive Mechanism (NPM) will be performed within a separate unit organized as a department while, absurdly, IT department (employing only several persons) will be transformed into a separate sector.¹¹ In formal hierarchy, head of a department (i.e. department for NPM) is on lower position than head of a sector (for e.g. IT sector). With this in mind, process of adoption of the new Rulebook the Internal Organisation and Job Classification appears to be a missed opportunity to strengthen the role and position of NPM and to fulfil one of the obligations in the EU integration process concerning the capacities of Ombudsman, i.e. to strengthen its role as National Preventive Mechanism.
12. As of 2008 there is recognized need to amend the Law on Protector of Citizens and one of the purposes of these amendments would be to ensure that the Government cannot suspend, delay or restrict the execution of budget of the Ombudsman without his/her consent.¹² Such provision would lead to concretization of the constitutionally prescribed independence of the Ombudsman with regard to budget execution, which is one of the key aspects of independence from executive power.¹³ However, amendments to the Law on Protector of Citizens have not been adopted yet despite the fact that more than 10 years has passed since the first initiatives for amendments of the Law on Ombudsman, and despite the fact that adoption of stated law is envisaged as an obligation under the Chapter 23¹⁴ in the process of EU integration. Deadline for adoption of these legal amendments was set for 2016.¹⁵
13. At the moment, **the institution of the Protector of Citizens is understaffed**, functioning with less employees in the Secretariat of the Protector of Citizens than foreseen by the systematization. This problem has been recognised for several years in the framework of the accession process to the European Union, and highlighted in the Government's Action Plan for Chapter 23 that recommended

¹⁰ New Rulebook on Internal Organisation and Job Classification in the Service of the Ombudsman entered into force on 19 December 2018 (*Official Gazette of RS*, no. 99/2018). It repealed the Rulebook of 22 October 2014.

¹¹ Article 3 of the Rulebook on Internal Organisation and Job Classification in the Service of the Ombudsman, available at: <https://www.ombudsman.rs/attachments/article/142/pravilnik%201.pdf>.

¹² Public hearing at the topic: Role of the Ombudsman and Commissioner for Information of Public Importance and Personal Data Protection on protection and promotion of human rights and consideration of the need to promote legal framework, Informator, statement of Saša Janković, Ombudsman, 18 March 2013.

¹³ *Ibid.* See also Ombudsman, *Regular Annual Report for 2016*, p. 46.

¹⁴ Action Plan for Chapter 23.

¹⁵ For more details, please see Ombudsman, *Regular Annual Report for 2016*, p. 44.

to strengthen the capacities of the Protector of Citizens in order to reach the performance level required for the of activities from his competence. Along these lines, one of the key activities stipulated in the Action Plan includes “further strengthening the capacity of the professional service of the Ombudsman through facilitating full employment status, bringing total employment in line with current vacancies securing the necessary number and structure of the (Ombudsman) office”.¹⁶ Yet to the knowledge of the submitting organisations, the **Secretariat of the Protector of Citizens currently has 94 employees**, out of 106 foreseen by the systematization, and even less than in the end of 2018.¹⁷ Despite the existing vacancies, there hasn’t been any new employees permanently employed since the beginning of this year, new staff has been employed only on temporary positions, along with a noticeable trend of staff leaving the institutions.

14. Furthermore, according to the testimonies of former employees, there has been **an alarming decline in transparency of internal procedures, restricting the access to information and documentation** within the institution itself.¹⁸

Appointment of the Protector of Citizens’ Deputies

15. **For almost two years, the Protector of Citizens has still not appointed his deputies, leaving the four key positions of the institution vacant.** The four deputies of the Protector of Citizens include Deputy Protector of Citizens for Child Rights and Gender Equality, Deputy Ombudsman for the Rights of Persons with Disabilities, Deputy Protector of Citizens for the Rights of National Minorities, as well as the Deputy Ombudsman for the Protection of the Rights of Persons Deprived of Liberty and Head of the National Mechanism for the Prevention of Torture in the Republic of Serbia. For example, in November 2018, the mandate of the Deputy for the Rights of Detainees Mr. Milos Jankovic expired and to the date of this report, Mr. Pasalic has failed to propose to the National Assembly the new one. This is a **violation of Art. 6 (4) of the Law on Protector of Citizens.**

¹⁶ See the Activity No. 3.2.1.1. of the Action Plan, p. 222, available at: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%202023.pdf>

¹⁷ As stipulated in the new Rulebook on Internal Organization and Systematization of Job Positions in the Secretariat of the Protector of Citizens, 61 job positions with totally 106 employees is foreseen in the systematization, 11 of whom were civil servants with official positions, 91 at operational job positions and four employees whose job positions refer to accompanying assisting technical activities. For more details, see the Rulebook on Internal Organization and Systematization of Job Positions in the Secretariat of the Protector of Citizens, number 213-558/2018-32833 dated 19th October 2018, to which the National Assembly gave consent by Decision RS number 71 dated 7th December, 2018243.

¹⁸ Information on file with the authors of this submission.

(Lack of) reactions of the Protector of Citizens in different cases relevant for the protection of human rights of persons deprived of liberty and criminal suspects

16. Since the election of Mr. Pasalic, the Ombudsman has had an extremely passive attitude towards issues that fall directly under his mandate and which are substantially connected to the work of **National Mechanism for Prevention of Torture**¹⁹ and the **Department for the Rights of Detainees**.²⁰ The problems in Serbia in this field are extensive, and constant involvement of Ombudsman is essential for the improvement of the status of persons deprived of liberty and combating torture and ill-treatment.
17. Organizations submitting this report consider that the work of the Protector of Citizens in this field is below minimum standard and its passive attitude indicates the existence of a restraining approach towards the Ministry of Interior.²¹ This is clearly contrary to the Paris principle which prescribes that the national human rights institution shall 'freely consider any questions falling within its competence'.
18. Since the appointment of the new Ombudsman, the head of NPM, Ms. Jelena Unijat, was relocated to another department, while Ms. Tamara Blagojevic was appointed as the new head of this unit. Mrs. Blagojevic has never been involved in any of the activities related to torture prevention, neither she had any previous experience in monitoring of places of deprivation of liberty or providing assistance to victims of torture and other forms of ill-treatment. In other words, the person that is currently in charge of NPM is highly incompetent to carry out the mandate of this unit. Ms. Unijat had left the institution soon after.
19. At the beginning of his term, Mr. Pasalic **prohibited NPM to visit police stations and withdrew the security clearances of most of the NPM's staff**, restricting the number of visits.²² This was *de facto* suspension of all activities aimed at torture prevention, especially regarding the Ministry of Interior. During the term of Mr. Pasalic, NPM has failed to determine a single case of ill-treatment in police custody, even though this practice has been thoroughly reported as widespread. At the same time, the delegation of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

¹⁹ Hereinafter: 'NPM'.

²⁰ Hereinafter: 'DRD'.

²¹ Hereinafter: 'MoI'.

²² NPM Observatory, 'Observation visits to the National Preventive Mechanism of Serbia 19 and 20 June 2017 & 18 and 22 June 2018', available at: <http://bit.ly/35ymCi3>, paras. 11, 46 and 47.

Punishment²³ (May 2017)²⁴ and Special Rapporteur on Torture²⁵ (November 2017) have found dozens of credible allegations on ill-treatment committed by the hands of criminal inspectors.

20. In April 2019, the Belgrade Centre for Human Rights, an NGO that has been a member of NPM since its establishment (2012), decided to **terminate its cooperation with this body after more than 7 years**. This was also noted in European Commission 2019 Progress Report.²⁶ One of the main reasons for this step was the lack of faith in independence of Mr. Pasalic, which is guaranteed in Art. 2 of the Law on Protector of Citizens.²⁷

21. To conclude, the capacities of the Ombudsman in the field of torture prevention have been severely undermined since the appointment of Mr. Pasalic. Unfortunately, current **personnel solutions are inadequate to respond to the needs of persons deprived of liberty and widespread problem of police violence towards criminal suspects**. The most solid proof for this claim can be found in the latest NPM Observatory report on Serbian NPM.²⁸

22. According to the reports published by the most notable international bodies whose mandate lies in the field of torture prevention, ill-treatment committed by the hands of Serbian law enforcement is widespread, especially in the units tasked for the suppression of criminal offences (criminal inspectors). **The Ombudsman office has remained silent on these reports and failed to condemn the current state of affairs and to undertake measures in line with its mandate with an aim to challenge the problem of police violence and impunity.**

23. **Committee against Torture**²⁹ raised the problem of impunity in its 2015 findings.³⁰ CPT highlighted in its report on 2015 visit to Serbia that 'the seriousness of the information gathered in the course of the

²³ Hereinafter: 'CPT'.

²⁴ CPT, 'Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017', CPT/Inf (2018) 21, available at: <http://bit.ly/2MRFctd>, paras. 22-23

²⁵ Human Right Council, 'Visit to Serbia and Kosovo* - Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**', 25 January 2019, A/HRC/40/59/Add.1, available at: <http://bit.ly/2pg1758>, paras. 19 – 22.

²⁶ European Commission, 'Serbia: Progress Report 2019', 29 May 2019, SWD(2019) 219 final, available at: <http://bit.ly/2VGV19K>, pp. 23-24.

²⁷ The Belgrade Centre for Human Rights statement on this matter can be found on the following link: <http://bit.ly/2pjzXu9>.

²⁸ NPM Observatory (n 22), pp. 7-8.

²⁹ Hereinafter: 'CAT'.

³⁰ CAT, 'Concluding observations on the second periodic report of Serbia**', 3 June 2015, CAT/C/SRB/CO/2*, available at: <http://bit.ly/2oFicFx>, para. 10.

2015 visit concerning ill-treatment calls for immediate and determined action by the authorities.³¹ CPT reiterated its stand in its report on 2017 *ad hoc* visit to Serbia, stating that ‘Serbian authorities must recognize that the existence of ill-treatment by police officers is a fact; it is not the work of a few rogue officers but rather **an accepted practice within the current police culture, notably among crime inspectors.**’³² Special Rapporteur on Torture, Mr. Nils Melzer confirmed CPT’s findings during his 2017 visit and noted with *grave concern* ‘that he received numerous and consistent allegations of torture and ill-treatment at the hands of the police, most notably as a means of coercing confessions out of individuals during interrogation in police custody.’³³

24. It is indicative that these concerns were raised solely by the international bodies for the protection of human rights and NGOs, while the Ombudsman remained silent. Additionally, two of the above-stated reports were published during the term of Mr. Pasalic, and none of them were publicly highlighted by him or any other representative of the institution. The best examples of the mitigation of these findings of the Special Rapporteur on Torture and CPT can be found in two of his public appearances on N1 television and *Insajder* portal.³⁴

The lack of reaction in individual cases regarding ill-treatment complaints against the Ministry of Interior and the reluctance to act ex-officio

Case of Cevdet Ayaz

25. Mr. Ayaz is a Kurdish political activist who was extradited to Turkey on 25 December 2017, despite the fact that the Committee Against Torture issued the interim measures in this case.³⁵ On 2 August 2019, CAT determined that Serbia violated Art. 3 and Art. 22 of the Convention.³⁶ Mr. Ayaz submitted the complaint to the Ombudsman on 22 May 2018, claiming that his deprivation of liberty in Detention Centre for Foreigners of the Ministry of Interior was unlawful and arbitrary. To the date of this report

³¹ CPT, ‘Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 May to 5 June 2015’, CPT/Inf (2016) 2, available at: <http://bit.ly/2MRFctd>, para. 16.

³² CPT Report on 2017 visit (n 24), p. 3.

³³ Human Right Council, ‘Visit to Serbia and Kosovo* - Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, 25 January 2019, A/HRC/40/59/Add.1, available at: <http://bit.ly/2pg1758>, para. 20.

³⁴ For more information please see subtitled video, marked as Annex 1.

³⁵ Deutsche Welle, ‘Serbia extradites Kurdish political activist Cevdet Ayaz despite UN warning’, 27. December 2017, available at: <http://bit.ly/2VH1v8T>.

³⁶ *Ayaz v. Turkey*, Comm. No. 758/2017 (CAT 3 August 2019).

the Ombudsman has failed to undertake a single investigative activity or to condemn the acts of the Ministry of Justice and the Ministry of Interior which were contrary to the Convention against Torture. The silence of the Ombudsman in this case is just another example of ***turning the blind eye attitude towards the Ministry of Interior.***³⁷

26. Another case of grave violation of human rights could serve the abovementioned point. On 16 March 2019, the group of opposition protestors broke into the building of national broadcaster, Radio Television of Serbia. The day after, the video footage of apparent excessive use of force appeared on YouTube showing two police officers beating a person not actively resisting.³⁸ In this case, Mr. Pasalic has failed to inform the public that his institution has the competence for *ex-officio* investigation into this case, in line with Art. 24 of the Law on the Protector of Citizens and the Paris principles prescribing the methods of operations of the national human rights institutions. To this date, the Ombudsman **has failed to act *ex-officio*** in this regard.³⁹

The lack of reaction concerning the adoption of the amendments to Criminal Code

27. In April 2019, the Government of the Republic of Serbia sent the Law on the Amendments to the Criminal code to the Parliamentary procedure. The law was neither discussed with the relevant stakeholders, nor the public debate was held. The Amendments introduced the lifetime imprisonment without the right to conditional release for a number of criminal offenses in which victims are children and pregnant women, contrary to the provisions of the Constitution of the Republic of Serbia and the European Convention on Human Rights. In his public appearances, Mr. Pasalic stated that the Ombudsman will react to this and provide the Government with the comments on the amendments of the Criminal Code.⁴⁰ Ombudsman was invited by a number of non-governmental organizations to intervene and to outline that these amendments are undermining absolute prohibition of inhuman and degrading treatment.

28. Amendments of the Criminal Code were criticized by academics, attorneys at law, judges and prosecutors,⁴¹ but also by the Council of Europe High Commissioner for Human Rights Ms. Dunja

³⁷ For more information please see subtitled video, marked as Annex 2.

³⁸ The video of police violence is available on the following link: <http://bit.ly/2q8ikh6>. 00:10-00:21.

³⁹ For more information please see subtitled video, marked as Annex 1.

⁴⁰ For more information please see subtitled video, marked as Annex 3.

⁴¹ The list of academics and professionals can be found on the following link: <http://bit.ly/35xDUf7>.

Mijatovic.⁴² The same arguments were raised in the Progress Report by the European Commission.⁴³ However, the institution remained silent to this date, and the Ombudsman has **decided not to take part in this legislative procedure as prescribed in Art. 18 of the Law on the Protector of Citizens.**

Protector of Citizens and the protection of economic and social rights

29. In the last State report on the implementation of the International Covenant on Economic, Social and Cultural Rights, it has been reported that ‘within 2015–2018, the Ombudsman **submitted 21 legislative initiative in the field of economic, social and cultural rights** (of which, the competent authorities accepted three, rejected eight, while the remaining ten are still in the procedure); questioned constitutionality and legality of the provisions of the Decision on determining insuree’s capacity and the obligation of paying contributions for pension and disability insurance before the Constitutional Court; referred 43 opinions on drafts or regulations proposals from the field of economic, social and cultural rights and issued 21 opinions on the questions from its competence in the given areas’.⁴⁴ In addition, it has been reported that the Ombudsman issued a ‘number of recommendations to the competent authorities which refer in total or partly to the protection and improvement of economic, social and cultural rights (of 1,176 recommendations concerning economic, social and cultural rights, 638 were acted upon, 272 were not acted upon, whereas 266 are still in the acting procedure or being monitored)’⁴⁵. It should be noted, according to the Ombudsman, the percentage of his recommendations followed up by the authorities remains high in 2018 was 93.2%⁴⁶, while **the overall percentage of the recommendations that the authorities implement in the area of economic, social and cultural rights is only 76.8%.**⁴⁷ However, this problem was never addressed by the institution and the protection of economic and social rights remains the weak spot of the mandate Protector of

⁴² Commissioner for Human Rights, Letter to Minister of Justice Mrs. Nela Kuburović, 7 May 2019, available at: <http://bit.ly/2IPm39W>.

⁴³ European Commission, ‘Serbia: Progress Report 2019’, 29 May 2019, SWD(2019) 219 final, available at: <http://bit.ly/2VGV19K>, p. 23.

⁴⁴ Committee on Economic, Social and Cultural Rights, Third periodic report submitted by Serbia under articles 16 and 17 of the Covenant, due in 2019*, **, para 15, UN Doc no. E/C.12/SRB/3

⁴⁵ Ibid.

⁴⁶ European Commission, ‘Serbia: Progress Report 2019’, 29 May 2019, SWD(2019) 219 final, available at: <http://bit.ly/2VGV19K>, pp. 23-24.

⁴⁷ This number is calculated on the basis of the number of recommendations Ombudsman reported as implemented and all the recommendations where implementation is pending or being monitored.

Citizens' mandate. In addition to that, there is no systemic development of the relations with NGOs working in the area of economic and social rights and/or protection of the most vulnerable population.

30. In addition, since June 2018, the Ombudsman decided not to submit his independent reports to different UN Treaty bodies⁴⁸ but opted to cooperate with the Government in preparing the State reports on the implementation of different human rights instruments. This radical shift in the methodology was never communicated to other relevant stakeholders. Consequently, there were no consultations with other interested stakeholders working in this area.

Lengthy proceedings in front of the Protector of Citizens

31. Due to the overload with complaints and problems in internal organization and capacities, the role of the Ombudsperson in considering complaints and petitions concerning individual cases of human rights violations is constantly weakening. There are examples of **complaints the procedures whereon have not been finalised even after several years.**⁴⁹ Inefficiency in Ombudsperson's acting upon complaints could be easily illustrated by comparison with procedures before the Commissioner for the Protection of Equality and the following example. In 2018, two complaints concerning the same factual situation were sent simultaneously to the Ombudsperson (because of infringement of good governance principle) and to the Commissioner for the Protection of Equality (because of discriminatory treatment). The procedure before the Commissioner was completed within the prescribed 90 days deadline, while the procedure before the Ombudsperson is still ongoing, even though more than a year has passed since the complaint was submitted and more than a half year since the plea for urgent acting upon complaint was sent.⁵⁰ There were also cases finalised only after two or more years from their submission.⁵¹ Duration of procedures upon complaints can also be of importance for considering the

⁴⁸ Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the Report on the implementation of the International Covenant on Economic, Social and Cultural Rights.

⁴⁹ For more details please see CRTA, A 11 – Initiative for Economic and Social Rights, *Role and Status of Ombudsperson and Commissioner for the Protection of Equality*, Working Paper, Belgrade, January 2019, available at: <https://cрта.rs/en/role-and-status-of-ombudsperson-and-commissioner-for-the-protection-of-equality/>, p. 14-15. The same report points to the case in which the notice of the Ombudsman about the institution of procedure upon complaint had been received more than eight months after the complaint had been filed, whereas the procedure was not finalised for more than three years.

⁵⁰ Both procedures were initiated by one of the submitting organization. Complaints are on file with authors. Please note that, unlike the Commissioner for the Protection of Equality, who has the legal deadline of 90 days to give her/his decision upon a complaint, there *is no time limit imposed for the duration of procedure before Ombudsperson*.

⁵¹ CRTA, A 11 – Initiative for Economic and Social Rights, *Role and Status of Ombudsperson and Commissioner for the Protection of Equality*, Working Paper, (n 49).

Ombudsman's independence because, hypothetically, the Ombudsman could avoid the acting on sensitive issues by failing to state the opinion thereon in a reasonable time period.⁵²

32. Large number of complaints, combined with limited abilities for new employment, affects efficiency in acting upon complaints, thus creating risk of losing citizens' trust in this form of protection of their rights.
33. For example, in May 2016, Mr. Turudic submitted the complaint⁵³ to Ombudsman claiming that police officers from one of the police stations in Belgrade violated his rights of persons deprived of liberty (right to inform a lawyer, third person, to be examined by a doctor, to be informed about the reasons for his arrest, etc.) and ill-treated him by putting him in police custody in inhumane and degrading conditions.
34. On 12 January 2018, 18 months after he submitted the complaint, the Ombudsman informed the applicant that his complaint is unfounded. During those 18 months the only investigative activity that the Ombudsman has undertaken is written request sent to the Ministry of Interior to respond to allegations of the complaint. Ombudsman failed to undertake other activities such as questioning of the applicant and police officers involved in incident, conducting a fact-finding field activity. All of these possibilities are envisaged in Art. 21 of the Law on the Protector of Citizens.
35. After Mr. Turudic published an article on the outcome of the procedure before Ombudsman, Mr. Pasalic contacted him and promised to reopen the case, which he did in the end. On 28 May 2019, 17 months after reopening the case and **exactly 3 years after the complaint was submitted**, the Ombudsman partially adopted the applicant's complaint.
36. In addition to already raised concerns, it has been observed that there are also other concerning cases where the Ombudsman failed to protect vulnerable population from human rights violations. The last relevant case was concerning the racial discrimination of Roma community in Ovca settlement in Belgrade. Based on the public call of the City of Belgrade, Roma living in informal settlements were provided with social apartments that were planned for the construction in Ovca settlement. However, after the protests of local communities against Roma, the Protector of Citizens was invited by the City

⁵² Ibid.

⁵³ Case file No. 276-872/2018.

of Belgrade to provide assistance for reaching amicable settlement in this case. After having meetings with both sides in this conflict, the Ombudsman recommended the City of Belgrade to reopen the consultation process (previous consultations were conducted in line with the methodology prepared by the UNOPS and the UN Human Rights Unit in Serbia⁵⁴) and to take into account economic and social interests of both host community and the Roma provided with social housing.⁵⁵ Because of that, the City of Belgrade suspended the project, and 22 Roma families still live in inadequate housing units. Particularly disturbing in this case is the fact that the recommendation of the Ombudsman was not publicly available on its website, and the submitting organisations received it only as a proof in another judicial proceedings initiated in order to protect the rights of Roma community. This case deserves additional scrutiny and demonstrates that there is a serious concern about the lack of independence in the work of the Ombudsman in Serbia, both because of the consequences, but also because of the very loose interpretation of the Ombudsman's competences prescribed by the Art. 24 (2) of the Law on the Protector of Citizens.

Conclusion

37. Having all the above-mentioned in mind, we kindly ask the GANHRI Sub-Committee on Accreditation to raise these issues during Serbia's re-accreditation process and to assess the Serbian Protector of Citizens' compliance with the Paris principles and the accredited A status.

⁵⁴ UNOPS, UN OHCHR, *Methodology for Consultations with Host Communities*, available at: <https://bit.ly/2nSuFW4>

⁵⁵ Zaštitnik gradjana (*Protector of Citizens*), Case file No. 13-27-1944/18 274-614/18, 13 September 2018.