



**Platform**  
of Organizations for  
Cooperation with UN  
Human Rights Mechanisms

# **Alternative Report for the 71st Session of the Committee on Economic, Social and Cultural Rights**

## **Review of Serbia's third periodic report**

Prepared by

The Platform of Organizations for Cooperation with UN Human Rights  
Mechanisms, Working Group for Economic, Social and Cultural Rights

Belgrade, 14 January 2022

The Platform of Organizations for Cooperation with UN Human Rights Mechanisms<sup>1</sup> – the Working Group for Economic, Social and Cultural Rights, hereby submits the Alternative Report for the 71<sup>st</sup> Session (14 February 2022 – 4 March 2022) of the Committee on Economic, Social and Cultural Rights to consider the third periodic report of the Republic of Serbia. The Report was prepared by the members of the Platform of Organizations for Cooperation with UN Human Rights Mechanisms – the Working Group for Economic, Social and Cultural Rights. For more information about the work of the Platform, please view: <https://platforma.org.rs/>

## GENERAL INFORMATION

**LOI 3. Please inform the Committee of how the State party guarantees the independence of the Office of the Ombudsman, as well as on the actual impact of the Ombudsman's work on the observance of Covenant rights, including data concerning legislative initiatives, monitoring activities and interventions on behalf of victims of violations of Covenant rights.**

1. In accordance with the Committee's recommendations of in the Concluding Observations on the on the Serbia's second periodic report<sup>2</sup>, the State adopted the new Law on the Protector of Citizens in 2021.<sup>3</sup> For the first time, the Law explicitly foresees a legal mandate for the Protector of Citizens (Ombudsman) to interact with the international human rights system and civil society organizations.
2. The lack of an explicit mandate has not affected the scope and quality of the **Ombudsman's cooperation with the civil society organizations** in the past. However, a big **drop-off** in this cooperation has been noted since the election of the new Ombudsman in 2017, after which the majority of the organizations have left the National Preventative Mechanism.<sup>4</sup> It also noted that a number of experienced staff members leaving the Ombudsman's office.<sup>5</sup>
3. A budgetary safeguard has been added in Art. 44 of the new Law, allowing the reduction in the Ombudsman's annual budget only if reductions also apply to other budget users. It is not clear from the wording whether these reductions have to be equal or not. The recruitment of staff is still regulated by the Law on Civil Servants limiting the access of the institution to good and experienced staff. This is reflected in the Ombudsman's inability to fill vacancies, which is noted in the Third Periodic Report submitted by Serbia.<sup>6</sup>
4. Other concerns raised by the Committee still remain an issue in the Law and in practice. Views and opinions of the Ombudsman have often been ignored when adopting legislation or formulating policies and programs. This also applies to his legal powers in proposing laws directly to the Parliament and in initiating the procedure of assessing the constitutionality of laws before the Constitutional Court.<sup>7</sup>
5. The **Ombudsman's activities in the area of socio-economic rights have been limited** in spite of the fact that the majority of citizens' complaints received by the institution are related to these rights. Also, the Ombudsman has failed to participate in the discussion about the ratification of the Optional Protocol to the Covenant, which would give citizens direct access to the Committee. There was a noted increase in the number of the Ombudsman's inputs in the legislative process in 2019 and 2020 regarding the adoption of laws concerning socio-economic rights.

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1 The Platform consists of the following organizations: ASTRA – Anti-trafficking Action, Atina, A 11 – Initiative for Economic and Social Rights, Belgrade Centre for Human Rights, Centre for Independent Living of PWD's Serbia, Child Rights Centre, ERA - LGBTI Equal Rights Association for Western Balkans and Turkey, FemPlatz, GETEN, Group 484, Mental Disability Rights Initiative of Serbia (MDRI-Serbia); YUCOM - Lawyers Committee for Human Rights, International Aid Network, The Network of Organizations for Children of Serbia – MODS, National Organization of Persons with Disabilities of Serbia, Centre for Support of Women - SOS Vojvodina Network, Standing Conference of The Roma Association of The Citizens.

2 Concluding observations on the second periodic report of Serbia, Committee on Economic, Social and Cultural Rights, 10 July 2014, para. 13 available at:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW54MWm13CZ4%2bVqIQ1kU7YRw1%2bWwofd2tBOLmHCPVP18p98WsdiiW2OUQ17gvnJpVvpoFywjLVYimxKtrPdaw9JwPrBrBaLOKZNQhIvbfOZUK>

3 Law on the Protector of Citizens ("Official Gazette of RS", No. 105/2021).

4 ANALYSIS OF THE WORK OF THE PROTECTOR OF CITIZENS OF THE REPUBLIC OF SERBIA 2015-2019, YUCOM, 2019, pg. 96, available at: <http://en.yucom.org.rs/wp-content/uploads/2020/01/Analiza-rada-Ombudsmana-2015-2019-ENG.pdf>

5 CRTA, A 11 – Initiative for Economic and Social Rights, Joint Submission to the GANHRI SubCommittee on Accreditation (SCA) on the occasion of re-accreditation of Serbian National Human Rights Institution, october 2019, available at: <https://www.a11initiative.org/wp-content/uploads/2021/01/Joint-Submission-to-the-GANHRI-Sub-Committee-on-Accreditation-on-the-occasion-of-re-accreditation-of-Serbian-NHRI-2.pdf>

6 Third periodic report submitted by Serbia under articles 16 and 17 of the Covenant, due in 2019\*, Republic of Serbia, May 3, 2019, available at:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW54MWm13CZ4%2bVqIQ1kU7YRzwVhwBtDioXlo2YDaajGQ%2fHjsl7H7pbfkx1zL3SKjOkmXeEMsN%2b9%2fGcSknwbTLXgzF7TqL1RiVD7MDMLPWORSK>

7 ANALYSIS OF THE WORK OF THE PROTECTOR OF CITIZENS OF THE REPUBLIC OF SERBIA 2015-2019, YUCOM, 2019, pg. 50, 51, available at: <http://en.yucom.org.rs/wp-content/uploads/2020/01/Analiza-rada-Ombudsmana-2015-2019-ENG.pdf>

However, the quality of these inputs remains weak, since they failed to address some of the key issues in the most important laws in this field: A) Discriminatory effects of the provisions of the Law on Financial Support for Families with Children conditioning the provision of support on the educational and vaccinal status of children which disproportionately affects Roma, and low social assistance ceilings, which leave many socially disadvantaged families with children without the support they need,<sup>8</sup> B) Draft Law on Social Protection which was withdrawn after the protests of civil society organizations,<sup>9</sup> C) Law on Social Cards adopted to prevent social assistance fraud, but which violates the privacy rights detailed in the Law on Personal Data Protection.<sup>10</sup>

## SUBMITTING ORGANIZATIONS CALLS THE COMMITTEE TO RECOMMEND TO THE STATE TO

- **Strengthen independence and competence of the Ombudsman's Office in the field of socio-economic rights.**

## ISSUES RELATED TO GENERAL PROVISIONS OF THE COVENANT (ART. 1-5)

### Non-discrimination (Art. 2 (2))

#### ROMA

#### Exclusion of Roma without ID and permanent residence from cash assistance to mitigate consequences of the pandemic

6. **Roma without an ID card and permanent residence were excluded from the cash benefit** of € 100<sup>11</sup> in 2020 and € 80<sup>12</sup> in 2021 – state measures introduced to mitigate the consequences of COVID-19 pandemic, which all adult Serbian citizens with an ID and registered permanent residence were eligible for. However, persons who do not have an ID card and registered permanent residence (and these are almost exclusively Roma) were not eligible for this form of assistance. These measures are among the most obvious examples of the exclusion of vulnerable Roma from measures aimed at mitigating the economic consequences of the COVID-19 pandemic. In addition to that, this cash benefit failed to take into account the situation of families with children, as it was envisaged that only adult persons could be supported. For this reason, families with children and especially families with several children received proportionately less financial support.
7. The Commissioner for the Protection of Equality also pointed out that the requirement of a residence registration and ID card for access to support measures mainly affected Roma individuals, and recommended that the competent Ministry of Finance to include these persons in the support measures, either by amending the relevant regulation or by passing a new regulation.<sup>13</sup> However, the Ministry of Finance ignored the recommendation and took no steps to include Roma without an ID card and residence registration in measures intended to mitigate the consequences of pandemic. In the meantime, the law regulating this type of assistance was amended and envisaged additional financial assistance of € 20, but the same conditions regarding residence registration and ID card were maintained – once again confirming the discriminatory position towards undocumented Roma.<sup>14</sup> Although it is obvious that the Commissioner's recommendation has been ignored, **Roma who are excluded from the access to assistance, as described, are also unable to obtain protection from discrimination.** For example, one of the Platform organizations (A 11 Initiative) filed a complaint with the Commissioner for the Protection of Equality on behalf of a Romani woman whose birth was recently registered and Serbian citizenship confirmed, but

8 Open Global Rights, Welfare caps: how the UK and Serbia became outliers in restricting child support, Imogen Richmond-Bishop & Danilo Curcic, April 21, 2021, available at:

<https://www.openglobalrights.org/welfare-caps-how-the-uk-and-serbia-became-outliers-in-restricting-child-support/>

9 See: <https://civic-forum.eu/civil-dialogue/csos-law-social-protection-serbia>

10 Privacy and Personal Data Protection in Serbia, An Analysis of Selected Sectoral Regulations and

Their Implementation, pg. 27, available at: [https://www.partners-serbia.org/public/documents/Privacy\\_and\\_Personal\\_Data\\_Protection\\_in\\_Serbia-](https://www.partners-serbia.org/public/documents/Privacy_and_Personal_Data_Protection_in_Serbia-_An_Analysis_of_Selected_Sectoral_Regulations_and_Their_Implementation,_PS.pdf)

[\\_An\\_Analysis\\_of\\_Selected\\_Sectoral\\_Regulations\\_and\\_Their\\_Implementation,\\_PS.pdf](https://www.partners-serbia.org/public/documents/Privacy_and_Personal_Data_Protection_in_Serbia-_An_Analysis_of_Selected_Sectoral_Regulations_and_Their_Implementation,_PS.pdf)

11 Article 15 of the Decree on Fiscal Benefits and Direct Benefits to Private Sector Companies and Financial Assistance to Citizens to Mitigate the Economic Consequences of COVID-19 stipulates that all adult citizens of the Republic of Serbia be paid one-time financial assistance in the amount of 100 € in dinars equivalent.

12 Law on the Temporary Registry of Adult Citizens of the Republic of Serbia Eligible for Financial Assistance for Mitigating the Consequences of the Covid-19 Pandemic Caused by the SARS-COV-2 Virus, Official Gazette of the RS, No. 40/2021 and 96/2021 (hereinafter: The Law on Temporary Registry of Adult Citizens) stipulates that all adult citizens of the Republic of Serbia will receive financial assistance in the amount of 60 €, paid in two installments. Later amendments of this Law (Official Gazette of the RS, No. 96/2021) introduced additional financial assistance in the amount of 20 which was also available only to adult Serbian citizens with registered permanent residence and valid ID card.

13 The Commissioner for the Protection of Equality, Recommendation of measures to the Ministry of Finance – Recommendations of measures to the Ministry of Finance, No. 07-00-00353/2021, from 26 August 2021, available (in Serbian only) at: <http://ravnopravnost.gov.rs/rs/preporuka-mera-ministarstvu-finansija-2/>.

14 Law on Amendments to the Law on the Temporary Registry of Adult Citizens of the Republic of Serbia Eligible for Financial Assistance for Mitigating the Consequences of the Covid-19 Pandemic Caused by the SARS-COV-2 Virus (Official Gazette of the RS, No. 96/2021).

who has been unable to register her residence for more than seven months. As a result, she has no ID card and has been unable to receive cash assistance to mitigate the consequences of the pandemic. The Commissioner rejected her complaint because discriminatory conditions regarding residence and ID card were prescribed by the law.<sup>15</sup>

8. It should be recalled that requiring documents (such as a birth certificates, ID card or permanent residence) to access certain rights can discriminate against ethnic minorities who are not in possession or have been denied such documents.<sup>16</sup> Furthermore, **the exclusion of undocumented Roma from the possibility of receiving this cash assistance is fundamentally at odds with the recommendations of international organizations and human rights treaty bodies, including those of the CESCER regarding the response to the epidemic**, which indicate that the needs of marginalized groups should be prioritized in the response to the epidemic and the allocation of resources.<sup>17</sup> On the contrary, Serbia has allocated significant resources for the payment of financial assistance to all adult citizens (with valid ID cards), many of whom are certainly not in a state of vulnerability.<sup>18</sup> Contrary to the principle of social justice, Roma without ID and permanent residence, who are the most marginalized and have no access to other types of assistance because they have no personal documents, could not receive this assistance.

#### **SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE TO**

- **Ensure access to financial assistance for citizens who were unable to receive financial assistance of € 100 and € 80 (30+30+20) to mitigate the consequences of the pandemic due to the lack of an ID card and registered permanent residence;**
- **Include undocumented Roma and other vulnerable citizens in future pandemic mitigation measures.**

**LOI 9. Please provide more details on the steps taken and envisaged to enable Roma from Kosovo living in informal settlements to move into regular and adequate accommodation and to register a legal address where they actually reside.**

9. The Response to the list of issues by the Republic of Serbia states that, between January 2018 and 31 December 2019, the Ministry of Interior determined residence at the address of the competent social welfare centres (hereinafter: SWC) for 853 persons, mainly for members of the Roma living in informal settlements. This submission aims to provide additional insight into the number of Roma without residence and the procedure they need to complete to register their residence in the place where they actually reside.
10. **The registration of residence is still among the major obstacles to assessing social rights for vulnerable Roma, especially for Roma from Kosovo and Roma living in informal settlements.** According to the UNHCR 2020 Survey on Persons at Risk of Statelessness among the Roma in Serbia, the number of persons without registered permanent or temporary residence is now higher than it was in 2010 and 2015.<sup>19</sup> Currently, the number of Roma without registered permanent or temporary residence is estimated at 2,027.<sup>20</sup> Roma without a registered permanent residence mainly attribute this fact to living in (not legalized) buildings where permanent residence cannot be registered.<sup>21</sup>
11. The adoption of the Law on Permanent and Temporary Residence of Citizens in 2011 was the most significant step in enabling residence registration for vulnerable Roma. This Law introduced the possibility of determining permanent residence for Roma from informal settlements and other citizens who are unable to register their permanent residence in any other way at the address of a SWC.<sup>22</sup> However, problems still frequently occur in these procedures.<sup>23</sup> Also, in practice, persons who have already registered their permanent residence in places they left

<sup>15</sup> Commissioner for the Protection of Equality, No. 07-00-556/2021 from 16 November 2021.

<sup>16</sup> For a similar conclusion see CESCER, General comment no. 20 (Non-discrimination), para. 10(b).

<sup>17</sup> CESCER, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, 17 April 2020, para. 14.

<sup>18</sup> A 11 – Initiative for Economic and Social Rights, Human Rights in Serbia during the First Wave of Coronavirus: from denial of danger to state of emergency, August 2020, pp. 20-21.

<sup>19</sup> UNHCR, CeSID, Persons at Risk of Statelessness in Serbia: Overview of current situation and the way forward, November 2020, available at: <https://www.unhcr.org/rs/wp-content/uploads/sites/40/2021/04/01-Persons-at-Risk-of-Statelessness-in-Serbia-2020..pdf>, p. 17.

<sup>20</sup> Ibid, p. 7.

<sup>21</sup> Ibid.

<sup>22</sup> The option for persons without legal grounds for residence to have their permanent residence registered at the address of social welfare centre, was introduced by the Article 11 of the Law on Temporary Residence in 2011.

<sup>23</sup> Praxis, Review of the remaining obstacles, in exercise of the right to birth registration, acquisition of citizenship and permanent residence registration, March 2019, p. 6-7. Praxis, Overview of obstacles to exercising the right to registration in birth registry books, acquisition of citizenship and registration of permanent residence in 2020, 2021, pp. 10-11 (hereinafter: Praxis 2020). A 11 – Initiative for Economic and Social Rights, Realisation of Economic and Social Right for Internally Displaced Persons in Serbia, 2018, p. 13-15. Protector of Citizens, Special report on the Implementation of the Strategy of Social Inclusion of Roma for the Period from 2016 to 2025, 51 and 61, available at: <https://www.ombudsman.rs/attachments/article/6359/ZAstitnik%20socialno%20ukljucivanje%20roma%2020191129c.pdf>.

many years or even decades ago are denied the establishment of permanent residence at the address of the SWC<sup>24</sup>, on the grounds that this option is intended for persons who have no registered residence at all. Roma from Kosovo are particularly affected by this practice. If they live in informal settlements, they are often prevented from registering their residence in the place where they actually live. This affects their access to the majority of social rights and services.

12. Another problem is the **long duration of procedures to establish residence at the address of the SWC**,<sup>25</sup> as well as the arbitrary rejection of applications for residence registration. Most often, Roma from Kosovo are rejected because a regulation applied provides for additional security and other checks for persons from Kosovo when registering their residence.<sup>26</sup> As a result, persons from Kosovo face additional obstacles in registering their residence and the procedures themselves take longer.<sup>27</sup> Also, applications to register permanent residence are often rejected on the grounds that it could not be proven that the applicant intends to live permanently in the place where he or she wishes to register residence.<sup>28</sup> Sometimes, the fact that an applicant does not intend to live permanently in the place where he/she seeks to register his/her residence is explained by the fact that the applicant has no permanent employment or real estate on her/his name.<sup>29</sup>
13. **Tying permanent residence registration for citizens of the Republic of Serbia to permanent employment or ownership of real estate in the place of residence** has no basis in the Law on Permanent and Temporary Residence of Citizens. Especially, considering the high unemployment rate among Roma<sup>30</sup> and their poverty, tying residence registration to permanent employment and ownership of real estate equals denial of residence registration, which further hinders or prevents the access to most economic and social rights. This also contradicts the provisions of Article 2(2) of the Covenant.
14. The **unlawful practice of police stations** creates yet another obstacle in residence registration procedures for Roma from Kosovo who have never registered permanent residence and obtained an identity card. The police stations in the areas where they live require them to register permanent residence in their place of birth in Kosovo in order to be able to obtain their first identity card, even though they do not live there, do not intend to return there and, above all, do not have the necessary proof of residence registration in their place of birth.<sup>31</sup> Above all, they need residence registration at their actual place of residence in order to access rights and services.
15. Another obstacle is the **arbitrary refusal of social welfare centres to grant permission to register permanent residence at their address to a person who is unable to register permanent residence in any other way**.<sup>32</sup> The police station shall not continue the procedure for establishing residence until the social welfare centre has given its consent to register residence at the address of the social welfare centre. If the social welfare centre refuses to give its consent, the Ministry of Interior shall reject the application for the establishment of residence without further examination of whether the application was justified and whether the refusal to give consent to the registration of residence at the address of the social welfare centre was unjustified.
16. Due to the unlawful practice of the competent police stations, **persons from Kosovo encounter difficulties even when they try to register their permanent residence at the address of their own (legalized) house**, which meets all the requirements for residence registration. Even internally displaced Roma, who have finally been able to solve

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24 Praxis, Overview of obstacles to exercising the right to registration in birth registry books, acquisition of citizenship and registration of permanent residence in 2020, op. cit., 10-11.

25 See also Praxis, League of Roma SKRUG, Institute on Statelessness and Inclusion, European Network on Statelessness and European Roma Rights Centre, Joint alternative report submitted to the 94th session of the Committee on the Elimination of Racial Discrimination in relation to the second and thirds reports of Serbia, October 2017, para. 36, p. 14.

26 These additional checks are based on the Regulation on the procedure regarding the determination of the fulfillment of prescribed conditions for issuing passports for persons from the AP of Kosovo and Metohija (Official Gazette of the RS, No. 76/2009). This Regulation stipulates that for citizens of the Republic of Serbia with registered permanent residence in Kosovo and citizens of the Republic of Serbia without registered residence in Serbia who have been issued citizenship certificates by the Serbian authorities responsible for Kosovo, security and other checks are performed by the Ministry of Interior and others competent authorities. The Decree envisages that these checks will be also conducted in the residence registration procedures.

27 For example, in cases concerning pregnant women, who asked for urgent acting upon their request since they needed to register a permanent residence in order to obtain an identity card and health insurance, it lasted for more than seven months. Casework of one of the Platform organizations (A 11 – Initiative for Economic and Social Rights).

28 Article 13 of the Law on Permanent and Temporary Residence of Citizens prescribes that the competent body shall issue a decision rejecting the registration of permanent residence if it cannot establish that the applicant intends to live permanently at the designated address. Often, this article serves as the only explanation for rejecting the application for permanent residence registration.

29 The Ministry of Interior, the Belgrade Police Administration of the RS, the Police Station Zemun, Decision 03 15 14 4 No. 205.3-19/21, from 20 April 2021; the Ministry of Interior of the RS, the Pančevo Police Administration, the Police Station Vršac, Decision No. 205-20/18, from 27 December 2018.

30 It is estimated that 59% of the total active Roma are not employed, which is significantly above the national average of 22.4%. Strategy of social inclusion of Roma for the period from 2016 to 2025, p. 18.

31 Praxis, Overview of obstacles to exercising the right to registration in birth registry books, acquisition of citizenship and registration of permanent residence in 2020, op. cit., 10. A 11 – Initiative for Economic and Social Rights, Realization of economic and social rights for internally displaced persons in Serbia, 2018, p. 14, available at: [https://www.a11initiative.org/wp-content/uploads/2019/01/A11\\_zavrsni-izvestaj\\_ENG\\_web-compressed-1.pdf](https://www.a11initiative.org/wp-content/uploads/2019/01/A11_zavrsni-izvestaj_ENG_web-compressed-1.pdf).

32 Praxis 2020, op. cit.

their housing problems thanks to donor funds, still face problems such as rejected applications for permanent residence registration and lengthy procedures.<sup>33</sup>

17. It is appropriate to recall that **access to rights in Serbia requires proof of residence** and that the residence mechanism in Serbia and problems faced by the poor people, Roma and internally displaced persons not only hinder the exercise of a number of human rights, but, according to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right not to be discriminated against in this context, also increase social exclusion, stigmatisation and discrimination.<sup>34</sup>
18. Internally displaced persons, including internally displaced Roma, can exercise some rights in the place where they have registered temporary residence, such as the right to health insurance and some benefits in the field of social protection. However, registration of temporary residence requires a legal proof for housing. Internally displaced persons from informal settlements and informal collective shelters living without legal proof of housing are in a particularly disadvantaged position, as they are not even able to register temporary residence and consequently exercise Covenant rights in the place of their actual residence.

#### **SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE TO**

- **Take additional steps to enable vulnerable Roma from informal settlements to register permanent residence in their actual place of residence;**
- **Extend the possibility of establishing permanent residence at the address of the social welfare centre for Roma from Kosovo who wish to change their permanent residence registration and to register residence in their actual place of residence;**
- **Ensure (including by training of police officials conducting procedure of residence registration, through written instructions or any other appropriate manner) that lack of employment, lack of real estate ownership or language barriers are not hindering the access to residence registration for vulnerable Roma who are Serbian citizens;**
- **Ensure that procedures of establishing permanent/temporary residence are conducted in a timely manner, particularly in cases involving pregnant women and young children;**
- **Enable access to social rights and health care in the place of habitual residence to internally displaced persons and internally displaced Roma who are not able to register residence at their actual place of residence;**
- **Consider the possibility of determining temporary residence for internally displaced persons who cannot register temporary residence because they live in informal settlements, informal collective shelters or non-legalized buildings.**

#### **REFUGEES, ASYLUM SEEKERS, MIGRANTS, RETURNEES AND INTERNALLY DISPLACED PERSONS**

##### **Discrimination**

19. Commissioner for the Protection of Equality finds that **few banks had directly discriminated against refugees and asylum seekers from Iran by refusing to open them bank accounts.**<sup>35</sup> Those banks had negatively generalised against these people based solely on their nationality and country of birth, whilst failing to assess whether they fulfilled requirements to open bank accounts. The Commissioner's opinions alert the banks to the need to act in accordance with the law and fairly, without making blanket and discriminatory assessments of persons belonging to specific groups, such as refugees and asylum seekers.
20. Under the Law on Asylum and Temporary Protection (LATP)<sup>36</sup> foreigners granted the right to asylum shall be provided with assistance in accommodation. The process is governed in greater detail by the **Accommodation Decree**. However, in practice, refugees have been provided exclusively with financial aid since the Commissariat for Refugees and Migration does not have temporary housing at its disposal.<sup>37</sup> The identical amount of aid is

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<sup>33</sup> Ministry of Interior of the RS, Novi Sad Police Administration, Police Station Bečej, Decision No. 205-4/K/2018 from 20 August 2018; Ministry of Interior of the RS, Pančevo Police Administration, Police Station Vršac, Decision No. 205-20/18, from 27 December 2018.

<sup>34</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia and Kosovo, 26 February 2016, para. 41, p. 9, available at: <https://digitallibrary.un.org/record/831292>.

<sup>35</sup> Belgrade Centre for Human Rights, The Commissioner for the Protection of Equality finds that Raiffeisen Bank discriminated against refugees, November 2021, available at: <http://www.bgcenter.org.rs/bgcenter/eng-lat/the-commissioner-for-the-protection-of-equality-finds-that-raiffeisen-bank-discriminated-against-refugees/>.

<sup>36</sup> Art. 61(2), LATP

<sup>37</sup> The financial aid in the amount of the minimum wage the previous month is granted to refugees, who have no income or whose income per family member does not exceed 20% of that minimum wage. Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia 2020, 2020, p. 140, available at: <http://azil.rs/en/wp-content/uploads/2021/02/Right-to-Asylum-in-Serbia-2020.pdf>.

granted single refugees and those living together with their families. It usually does not suffice to pay the rent and utility bills, especially in cities, and in cases of larger families.

**LOI 12. Please elaborate on the measures taken to provide access to naturalization procedures and to procedures for the registration of births and places of residence of refugees, asylum seekers, migrants, returnees and internally displaced persons.**

21. According to the LAMP<sup>38</sup> a person who has gained refugee status, on his/her request, can be issued with a Serbian travel document. In practice this right is not accessible. Minister of the Interior (MOI) still has not adopted a by-law governing the format of the travel document for refugees<sup>39</sup> although 13 years have passed since Serbia established the asylum system.<sup>40</sup> Additionally, Serbia has not granted citizenship to any foreigners it has granted asylum. The MOI should initiate, and the Government should propose amendments to the Law on Citizenship and the Foreigners Law to enable acquisition of Serbian citizenship by foreigners granted status under the LAMP. The Law on Citizenship should also provide these individuals with the possibility of acquiring Serbian citizenship under more favourable terms.

**SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE TO**

- **Facilitate the access to travel documents and naturalization for refugees in Serbia;**
- **Take steps to combat discrimination against refugees, asylum seekers and migrants and facilitate their integration including through ensuring that they can open bank accounts, and have access to public services without discrimination;**
- **Amend the Accommodation Decree to ensure that the amount of financial aid for housing granted to refugees reflects the size of their families;**
- **Set participation in integration programs as the requirement for realization of the right to accommodation.**

**LOI 15. Please explain how the State party plans to increase the participation of unemployed persons in the labor market, specifically unemployed women, migrants in irregular situations, temporary residents, victims of human trafficking, Roma (especially Roma women), youth and persons with disabilities (especially women with disabilities).**

22. For many years, the Republic of Serbia has been recognized as a country of origin, transit and final destination of victims of human trafficking, and several dozen victims of human trafficking are identified each year. In 2019 and 2020, the competent Center for the Protection of Human Trafficking Victims identified 39<sup>41</sup> and 57<sup>42</sup> victims of human trafficking, respectively. In both years, victims of sexual exploitation dominated – 23 in 2019, and 21 in 2020<sup>43</sup>. However, it is assumed that the **actual number of human trafficking victims is in fact significantly higher**, and that only a small number of suspicions of human trafficking are reported.
23. In order to help them recover from surviving exploitation and avoid being re-trafficked, it is important to provide victims of trafficking with comprehensive and long-term support. Within this long-term recovery process, victims must also be provided with economic empowerment so that they can become economically independent and fully (re)integrate into the community. This is especially important for women victims of sexual exploitation, who often come from a deprived and violent family environment, who live in poverty and therefore become easy targets of traffickers.
24. Apart from donor sponsored activities and support programs provided by civil society organizations, such as programmes provided by one of the Platform organizations (NGO Atina)<sup>44</sup>, the State does not have a comprehensive support programme in place aimed at long-term and sustainable social inclusion of women victims of trafficking. However, NGO Atina's economic empowerment program is still a donor driven service, and not a

<sup>38</sup> Article 91, the Law on Asylum and Temporary Protection.

<sup>39</sup> As he was under the duty to within the deadline set for in Art. 101 in conjunction with Art. 87(6) of the LAMP.

<sup>40</sup> When the prior AL (Official Gazette of the RS, No. 109/07) entered into force.

<sup>41</sup> 2019 Annual Report of the Center for Protection of Human Trafficking Victims, p. 24, in Serbian [http://centarzztlj.rs/wp-content/uploads/2021/03/1-1-\\_Izvestaj\\_o\\_radu\\_2019.pdf](http://centarzztlj.rs/wp-content/uploads/2021/03/1-1-_Izvestaj_o_radu_2019.pdf)

<sup>42</sup> 2020 Annual Report of the Center for the Protection of Human Trafficking Victims, p. 4, in Serbian <http://centarzztlj.rs/wp-content/uploads/2021/08/Izvestaj-o-radu-2020.-godina.pdf>

<sup>43</sup> The same source as for the total number of victims.

<sup>44</sup> Within this program unit, Atina maintains various activities for women survivors, such as the practical trainings in its Bage! bakery shop Bejgl (NGO Atina's social enterprise), individual classes for beneficiaries on how to look for jobs, how to write their CVs, then language courses, etc. In previous years, dozens of women at risk or women who have survived human trafficking, have gone through this program, or participated in some of its activities. For example, in 2020, 49 beneficiaries received support in looking for a job through this program, while 13 of them found jobs, i.e. they were hired for more than 3 months.

permanent opportunity for victims. The provision of this service is additionally hindered by the lack of law on social entrepreneurship in Serbia. This means that there is no strategic support or legal relief for women's entrepreneurship and women's economic initiatives that could have a positive impact on the employment of women survivors of trafficking, or encourage them to start their own businesses. Despite years of announcements, and some formal moves, state failed to pass such a law, and facilitate social entrepreneurship in Serbia.

25. Meanwhile, the state has taken some formal steps to enable the employment of trafficking victims. Thus, at the beginning of 2017, a **Protocol on Cooperation was signed between the Center for the Protection of Human Trafficking Victims and the National Employment Service**<sup>45</sup>, according to which victims of trafficking were recognized as hard-to-employ categories of the population, and which provided for mutual support during activities undertaken to encourage the employment of trafficking victims. However, there is no data on whether and how many trafficking victims have been employed through the National Employment Service since then, or whether any support programs have been created which would relate to vocational training or retraining of this group. Moreover, although the Strategy for Prevention and Suppression of Human Trafficking, especially Women and Children and Victim Protection 2017-2022 envisages that support for victims be improved through access to long-term and sustainable social inclusion programs for trafficking victims, there were no activities in the accompanying action plans which referred to long-term economic empowerment or employment of trafficking victims. This means that this issue has missed the strategic response of the state and has not been recognized as a priority when it comes to supporting victims of trafficking.
26. The **COVID-19 pandemic brought numerous challenges in this area**, revealing that the established system of protection and support for trafficking victims in crisis situations is almost non-existent. Human trafficking survivors, who were previously employed, were among the first to lose their jobs in the pandemic, which made this vulnerable group even more vulnerable and increased pressure on civil society organizations to provide support. An additional burden was created by the abolition of some services for human trafficking victims, for example the state-run emergency shelter for trafficking victims was closed in August 2020, so all the beneficiaries who were accommodated there were referred to safe shelters of NGO Atina.<sup>46</sup> Estimates say that in Serbia, **state institutions in the field of protection of victims of trafficking managed to respond to only 30% of the needs of trafficking victims during COVID-19 in 2020, while the remaining 70% were covered by civil society organizations.**<sup>47</sup>
27. Another vulnerable group that has difficulty finding employment in Serbia are refugees, migrants and asylum seekers. The most vulnerable among them are women, victims of violence and exploitation. The problem here can be found in the fact that the right to work is linked with the asylum procedure and the deadline for this right to be exercised is too long. **People seeking asylum can apply for a personal work permit nine months after an asylum application is submitted.**<sup>48</sup> **Work permits fees are still high** (€ 130 in total) and usually these categories of foreigners do not have the required amount of money for this expense. Then, asylum procedure also determines how long the permit will be valid – if a person is awarded the right to asylum, (s)he also exercises the right to a work permit for five years; persons with granted subsidiary protection for a period of one year, and persons who have only expressed their intention to seek asylum can have a work permit for up to six months.<sup>49</sup> Persons who were granted temporary residence for humanitarian reasons are still not eligible (vulnerable categories include for example persons granted asylum or victims of trafficking) for work permit.

#### **SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE TO**

- **Facilitate and accelerate the integration of refugees and asylum seekers into the labor market and to provide them with systemic support in finding a job and in acquiring skills and knowledge to improve their competitiveness in the labour market;**
- **To regulate the employment of the vulnerable persons who were granted temporary residence on humanitarian grounds;**

45 In Serbian: [http://www1.nsz.gov.rs/live/info/vesti/pomo\\_\\_u\\_ekonomskom\\_osna\\_ivanju\\_\\_rtava\\_nasilja.cid32889](http://www1.nsz.gov.rs/live/info/vesti/pomo__u_ekonomskom_osna_ivanju__rtava_nasilja.cid32889)

46 Atina, „Promising practices: Atina’s response to the crisis caused by the COVID-19 pandemic”, available at: <http://www.atina.org.rs/en/promising-practices-atina%E2%80%99s-response-crisis-caused-covid-19-pandemic>.

47 Ibid.

48 Official Gazette of the Republic of Serbia, nos. 128/2014, 113/2017, 50/2018 and 31/2019.

49 Article 13 of the Law on Employment of Foreigners. For additional details, see also A 11 – Initiative for Economic and Social Rights, Precondition for integration: The tight to work of refugees and asylum seekers in the Republic of Serbia, available at: <https://www.a11initiative.org/wp-content/uploads/2021/03/PRECONDITION-FOR-INTEGRATION-A-11-Initiative.pdf>, p. 18.

- Introduce special and effective measures for the employment of migrant women and women victims of trafficking and provide incentives for employers;
- Amend LATP and the LEF in order to automatically recognize the right to work of persons granted the right to asylum, without them needing to obtain personal work permits.

## ISSUES RELATED TO THE SPECIFIC PROVISIONS OF THE COVENANT (ART. 6-15)

**LOI 19. Please provide an update on the implementation of the new Law on Social Welfare and the Economic Reform Programme for 2019–2021 and explain how they contribute to reducing the number of people who are at risk of living in poverty. Please also explain the extent to which social security benefits under the new law are calculated in such a way as to ensure that beneficiaries in vulnerable situations enjoy the right to an adequate standard of living and other rights under the Covenant. Please also provide data on the number of recipients who had required to perform unpaid work in order to maintain their social benefits. Please indicate whether the increase mentioned in the state report (E/C.12/SRB/3, para. 201) has compensated for the pension cuts made since 2014.**

### Clearly an insufficient level of social benefits and interruptions and reductions in the granting of benefits

28. The amount of financial social assistance in Serbia is insufficient to cover basic expenses such as rent for social housing and utility bills, as it amounts to **approximately RSD 9.115 (€ 77.50)**<sup>50</sup>. The European Committee of Social Rights has stated that the amount of social assistance to which the socially vulnerable individuals in Serbia are entitled is **clearly insufficient and does not exceed the poverty line**.<sup>51</sup> In practice, this amount is further reduced by the (fictitious) amount of “lost earnings”, i.e. by taking into account the income that the SWC believes a person could have earned although in fact they did not.<sup>52</sup> For persons who are able to work from families in which the majority of family members are able to work, the actual monthly level of benefit is € 58<sup>53</sup> considering that the benefit is paid for nine months per year.<sup>54</sup>
29. Serbia is currently in the process of amending the Law on Social Welfare.<sup>55</sup> However, the State is ignoring the findings of the CESCR<sup>56</sup> and of Council of Europe’s Committee on Social Rights,<sup>57</sup> as the last version of the Draft Law on the Amendments to the Law on Social Welfare did not abolish the interruption of the receipt of financial social assistance or the reduction of social benefits by the amount of (notional) lost earnings, nor did it increase the amount of financial social assistance.<sup>58</sup> By continuing with interruptions of social benefits and the reductions of already insufficient social benefits, the **State continues to act contrary to its obligation under Article 9 and the Committee’s recommendation to prevent any unjustified interruptions in the allocation of social security benefits**.<sup>59</sup> In addition, Serbia has adopted the **Law on Social Cards**<sup>60</sup> which envisaged a “unified register of data on individuals and related persons, data on the socio-economic status of individuals and related persons, data on the type of social protection rights and services that the person uses or has used”. This Law requires that SWCs and other institutions in the social protection system collect and **process more than 140 personal data of a single beneficiary of financial social assistance**. This law provides for a large amount of personal data processed about social assistance recipients and persons applying for this assistance which cannot be considered proportionate

50 Minister for labor, employment, veteran and social issues, Ruling on the nominal amounts of cash benefits, Official Gazette of the RS, No. 99/2021.

51 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>. This amount has not changed significantly since then (in 2017 it was approximately €71 and in 2019 it is approximately € 78).

52 Pursuant to Article 102 of the Law on Social Protection and the Rules of Forms in the Procedure for Exercising the Right to Financial Social Assistance, 62 social welfare centres determine the lost earnings, earnings that the individual has not made, but could have made in the opinion of the social welfare center.

53 For the same conclusion for 2017, please see 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>.

54 Article 85 para. 3 of the Law on Social Welfare.

55 Response of Serbia to the list of issues in relation to its third periodic report, 29 June 2020, E/C.12/SRB/RQ/3, available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSRB%2fRQ%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSRB%2fRQ%2f3&Lang=en), para. 88, p. 19 and para. 94, p. 19.

56 CESCR, Concluding observations on the second periodic report of Serbia, op. cit., paras 24(a) and 24(b).

57 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>.

58 The latest version of the Draft Law amending the Law on Social Welfare was published in July 2019. For more information, please see: <https://www.minrzs.gov.rs/sr/dokumenti/ostalo/javni-poziv-za-ucesse-u-javnoj-raspravi-o-naertu-zakona-o-izmenama-i-dopunama-zakona-o-socijalnoj-zastiti> (Serbian only). In its response to the list of issues, the State answered that, having in mind the limited budget funds for these purposes, it was not possible to envisage changes in the amount and manner of determining the amount of financial social assistance in the Draft Law on Amendments to the Law on Social Protection. Response of Serbia to the list of issues in relation to its third periodic report, op. cit., para. 88, p. 19.

59 CESCR, Concluding observations on the second periodic report of Serbia, para. 24 (c).

60 Official Gazette of the Republic of Serbia, No. 14/2021.

and lawful. In addition to that, the Law on Social Cards is not in line with the provisions of the Law on Social Protection and the Law on Data Protection<sup>61</sup>, and Article 17 of the Law prescribes automated data processing, without transparent criteria for such data processing.

### Unpaid work of social benefit recipients

30. From October 2014 until June 2018 at least **9,436 of financial social welfare benefit recipients were required to perform unpaid work to maintain social benefits**,<sup>62</sup> in accordance with the Decree on Social Inclusion Measures for Recipients of Financial Welfare Assistance.<sup>63</sup> The Decree, *inter alia*, prescribed that the recipients of financial assistance who are fit for work may be assigned to community service, i.e. work in local communities, by social welfare centres. Those who refuse this type of engagement may lose the financial assistance they are entitled to or it may be reduced. This bylaw **contradicts State obligations under Article 9 of the Covenant**. In 2014, at least three initiatives were filed for the assessment of the constitutionality and legality of the Decree. Likewise, the Ombudsman submitted a proposal for the assessment of the constitutionality of this bylaw. Although **more than seven years have passed, the Constitutional Court has not yet passed the decision** regarding the said initiatives and proposal for assessment of constitutionality.

### Pension cuts without compensation

31. **Pension cuts**, which were introduced by the Law on the Temporary Provisions for the Administration of Pension Payments<sup>64</sup> and **lasted from 2014 until 2018, affected around 40% of pensioners**.<sup>65</sup> Despite the fact that these pensions are contributory benefits and that 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, without issuing individual decisions which are subject to judicial or administrative review.<sup>66</sup> Therefore, pensioners were denied the right to legal remedy,<sup>67</sup> which 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.<sup>68</sup>
32. The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of the existing social security coverage.<sup>69</sup> 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, leads to the conclusion that these restrictions were arbitrary and unreasonable.
33. Regarding the increase of pensions mentioned in the State report, it is important to note that this increase has not been a compensation for the cuts that were applied to pensions from 2014 until 2018, because the increases were rather minor compared to the previous pension cuts.<sup>70</sup>

### THE SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE TO

- **Abolish unjustified interruptions in the receipt of financial social assistance and the concept of “lost earnings” which prevents socially vulnerable persons from meeting their basic needs and can result in the deprivation of any means of subsistence for the persons concerned;**
- **Increase the social assistance benefits to a level which provides for a minimum acceptable standard of living;**

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61 Partners for Democratic Change Serbia (Partners Serbia), Privacy and Personal Data Protection in Serbia - An Analysis of Selected Sectoral Regulations and Their Implementation, p. 28, available at: [https://www.partners-serbia.org//public/news/Privacy\\_and\\_Personal\\_Data\\_Protection\\_in\\_Serbia-An\\_Analysis\\_of\\_Selected\\_Sectoral\\_Regulations\\_and\\_Their\\_Implementation,\\_PS\(2\).pdf](https://www.partners-serbia.org//public/news/Privacy_and_Personal_Data_Protection_in_Serbia-An_Analysis_of_Selected_Sectoral_Regulations_and_Their_Implementation,_PS(2).pdf)

62 Data is based on the answer of social welfare centers to the freedom of information requests by the A 11 – Initiative for Economic and Social Rights. For more details, please 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 Social Inclusion Measures for Recipients of Financial Welfare Assistance, 2018, available at: [https://www.a11initiative.org/wp-content/uploads/2018/10/Uredba\\_ENG.pdf](https://www.a11initiative.org/wp-content/uploads/2018/10/Uredba_ENG.pdf).

63 Official Gazette of the Republic of Serbia No. 112/2014.

64 Official Gazette of the Republic of Serbia, No. 116/2014. The Law was temporary only by its name, as it did not announce for how long the “temporary” pension cuts would be enforced. Even though its title suggests that the Law regulated the method of pension payments, the title is misleading, since the Law actually introduced progressive cuts of pensions.

65 For more details, see Jurij Bajec, Pensioners’ right in Serbia: assessing the impact of fiscal consolidation measures, European Social Policy Network, ESPN, 2016/2011.

66 See, for example, separate dissenting opinion to the decision Iuz-531/2014 by judge Dragan M. Stojanović.

67 Ibid.

68 CESCR, General Comment 19, The right to social security (art. 9), (Thirty-ninth session, 2007), U.N. Doc. E/C.12/GC/19 (2008).

69 CESCR, General Comment No. 19, The right to social security (art. 9).

70 Jurij Bajec, Pensioners’ right in Serbia: assessing the impact of fiscal consolidation measures, European Social Policy Network, ESPN, 2016/2011, available at:

<https://ec.europa.eu/social/BlobServlet?docId=15078&langId=en>. BBC News, „Najava povećanja penzija u Srbiji: „Penzije su realno niže do 1,8 odsto nego pre pet godina“, 17 september 2019, available at <https://www.bbc.com/serbian/lat/srbija-49660506>.

- **Ensure that social assistance beneficiaries are not required to perform unpaid work to maintain their social entitlements and that “social inclusion measures” do not lead to withdrawal or reduction of social entitlements;**
- **Include civil society organizations and other interested parties in drafting the amendments of the Law on Social Protection;**
- **Outline the plan for adequate compensation for pension cuts that took place between 2014 and 2018.**

**LOI 20. Please provide information on the steps taken by the State to amend the Law on Financial Support for Families with Children in order to: Ensure that families with children with disabilities benefit from their social entitlements (parental leave and childcare allowance).**

34. In May 2021, the Constitutional Court ruled that several provisions of the **Law on Financial Support for Families with Children** (hereinafter: LFSFC) were unconstitutional, including a provision stipulating that the right to salary compensation due to absence from work (for parental leave) could not be exercised for a child entitled to allowance for the care and assistance of the other person, which put parents of children with disabilities in a worse position and forced them to choose between these two social entitlements.<sup>71</sup> The mentioned decisions of the Constitutional Court led to new amendments to the LFSFC.<sup>72</sup> As one of the results of these amendments, unconstitutional provisions which forced parents of children with disabilities to choose between the salary compensation and the childcare allowance was erased, which was a positive step.

35. Two competent ministries issued instructions for social welfare centres and local self-government units regarding the re-examination of individual decisions based on provisions that were declared unconstitutional, including decisions which prevented parents of children with disabilities to exercise their right to salary compensation together with the childcare allowance.<sup>73</sup> However, parents who, having in mind the unconstitutional provisions of the law in force, did not apply for both types of benefits, were not eligible for compensation.<sup>74</sup> Most parents did not apply for both types of assistance because they knew they wouldn't receive both types of compensation due to the then applicable provisions of the LFSFC which were later declared unconstitutional.<sup>75</sup> As a result, **many families with children cannot claim their right to compensation despite the fact that LFSFC provisions, which prevented them from benefiting from their social entitlements, have been declared unconstitutional.**

**SUBMITTING ORGANIZATIONS RECOMMEND TO THE STATE**

- **To introduce the possibility of compensation (with a new deadline) for parents of children with disabilities who, due to the unconstitutional provisions of the Law on Financial Support for Families with Children, did not apply for salary compensation and allowance for the assistance and care of another person benefits while those provisions were in force, and therefore could not receive compensation even after those provisions of the law were declared unconstitutional.**

**LOI 20. Please provide information on the measures taken by the State to amend the Law on Financial Support for Families with children in order to: (b) Increase access to social protection services for the Roma population.**

36. Not a single provision of the Law on Financial Support for Families with Children has the purpose to increase coverage of Roma children with social benefits or benefits aimed at families with children. On the contrary, conditions for parental and child benefits exclude many vulnerable Roma children from their access to these benefits. This particularly refers to the Article 25 of LFSFC.<sup>76</sup> The LFSFC was amended in an urgent procedure in June 2018 and entered into force on 1 July 2018. Article 25 of the said Law introduced additional conditions for the parental allowance, which envisaged that children must be fully and timely vaccinated and that they must regularly attend elementary school and obligatory preschool education. **If at least one child does not attend the**

71 Constitutional Court of the RS, Decision No IUz-266/2017 determining that provision of the Article 12, para 7 of the Law on Financial Support for Families with Children (Official Gazette of the RS, No. 113/17 and 50/18) is unconstitutional.

72 Law on amendments to the Law on Financial Support for Families with Children, „Official Gazette of the RS, No. 66/2021, from 30 June 2021.

73 Ministry of Family Welfare and Demography and Ministry of Labor, Employment, Veteran and Social Issues, „Instruction on the conduct of municipal - city administrations and social welfare centres in the implementation and enforcement of decisions of the Constitutional Court of the Republic of Serbia No. IUZ-216/2018, IUz/2018, and Iuz-266/2017“, 2 August 2021, available (in Serbian) at: <http://minbpd.gov.rs/wp-content/uploads/2021/11/Instrukcija-o-postupanju-opstinskih-gradskih-uprava-i-centara-za-socijalni-rad-u-primeni-i-sprovoenju-odluka-Ustavnog-suda-Republike-Srbije-br.-IUz-2162018-IUz-2472018-i-IUz-2662017-1.pdf> (hereinafter: MFWD and MLEVSA 2021 Instruction).

74 BBC News, “Deca sa invaliditetom i Srbija: Država promenila zakon, ali još nema novca roditeljima dece sa posebnim potrebama“, 25.10.2021, available at: <https://naslovi.net/2021-10-25/bbc-news/deca-sa-invaliditetom-i-srbija-drzava-promenila-zakon-ali-jos-nema-novca-roditeljima-dece-sa-posebnim-potrebama/29191860>;

75 Ibid.

76 Official Gazette of the Republic of Serbia, No. 113/2017, 50/2018, 46/2021 – Decision of the Constitutional Court of the RS, 51/2021 – Decision of the Constitutional Court of the RS, 53/2021 – Decision of the Constitutional Court of the RS and 66/2021.

- preparatory preschool program or has not been properly vaccinated, it is not possible to exercise the right to the parental allowance for any child from that family.** Although conditions regarding immunization and (pre)school attendance are neutral at first site, they have a disproportionate impact on vulnerable Roma children.
37. The LFSFC was once again amended in 2021, including minor changes to the Article 25<sup>77</sup>, but these amendments didn't lead to any improvement regarding eligibility of Roma children to parental allowance, nor are they able (nor intended) to increase access to benefits for Roma children. Therefore, when the LFSFC was amended, provisions that discriminated against Roma children were retained with minor changes that did not improve their position in any way.
  38. The 2019 European Commission Report for Serbia highlights the discriminatory provisions of the LFSFC: "The new provisions of the Law on Financial Support for Families with Children include the condition that *eligibility for parental allowance depends on the children being vaccinated. However only 12.7% of Roma children have received all recommended vaccines, compared to 70.5% of non-Roma children in the country*"<sup>78</sup> (emphasis added).
  39. Recent data also confirms the existence of **a gap between Roma and non-Roma children in the immunization coverage, as well as in school and pre-school attendance.** Thus, a regional UNDP research about Roma shows that about one in six marginalized Roma children of school age is still not participating in the education system.<sup>79</sup> The same research shows that the completion rate of compulsory education among Roma girls is only 57%, compared to 93% among non-Roma girls and 95% non-Roma boys. According to 2019 data from UNICEF and the Republic Statistical Office, the percentage of Roma children enrolled in school in early childhood is only 7% compared to 61% for the general population. The primary school completion rate among children living in Roma settlements is 64%.<sup>80</sup> School attendance rates for children from Roma settlements are lower compared to the national average at all three levels, particularly at the level of early childhood education (7 %). The completion rates for primary and secondary education in the general population are high, while these rates are significantly lower for children coming from Roma settlements.<sup>81</sup> Among children in the general population, the attendance rate in the preparatory preschool program is 97 %, compared to 76 % in Roma settlements.<sup>82</sup> Immunisation coverage is also lower among Roma children. According to 2019 data from UNICEF and the Republic Statistical Office, only around one-third (35 %) of Roma children have received all vaccines on time, compared to 69 % of children in the general population who have received all vaccines on time.<sup>83</sup> Data on school and preschool attendance and immunization coverage among Roma and non-Roma children clearly suggest that conditions for parental allowance have a disparate impact upon Roma children.
  40. Roma children who remain outside the education system and who are not covered by immunization are, without doubt, one of the most marginalized groups in Serbia. Instead of increasing efforts to promote non-discriminatory access to opportunities and services in all fields for Roma and to ensure effective inclusion of Roma children, unfair provisions of the LFSFC are putting them in an even worse situation and increasing the gap between Roma and non-Roma children.
  41. It is pertinent to mention that Article 25 of the LFSFC and its conditions for parental allowance are **in direct contradiction with the recommendation of the Human Rights Committee during the consideration of the third periodic report of the Republic of Serbia on the implementation of the International Covenant on Civil and Political Rights** - to promote equal access to rights and services in all areas for members of the Roma community.<sup>84</sup> Due to excessive differences in the immunization coverage and education among Roma and non-Roma children, the conditions of Article 25 of the Law disproportionately affect Roma children, and are in substantial contradiction with the mentioned recommendation. Examining the fulfilment of the recommendations from the Concluding Observations in relation to the third periodic report of the Republic of Serbia, the Human Rights Committee concluded that Serbia, among other things, had not fulfilled the recommendations regarding the exclusion of Roma.<sup>85</sup> Furthermore, the Human Rights Committee requested from Serbia to provide, within the next reporting

77 Law on Amendments to the Law on Financial Support for Families with Children, Official Gazette of the RS, No. 66/2021 of 30 June 2021.

78 European Commission, Serbia 2019 Report, 25.9.2019, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>.

79 UNDP, Roma at glance, Serbia, available at: [https://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet\\_SERBIA\\_Roma.pdf](https://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_SERBIA_Roma.pdf), page 2

80 UNICEF and Statistical Office of the Republic of Serbia, Serbia, Multiple Indicator Cluster Survey 2019 and Serbia Roma Settlements Multiple Indicator Cluster Survey 2019, Survey findings report, Belgrade, October 2020, xvii; hereinafter: MICS 2019, available at: <https://www.unicef.org/serbia/media/16726/file/MICS%206%20Multiple%20Indicator%20Cluster%20Survey%20for%202019.pdf>

81 Serbia Multiple Indicator Cluster Survey 2019 and Serbia Roma Settlements Multiple Indicator Cluster Survey 2019, Statistical Snapshot, page 37, available at:

[https://www.unicef.org/serbia/media/16301/file/Serbia%20\(National%20and%20Roma%20Settlements\)%202019%20MICS%20Statistical%20Snapshots\\_English.pdf](https://www.unicef.org/serbia/media/16301/file/Serbia%20(National%20and%20Roma%20Settlements)%202019%20MICS%20Statistical%20Snapshots_English.pdf)

82 Ibid, page 35.

83 MICS 2019, xv.

84 Human Rights Committee, Concluding observations on the third periodic report of Serbia, CCPR/C/SR/CO/3, 2017, p. 3, para. 15,

85 Human Rights Committee, Follow-up letter sent to the State party – Discontinuance of the Follow-up procedure, 26 November 2020 (general distribution – 21 February 2021), available at:

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SRB/INT\\_CCPR\\_FUL\\_SRB\\_44136\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SRB/INT_CCPR_FUL_SRB_44136_E.pdf).

cycle, specific information on how the amendments to the Law on Financial Support for Families with Children and Article 25 of that Law affect the Roma community.<sup>86</sup>

42. **Limiting the number of children eligible for parental and child allowance** is another condition that affects disproportionately most vulnerable Roma children and families.<sup>87</sup> Families are eligible to receive parental and child allowance for up to four children, apart from several exceptional cases.<sup>88</sup> This limitation of the number of children who are eligible for parental and child allowance disproportionately affects the most vulnerable families with children. Namely, the data of the Statistical Office of the Republic of Serbia from the last Census from 2011, demonstrates that there are only 5,264 families with over five children in Serbia. Out of this number, there are as many as 1,719 families in which one or both parents stated that they are Roma.<sup>89</sup> Furthermore, out of this number, in 782 families one or both parents are illiterate, while there are 1,024 families in which both parents have no school education or have completed a maximum of three grades of primary school.<sup>90</sup>
43. These insights into the more detailed characteristics of families with five or more children show that the most vulnerable families are particularly affected by the limited number of children who can receive the parental and child allowance. In addition, having in mind the ethnicity of parents with five or more children, the mentioned limitation raises the issue of discrimination. Namely, **although Roma make up 2.05 % of the population according to the 2011 Census, their share in families with 5 or more children is 32.66 %**. Since the number of families with five or more children is not large, the abolition of this restriction would not require huge budget expenditures. Above all, it would lead to abolishment of the seemingly neutral norms and limitations that disproportionately affect the most vulnerable Roma families. However, even presented with these arguments, the Government failed to address this issue during the last two revisions of the above-mentioned Law.

**(c) Right to parental allowance and parent's legal status in the State.**

44. Due to the decision of the Constitutional court<sup>91</sup>, and the Article 22 paras. 1 and 9 of the Law on Financial Support for Families with Children (LFSFC), the right to parental allowance may be granted to a child whose mother is a foreign national if the father of the child is a Serbian national (in which case the request for parental allowance can be submitted by the father), as well as to a child born in Serbia whose mother is a foreign national with a permanent residence permit in Serbia. However, **parental allowance is denied to a child whose mother is stateless or at risk of statelessness (including undocumented Roma) or a Serbian citizen with no identity card and registered permanent residence.**<sup>92</sup>

**SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE**

- **To remove conditions for parental allowance regarding immunization and school and preschool attendance, in order to avoid further discrimination and exclusion of Roma children;**
- **To abandon the limitation on the number of children who are eligible for the children and parental allowance which deny these entitlements to the most vulnerable families and children;**
- **To grant the right to parental allowance for children whose mothers are undocumented or Serbian citizens without permanent residence;**
- **To abandon conditions for permanent residence of Serbian nationals for parental allowance;**
- **To affirm the right to parental allowance for every child born in Serbia whose mother is stateless, undocumented or a Serbian national without permanent residence.**

**LOI 25. Please provide information on the measures taken and envisaged to guarantee universal health coverage and unhindered access to health care and related services, in particular for Roma, refugees, asylum seekers, migrants in irregular situations, internally displaced persons, persons deprived of their freedom and cancer patients.**

45. Undocumented Roma have no access to health insurance. The lack of access to health insurance has a particularly serious impact on Roma women and their access to adequate prenatal and maternal health care. **Roma women**

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<sup>86</sup> Ibid, para. 4.

<sup>87</sup> Imogen Richmond-Bishop and Danilo Ćurčić, „Welfare caps: how the UK and Serbia became outliers in child support“, Open Global Rights, 21 April 2021, available at: <https://www.openglobalrights.org/welfare-caps-how-the-uk-and-serbia-became-outliers-in-restricting-child-support/?lang=English>.

<sup>88</sup> Ibid. See also Article 22 paras 1 and 3 and Article 26 para 1 of the Law on Financial Support for Families with Children.

<sup>89</sup> Data obtained by special processing of census data performed by the Statistical Office of Serbia. One of the Platform organizations (A 11 Initiative) received data about characteristics of families with five or more children from the Statistical Office of Serbia in March 2021.

<sup>90</sup> Ibid.

<sup>91</sup> Constitutional Court of the RS, Decision No. IUz-40/2012, published in the Official Gazette of the RS, No. 104/2014, from 1 October 2014.

<sup>92</sup> A 11 – Initiative for Economic and Social Rights, Second Class Rights, op. cit., 15.

**giving birth without health insurance receive high bills** and are exposed to threats in order to pay for medical treatment, i.e. for giving birth in hospital without health insurance.<sup>93</sup> The Law on the Realization of Health Care for Children, Pregnant Women and New Mothers,<sup>94</sup> adopted back in 2013, regulates the manner of exercising the right to health care for children, women and new mothers whose health insurance documents (health insurance cards) are not certified. However, it ignores those women and children who are not able to obtain health insurance cards at all, such as undocumented Roma. One of the Platform organizations (A 11 – Initiative for Economic and Social Rights) came across cases of Roma women (including one undocumented 17-year-old Roma) who received hospital bills amounting to more than € 2,000 (for childbirth in a hospital) or even more than € 3,000 (for hospitalization related to pregnancy).

46. The situation of Roma women and children in the area of health care led the Committee on the Rights of the Child to the conclusion that Roma mothers and young children are “particularly vulnerable and continue to have limited access to adequate maternal and general health care, resulting in high mortality rates (...)”.<sup>95</sup> This Committee further recommended the State to “strengthen efforts to ensure that access to adequate health care, including prenatal care for pregnant women without health insurance, is extended to families living in the most vulnerable situations, particularly those living in marginalized and remote areas”. Data collected by the Protector of Citizens for the purpose of the Special Report of the Protector of Citizens on Reproductive Health of Roma Women also show that there are still cases of undocumented Roma and cases in which Roma are unable to register their permanent residence at the address of the social welfare centre, which presents an obstacle for them when it comes to accessing health care.<sup>96</sup>
47. The reporting period was characterised by the fight against the coronavirus. **Refugees, asylum seekers and migrants had the chance to be vaccinated free of charge** in the local outpatient health clinics, Asylum Centres, Reception Centres and at other vaccination facilities. In practice, once accommodated at private addresses refugees and asylum seekers are faced with problems and are often deprived of health care unless it is an emergency. The main reason is the Ministry of Health fails to provide information that would inform the medical institutions under its jurisdiction of legal requirements related to the provision of health services to refugees and asylum seekers. Furthermore, **health insurance cards are almost impossible to obtain in practice for this category of the population**. Also, Asylum Centre Bogovađa did not have a doctor ordination assigned during the reporting period, which jeopardize access to health for refugees, asylum seekers and migrants accommodated there.
48. **New Health Insurance Act** stipulates that 65% of health service costs is provided to a person who fails to undergo a mandatory cancer screening if a disease which is subject of these screening is diagnosed before the next screening cycle begins<sup>97</sup>. This provision **financially penalizes those who miss preventive cancer screening and ultimately contract one of the targeted cancers**.<sup>98</sup> They will be forced to cover up to 35% of the total cost of the treatment. For those who are unable to pay the remaining 35% of the cost, the consequence may be the complete lack of health care. By imposing such an unfair and disproportionate sanction for missed screening, the Law on Health Insurance most severely affects those who are the poorest and unable to participate in the payment of treatment costs, which is **fundamentally contrary to the provisions of the paragraph 12 (b) and 18 of the Committee’s General Comment No. 14 on the Right to the Highest Attainable Standard of Health (Art. 12)**. Stated provisions of the Law on Health Insurance will disproportionately affect women, who are required to be screened for all three cancers covered by the mandatory screening, as compared to men, who are required to be screened only for one type of cancer.

#### **SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE TO**

- **Extend coverage by obligatory health insurance in order to include vulnerable undocumented children and pregnant women;**
- **Ensure effective access to health insurance for refugees and asylum seekers, including those residing out of asylum centres and reception centres;**

93 For more details, please see FemPlatz and A 11 – Initiative for Economic and Social Rights, Information for the Committee on the Elimination of Discrimination against Women, Pre-sessional Working group for the 72nd session on reviewing the Republic of Serbia, p. 6-8.

94 Official Gazette of Republic of Serbia, No. 104/2013.

95 Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of Serbia, 7 March 2017, para. 45 (b).

96 The Protector of Citizens, Special Report of Reproductive Health of Roma Women with Recommendations, 2017, available at:

<https://www.ombudsman.rs/attachments/article/5536/Posebna%20izvestaj%20ZG%20Rep%20zdravlje%20Romkinja%2011.pdf>, pages 3 and 11.

97 Article 131, paragraph 1, item 4, line 5 of the Law on Health Insurance, Official Gazette of RS, No. 25/2019.

98 BBC News in Serbian, „Borba protiv raka u Srbiji: Poziv ili pismo pa kazna (The fight against cancer in Serbia: Call or letter and punishment)”, 11 April 2019, available (in Serbian) at:

<https://www.bbc.com/serbian/lat/srbija-47851338>. A 11 - Initiative for Economic and Social Rights, Second Class Rights, op. cit., pp. 27-28.

- **Enable access to health insurance and health care in the place of actual (habitual) residence for internally displaced persons who are unable to register (permanent or temporary) residence in the place they actually reside;**
- **Abandon disproportionate sanctions for missed cancer screenings which hinder the access to health care for cancer patients.**

## **ISSUES NOT LISTED IN THE LIST OF ISSUES**

### **Position of LGBTI persons in Serbia**

49. Serbia has still **not legally recognised same-sex partnerships**. The process of adopting a relevant law was initiated in 2021, but halted.<sup>99</sup> The lack of a comprehensive law regulating the matter affects the wide scope of socio-economic rights of LGBTI persons in Serbia.
50. In Serbia, the process of legal gender recognition is regulated by law<sup>100</sup>, but legally, only male and female options are available. Birth certificates may be legally amended to recognise the change and undergoing gender affirmation surgery is no longer mandatory. In December 2018 Serbia adopted the **Ordinance on the Issuance and Form of Sex Change Certificates of Health Institutions**<sup>101</sup>. This ordinance regulates determining a moment of the "sex change" from Article 45b of the Law on Registry Books, that is, what documentation a person needs in order to legally change their gender marker in their personal documents.<sup>102</sup> Despite the criticism of local and international civil society organizations fighting for transgender rights, this ordinance **requires that a person must have medical documentation including a psychiatrist's report, after a year-long monitoring, and an endocrinologist's report after administered hormone therapy in order to be able to change their legal gender marker**. The current directive still perpetuates pathologisation and discrimination against trans persons who do not want to or cannot go through hormone therapy and prohibits them from accessing legal means to change their gender marker<sup>103</sup>. Others are put on hold until they complete psychiatric monitoring and hormone treatment, during which time they do not have appropriate personal documents<sup>104</sup>, and are discriminated against in accessing education, employment, healthcare, traveling abroad, etc.
51. Trans persons in Serbia undergoing hormone therapy were already facing problems in accessing these rights before the 2018 legal amendments, explicitly requiring hormone therapy as a mandatory condition for legal gender recognition. Until the submission of this document, access to hormone therapy is still limited or it is entirely inaccessible. There are a limited number of oral and intradermal type of hormone preparations available, but they are not effective in hormone therapy for trans women. Medications/hormones for trans women in the forms of injections, which are efficient and primarily used in the hormone therapy of trans persons, are not listed in the State registry. They can only be found in some private pharmacies and are imported. It is important to mention the gender inequality elements of said situation, affecting mostly trans women.<sup>105</sup> They have to finance their hormones which are at least 6 times more expensive than testosterone, themselves, if they are available at all. The issue was also raised by the Ombudsman.<sup>106</sup> **Transgender children are affected in different ways: they cannot access hormone therapy on their own before the age of 18; the hormone stoppers are expensive.**<sup>107</sup> In addition, the costs of hormonal treatment of trans persons are not yet covered by compulsory health insurance, although Article 131 of the Law on Health Insurance of the Republic of Serbia<sup>108</sup> states that at least 65% of medical services of "gender reassignment for medical reasons" are covered by the compulsory health insurance funds of the Republic of Serbia. This legal provision still does not include hormone and other treatment.

99 See more: Coalition PrEUgovor, Alarm Report on Progress of Serbia in Cluster 1 - November 2021, page 85-88, available at: <https://preugovor.org/Alarm-Reports/1689/Alarm-Report-on-Progress-of-Serbia-in-Cluster-1.shtml>

100 Legal gender recognition is regulated in the Republic of Serbia under Article 45b of the Law on registry books. This article was introduced when the law was amended in 2018. Law on Registry book of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 20/2009, No. 145/2014 and No. 47/2018).

101 Ordinance on the manner of issuing and the health care institution confirmation form regarding the person's change of sex (Official Gazette of the Republic of Serbia No. 103/2018)

102 This Ordinance came into effect on 1 January 2019.

103 Some of these reasons include risks to their health, mental wellbeing, and other conditions, including their right to their physical and bodily integrity and self-determination of such

104 That is, the ones reflecting their appearance and gender identity.

105 Testosterone is comparatively cheaper and locally produced, and therefore trans men can (in most cases) receive it for free at the primary health institution where their medical file is kept.

106 Opinion No. 322-163/19, delivered on 26 July 2021, <https://ombudsman.rs/attachments/article/7175/Misljenje.pdf>

107 These are used in the hormone therapy of trans children and are priced at app. 300 € per month treatment.

108 Law on Health Insurance of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 25/2019).

52. In relation to **intersex persons**, a major problem is the provisions of the **Law on Registry Books, which stipulate that the fact of the child's birth must be reported within 15 days from the day of the child's birth**. Considering that the sex of the child must be entered in the birth register, in the case of an intersex child, this provision produces negative consequences. Since the competent authority has to register the sex of the child, in practice this leads to child's parents deciding on urgent and harmful medical procedures. In the Republic of Serbia, there are no appropriate bylaws that would precisely regulate the position of intersex newborns or their position during development and growth. This includes medical protocols, but also the procedures of the competent administrative bodies, which would adequately regulate their specific position.

#### **SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE TO**

- **Adopt a comprehensive law on same-sex partnerships, providing equal rights to same-sex couples as to married couples, including equal access to inheritance rights, family rights, socio-economic rights, joint adoption and foster care for same-sex partners, as well as fertility treatment for same-sex couples and single LGBT women, with no additional and discriminatory requirements in comparison to married couples;**
- **In cooperation with trans and intersex civil society organizations, adopt a comprehensive law on legal gender recognition and introduce precise medical and administrative protocols and guidance on the position of intersex newborns, as well as on transgender and intersex affirming health care, based on a person's self-determination, in line with international standards and best practices and by ending harmful practices;**

#### **Access to education for refugees, asylum seekers and migrants**

53. When it comes to education, persons granted asylum in the Republic of Serbia are equal with Serbian citizens.<sup>109</sup> Problems still exist in primary schools, include lack of preparatory Serbian lessons, interpreters and the fact that the support depends entirely on the support of NGOs and donors. All children are enrolled in school, regardless of their legal status. Under the LAMP, **foreigners granted to asylum are entitled to preschool education under the same terms as Serbian nationals. However, this right is not guaranteed for asylum seeking children**. In practice, a small number of refugee children are enrolled in preschool education due to relevant regulations on preschool enrolment which do not recognize refugee and asylum-seeking children as vulnerable categories. Additionally, refugee and asylum-seeking children do not have right to free textbooks. The enrolment of the first refugees in Belgrade University with the status of full-time students was a positive step. The problems with recognition of national education diplomas in order to verify the level of education for those who do not have their diplomas has been resolved by joining RS the European Qualifications Passport for Refugees - EQPR project in 2021.<sup>110</sup>

#### **SUBMITTING ORGANIZATIONS URGE THE COMMITTEE TO RECOMMEND TO THE STATE TO**

- **Develop specialised curricula for refugees, asylum seekers and migrant children;**
- **Enable access to preschool education free of charge for refugee and migrant children, irrespective of their legal status;**
- **Develop a plan to achieve the sustainability of interpretation services and school assistants for helping children during classes, which are currently being provided by donors and/or NGOs;**
- **Amend the Decision on Funding Textbooks from the Budget, to entitle refugee and asylum-seeking children to free textbooks, and to introduce support and financial aid for refugees for access to higher education.**

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<sup>109</sup> Article 64 of the Law on Asylum and Temporary protection.

<sup>110</sup> With the support of UNHCR's Office in Belgrade, the BCHR started cooperating with the Serbian Qualification Agency ENIC/NARIC Centre. The accession of the ENIC/NARIC Centre to the Council of Europe, as the implementer of the EQPR project, was initiated in early 2021, together with the representatives of the CoE Office in Belgrade and the EQPR project.