

CONTRIBUTIONS FOR REPORTS

Written Contribution to European Commis- sion 2019 Annual Report on Serbia



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I RULE OF LAW

Law on free legal aid

During July and August 2018, the Ministry of Justice organized a public debate regarding the Draft Law on Free Legal Aid and in September 2018 the proposal of this law entered in the parliamentary procedure. The citizens of Serbia have been waiting for the adoption of the said law for more than a decade. Unfortunately, the Proposal of the Law does not take into account the best interest of citizen's who are in need of free legal aid. The proposed Draft Law seeks to limit the circle of free legal aid providers and introduce complicated procedures that would limit the number of potential beneficiaries of free legal aid. The Proposal of the Law on Free Legal Aid diverges from the strategic goals set out in the *Strategy for the Development of a Free Legal Aid System*, which was intended to help preserve and improve the existing resources in the future free legal aid system, as well as to create conditions for the specialization of free legal aid providers for different topics. By introducing the limitation which stipulates (in Article 9) that only attorneys at law and free legal aid service centers in local self-government units can provide free legal aid while civil society organizations can only provide free legal aid on the basis of the provisions of laws that regulate asylum and discrimination - and then only through attorneys at law - the Government has made it clear that it will not continue to follow the principle of specialization of providers. This will neglect the many-decade-long experience of citizens' associations in regard to the provision of free legal aid to beneficiaries belonging to the

most vulnerable social groups. Furthermore, such restrictive approach is in contradiction with the Recommendation P(93) 1 of the Committee of Ministers of the Council of Europe on effective access to the law and to justice for the very poor (1993),¹ and particularly with paragraph III item (f) of the Recommendation.

→ It is necessary that Serbia explicitly recognize CSOs as providers of free legal aid in procedures in which, according the existing procedural laws, a party does not need to be represented by an attorney at law.

II FUNDAMENTAL RIGHTS

Protection of personal data

Article 41 of the Draft law on amendments to the Law on Social Protection disproportionately interferes with the rights of beneficiaries of financial social assistance, including the protection of personal data.

Article 41 establishes the powers of the centers for social work very broadly when it comes to the processing of personal data of the beneficiaries of financial assistance, prescribing that the center for social work may re-examine the conditions for exercising the attained rights of the beneficiary if, *in any way*, it becomes aware of facts that significantly influence the conditions for exercising such right (emphasis ours).

According to the Article 41, **center for social work will re-examine the conditions for exercising the cash social assistance if it becomes aware that the beneficiary or any member of his/her family resided abroad for more than 15 days.**

When submitting a request, beneficiaries of financial social assistance may give written consent to the centers for social work to process their personal data on which the official reports are kept, and which are necessary for the decision-making process.² However, according to domestic regulations, no official records are kept on the temporary residence of domestic citizens longer than 15 and shorter than 90 days.³ Only if citizens stay abroad

¹ Council of Europe, Committee of Ministers, Recommendation No. R (93) 1 on Effective access to the law and to justice for the very poor (1993), available at: <https://www.legislationline.org/documents/id/8283>.

² Article 9 and 103 of General Administrative Procedure Act, Official Gazette No. 18/2016.

³ Central Registry - A catalogue of personal data collections managed by the Ministry of Internal Affairs, available at <https://registar.poverenik.rs/r/bdb4d40c-70b6-4641-a26c-7f65fe850d23>.

for more than 90 days, they are obliged to report to the Ministry of Internal Affairs and official records are kept in such cases.

Since staying abroad for more than 15 and less than 90 days is not subject to keeping official records, the collection of such data by the centres for social work opens up **multiple risks of non-transparent data exchange or their unauthorized processing and abuse.**

The collection and processing of such data by the centres for social work create serious risks of disproportionate interference with citizens' rights and violations of the right to privacy under Article 8 of the European Convention on Human Rights. The processing of such data is not regulated adequately nor completely by the Draft, as it does not specify the purpose and method of collecting, storing and processing of such data. In addition, there is also a question of who collects data on staying abroad for more than 15 days and about whom. If such data were collected only for the beneficiaries of financial social assistance, such treatment would be contrary to the prohibition of discrimination, since records on staying abroad for less than 90 days are kept only for one category (the beneficiaries of financial social assistance). This would be contrary to the principle of the special consideration for the legality of the processing of particularly sensitive data. If centres for social work do not collect data from the Ministry of the Interior at all, then the manner of data processing is in contradiction with the principle of accuracy of data, which means that the processing of personal data is not permitted if the data are not based on credible sources.

→ It is necessary that Serbia amend the Draft Law on the Amendments to the Law Social Protection so as to remove provisions of the article 41 which creates the risk of disproportionate interference with citizens' rights, including the protection of personal data and right to private and family life.

III CHAPTER 19: SOCIAL POLICY AND EMPLOYMENT

III a Discrimination and exclusion of the most marginalized population

Discriminatory provisions of the Law on Financial Support to the Family with Children

Some of legal amendments adopted in 2018 are in direct contravention with recommendation from the 2018 Report on Serbia – to improve the adequacy of the social benefit system to provide more effective support for parts of the population most in need. Namely, **the Law on Financial Support to the Family with Children**, which was amended in an urgent procedure in June 2018 and entered into force on 1 July 2018, **discriminates the most marginalized Roma children** and increases the risk of further deterioration of their position. Article 25 paragraphs 1 – 6 of the Law on Financial Support to the Family with Children introduces additional conditions for parental allowance, including that children must be fully and timely vaccinated and that they must regularly attend elementary school and obligatory preschool education. Although these conditions, on the face of it, are neutral, their effects will disproportionately affect vulnerable Roma children. This is clearly visible from data about school and preschool attendance and immunization coverage among Roma and non-Roma children. Only 12,7% of Roma children received all recommended vaccines, compared to 70,5% of children in general population.⁴ While 98% of non-Roma children attends preparatory preschool program,⁵ only 63% of Roma children attend this program.⁶ About 1 out of 6 marginalized Roma children of compulsory attendance age are still out of the education system.⁷ Completion rate in compulsory education among Roma girls is only 57%, compared to 93% among non-Roma girls and

⁴ UNICEF and Statistical Office of the Republic of Serbia, *2014 Serbia Multiple Indicator Cluster Survey and Serbia Roma Settlements Multiply Cluster Survey, 2014, Final Reports*, Belgrade, Serbia, p. iv, available at: https://mics-surveys-prod.s3.amazonaws.com/MICS5/Europe%20and%20Central%20Asia/Serbia%20%28Roma%20Settlements%29/2014/Final/Serbia%20%28National%20and%20Roma%20Settlements%29%202014%20MICS_English.pdf.

⁵ *Ibid*, p. 167

⁶ *Ibid*. P. 173.

⁷ UNDP, Roma at glance, Serbia, available at:

https://www.google.com/url?q=http://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_SERBIA_Roma.pdf&sa=D&source=hangouts&ust=1541498169882000&usq=AFQjCNF_B1337gwA9_ETdGLr83i3F3l82w, p. 2.

95% among non-Roma boys.⁸ These data clearly suggest that **these conditions for parental allowance will have disparate impact upon Roma children**. These conditions will affect not only children who are out of the education system or who are not covered by immunization – they will also exclude their brothers and sisters, since Article 25 of the Law stipulates that family will not be able to exercise the right to parental allowance if at least one child in a family is not fully vaccinated or does not attend obligatory education and preparatory preschool program.

Roma children who remain outside education system and who are not covered by immunization are, without doubt, one of the most marginalized groups in Serbia. Article 25 of the Law on Financial Support to the Family with Children will disproportionately affect exactly those children and the right to parental allowance will be denied to the children most in need. Instead of special protection of the most marginalized, unfair provisions of the Law put them in even worse situation and increase the gap between them and other children. Despite the fact that primary objective of the Law is not to reduce poverty, but rather to increase birth rates among the population, excluding the most vulnerable children is unacceptable, discriminatory and contrary to the need to improve the adequacy of the social benefit system to provide more effective support for parts of the population most in need.

Various shortcomings and discriminatory provisions of the Law on Financial Support to Family with Children resulted in **protests**⁹ and submissions to the Constitutional Court (**a proposal for the assessment of the Constitutionality of the Law, submitted by the Commissioner for Protection of Equality**¹⁰ and **initiatives for assessment of constitutionality** submitted by A 11 Initiative¹¹ and several civil society organizations¹²).

⁸ *Ibid*, p. 4.

⁹ N1, *Mothers Rule protest in central Belgrade*, available at:

<http://rs.n1info.com/a423259/English/NEWS/Mothers-Rule-condemns-Serbian-ruling-party-MP.html>.

¹⁰ Commissioner for Protection of Equality, *Statement about Proposal for the assessment of constitutionality*, available at: <http://ravnopravnost.gov.rs/en/statement-about-proposal-for-the-assessment-of-constitutionality/>.

¹¹ A 11 – Initiative for Economic and Social Rights, *Initiative A 11 submitted initiative for the assessment of the constitutionality of the Law on financial support to the Family with Children*, available at: <http://www.a11initiative.org/sr/inicijativa-a-11-podnela-inicijativu-za-ocenu-ustavnosti-zakona-o-finansijskoj-podrsци-porodici-sa-decom/>.

¹² NORBS – Nacionalna organizacija za retke bolesti Srbije, MODS – Mreža organizacija za decu Srbije, SUPS – Savez udruženja pacijenata Srbije and association Hrabriša.

→ Serbia must amend its Law on Financial Support to the Family with Children so as to remove discriminatory Article 25 which excludes marginalized Roma children and prevents them from exercising the right to parental allowance.

III b Exclusion of the population the most in need in the Draft Law on Social Protection

In July 2018, the Ministry of Labor, Employment, Veteran and Social Affairs published the Draft Law on the Amendments to the Law on Social Protection which opens up a risk of human rights violations and deterioration of the position of the beneficiaries. The most concerning elements of the Draft Law include the introduction of measures that are contrary to the Constitution and the international obligations of the state in relation to the prevention of forced labor and discrimination, i.e. the introduction of provisions from the Regulation on measures of social inclusion of beneficiaries of financial social assistance. By providing that person who is capable to work can be granted the right to financial social assistance only if he/she has not refused to participate in public works and the individual employment plan, **the Draft Law is in contradiction with the prohibition of forced labour** from Article 20 of the Constitution of Republic of Serbia, ILO Convention No. 29 and Article 4 of the ECHR. Especially worrying is the fact that the Draft Law stipulates the measures that were previously applied on the basis of the bylaw (Regulation on measures of social inclusion of beneficiaries of financial social assistance) and which, according to the claims given in the explanation of the Draft, did not produce results. From February to September 2018, the A 11 – Initiative for Economic and Social Rights conducted a **research on the implementation of this Regulation**. According to the results, rather than facilitating their employment, its implementation leads to stigmatization and violation of dignity of the beneficiaries of financial assistance. From the day the Decree entered into force, **at least 9,436 of the most severely poverty-stricken citizens of Serbia who are users of financial assistance were forced to do unpaid work** that does not improve their skills in any way nor increase their employability.¹³

By conditioning the right to financial social assistance by regular school attendance and achievement of the success within the education system (i.e. fulfillment of obligations from the curriculum), **the Draft Law is in the contradiction with the principle of the best interest of the child and the prohibition of discrimination. Furthermore, it**

¹³ For more details, please see A 11 – Initiative for Economic and Social Rights, *In focus: Four years of forced labour in Serbia – Results of the implementation of the Decree on Social Inclusion Measures for Recipients of Financial Welfare Assistance*, available at: http://www.a11initiative.org/wp-content/uploads/2018/10/Uredba_ENG.pdf.

undermines the purpose of social benefits. This type of material support should aim to protect children from poverty and to provide them with a chance to live in dignity and achieve appropriate development, rather than reward particularly successful children and sanction those facing difficulties in accessing education. These difficulties are often related to the life in poverty, and the abolition or reduction of material support in such cases would be fundamentally contrary to the best interest of the child. Above all, this provision may have a disproportionately negative effect on children belonging to the Roma national minority who often face numerous challenges in the field of education.

At the same time, some much needed changes did not find their place in the Draft Law. In order to ensure that everyone is able to meet at least basic existential need, it was necessary to remove some of the most concerning provisions from the existing Law on Social Protection, such as “missed earning” used for arbitrary decrease of social benefits and **unjustified interruptions in the allocation of social security benefits to those who are capable to work.** Unfortunately, these provisions remained unchanged in the Draft Law.

The Committee of Social Rights of the Council of Europe in its conclusions for 2017 and 2016 has determined that the situation in Serbia is not in accordance with Article 13 of the Charter, since the amount of social assistance to which the socially vulnerable individuals are entitled is clearly inadequate and does not exceed the poverty line.¹⁴ The amount of financial social assistance in the Republic of Serbia is often insufficient to cover basic expenses, such as rent in social housing and utility bills, and this amount is further reduced by the unrealistic and arbitrary determination of the missed earnings (i.e. the income that an individual could have achieved even though he/she actually did not realize it).¹⁵ **The abolition of the category of missed earnings is necessary** in order to combat poverty more effectively.

Also, it is necessary to delete paragraph 3 of Article 85 of the current Law on Social Protection, which stipulates that a person who is capable of work or a family in which the majority of members are capable to work is entitled to financial social assistance for up to

¹⁴ 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>.

¹⁵ The category of missed earning gives centers for social work discretionary right to determine which amount the beneficiaries of social cash assistance could have realized if they engaged in certain jobs, and afterwards deduct the amount of the social cash assistance for determined amount, even though the beneficiaries of social cash assistance have never realized the attributed income. See Article 102 of the Law on Social Protection.

nine months during the calendar year, if they meet the requirements prescribed by the law. Individuals and families whose members cannot find employment are left without any means of living and without the ability to satisfy basic livelihood needs. Interruptions in the receipt of financial social assistance are pushing the beneficiaries even deeper into poverty and exposing them to the risk of drastic worsening of their living conditions, and often put them at risk of staying homeless due to the inability to pay for utility services and rent.

→ It is necessary that Serbia reopen the procedure of amending the Law on Social Protection so as to remove its highly concerning provisions such as those introducing forced labor or discriminating Roma children by unjustified conditions regarding school achievements. In order to ensure that anyone under its jurisdiction is able to meet basic existential needs and to combat poverty more effectively, Serbia must abolish category of the missed earnings and three-month interruptions in the receipt of financial social assistance for beneficiaries who are capable to work.