

Everyday Injustice – Realization of Economic and Social Rights in Serbia



INITIATIVE FOR
ECONOMIC AND
SOCIAL RIGHTS



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For the publisher:

Danilo Ćurčić

Authors:

Milijana Trifković

Danilo Ćurčić

Marko Vasiljević

Milica Marinković

Ema Stepanović

Nađa Marković

Ratka Tomić

Uroš Randelović

Editor:

Milena Jakovljević

Design and prepress:

Monika Lang

www.a11initiative.org

office@a11initiative.org

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INTRODUCTION

This report highlights the findings of the A 11 Initiative's ongoing activities in monitoring the Republic of Serbia's commitments to uphold and advance economic and social rights. Just like in the past, instances of violations have been recorded and key concerns examined in five essential areas that are fundamental to the economic and social rights we enjoy every day: the right to work, health, social protection, housing, and education. These areas are critical for complying with the obligations set forth in the International Covenant on Economic, Social, and Cultural Rights, the principal document upholding these **everyday rights**.

Covering the time period from 2022 to 2023, the report is grounded in an analysis of regulations and public policies, an evaluation of the legislative landscape, and crucially, cases concerning the protection of the economic and social rights of Serbia's most vulnerable citizens¹. Although examining the situation through the lens of the most vulnerable citizens, whether due to their economic status, age, nationality or other affiliations, gender, sex, or other characteristics, has some methodological constraints, the report opted for it, because it is rooted in the concept of economic and social rights that give precedence to the requirements of the most vulnerable citizens, dignity, social justice, and solidarity.

The report's unique title, "**Everyday Injustice**", mirrors our recognition of the issues and obstacles encountered by society's most vulnerable members. Among these are their endeavors to achieve dignified work, access proper healthcare, protect social assistance benefits, and live in conditions that honor their humanity. The degree of exclusion and obstruction in the attainment of economic and social rights is so pronounced that it inevitably shifts from the realm of rights and regulations to the issues of justice and systemic inequalities faced by the most vulnerable citizens as they strive to access their rights to employment, healthcare, social welfare, housing, and education.

¹ All words importing the masculine gender shall include the feminine gender.

Achieving a different conclusion requires substantial systemic changes that would lead to the interpretation of "sectoral regulations," public policies, and practices related to the five fundamental economic and social rights in line with the obligations states have in implementing the provisions of the International Covenant on Economic, Social, and Cultural Rights.

It is important to note that in April 2022, the Republic of Serbia completed its third reporting cycle on fulfilling the obligations it agreed to by ratifying this Covenant. Following this reporting cycle, the United Nations Committee on Economic, Social, and Cultural Rights provided a series of recommendations² for improving economic and social rights. While acknowledging the positive aspects of the Covenant's implementation, the Committee also highlighted significant concerns related to the direct application of the International Covenant on Economic, Social, and Cultural Rights in Serbia, the training for judges, prosecutors, and lawyers on the application of this international treaty, and the systematization of the impact assessment of new regulations on the realization of economic and social rights. Unfortunately, progress has stalled beyond improving the legislative framework. Article 14 of the Law on the Prohibition of Discrimination envisages assessing the impact of regulations or public policies significant for the realization of the rights of socially and economically vulnerable individuals or groups; yet not a single regulation has been preceded by such an impact assessment. Failing to align legal solutions with the needs of the socially and economically most vulnerable individuals gives rise to new situations where the regulations themselves restrict or pose a threat to the rights of the most vulnerable citizens.

Additionally, the Committee recommended that the Republic of Serbia improve the system of free legal aid, enhance the collection of data related to the realization of economic and social rights, and address issues concerning the COVID-19 pandemic and previously implemented austerity measures and their impact on economic and social rights. The Committee also issued a series of recommendations aimed at improving specific rights. More significantly, it called for the establishment of a more efficient, progressive, and socially just fiscal policy and for increased budget alloca-

² UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Third Periodic Report of Serbia, 6 April 2022, UN Doc. no. E/C.12/SRB/CO/3.

tions for services related to adequate housing, employment, social protection, healthcare, education, and other rights guaranteed by the Covenant.

Finally, in the document in which it adopted the concluding recommendations, the Committee already highlighted the announcement of the ratification of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights as a positive advancement in strengthening the protection of these rights in Serbia. This ratification was achieved with the **adoption of the Law on the Ratification of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights**³ in September 2023. The Optional Protocol, which for the first time allows Serbian citizens to directly address the United Nations Committee for the protection of economic, social, and cultural rights when these rights are violated in Serbia, was confirmed by the National Assembly on September 6, 2023, and came into force on December 22 of the same year. This major milestone, which at a normative level equates economic and social rights with other human rights, is the result of advocacy efforts of the A 11 Initiative since its establishment, as well as numerous activities highlighting the importance of ratifying this instrument for the realization of everyday rights of Serbian citizens. Such significant changes would not have occurred without the recognition by the Ministry of Human and Minority Rights and Social Dialogue of the need to ratify this international treaty and its coordination in the ratification process. Nonetheless, there is still much work needed to promote this international treaty and the Committee's practices, as well as in establishing mechanisms that would enable the Committee's views to be adopted as guidelines for decision-makers regarding the enhancement of economic and social rights protection. Nevertheless, the first step in joining this international treaty has been made.

The ratification of the Optional Protocol has shown that there is still potential to advance and protect the economic and social rights of citizens. Still, this potential is not fully utilized, as daily instances highlight the barriers and restrictions that hinder the fulfillment of citizens' economic and social rights.

3 Official Gazette of RS – International Treaties", No. 5/2023.

Notably, despite stagnation in most other areas, which can be attributed in part to reduced legislative activity stemming from political factors—election cycles and unreasonably long periods of forming executive power—the primary concern for the attainment of economic and social rights in recent times continues to be the combat against poverty and the introduction of the Social Card, a digital tool within the social protection system introduced by the **Social Card Law**. This system has triggered tectonic changes in the social protection system, primarily leading to the semi-automatic exclusion of financial social assistance recipients through illegitimate and unfair decisions to revoke already meager financial social assistance. The application of this digital tool threatens to become a standard practice that will be tested and applied first to the most vulnerable citizens in other areas significant for the realization of economic and social rights, such as the right to work and healthcare, thus utilizing new technologies to perpetuate the exclusion of citizens and widen inequalities. There is a legitimate concern that the continual advancement of digitization and introduction of artificial intelligence systems, without a focus on upholding human rights, may result in substantial violations of economic and social rights in the future, and that the key struggle to defend these rights will play out not only in Serbia but across the globe.

Sadly, the reporting period was marked by mass shootings, first at a location where the right to education is upheld—at the "Vladislav Ribnikar" Elementary School in Belgrade, where a student shot and killed nine students and a security guard, wounding several others, and later in the villages of Dubona and Malo Orašje, where, inadequate intervention by the Center for Social Work in past cases of violent behavior partly contributed to a young man shooting and killing nine young individuals from those areas, as well as injuring others. Our objective in this report is not to dig further into the analysis of the causes of this unprecedented violence, but it is evident that a comprehensive grasp of the factors behind the tragedy requires the involvement of the entire society, including those in charge of overseeing the key systems that impact economic and social rights in Serbia.



RIGHT TO WORK

The improvement of the situation regarding the right to work and the regulation of matters covered by the Labor Law have been delayed due to various factors, including parliamentary and presidential elections, the formation of the government only at the end of 2022, and the subsequent calling of new elections in the following year. In accordance with the recommendations of the European Commission, Serbia should begin preparations for joining the European Labor Authority.⁴

Legislative Activities

The reporting period did not witness any progress in the drafting of the Labor Law and other essential regulations related to this domain, such as the Law on Strike, despite initial expectations and announcements. As for the latest draft Law on Employment due to Increased Workload in Certain Business Activities analyzed in our previous report, there have been no significant developments, and the draft text remains unchanged. In contrast, the Law on Occupational Safety and Health, the Law on Volunteering, the Law on Internships, and the Law on Employment of Foreign Citizens were all adopted in 2023.

Finally approved in 2022, the Law on Social Entrepreneurship⁵ has been met with widespread approval for its introduction of beneficial measures, with particular emphasis on the elimination of the need to change legal forms in order to qualify as a social enterprise. The comprehensive regulation of this area is expected to enhance economic empowerment opportunities for disadvantaged demographics in the labor market. The full impact will be measurable after the adoption of the necessary bylaw regulations.

⁴ Annual Report of the European Commission on Serbia for 2023, available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_695_Serbia.pdf, p. 100.

⁵ "Official Gazette of RS", No. 14/2022.

However, except for the Regulation on the Conditions, Criteria, and Procedure for Obtaining the Right to Allocation of Funds for the Promotion of Social Entrepreneurship, nothing further has been achieved.⁶

The adoption of the Law on Occupational Safety and Health⁷ aimed to enhance the safety system in place. One of the major changes concerns remote work and telework; the Law enhances the power of labor inspectors and imposes additional responsibilities on workers to adhere to protective measures.

Effective from February 1, 2024, the amendments to the Law on Employment of Foreign Citizens⁸, have made extensive modifications to the previous legislation, which was no longer in line with market requirements or current practices. This revision appears timely, given the substantial number of foreign workers currently employed in Serbia. It should also be emphasized that after the completion of the public debate on amendments, the Association of Autonomous Trade Unions of Serbia publicly expressed dissatisfaction because their proposals aimed at protecting the erosion of domestic workers' rights and stopping the "policy of low wages and earnings, and ensuring that Serbia remains a country of cheap labor" were not adopted during the preparation of this legislative solution.⁹ The adopted amendments include some positive measures in the area of dignified work, such as the possibility of permanent employment, strengthened rights protection, and higher penalties for violations. Regarding the change that has resonated most within the professional community—the simplified process for obtaining work permits—it remains to be seen in practice whether this was a beneficial solution. On one hand, easier access to work permits could facilitate the integration of migrant workers, reduce illegal employment, and the requirement for workers to stay with the same employer is no longer necessary, as work permits will not be forfeited when the employment with the initial employer is terminated. The extension of work permit validity to three years may result in foreign workers staying longer. Moreover, individuals with approved residence in Serbia are not

6 "Official Gazette of RS", No. 18/2024.

7 "Official Gazette of RS", No. 35/2023.

8 "Official Gazette of RS", Nos. 128/14, 113/17, 50/18, 31/19, and 62/23.

9 For more information, see: <https://nezavisnost.org/wp-content/uploads/2023/05/saopstenje-za-javnost.pdf>

obligated to obtain a work permit for employment. Nevertheless, due to the lenient requirements and the high demand for low-skilled and low-paid labor, which is often forced to accept very poor working conditions and accommodation, there is concern that the influx of a large number of such workers might erode the rights of existing workers. The labor market test, carried out by the National Employment Service to assess market requirements prior to granting permission for employment, continues to be enforced to ensure the protection of workers who are citizens of the Republic of Serbia.

The adoption of the Rulebook on the Development and Implementation of a Risk Management Plan in case of Violation of the Principle of Gender Equality is also of significant importance.¹⁰ This Rulebook represents a significant advancement towards enforcing the gender equality principle and the measures prescribed by the Gender Equality Law, particularly in the field of labor. It is primarily intended for public authorities but also for other legal entities involved in drafting Risk Management Plan in case of Violation of the Principle of Gender Equality. Specifically, the Risk Management Plan in case of Violation of the Principle of Gender Equality is a document that public authorities—state bodies, provincial authorities, and local self-government units—as well as public enterprises, institutions, public agencies, and other organizations and entities vested with particular public powers by law, as well as legal entities established or predominantly financed by the Republic of Serbia, autonomous provinces, or local self-government units, must prepare in written form. Therefore, this document, along with the Rulebook on Keeping Records and Reporting on Gender Equality Implementation¹¹, aims to facilitate the practical application of the Gender Equality Law by making it easier for entities to fulfill their legal obligations and effectively apply the gender equality principle in the workplace.

It is also noteworthy that the government has adopted Ethical Guidelines for Development, Implementation, and Use of Robust and Accountable Artificial Intelligence.¹² While not legally binding, this document marks the ini-

10 Rulebook on the Development and Implementation of a Risk Management Plan in case of Violation of the Principle of Gender Equality ("Official Gazette of RS", No. 67/2022).

11 "Official Gazette of RS", No. 67/2022.

12 Ethical Guidelines for Development, Implementation, and Use of Robust and Accountable Artificial Intelligence ("Official Gazette of RS", No. 23/2023).

tial move towards more comprehensive regulation in this field. The Guidelines identify various high-risk areas that call for extra scrutiny and ethical principles to be followed when introducing AI systems. A high-risk system is characterized by its potential to breach the principles and conditions outlined in the Guidelines, directly or indirectly, although it may not necessarily do so. Among the high-risk areas are those crucial for upholding labor rights, including: 1) Professional development and training (encompasses systems created to regulate individuals' admission to educational and vocational training facilities or to place individuals into these facilities, as well as systems meant for assessing those enrolled in these facilities, including systems that assess entrance exams required for admission); 2) Employment, management of employees/contracted personnel, and access to self-employment: this covers systems involved in the selection and employment/engagement of individuals, including systems that advertise job vacancies, review, filter, and assess candidates for specific positions (interviews or tests), and make final employment/engagement decisions. It encompasses systems that handle employment-related decisions (promotions, rewards, bonuses, terminations, changes in job descriptions, specific tasks) and systems that monitor and evaluate employee performance, both of which informing employment-related decisions.

By reviewing the proposed and adopted law and by-law regulations, it is evident that some enhancements have been made. Nevertheless, advancements in labor rights are more evident in segments that are less significant for the systemic enhancement of workers' positions. This is exacerbated by the fact that there are no normative actions in place to enhance workers' conditions through the introduction of a new Labor Law. Maintaining outdated legal solutions that do not reflect the actual market needs results in a continued erosion of workers' rights, with new types of work being inadequately acknowledged and governed by law.

Minimum Wage

The position of workers and their ability to exercise their rights is significantly influenced by wage levels, with many employers, particularly in the industrial and commercial sectors, using the minimum wage as a bench-

mark for lower and middle-level staff. The minimum wage is being earned by 250,000 workers, as per government data.¹³ Negotiations led by the Social and Economic Council to raise the minimum wage in 2022 and 2023 failed. The unions recommended adjusting the minimum wage to correspond with the minimum consumer basket, with recommended levels of 43,000 dinars in 2023 and 52,000 dinars in 2024. In light of the escalating prices, it is obvious that the union representatives were ready to make concessions, yet their modest suggestion was dismissed. Employer representatives argued that an amount of 39,000 dinars would be satisfactory if the non-taxable portion of the salary was increased. Consequently, no agreement was reached, leading to the breakdown of social dialogue. Following the announcement by executive branch representatives, the Government of the Republic of Serbia has increased the minimum wage from 35,012 dinars to 40,020 dinars and has also raised the non-taxable income limit.¹⁴ In a repeat of past events, the Government's decision to set the 2024 minimum wage at 47,154 dinars showcases the persistent dysfunctionality in social dialogue. It's crucial to recognize that the minimum wage has been consistently set below the minimum consumer basket for years, a measure that is more statistical than realistic, leaving a considerable number of workers teetering on the edge of poverty.¹⁵ In addition, the minimum consumer basket amount considered in wage negotiations is based on the last figure published by the Republic Statistical Office, rather than the current one. The spending involved is deemed minimal, and a breakdown of its contents highlights how the correlation between prices, services, and goods fails to meet genuine necessities, ultimately exacerbating poverty.¹⁶ Moreover, employers commonly ignore explicit legal regulations that specify the minimum wage as an exemption, choosing instead to estab-

13 For more information, see: <https://novaekonomija.rs/vesti-iz-zemlje/na-minimalcu-250-000-ljudi-kaze-mali>

14 Decision on the minimum wage for the period January–December 2023 ("Official Gazette of RS", No. 105/2022) and Decision on the minimum wage for the period January–December 2024 ("Official Gazette RS", No. 79/2023).

15 For example, the minimum consumer basket in August 2022 amounted to 45,729.57 dinars. However, from August until the end of the year, there was a significant rise in the prices of food and other services, so the basket amount for January 2023 was 49,420.40 dinars, while the minimum wage remained 40,020 dinars. Data on the amount of the minimum consumer basket is available at: <https://must.gov.rs/tekst/378/potrosacka-korpa.php>

16 For example, the minimum consumer basket for a three-person family entails the consumption of 700 grams of beef, 450 grams of sausages, one box of tea, and 2 liters of juice in a month. More information about the contents of the consumer basket is available at: <https://must.gov.rs/extfile/sr/245/KUPOVNA%20MOC%20septembar%202022.pdf>

lish it as the standard pay for numerous low-skilled positions. Additionally, many employers require workers to give back a portion of their wages in cash after they have been paid. Proving this common practice is extremely challenging, as most reports of rights violations come from workers' testimonies, with very few legal actions taken.¹⁷ Some employers find various ways to lower wages, sometimes not even paying the minimum amount required. These actions are frequently observed among employers commonly labeled as "foreign investors," who often receive preferential treatment from state institutions.¹⁸

When discussing the cost of labor, it's crucial to highlight the "Living Wage" initiative¹⁹, which advocates for workers' earnings to be significantly higher than current levels and aligned with the principle of dignity in work. This wage is calculated based on real living costs, covering essential needs such as food, clothing, housing, public transportation, utilities, telecommunications, education, healthcare, leisure, and culture. In 2022, this wage was expected to be 114,000 dinars.²⁰ The objective of this initiative is to elevate wages to a level where they can support a dignified life, not just basic survival. Hence, the undersigned of the "Living Wage" Declaration are advocating for the incorporation of this wage as a standard requirement in the Labor Law, with the aim of adjusting the minimum wage to meet the actual living expenses and necessities of workers. Additionally, to achieve this goal, the signatories advocate for the adoption of a social pact and an economic development strategy that prioritizes the dignified life of workers, ecological and social sustainability, and visible, concrete, measurable steps by companies to ensure the payment of a living wage within a reasonable timeframe.

In 2023, workers at the Falc East factory in Knjaževac went on strike, sup-

ported by many civil society organizations, including the A 11 Initiative.²¹ A notable feature of this strike was the inclusion of a demand for a 'Living Wage' for the first time, highlighting its importance in advocating for workers' rights. It is also worth noting that the strike ended with many demands being met and worker contentment.²²

Protection of Labor Rights

Improving workers' rights and their overall position relies heavily on the effective protection of workers' rights in practice. **The Labor Inspectorate** holds the utmost importance in ensuring workers' rights are protected and the first resort for workers seeking help. The data on complaints filed with the Commissioner for Protection of Equality reveal that women experience the most discrimination in the workplace, largely influenced by gender-specific roles like family status and childcare responsibilities.²³ The Labor Inspectorate's performance in detecting violations of workers' rights falls short compared to the widespread nature of rights violations. It should be noted that the Commissioner has persistently proposed the adjustment of labor regulations as a key element in their recommendations for enhancing the situation and safeguarding workers' rights, along with enhancing inspection controls and the inspection authorities. Inadequate enforcement of the inspectorate's authority and a lack of understanding of discrimination issues continue to undermine rights and communicate to workers that they won't be safeguarded if their rights are infringed upon.

A large number of requests concerning the protection of workers' rights are submitted to the Commissioner for Protection of Equality, who in an-

17 For more information, see: <https://www.bbc.com/serbian/lat/srbija-61965135>

18 The Leoni factory in Kraljevo has been frequently cited in reports for labor rights violations and its failure to address these issues, showcasing its ability to come up with inventive strategies to decrease employees' salaries. For more information, see: <https://www.danas.rs/vesti/ekonomija/radnice-fabrike-leoni-za-8-mart-dobile-na-poklon-vaucere-pa-im-taj-iznos-odbijen-od-plate/>

19 For more information, see: <https://platazivot.rs/>

20 "Living Wage" Declaration is signed by numerous citizens, three unions and eighteen civil society organizations, including the A 11 – Initiative for Economic and Social Rights; for more information see: <https://platazivot.rs/#potpisnice>

21 For more information, see: <https://cpe.org.rs/podrska-strajku-radnica-i-radnika-fabrike-falc-east-iz-knjazevca/>

22 For more information, see: <https://www.masina.rs/nagrada-za-drustveno-kriticki-angazman-ivan-radenkovic-dodeljena-radnickom-strajku-u-fabrics-falc-ist-iz-knjazevca/>

23 According to the Regular Annual Report of the Commissioner for the Protection of Equality for 2022 and 2023, natural persons filed the highest number of complaints. The majority of these complaints centered on discrimination against women in the context of childbirth, motherhood, and childcare. The Commissioner also received 37 complaints in 2022 pertaining to marital and family status as a personal characteristic, predominantly filed by women (Regular Annual Report of the Commissioner for the Protection of Equality, p. 191). For more information, see: <https://ravnopravnost.gov.rs/rs/izvestaji/>

nual reports highlights that the majority of complaints revolve around workplace discrimination and employment issues. A review of complaints submitted to the Commissioner reveals that in the realm of labor, especially in employment, vulnerable groups become even more vulnerable and susceptible to discrimination. Members of vulnerable social groups, including individuals with disabilities, young people, elderly individuals, Roma people, and LGBTI community members, are particularly susceptible to discrimination.²⁴ Members of these categories are frequently targets of intersecting forms of discrimination, as exemplified by a case in which an employer discriminated against four Romani women by treating them disparately, isolating them from communication, restricting their use of common spaces, assigning them separate coffee cups, and ultimately terminating their employment.²⁵

When considering the safeguarding of rights and its practical consequences, it's essential to highlight the conclusion reached by the Supreme Court of Cassation in 2022 on minimum wage earners' entitlement to meal and annual leave allowances. School janitors were mostly affected by this ruling.²⁶ Numerous employees took legal action against their employers for failing to include these benefits in their pay, with many disputes being resolved in favor of the employees, although there were also cases where the court ruled differently. Due to inconsistent case law regarding these benefits, the Basic Court in Šabac referred the matter to the Supreme Court of Cassation (hereinafter: SCC) to resolve the legal dispute concerning whether employees earning minimum wages are entitled to meal and annual leave allowance. In response, the SCC determined that employees in public institutions are entitled to annual leave and meal allowance, as these are deemed an "integral part of the coefficient for calculating and paying salaries for each employee." Essentially, this implies that according to the SCC's conclusion, these benefits are already factored into the minimum wage rate. Consequently,

24 Special Report of the Commissioner for the Protection of Equality on Discrimination in the Field of Labor and Employment, p. 10.

25 Opinion No. 07-00-183/2022-02 dated 12.9.2022, available at: <https://ravnopravnost.gov.rs/166-168-22-prituzba-zbog-diskriminacije-na-osnovu-nacionalnalne-pripadnosti-u-oblasti-rada/>

26 Conclusion of the Supreme Court of Cassation, adopted at the session of the Civil Department of the SCC held on July 05, 2022, available at: <https://www.vk.sud.rs/sites/default/files/attachments/Zakljucak%20-%20naknada%20troskova%20za%20ishranu%20u%20toku%20rada%20i%20regresa%20za%20koriscenje%20godisnjeg%20odmora%20u%20javnim%20sluzbama.pdf>

claims from employees earning minimum wages for these benefits were rejected as they were already accounted for in their compensation. As a result of this conclusion, many workers who filed legal claims for these benefits have lost their cases and have been required to cover court expenses. Minimum wage earners are now facing the financial burden of legal fees, which typically amount to 200-300,000 dinars, pushing them further into debt and poverty. Undoubtedly, analyzing the aftermath of this decision, it becomes apparent that it significantly harmed the position of minimum wage workers, and the decision was made without a thorough assessment of its consequences. It is noteworthy that in some cases, the SCC has ruled in favor of school janitors. Such conclusions contradict the court jurisprudence and, arguably, the principles of dignified work. Once again, mirroring the situation with the Constitutional Court's decision on cutting pensions, it seems that the poorest members of society are being marginalized, with their conditions worsened by rulings from the highest judicial authorities. Union representatives are steadfast in their argument that this conclusion deviates from the Labor Law's provisions and are announcing their plan to utilize all legal mechanisms to challenge it.

In support of claims that the protection of labor rights is ineffective and achievable to only a limited extent, it is concerning that the case of labor exploitation of Vietnamese workers at the **"LingLong Tires Ltd."** factory remains unresolved even three years after reports and complaints were filed, with no conclusion reached and no rights violations established. Despite emerging public disclosures of irregularities and indications of rights violations, there continues to be a complete lack of will on the part of competent authorities to address the events within this factory.²⁷ Moreover, the long-awaited report by the Protector of Citizens on the oversight of competent authorities in this case revealed a total absence of responsibility and concern for the human rights of foreign workers, as the Protector of Citizens' report stated that there were no deficiencies in the work of state authorities.²⁸

27 For more information, see: <https://voice.org.rs/na-gradilistu-linglonga-umro-drzavljanin-srbije-sve-vise-povreda-na-radu/>

28 Report of the Protector of Citizens on the case of Vietnamese workers engaged in the construction of the tire factory in Zrenjanin with recommendations, available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/7853-izv-sh-sluc-u-vi-n-s-ih-r-dni-ng-z-v-nih-n-izgr-dnji-f-bri-gu-u-zr-nj-ninu-s-pr-p-ru>

Moreover, labor rights protection remains unattained, even when evident serious violations occur, such as worker deaths in the workplace, where only the outcome is made public without any effort to determine if there were any rights infringements.²⁹ One of the most tragic incidents of worker deaths in 2022 occurred at the "Soko" mine, where eight miners were killed and twenty injured. It is known that the mine operated for two years without a permit for excavation, and that miners' personal methane detectors showed higher concentrations of methane, yet work was not suspended. Although there were irregularities and findings observed during the inspection, the Basic Public Prosecutor's Office in Aleksinac determined that there were no reasons to start criminal proceedings against anyone, as there were no elements of a criminal offense that necessitated mandatory prosecution. Additionally, a criminal complaint filed by the Ministry of Mining and Energy against 14 individuals for the criminal offense of severe breach of general safety regulations was also dismissed. As a result, the families of deceased miners are forced to rely on their representatives to contest decisions and persist in seeking justice and accountability.³⁰

Employment of Hard-to-Employ Individuals

While there are strategic objectives in place to enhance Roma employment, they continue to be among the most vulnerable demographics, often experiencing job insecurity and earning minimal wages, typically found in the most strenuous roles. In general, a lack of proper education along with biases and stereotypes are the key factors behind their disadvantaged position in the labor market. Although there is no official data available on the average incomes of Roma, it is believed that 71% of Roma are engaged in informal work, in contrast to 17% of other population groups. A significant portion of informal work involves activities like collecting secondary raw materials, seasonal work, music-related jobs, and cleaning jobs.³¹ There

29 For more information, see: <https://mondo.rs/Info/Crna-hronika/a1720253/Dva-radnika-poginula-u-Kraljevu-obrusila-se-piljevina.html>

30 For more information, see: <https://www.cins.rs/godisnjica-nesrece-u-rudniku-soko-deca-bez-oceva-i-pitanja-bez-odgovora/> i <https://direktno.rs/vesti/hronika/425229/rudnik-soko-poginuli-rudari-tuzilastvo.html>

31 Strategy for the Social Inclusion of Roma Men and Women in the Republic of Serbia for the period from 2022 to 2030, 4.2.2. Employment.

are no official statistics from the National Employment Service (NES) or the Statistical Office of the Republic of Serbia that can provide the precise or estimated number of unemployed Roma. These statistics are not included in the NES's monthly bulletins, and nationality is not a recognized category in the Labor Force Survey.³² Consequently, the impacts of employment measures on Roma's employment cannot be adequately tracked. The most recent data available for the year 2021 reveals that 4,771 (including 1,441 Roma women) out of 37,987 individuals of Roma nationality registered with the National Employment Service were employed by the end of November.³³

In addition, there is a specific number of people who are not actively searching for jobs but just meet their requirements by attending appointments with the NES. The Strategy for the Social Inclusion of Roma in the Republic of Serbia 2022–2030 points out that low levels of education and prolonged unemployment are the key factors behind Roma unemployment. The Roma national minority's low engagement in the formal labor market is connected to a lack of information, unawareness of regulations, rights, and available incentives. The Strategy emphasizes the lack of Roma involvement in local employment policy actions, as well as the absence of effective local employment mechanisms.

Therefore, it is crucial to emphasize that despite the Strategy for the Social Inclusion of Roma in the Republic of Serbia 2022–2030 being relatively well-designed, the criteria for unemployed Roma to be eligible for self-employment support are unattainable for most of the most vulnerable individuals in this community.³⁴ When it comes to trade unions and their involvement with vulnerable groups, it is acknowledged that these issues are important, but it mainly hinges on the functioning of the unions. That being said, it is worth noting that even in unions with a reputation for being sensitive, these matters are not consistently prioritized but rather handled on a case-by-case basis.³⁵

32 2024 Labor Force Survey: <https://publikacije.stat.gov.rs/G2024/Pdf/G20245707.pdf>

33 Strategy for the Social Inclusion of Roma Men and Women in the Republic of Serbia for the period from 2022 to 2030, Table 3: Unemployment/Employment of Roma registered with NES.

34 Special Report on the Implementation of the Strategy for the Social Inclusion of Roma Men and Women by the Protector of Citizens and A 11 – Initiative for Economic and Social Rights, p. 45.

35 V. Vilić, K. Beker, *The Position of Women in Trade Unions in Serbia*, FemPlatz, 2021, p. 64.

Until recently, incentive measures for the employment of hard-to-employ categories mostly focused on tax incentives, subsidies for employing persons with disabilities, Roma, persons over 50 years of age, and others.³⁶ Unemployed Roma, unemployed women, youth, and persons with disabilities are considered extremely vulnerable groups according to the analysis of the measures outlined in the Action Plan of the Employment Strategy. Consequently, support measures have been developed, including professional practice programs, internships for young people with higher education, internships for unemployed individuals with secondary education, hands-on experience, skill development through practical tasks, and the establishment of employment relationships with private sector employers. Additionally, subsidies for employing unemployed persons from the harder-to-employ category, support for self-employment, and other active labor market measures have been introduced.³⁷ Based on the Regulation on Establishing the Program for Encouragement of Entrepreneurship Development through Financial Support for Women Entrepreneurs and Youth in 2022,³⁸ a program was adopted to support women and youth in entrepreneurship and stimulate employment. The following year saw some changes to this incentive, leading to the introduction of the Regulation on Establishing the Program for Encouragement of Entrepreneurship Development through Financial Support for Beginners in Business and Youth in 2023.³⁹ This regulation is designed to offer financial aid to recently established entrepreneurs with legal representatives aged 35 or younger. This incentive can be seen in a positive light as it involves acquiring equipment for business activities, managing business facilities, and addressing operational expenses, mainly due to the growing recognition of these categories in self-employment.

"My First Salary" program, launched in mid-2020 by the National Employment Service⁴⁰, is aimed at assisting hard-to-employ individuals in secur-

ing employment.⁴¹ This program requires participants to engage in vocational training, tailored to their program status, including a nine-month internship.⁴² This program differs from past youth employment initiatives in that employers are not obligated to hire participants once the subsidized program concludes. Typically, employers have minimal responsibilities within this program, and they are not mandated to track the retention of participants in their positions post-program, creating challenges in evaluating its effectiveness. Young people with secondary education are provided with a monthly allowance of 28,000 dinars, while those with higher education receive an allowance of 34,000 dinars. Employers have the option to supplement these amounts from their own funds for their engagement, although this has rarely happened in practice.⁴³ These stipends have seen a slight increase compared to the previous year but remain exceedingly low, falling well below the minimum wage. As with previous programs of its kind, a persistent issue is the challenge of securing permanent employment, with the program mainly focusing on low-skilled jobs such as jobs in retail stores, cashier roles, and assistant positions in shopping centers, cinemas, and similar settings. This raises questions about the program's ability to provide valuable work experience and enhance the competitiveness of youth in the labor market.⁴⁴ Since this program does not create an employment or any other Labor Law-defined relationship, participants are not entitled to annual leave, sick leave, transportation reimbursement, or other benefits as outlined in labor legislation. Additionally, only contribu-

41 "Official Gazette of RS", No. 107/20.

42 The National Employment Service reports that approximately 25,000 young individuals have participated in this program to date; available at: https://www.rtv.rs/sr_lat/ekonomija/aktuelno/kroz-program-moja-plata-proslo-25.000-mladih-u-srbiji_1421185.html

43 *Analytical Report on the Situation in the Labor Market of Serbia in the Context of the Economic Crisis Caused by the COVID-19 Pandemic*, published by the Regional Cooperation Council, in the section dealing with the analysis of the "My First Salary" measure, states that, although employers had the option of paying participants additional funds in addition to the amount reimbursed by the NES, these benefits were used by relatively few employers, so that about 700 young people received additional compensation, or less than 10% of the total number of participants in the program. According to the answers of the respondents, the additional amount of compensation in most cases was up to 5,000 dinars per month; available at: <https://www.esap.online/download/docs/Analytical-report-labour-market-Serbia-sr.pdf#ebced3e55985dbe4b974909ea7058187.pdf>, p. 48. These data for the reporting period are not available.

44 In the final round of matching, 8,453 unemployed young people were sent to 5,177 employers, representing an implementation rate of around 85%. In line with the intentions, the largest number of individuals were engaged by private sector employers (7,165), while the representation of young individuals in the public sector was significantly smaller (1,288). The program predominantly engaged individuals with a secondary level of education, and the most requested profiles came from employers in the manufacturing industry and trade. Ibid., p. 46.

36 Public Call of the National Employment Service: Subsidy for Employment of Unemployed Persons from the Hard-to-Employ Category, available at: https://www.nsz.gov.rs/live/nudite-posao/subvencija_za_zapo_ljavanje_nezaposlenih_lica_iz_kategorije_te_e_zapo_ljivih.cid266

37 Action Plan 2021 to 2023 for the Implementation of the Employment Strategy in the Republic of Serbia for the period 2021-2026.

38 "Official Gazette of RS", No. 4/2022.

39 "Official Gazette of RS", No. 43/2023.

40 Government of the Republic of Serbia program "My First Salary", available at: <https://mojapravapla-ta.gov.rs/o-programu>.

tions related to workplace injuries and occupational diseases are covered for program participants. Unlike prior programs of this nature, which included commitments to continued employment for a period after hiring, employment is not assured by this program, nor is there a mandate to hire or consequences for terminating a participant. Contracts are executed under the name "Contract for the Implementation of My First Salary Program" between the National Employment Service, the implementing agency, and the participant. Despite the term "salary" in the title, **neither the type of contract nor the relationships between the contracting parties indicate employment or any form of professional development.** Therefore, organizing such a program allows the state to provide employers with inexpensive labor without specifying the obligations required by the Labor Law. The United Nations Committee on Economic, Social, and Cultural Rights also addressed this employment incentive measure. In its Concluding Observations, the Committee recommended that Serbia take effective measures to protect students on the dual education system and young people on internship programs such as the "My First Salary" program from labor exploitation and to ensure that they are protected by labor regulations.⁴⁵

45 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Serbia, 6 April 2022, UN Doc. no. E/C.12/SRB/CO/3.

Case Study: Fictitious Employment of Roma men and women in Belgrade

The Republic Statistical Office's most recent data⁴⁶ shows that the unemployment rate in Serbia for the last quarter of 2023 stood at 9%. However, the ongoing narrative of declining unemployment and its outcomes may be doubted because the methodology fails to account for social realities. Under this methodology, employed individuals are considered those who have worked at least one hour in any paid job during the observed week, or those who had a job but were absent from work that week.

In addition to conflating the concepts of work engagement⁴⁷ and employment affecting the accuracy of the unemployment rate, there are numerous problems in registering employees with the official records of competent state authorities. The root of these issues lies in the lack of proper monitoring of the data employers submit to the relevant institutions. For example, the lack of verification of employment contracts for at least ten "employees," and the gross misuse of their social status resulted in Roma from the settlement "Vuk Vrčević" being officially classified as employed, even though they did not carry out any work during that time.

In July 2022, the A 11 Initiative conducted a field visit to the Roma settlement "Vuk Vrčević". Due to their economic status and vulnerability, most residents rely on social protection benefits, primarily financial social assistance and access to soup kitchen. Their living conditions are very poor, with a large number of families living in inadequate shacks. Local authorities have failed to address the enhancement of living conditions for the settlement's residents in their local plans, nor have they put forward any solutions to tackle these issues.

In discussions with residents of the settlement, the A 11's legal team found out that a number of them had been disqualified from receiving financial social assistance because they had formally become employed, which did

46 For more information, see: <https://www.stat.gov.rs/sr-latn/vesti/20231130-anketa-o-radnoj-snazii-kv-2023/?s=2400>

47 This concept includes not only employment relationships but also different forms of work engagement (temporary, occasional, seasonal, etc.).

not reflect the actual situation. In March 2022, just before the presidential and parliamentary elections, an individual visited the settlement, claiming to be authorized to temporarily take personal IDs from residents for pre-election campaign purposes and voter registration at polling stations. The residents of the settlement, who are predominantly illiterate and lack legal understanding, surrendered their IDs and received them back later. Shortly after the incident took place, a resident was notified at the Republic Health Insurance Fund that her health insurance card could not be renewed due to her "employer" failing to pay health insurance contributions. Prior to that, she was covered by health insurance due to her social assistance recipient status.

It turned out that an unknown person who visited the settlement before the elections had fraudulently signed employment contracts on behalf of about ten residents with various companies, using their personal IDs and forging their signatures. Even though these contracts were initially set for a three-month period, under Labor Law, if an employee continues working for an employer for at least five days after the contract ends, it is recognized as an indefinite agreement. Since no one deregistered them, they were still considered employed. None of the individuals living in the informal settlement had any knowledge of the contracts, never commenced work, and never received any wages. The actions had a devastating impact on the settlement's residents. Specifically, they were all disqualified from receiving social welfare benefits as the system no longer categorized them as vulnerable. Furthermore, they were prevented from finding work since the Labor Law prohibits holding multiple jobs that surpass a total of 40 hours per week (which was their "working time" at their primary job). Ultimately, as a result of their "employers" failing to pay contributions, they were also deprived of healthcare rights.

These individuals were "engaged" in multiple private companies based in different parts of Serbia, carrying out a variety of roles such as sales reps and truck drivers, for which they often lacked the necessary qualifications. A large number of them had not finished elementary school, whereas certain positions mandated completion of elementary vocational studies. The police station was notified right after the incidents occurred, and the victims were questioned and provided official statements, but there has been

no response from the authorities yet. Given the number of victims and the systematic nature of their "employers'" actions, it is clear that this case involves organized violation of these people's rights and abuse of their socio-economic status for personal or material gain. Whether these actions were motivated by accessing national subsidies for employing harder-to-employ groups, including Roma, or by the possibility for employers to pay wages "under the table," remains to be established in any potential criminal proceedings, if they occur.

The A 11 Initiative focused primarily on resolving the specific problem in which the residents of this settlement found themselves involuntarily - determining their unemployment status and reconciling formal and actual employment statuses. At first, the main goal was to reach out to the employers that these individuals were said to be working for. When there was no reply through written or phone contact, the next move was to visit the addresses listed as their official headquarters scattered across Belgrade (Rakovica, Rušanj, Kaluđerica, Mirijevo, etc.). However, instead of finding company headquarters, they found residential buildings or restaurants at these locations, and the people there were unaware of any companies at those addresses.

As communication with the companies was not feasible, the next course of action was to directly contact state institutions responsible for keeping records of employed individuals.⁴⁸ The responsible institutions shifted the responsibility for solving the problem back and forth between each other in response. The Labor Inspectorate has confirmed the absence of any business entities at the specified headquarters addresses and has passed the case on for criminal proceedings. The A 11 Initiative's efforts led to the removal of individuals from insurance coverage based on fraudulent employment claims six months after the initial report, following a visit to the Republic Pension and Disability Insurance Fund and presenting the problem to the relevant official. Subsequently, they successfully renewed their health insurance cards and re-registered with the appropriate Centers for Social Work to restore their entitlements. Regrettably, they were not compensated for the time they unjustly lost their rights, despite some being incorrectly marked as employed until February 2023.

48 Central Register of Mandatory Social Insurance, Republic Health Insurance Fund, Republic Pension and Disability Insurance Fund, National Employment Service, and Labor Inspectorate.

Employment Relationships and Realization of Health Rights

The Labor Law⁴⁹ only acknowledges individuals who are formally employed through an employment contract, not workers in general. This category excludes individuals engaged under temporary service contract, contract of performing temporary and periodical jobs, professional training and development, outside employment, and those who work without a contract. For all these categories, the Law specifies that individuals in these categories are considered as "working outside the scope of the employment relationship", leading to them not being entitled to the same rights as employees, such as paid sick leave⁵⁰ and other protections in cases of illness, reduced or lost working ability, and old age. In reality, these contracts are frequently misused as replacements for official employment contracts, enabling employers to circumvent ensuring the rights of employees. The 2024 Labor Force Survey reveals that 112,200 workers in Serbia are currently employed without health insurance, and 143,500 employees are deprived of paid sick leave benefits. Furthermore, 17.2% of workers put their mental and physical health at risk by working overtime without any compensation to make ends meet.⁵¹

Conversely, the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities⁵² brings about greater uncertainty regarding the status of workers. To begin with, it enables verbal agreements that go against the Labor Law, and in addition, it diminishes the protections for workers not in formal employment, promoting cheaper labor and leading to inadequate healthcare for workers. For instance, workers are only entitled to health insurance for workplace injuries and professional diseases, not for other health conditions.

49 "Official Gazette of RS," Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Constitutional Court decision, 113/2017, and 95/2018 – authentic interpretation.

50 That is, the right to wage compensation during temporary work incapacity, which is more specifically defined by Article 73 of the Health Insurance Law.

51 Republic Statistical Office, Labor Force Survey, 2023, available at: <https://publikacije.stat.gov.rs/G2024/Pdf/G20245707.pdf>

52 "Official Gazette of the Republic of Serbia," No. 50/2018.

Both the Law on Prevention of Harassment at Work⁵³ and the Law on Occupational Safety and Health⁵⁴ affirm that employees can decline work in the presence of an imminent danger to life and health. However, workers exposed to such working conditions often have no other option but to accept such work in order to meet their basic needs. Weak trade union organization and lengthy legal protection of labor rights also leave workers with no alternative but to accept work that directly threatens their health.

53 "Official Gazette of RS" No. 36/2010.

54 "Official Gazette RS" No. 35/2023.



RIGHT TO SOCIAL PROTECTION

The field of social protection continues to be plagued by issues highlighted in previous years in reports from numerous international institutions and monitoring bodies responsible for ensuring compliance with economic and social rights obligations. Even in areas where there has been some progress, such as a reduction in the child poverty rate, this improvement is insufficient to claim that Serbia fully meets its internationally undertaken obligations in the realm of social rights.⁵⁵ The child poverty rate, while partially reduced, remains high, especially in comparison to the European Union average, and financial social assistance for the poor remains inadequate. The high proportion of children at risk of poverty is also why the European Committee of Social Rights has concluded that the situation in Serbia does not comply with Article 17(1-2) of the Revised European Social Charter.⁵⁶

At a broader level, the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights marked a crucial step forward. This could potentially enable the UN Committee on Economic, Social and Cultural Rights to exert greater influence over regulations, practices, and public policies concerning economic and social rights. The significance of this step is underscored by Serbia's failure to accept the collective complaints mechanism available before the European Committee of Social Rights, leaving Serbian citizens without access to another specialized mechanism for protecting economic and social rights at the international level.

⁵⁵ See the conclusions of the European Committee of Social Rights for Serbia in 2023, which indicate discrepancies with several provisions of the European Social Charter (revised), including Article 16, which guarantees the right of the family to social, legal, and economic protection, as well as Article 17, paragraphs 1-2, concerning the right of children and young people to social, legal, and economic protection. For more details, see *European Committee of Social Rights, Conclusions 2023 - Serbia*, March 2024.

⁵⁶ *Ibid.*, p. 33 and 35.

Regarding social protection itself, one of the few positive developments was the Constitutional Court's ruling in 2022, declaring unconstitutional certain provisions of the Law on Social Protection that served as the basis for the Regulation on Measures of Social Inclusion for Recipients of Financial Social Assistance.⁵⁷ This decision by the Constitutional Court, which was made in 2022, had been awaited since 2014. In 2023, there was further progress with the harmonization of sub-legal acts with higher legal acts, aiming to end the practice of unlawfully reducing or terminating the rights of financial social assistance recipients due to income earned from seasonal jobs.⁵⁸

The amount of financial social assistance remains inadequate, insufficient to enable individuals to escape poverty, and so low that individuals and families entitled to financial social assistance cannot secure the minimum subsistence necessary for a dignified life. Moreover, the already insufficient amount continues to be arbitrarily reduced by attributing missed earnings⁵⁹ and interruptions in payments of financial social assistance⁶⁰. Certain provisions of legal acts⁶¹ even foresee terminating financial social assistance, even when this results in a complete loss of funds necessary to secure the existential minimum. When it comes to financial support for families with children, the conditions for parental allowance are structured

57 By Decision of the Constitutional Court No. IUz-332/2015, published in the "Official Gazette of the Republic of Serbia," No. 117/2022 on October 26, 2022, provisions of Article 80, paragraphs 3 and 4 of the Law on Social Protection ("Official Gazette of RS", No. 24/11) were declared unconstitutional; those provisions were the basis for the adoption of the Regulation on Measures for the Social Inclusion of Beneficiaries of Financial Social Assistance. For more details on the Constitutional Court decision, as well as concerns that the possibility of imposing forced labor on beneficiaries of financial social assistance was only temporarily and formally abolished by the above decision, see section "Regulation on Measures for the Social Inclusion of Beneficiaries of Financial Social Assistance - a sublegal act introduced forced labor of beneficiaries of financial social assistance without any legal basis".

58 After the appeal of the A 11 Initiative in March 2023, the Minister of Labor, Employment, Veteran and Social Affairs amended the Rulebook on Forms. By these amendments, the Rulebook was harmonized with the law regulating engagement in seasonal jobs. According to the amendments, income from seasonal jobs will no longer be taken into account when calculating income that is relevant for acquiring the right to financial social assistance. For more details, see the subtitle "Illegal inclusion of income from seasonal jobs in the process of acquiring the right to financial social assistance - appeal for amendments to an illegal sublegal act".

59 See Article 102 of the Law on Social Protection and the Rulebook on Forms Required for Obtaining Financial Social Assistance ("Official Gazette of RS", No. 39/2011).

60 Article 85, paragraph 3 of the Law on Social Protection.

61 See, for example, Article 83, paragraph 1, item 2 of the Law on Social Protection ("Official Gazette of RS", No. 24/2011 and 117/2022 - Decision of the Constitutional Court).

in a way that excludes the most vulnerable Roma children from accessing this benefit. Furthermore, the restriction on the number of children in a family eligible for child allowance increases the risk of further marginalization and the lack of adequate support for families with a larger number of children. These families, often falling into the most vulnerable category due to ethnic background, housing vulnerability, educational, and employment status, face significant challenges.

In the Law on Financial Support to Families with Children (hereinafter: LFSFC), the eligibility criteria for parental allowance continue to exclude the most marginalized Roma children. This discriminatory effect has been highlighted by, *inter alia*, the United Nations Committee on Economic, Social and Cultural Rights. The Constitutional Court missed an opportunity to contribute to amending contentious conditions for parental allowance and to consider whether they constitute indirect discrimination against Roma children when it reviewed initiatives to assess the constitutionality of these conditions in 2022,⁶² despite previous concerns expressed by the United Nations Committee on Economic, Social and Cultural Rights regarding disputed provisions of the LFSFC and their impact on Roma children.⁶³ At the beginning of 2022, the Strategy of Deinstitutionalization and Development of Social Protection Services in the Community for the period 2022–2026 was adopted, with an Action Plan expected to follow. However, by the end of 2023, Serbia still lacks a Social Protection Strategy, and amendments to the Law on Social Protection announced over eight years ago have yet to be adopted.⁶⁴ In July 2022, the Ministry of Labor, Employment, Veteran and Social Affairs developed an Ex-Ante Analysis of the Effects of Social Protection Policy for the Period 2022-2030.⁶⁵ This analy-

62 Constitutional Court, Decision IUz-229/2018, published in the "Official Gazette of RS", No. 66/2022 dated June 10, 2022.

63 Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Serbia, April 6, 2022, E/C.12/SRB/CO/3, paragraph 50.

64 A 11 – Initiative for Economic and Social Rights, Second-Class Rights - Economic and Social Rights in the Light of Austerity Measures, op. cit., 13.

65 Ministry of Labor, Employment, Veteran and Social Affairs, Ex-ante Analysis of the Effects of Social Protection Policy for the Period 2022-2030, July 2022, available at: <https://www.minrzs.gov.rs/sites/default/files/2022-09/Ex%20ante%20D0%B0%D0%B-D0%B0%D0%BB%D0%B8%D0%B7%D0%B0%20D0%A1%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%98%D0%B0%20D1%81%D0%BE%D1%86%D0%B8%D1%98%D0%B0%D0%BB%D0%BD%D0%B5%20D0%B7%D0%B0%D1%88%D1%82%D0%B8%D1%82%D0%B5-%20D1%84%D0%B8%D0%BD%D0%B0%D0%BB.pdf>.

sis also emphasized that one of the key recommendations is the adoption of a new Social Protection Strategy to guide future actions in the field of social protection.⁶⁶ In addition to the absence of public policies aimed at reducing poverty and promoting social inclusion, **institutional capacities for social inclusion and poverty reduction** have been reduced since January 2022. For instance, in 2009, the Government of the Republic of Serbia established the Social Inclusion and Poverty Reduction Unit (SIPRU),⁶⁷ funded by international organizations, to strengthen the government's capacity to develop data-driven social inclusion policies, and to coordinate and oversee their implementation. However, this unit was dissolved on December 31, 2021, when project funding ended, and the government ceased its financial support.⁶⁸ In April 2022, when reviewing Serbia's third periodic report on the implementation of the Covenant on Economic, Social and Cultural Rights, the United Nations Committee on Economic, Social and Cultural Rights expressed regret and concern over the dissolution of the Social Inclusion and Poverty Reduction Unit and the absence of a specific policy and institutional framework for poverty reduction.⁶⁹ The Committee recommended that the state adopt a framework policy for poverty reduction, with a particular focus on those experiencing systematic poverty, including Roma, national minorities, persons with disabilities, and internally displaced persons, establish a mechanism to coordinate and monitor the implementation of poverty reduction policies, and allocate sufficient resources for poverty reduction measures to reach people living in poverty.⁷⁰ However, shortly after receiving these recommendations, following the implementation of the Social Card Law, the number of recipients of financial social assistance decreased by over 27,000 in 2022, and by 2023, 40,000 individuals had lost their status as recipients of financial social assistance, without a corresponding decrease in the poverty rate.⁷¹

66 *Ibid.*, 48.

67 More information about the Social Inclusion and Poverty Reduction Unit is available at: <http://socijalnoukljucivanje.gov.rs/>.

68 Social Inclusion and Poverty Reduction Unit, *Twelve years of work of the Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia*, available at: <http://socijalnoukljucivanje.gov.rs/rs/dvanaest-godina-rada-tima-za-socijalno-ukljucivanje-i-smrjenje-siromastva-vlade-republike-srbije/>.

69 Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Serbia, E/C.12/SRB/CO/3, April 6, 2022, p. 54.

70 *Ibid.*

71 For more information, see A 11 Initiative, (Anti)Social Card, available at: <https://antisocijalnekarte.org/>.

The United Nations Committee on Economic, Social and Cultural Rights also recommended that the state increase budget allocations for social protection and expand the coverage and amount of social security benefits.

Additional changes in this sector are necessary, as demonstrated as early as 2017 by the observations of the Council of Europe's Committee on Social Rights, which assessed the **amount of social assistance** available to socially vulnerable individuals in Serbia as **očigledno neodgovarajući**, as it does not exceed the poverty line.⁷² Although the Committee concluded in 2017 that this situation is contrary to the obligations under the Revised European Social Charter⁷³, this amount has not significantly changed. Thus, in October 2022, the nominal amount of financial social assistance for an individual, or a family's recipient, was 10,358 dinars, and in October 2023, it was 11,445 dinars.⁷⁴ For able-bodied individuals, or families where most family members are able to work, the monthly amount is around 73 euros (approximately 8,500 dinars), given that they only receive financial social assistance for nine months a year.⁷⁵ Due to provisions in the Law on Social Protection mandating **quarterly interruptions in receiving financial social assistance** for able-bodied individuals or families where most members are able to work, Article 85, paragraph 3 stipulates that these individuals or families are entitled to **financial social assistance for up to nine months per calendar year**. Neither of the two drafts of the Law on Amendments to the Law on Social Protection published so far have included the deletion of this provision, despite the fact that the Committee on Economic, Social and Cultural Rights has singled out inter-

72 *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>. U 2017. godini, novčana socijalna pomoć za pojedinca, odnosno nosioca prava, iznosila je 8.201 dinar.

73 *Ibid.*

74 Minister of Labor, Employment, Veteran and Social Affairs, Decision on nominal amounts of social assistance, "Official Gazette of RS", No. 115/2022 dated October 21, 2022. Minister of Labor, Employment, Veteran and Social Affairs, Decision on nominal amounts of social assistance, "Official Gazette of RS", No. 97/2023.

75 For the same assessment for 2017, 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>. Zaključeno je da novčana socijalna pomoć na mesečnom nivou za radno sposobne pojedince, odnosno porodice u kojima je većina članova radno sposobna, iznosi 47 evra.

ruptions in the receipt of financial social assistance as one of the key problems conflicting with Article 9 of the Covenant.⁷⁶

In the Ex-Ante Analysis of the Effects of Social Protection Policy for the period 2022-2030, it is emphasized that, taking into account the poverty risk threshold, families in Serbia whose financial social assistance is their sole source of income receive 40% less than they would need to reach the at-risk-of-poverty threshold.⁷⁷ The adequacy of the amount of financial social assistance is also inadequate from the perspective of meeting basic needs or lifting people out of absolute poverty.⁷⁸

Although to a lesser extent than in previous years⁷⁹, in 2022 and 2023, the A11 Initiative encountered cases where applications for financial social assistance (hereinafter: FSA) were rejected or the amount of FSA was significantly reduced due to **high and arbitrarily assigned missed earnings**. Consequently, a six-member family with no income receives only 8,000 dinars in financial social assistance due to the arbitrary assignment of missed earnings.⁸⁰

In practice, missed earnings are not calculated based on the actual capabilities of socially vulnerable individuals to get a job and earn the assigned

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

77 Ministry of Labor, Employment, Veteran and Social Affairs, Ex-ante analysis of the effects of social protection policy for the period 2022-2030, op. cit., p. 20.

78 *Ibid.*

79 Especially during 2019, 2020, and 2021, the A 11 Initiative encountered cases of rejection of applications for FSA due to arbitrarily high attributed amounts of missed earnings – for example, 14,720 dinars (decision of the Center for Social Work in B. No. 55310-8819/2021 dated 7 October 2021), 15,000 dinars (decision of the Center for Social Work in B. No. 3280/2019 dated 17 October 2019), 12,000 (decision of the Center for Social Work in B. No. 55310/6441/2019 dated 23 January 2020), or even 25,760 dinars for a family (decision of the Center for Social Work in B. No. 5310-985/2020). The application of a single mother living with a four-year-old child in an informal settlement, in an ungalvanized shack, with no significant assets was rejected because she was attributed missed earnings of 14,720 dinars, which exceeds the amount of financial social assistance (decision of the Center for Social Work in B. No. 55310-8819/2021 dated 7 October 2021). Similarly, the application of a single mother living with four minor children was rejected because she was attributed missed earnings of 22,080 dinars. The missed earnings were calculated based on the cost of jobs available through the Youth Cooperative "Bulevar," although the applicant is in her forties and has no theoretical possibility of being engaged through a youth cooperative, as the upper age limit for jobs through youth cooperatives is 30 years (decision of the Center for Social Work in B. No. 55310/7399/2021 dated 10 August 2021).

80 Interview with S.S. from the informal settlement Grmeč in Belgrade, November 2022.

income, but based on the wage rates paid to those individuals who manage to get a job. As a result, individuals who have failed to get any work engagement, and especially those who are the most vulnerable in the labor market (such as Roma women, internally displaced persons, persons with disabilities), remain without income needed to meet existential needs.

This reduces the number of financial social assistance beneficiaries or reduces the amount paid to them, not by employing them or improving their position in the labor market, but by arbitrarily attributing missed earnings⁸¹. Needless to say that the discontinuation or reduction of social benefits has a serious impact on individuals who cannot earn any income and have no other way to secure the existential minimum.

However, among the recipients who addressed the A 11 Initiative for the reduction or loss of FSA in 2022 and particularly 2023, the reasons were mostly related to the implementation of the Social Card Law or the illegal inclusion of income from seasonal work when calculating income that affects the right to FSA. Since March 2022, the mechanism for excluding people from social benefits through the attribution of missed earnings has largely been replaced by a mechanism for exclusion through the social card system, with even more far-reaching consequences. The discontinuation and reduction of FSA through the social card system mostly occurs due to errors, such as incorrectly attributed incomes or the inclusion of incomes that should not affect the entitlement to social benefits. The consequences are the same as with missed earnings: the loss or reduction of social benefits to vulnerable individuals.

The A 11 Initiative has encountered numerous cases showcasing how the Social Card registry and the concept of missed earnings are alternately used to reduce or terminate financial social assistance (FSA).⁸² The clearest examples are cases where FSA amounts were initially reduced be-

81 In addition to the aforementioned examples, arbitrary attribution of missed earnings is illustrated by the case of I.D., who was initially determined to have missed earnings of 15,000 dinars; however, after filing and having an appeal accepted, no missed earnings were determined for the same period and based on the exact same evidence and facts (decision of the Center for Social Work "B" No. 3280 dated 15 June 2020).

82 For more information, see the subtitle "Unlawful Inclusion of Seasonal Job Income in the Process of Exercising Right to Financial Social Assistance and Appeal for Amendments to the Unlawful Bylaw Regulation".

cause the Social Card incorrectly registered income that should not affect FSA eligibility (such as income from seasonal work). After an appeal and subsequent review, the FSA amount was further reduced due to "missed monthly earnings from seasonal work"(sic!).⁸³ Thus, for individuals who earned income from seasonal work, the amount of financial social assistance was reduced because the CSR determined they failed to maximize their earnings through such work. This demonstrates that the sole purpose of the missed earnings provisions is to reduce FSA amounts without determining whether opportunities to earn income actually existed or whether the individual utilized all available opportunities to earn income. Conversely, there have been no changes to improve the position of socially vulnerable individuals or implement recommendations from international organizations and treaty bodies regarding issues such as inadequate FSA amounts or interruptions in FSA receipt. The problems have exacerbated after the Social Card Law came into effect and the improper calculation of seasonal work earnings.⁸⁴ The unjust refusal by some branches of the National Employment Service to register individuals without a primary education or proof of completion has hindered their access to FSA.⁸⁵ While proof of primary education completion may be required for certain job positions or employers, it should not serve as grounds for outright denial of the constitutionally protected rights to employment or access to FSA (due to the inability to register as unemployed).

A significant issue is the ***unlawful prevention of FSA recipients, whose rights have been terminated, from submitting new applications while their appeal is pending***. In cases where a decision to terminate FSA has been made and an appeal has been filed, the practice of Centers for Social Work is to refuse to accept new FSA applications until a second-instance decision is made—a process that often takes over six months. Centers for Social Work commonly reject applications verbally, even though they

83 Decision of the Center for Social Work N.K. dated 24 March 2023 and 22 November 2022.

84 For more details, see the subtitle "The Social Card Law".

85 Interview with F.K., 1 November 2022; interview with R.K., December 2022; interview with residents of settlement Č., 30 August 2023.

are required by law to formally decide on the applicant's application and provide a written decision to the applicant.⁸⁶

Due to this practice, recipients are unjustly forced either to withdraw their appeal to submit a new FSA application or to continue with the appeal without the possibility of submitting a new application until the appeal decision is made. The Ministry of Labor, Employment, Veteran and Social Affairs, in response to a request for a legal opinion from the A 11 Initiative, confirmed that such a practice is unjustified, stating that there is no reason why an individual cannot submit a FSA application even if they have filed an appeal against decision of the Center for Social Work to terminate FSA and the second-instance decision has not yet been made, that is the appeal process had not been finalized when the request for financial social assistance was submitted⁸⁷. This unlawful prevention of submitting new FSA applications during the appeal process is especially common in cases where the termination of FSA resulted from the application of the Social Card Law. Although the A 11 Initiative had access to the mentioned opinion in 2023, which recipients could use to prove their right to submit a new FSA application during the appeal process, pressures on recipients to withdraw their appeals continued in 2023. Recipients often withdrew their appeals due to fears about their future treatment at the CSR. In one case, a recipient withdrew their appeal after being promised one-time cash assistance if they did so.

Among the few positive developments in social protection was the October 2022 decision by the Constitutional Court, which eliminated the legal basis for the Regulation on Measures of Social Inclusion of Recipients of Financial Social Assistance. This decree had stipulated the reduction or

86 In rare cases, Centers for Social Work issue a decision and reject a new application by invoking Article 92, Paragraph 1, Item 5 of the Law on General Administrative Procedure, considering that initiating a new procedure would involve making a decision on an administrative matter that is already subject to a second-instance appeal process. However, the time period relevant for decision-making is not the same for an appeal decision and a decision regarding a new application. The first-instance authority, when making a decision, assesses the fulfillment of conditions in the three months preceding the application, whereas the appeal process is decided based on the conditions that existed at the time the decision to terminate the right to financial social assistance was made. These two points in time can significantly differ, with a gap potentially exceeding six months, thus it is possible that there may be differences in the justification and conditions for exercising this right.

87 Opinion of the Ministry of Labor, Employment, Veteran, and Social Affairs, No. 553-00-00250/2023-10 dated March 30, 2023.

complete termination of FSA for recipients who did not participate in activation measures outlined in the subordinate legislation.

Regulation on Measures of Social Inclusion for Financial Social Assistance Recipients: A By-law Regulation Introducing Forced Labor Without Legal Basis

In October 2014, the Government of the Republic of Serbia adopted the Regulation on Measures of Social Inclusion for Financial Social Assistance (CSA) Recipients. This decree mandated that able-bodied FSA recipients engage in community service or work in the local community, as directed by the Center for Social Work (CSR). Those who refused these activation measures faced reductions or termination of their legally entitled social assistance.⁸⁸ Due to its discriminatory nature, introduction of forced labor, and endangerment of the livelihoods of socially vulnerable citizens, three initiatives were submitted in October 2014, along with a proposal by the Protector of Citizens to review the constitutionality of the Regulation. However, the Constitutional Court remained silent on these issues for over seven years.⁸⁹ Finally, in October 2022, instead of ruling on the submitted initiatives and proposals regarding the constitutionality of the disputed Regulation, the Constitutional Court initiated proceedings on its own and declared the unconstitutionality of Article 80, paragraphs 3 and 4 of the Law on Social Protection. These paragraphs related to social inclusion measures and the possibility of reducing or terminating the right to material support in cases of non-participation in such measures.⁹⁰ These provisions formed the legal basis for the Regulation on Measures of Social Inclusion for Recipients of Financial Social Assistance. By annulling these legal provisions, the Regulation was indirectly nullified, as its legal founda-

⁸⁸ See Article 4 of the Regulation. Research conducted by the A 11 Initiative in 2018 found that thousands of recipients of financial social assistance are forced to perform unpaid work to exercise their constitutionally guaranteed right to social protection. Additionally, the implementation of this regulation varies from municipality to municipality.

⁸⁹ A 11 Initiative, *Second-Class Rights*, op. cit., 14.

⁹⁰ Decision of the Constitutional Court of the Republic of Serbia, no. luz-332/2015, which establishes that the provisions of Article 80, paragraphs 3 and 4 of the Law on Social Protection are not in accordance with the Constitution. The decision was published in the "Official Gazette of the Republic of Serbia", no. 117/2022.

tion was removed. Specifically, Article 80, paragraph 4 stipulated that social inclusion measures were to be prescribed by the Government, while paragraph 3 allowed the CSR to conclude agreements with material support recipients on actively overcoming their unfavorable social situation, including the possibility of reducing or terminating material support rights in case of unjustified non-fulfillment of the agreement's obligations. These provisions of the Law were the basis for the adoption of the Regulation on Social Inclusion Measures for Recipients of Financial Social Assistance.

The Constitutional Court examined the constitutionality of these legal provisions from several perspectives: whether the Constitution allows the Government to prescribe social inclusion measures through bylaw regulation, whether the rule of law permits the reduction or termination of material support rights to be subject to agreements between Centers for Social Work and social protection system beneficiaries, whether these provisions comply with the principle of equality before the law, and whether the legislator was obliged to regulate the termination or reduction of beneficiaries' rights in detail by law rather than leaving it to sublegal regulation. The Court concluded that social inclusion measures should have been regulated by law, and that the reduction or loss of the right to material support cannot be subject to agreements between recipients and Centers for Social Work, but must be prescribed by law, specifying the conditions under which the reduction or termination of rights determined by a final decision of the competent authority can occur.

Despite the Constitutional Court's decision removing the legal basis for the controversial regulation, it did not address the fundamental issues of introducing unpaid, involuntary labor for material support recipients or the compliance of such labor with the Constitution and ratified international treaties. Since 2014, it has been consistently highlighted that imposing work obligations under the threat of losing or reducing social assistance is incompatible with obligations under the International Labor Organization Convention No. 29 of 1930, the European Convention on Human Rights, the Revised European Social Charter, and the International Covenant on Economic, Social and Cultural Rights. Judging by earlier drafts of the amendments to the Law on Social Protection and the language of the Constitutional Court's decision, there is concern that this issue, implying that

social assistance must be "earned," could be incorporated into the new Law on Social Protection.⁹¹ This would permanently undermine the basic principles of social protection in our society. The Constitutional Court unfortunately failed to address these matters. Nonetheless, it is crucial to recognize that including a work obligation for able-bodied FSA recipients in the law would contradict the state's international commitments to prevent forced labor and discrimination.

Law on Financial Support to Families with Children – The Most Discussed Regulation by the Constitutional Court in the Past Six Years

Shortly after the Law on Financial Support for Families with Children came into effect⁹² a series of protests followed, as an attempt to highlight the unjust solutions introduced by this regulation.⁹³ Additionally, a proposal⁹⁴ along with several initiatives⁹⁵ were submitted for the constitutional review of several provisions of the Law on Financial Support to Families with Children (LFSFC). It was argued that these provisions were contrary to anti-discrimination regulations, the Constitution of the Republic of Serbia, and ratified international treaties.

91 For more information, see A 11 Initiative, *Second-Class Rights – Social Rights in Light of Austerity Measures*, op. cit., 13 and 17.

92 Although the primary goal of the Law on Financial Support for Families with Children is not to reduce poverty but rather to encourage higher birth rates, provisions of the law that may affect the position of poor children or lead to the exclusion of children from the most vulnerable groups from the possibility of receiving certain benefits are also reviewed.

93 A series of protests organized by the initiative "Mame su zakon" (Moms Rule), highlighted inadequate solutions in the Law on Financial Support for Families with Children. News about these protests can be found at: <https://rs.n1info.com/tag/mame-su-zakon/> and, <https://n1info.rs/vesti/a422897-protest-mame-su-zakon-u-centru-beograda/>.

94 Commissioner for the Protection of Equality, Brankica Janković, submitted a Proposal to the Constitutional Court of Serbia for the constitutional and legal review of several provisions of the Law on Financial Support for Families with Children on September 13, 2018, available at: <http://ravnopravnost.gov.rs/rs/saopštenje-predlog-za-ocenu-ustavnosti/>.

95 National Organization of Persons with Disabilities of Serbia (NORBS) submitted an initiative for the constitutional and legal review of the Law on Financial Support for Families with Children, available at: <https://www.hrbrisa.rs/sr/dogadaji-galerija/173-ustavnom-sudu-je-podneta-inicijativa-za-ocenu-ustavnosti-i-zakonitosti-zakona-o-finansijskoj-podrsi-porodici-sa-decom>. A 11 – Initiative for Economic and Social Rights submitted an initiative for the review of the constitutionality of the Law on Financial Support for Families with Children on October 8, 2018, available at: <https://www.a11initiative.org/inicijativa-a-11-podnela-inicijativu-za-ocenu-ustavnosti-zakona-o-finansijskoj-podrsi-porodici-sa-decom/>.

Following the adoption of the LFSFC, the Constitutional Court extensively discussed and issued the largest number of declaratory judgements related to initiatives challenging specific provisions of this law.⁹⁶ In response to several initiatives, the Constitutional Court issued three rulings by the end of 2020 and in 2021, determining that certain provisions of this law were unconstitutional. These decisions include IUz-216/18 dated December 3, 2020, IUz-247/18 dated December 17, 2020, and IUz-266/2017 dated April 15, 2021. Additionally, on March 10, 2022, the Constitutional Court initiated proceedings with decision IUz-299/2018 to determine the constitutionality of Article 17 of the Law, and in 2023, decision IUz-299/2018 declared Article 17, paragraph 4 of the LFSFC unconstitutional.⁹⁷

In May 2021, **the Constitutional Court published three decisions declaring the unconstitutionality of several provisions of the Law on Financial Support for Families with Children.**

The Constitutional Court, in its **IUz-216/2018** of December 3, 2020⁹⁸ determined the unconstitutionality of Article 17, paragraph 2, and Article 18, paragraphs 2, 4, and 6 of the Law on Financial Support to Families with Children, which placed women that are agricultural insurance holders in an unequal position.

By decision IUz-247/2018 of December 17, 2020, the unconstitutionality of the provision of Article 14, paragraph 8 of the Law was established.⁹⁹ This provision stipulated that the monthly amount of wage compensation during maternity leave could not be less than the minimum wage *only* to employed women with at least six months of continuous social insurance contributions paid or *if* at least six minimum bases on which contributions were paid were recorded with the competent authority (emphasis added). This provision was found unconstitutional in the part where the guarantee of wage compensation not lower than the minimum wage was conditioned on a prior insurance tenure of at least six months.

96 See also the separate opinion of Judge Tamaš Korhec regarding the Constitutional Court's Decision No. Iuz-229/2018.

97 Decision was published in the "Official Gazette of RS", no. 43/2023 on May 26, 2023.

98 Decision was published in the "Official Gazette of RS", no. 46/2021 on May 7, 2021.

99 The decision was published in the "Official Gazette of RS", no. 51/2021 on May 21, 2021.

The Constitutional Court's decision **IUz-266/2017** dated April 15, 2021, declared Article 12, paragraph 7 of the Law on Financial Support for Families with Children unconstitutional. This provision stipulated that the right to wage compensation due to absence from work (for special childcare) could not be exercised for a child for whom the right to caregiver allowance had already been granted. This placed parents of children with disabilities in a worse position, forcing them to choose between these two benefits.¹⁰⁰

These Constitutional Court rulings prompted **amendments to the Law on Financial Support for Families with Children**.¹⁰¹ Among other changes, the unconstitutional provision forcing parents of children with disabilities to choose between wage compensation and caregiver allowance was removed.¹⁰² The unconstitutional provisions disadvantaging women that are agricultural insurance holders¹⁰³, and those linking the minimum wage guarantee during maternity leave to prior insurance tenure.¹⁰⁴ were also amended. The trend of amending the LFSFC continued into 2023, when the unconstitutionality of Article 17, paragraph 4 was established¹⁰⁵ leading to equalizing the duration of monetary compensation for work incapacity due to childbirth and childcare for mothers who were employed before

¹⁰⁰ The decision was published in the "Official Gazette of RS", no. 113/17 and 50/18. Decision IUz-216/2018 (published in the "Official Gazette of RS", no. 46/2021 on May 7, 2021) of the Constitutional Court established the unconstitutionality of Article 17, Paragraph 2, and Article 18, Paragraphs 2, 4, and 6 of the Law on Financial Support for Families with Children. Finally, Decision IUz-247/2018 (published in the "Official Gazette of RS", no. 51/2021 on May 21, 2021) established the unconstitutionality of Article 14, Paragraph 8 of the Law, which stipulated that the monthly amount of wage compensation, or salary compensation during maternity leave, could not be less than the minimum wage only to employed women with at least six months of continuous social insurance contributions, or if at least six of the lowest bases on which contributions were paid on earnings that have the character of wages had been recorded with the competent authority (emphasis added). This provision was declared unconstitutional in the part where the guarantee of wage compensation in an amount not lower than the minimum wage is conditioned by a prior insurance period of at least six months.

¹⁰¹ Law on Amendments to the Law on Financial Support for Families with Children, "Official Gazette of RS", no. 66/2021 of June 30, 2021 (hereinafter: 2021 LA LFSFC).

¹⁰² See Article 6 of the 2021 LA LFSFC.

¹⁰³ See Article 6 of the 2021 LA LFSFC. It is stipulated that other benefits based on the birth and care of a child and special childcare can also be obtained by a mother who was an agricultural insurance holder for a period of 18 months prior to the child's birth (instead of 24 months, as it was before the amendments and before this distinction between women agricultural insurance holders and other insured women was declared unconstitutional).

¹⁰⁴ Article 5 of the 2021 LA LFSFC.

¹⁰⁵ See the decision of the Constitutional Court of Serbia, IUz-299/2018.

the child's birth.¹⁰⁶ Specifically, while the Labor Law granted two years of leave and wage compensation for the birth of the third and each subsequent child, the LFSFC, in Article 17, paragraph 4, provided only one year of compensation from the child's birth for mothers with other forms of employment, regardless of the child's birth order.

However, it is necessary to address **the provisions of the Law on Financial Support for Families with Children that have not been substantially amended** despite their discriminatory nature.¹⁰⁷ This particularly pertains to the provisions related to parental allowance conditions, which disproportionately negatively impact Roma children.¹⁰⁸ The Constitutional Court failed to contribute to amending these conditions, despite recommendations from international treaty bodies explicitly addressing the conditions for parental allowance and their impact on Roma families.

In June 2022, the Constitutional Court issued decision IUz-299/2018, rejecting initiatives to review the constitutionality and compliance of Article 25 of the Law on Financial Support for Families with Children with universally accepted international law rules and ratified international treaties. In October 2018, the A 11 Initiative submitted a request to the Constitutional Court to review the constitutionality of Article 25 of the LFSFC, arguing that families could not receive parental allowance if any of their children had not received all mandatory vaccines or did not regularly attend primary school or the preschool preparatory program (hereinafter: PPP). Based on numerous studies and statistical data indicating drastic inequalities in immunization coverage and school and PPP attendance between Roma and non-Roma children, which show that these provisions have dispro-

¹⁰⁶ Law on Amendments to the Law on Financial Support for Families with Children, "Official Gazette of RS", no. 62/2023 of July 27, 2023. The law was enacted on July 27, 2023, and became applicable as of August 1, 2023, except for Article 3, amending Article 17, Paragraph 5, which was enforced as of May 27, 2023.

¹⁰⁷ A 11 Initiative, Second-Class Rights, op. cit. See also, Mario Reljanović, "Why the Law on Financial Support for Families with Children Must Be Amended," Pešćanik, October 16, 2018, available at: Pešćanik. The 2019 European Commission report also points to the new provisions of the Law on Financial Support for Families with Children, which condition parental allowance on immunization, highlighting, *inter alia*, the differences in vaccine coverage between Roma and non-Roma children.

¹⁰⁸ The issues affecting the poorest and most vulnerable children will be considered here. For other unresolved matters regarding the Law on Financial Support for Families with Children, see, for example, Mario Reljanović, "The Discrimination of Female Entrepreneurs Continues," Pešćanik, August 30, 2021, available at: <https://pescanik.net/diskriminacija-preduzetnica-se-nastavlja/>.

portionately negative effects on children from the most vulnerable Roma families, the A 11 Initiative pointed out that these restrictions constitute indirect discrimination against Roma children.

Although seemingly neutral, these provisions have a disproportionately negative effect on Roma children, as evidenced by data on the disparities in immunization coverage and school and PPP attendance between Roma and non-Roma children. According to 2019 data of the Statistical Office of the Republic of Serbia and UNICEF, early childhood education coverage for Roma children is only 7%, compared to 61% in the general population.¹⁰⁹ While 3% of preschool-age children in the general population fail to attend the preparatory preschool program on time, 24% of Roma children do not attend the PPP. The net enrollment rate in preschool education is 97% for the general population but significantly lower at 76% for children in Roma settlements.¹¹⁰ The completion rate of primary school among children living in Roma settlements is 64%.¹¹¹ The 2018 regional study on Roma by the United Nations Development Program shows that, on average, one in six Roma children of primary school age remains outside the educational system.¹¹² The same study indicates that only 57% of Roma girls complete primary education, compared to 93% of non-Roma girls and 66% of Roma boys. Regarding vaccination, the coverage for Roma children is also lower. According to 2019 data of UNICEF and the Statistical Office of the Republic of Serbia, only about one-third of Roma children (around 35%) received all vaccines on time, compared to 69% of children in the general population.¹¹³ The Strategy for the Social Inclusion of Roma Men and Women in the Republic of Serbia for the period from 2016 to 2025, adopted by the Government of the Republic of Serbia, also highlights these inequalities in mandatory immunization coverage. It notes that vaccination coverage for Roma children is similar to that of the general population only for the BCG

109 Statistical Office of the Republic of Serbia and UNICEF, Multiple Indicator Cluster Survey on the Position of Women and Children in Serbia and Multiple Indicator Cluster Survey on the Position of Women and Children in Roma Settlements in Serbia, Survey Findings Report, Belgrade, 2019, xvii (hereinafter: MICS 2019).

110 *Ibid.*

111 *Ibid.*

112 UNDP, *Roma at a Glance – Serbia*, April 2018, available at: https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/Factsheet_SERBIA_Roma.pdf.

113 MICS 2019, *op. cit.*, xv.

vaccine administered before the first year of life, while coverage decreases for other vaccines at later ages.¹¹⁴

The necessity of amending these provisions is also highlighted in the Concluding Observations of the Committee on Economic, Social and Cultural Rights, which, in April 2022, expressed concern over the conditioning of parental allowance on certain criteria, such as school attendance and child vaccination, which has a significant discriminatory effect on Roma families.¹¹⁵ The Committee recommended that Serbia revise the conditions for parental allowance to remove those that are discriminatory or have discriminatory effects and violate human rights norms.¹¹⁶

Nevertheless, the Constitutional Court did not find sufficient grounds to start proceedings and rejected the initiative. The court did not evaluate the proportionality of the restrictions imposed by the LFSFC (the removal of the parental allowance) and neglected to explore if the same objective could be attained with less infringement on individual rights. The lack of proportionality is apparent as the sanction of discontinuing the parental allowance affects all children, not just the child for whom the parent did not fulfill obligations regarding immunization and education. The disproportionality is underscored by the fact that sanctions for irregular attendance at compulsory preschool and primary education are already prescribed by relevant regulations. The Constitutional Court's decision to overlook the fact that the LFSFC duplicates sanctions for behaviors already deemed as misdemeanors has greatly restricted the significance and coherence of the unity of the legal order, as demonstrated in previous rulings.

The court declined to assess whether the denial of parental allowance is in line with the best interests of the child, as stated in the Convention on the Rights of the Child, stating that the "holder of this right is the parent. Therefore, the right to parental allowance cannot be directly linked to the provisions of the Convention on the Rights of the Child." This denial by the Constitutional Court, implying that the requirements for receiving parental

114 Strategy for the Social Inclusion of Roma Men and Women in the Republic of Serbia for the period 2016 to 2025, 2016, p. 50.

115 Committee on Economic, Social and Cultural Rights, *Concluding Observations on the third periodic report of Serbia*, *op. cit.*, para. 54.

116 *Ibid.*

allowance are not viewed as activities related to the child, not only embodies a formalistic approach to sidestep evaluating whether the disputed provisions align with the best interests of the child principle outlined in the Convention on the Rights of the Child but also contradicts the Court's previous practice and decisions related to the LFSFC, which clearly highlighted that the ultimate beneficiary of the parental allowance is the child.

In light of the pertinent statistical data and research conducted by international and national institutions, it is alarming that the Court failed to examine the consequences of parental allowance conditions on Roma children.

Two judges disagreed with the decision and expressed their dissenting opinions. The first dissenting opinion stated that the fundamental reason for disagreement with the Constitutional Court's decision "lies in the absence of consideration of indirect discrimination and the lack of response to claims that Roma children would be disproportionately affected by the conditions for obtaining parental allowance compared to children from the majority population."¹¹⁷ The initiative to review the constitutionality of Article 25 of the LFSFC, submitted by the A 11 Initiative, was precisely focused on the effects of the contested provisions on Roma children, a question that remained unanswered.

The Constitutional Court neglected the international legal framework regarding discrimination and ignored recommendations from international bodies specifically linked to the disputed clauses of the LFSFC. As highlighted in one of the dissenting opinions, the United Nations Committee on Economic, Social and Cultural Rights expressed concern over the conditioning of parental allowance on certain criteria, such as school attendance and child vaccination, which has a significant discriminatory effect on Roma families. The Committee recommended that Serbia revise the conditions for parental allowance to remove those that are discriminatory or have discriminatory effects and violate human rights norms.

The Constitutional Court disregarded these recommendations. Its decision can be summarized as follows: i) in the eyes of the Court, parental

allowance is perceived as a form of assistance that is not tied to children; ii) the presence of a significant social interest justifies any penalty without the necessity of evaluating its proportionality; iii) discrimination cannot exist if the same conditions and obligations apply to everyone, regardless of the fact that these seemingly equal conditions have different consequences for different groups, disproportionately harming one group. These positions lack foundation in the practice of international bodies that protect human rights, including the European Court of Human Rights (ECHR). The Constitutional Court also deviated from its previous practice, particularly regarding the principle of the unity of the legal order and the distinction between the beneficiaries and holders of support introduced by the LFSFC.

Important issues such as the proportionality of sanctions and their intended objectives, effects of the parental allowance conditions on Roma children, method of determining indirect discrimination, parental allowance beneficiaries, and the unity of the legal order were considered only in the dissenting opinions of certain judges. It is yet to be determined if the opinions expressed will have lasting impact, or if all institutions in Serbia, such as the Constitutional Court, will overlook not just the claims made by the dismissed initiative but also the recommendations of the Committee on Economic, Social and Cultural Rights. These recommendations clearly state that the parental allowance conditions have discriminatory effects on Roma children and advise Serbia to revise these conditions to remove those that are discriminatory or have discriminatory effects and violate human rights norms.

Nearly two years have passed since the Committee on Economic, Social and Cultural Rights recommended that the state revise the conditions for parental allowance to eliminate those that are discriminatory or have discriminatory effects on Roma children. Despite the fact that the law containing these conditions, the LFSFC, has been amended almost every year since its adoption in 2017, nothing has been done to change these conditions.

¹¹⁷ Separate opinion of Judge Dr. Tijana Šurlan regarding the Decision of the Constitutional Court in case IUz-229/2018 dated April 21, 2022.

The Inability to Claim Parental and Child Allowance for the Fifth and Subsequent Children

Among the unresolved issues in the LFSFC is the restriction on the number of children in a family who can receive child and parental allowance. Article 22, paragraphs 1 and 3, and Article 26, paragraph 1 of the LFSFC, which prescribe the conditions for obtaining parental and child allowance, limit the number of children for whom these rights can be claimed. Article 22 stipulates that parental allowance is granted to the mother for the first, second, third, and fourth child, provided she is a citizen of the Republic of Serbia and has a residence.¹¹⁸ Child allowance, another form of financial assistance provided by the LFSFC, is granted for the first, second, third, and fourth child in the family, and only exceptionally for a child of higher birth order if the right cannot be claimed for one of the first four children due to age limits.¹¹⁹

This **limitation on the number of children eligible for parental and child allowance disproportionately affects the most vulnerable families with children.**¹²⁰ According to the 2011 census data published by the Statistical Office of the Republic of Serbia, there are only 5,264 families in Serbia with more than five children. The A 11 Initiative obtained census processed data from the Statistical Office of the Republic of Serbia, showing that out of this number, 1,719 families have at least one parent who identified as Roma. Additionally, in 782 of these families, one or both parents are illiterate, and in 1,024 families, both parents have no schooling or have completed only up

¹¹⁸ Only exceptionally, if a mother with three children has two or more children in a subsequent birth, she may be entitled to receive parental allowance for each child born in that delivery, as per a special decision made by the social affairs ministry. On the other hand, child allowance is granted for the first, second, third, and fourth child in the family, and only exceptionally for a higher-order child if the right can no longer be granted due to the age limit for any of the first four children. See Article 22, Paragraph 3 of the Law on Financial Support for Families with Children. For more information, see: A 11 – Initiative for Economic and Social Rights, Commentary on the Draft Law on Amendments to the Law on Financial Support for Families with Children, April 2021, available at: https://www.a11initiative.org/wp-content/uploads/2021/04/Komentar-ZFPPD_Inicijativa-A-11.pdf.

¹¹⁹ Article 26 of the Law on Financial Support for Families with Children.

¹²⁰ For more information, see: Imogen Richmond-Bishop and Danilo Ćurčić, "Welfare Caps: How the UK and Serbia Became Outliers in Child Support", Open Global Rights, April 21, 2021, available at: <https://www.openglobalrights.org/welfare-caps-how-the-uk-and-serbia-became-outliers-in-restricting-child-support/?lang=English>.

to three grades of primary education. These families are particularly economically and socially vulnerable, with nearly 300 of them either sharing housing with another family, living in weekend homes, or residing in business premises, emergency housing or collective accommodation. Furthermore, 767 of these families lack a bathroom, and 644 do not have a toilet.¹²¹

The characteristics of families with five or more children show that the most vulnerable families are particularly affected by the limitation on the number of children who can receive parental and child allowance. Furthermore, when taking into account the ethnic background of parents with five or more children, this restriction brings up concerns of discrimination. Although Roma constituted 2.05% of the population according to the 2011 census, they make up 32.66% of families with five or more children. Since there are not many families with five or more children, lifting this restriction would not result in substantial budgetary costs.¹²² Most importantly, it would remove a seemingly neutral norm that disproportionately affects the most vulnerable families, thereby constituting indirect discrimination under Article 7 of the Law on the Prohibition of Discrimination.¹²³

Social Card Law

In March 2022, the Social Card Law¹²⁴, was implemented with the aim of automating procedures and processes related to social protection.¹²⁵ Despite its stated goal of enhancing the efficiency of social protection services and ensuring a fairer distribution of social assistance, the social card system is gradually creating barriers that prevent many marginalized citizens from accessing financial social assistance, child protection rights, and other benefits affected by income and property data.¹²⁶ The imple-

¹²¹ A 11 – Initiative for Economic and Social Rights, Commentary on the Draft Law on Amendments to the Law on Financial Support for Families with Children, op. cit.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ "Official Gazette of RS", no. 14/2021 of February 17, 2021, came into force on February 25, 2021, and has been applied since March 1, 2022.

¹²⁵ Article 4 of the Social Card Law.

¹²⁶ See also Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*, St. Martins Press, New York, 2018, p. 32.

mentation of that law led to a reduction in the number of financial social assistance beneficiaries by at least 27,000 people, and by the end of 2023, the number of individuals who lost their social protection beneficiary status exceeded 40,000.¹²⁷

Article 2 of this law establishes the "Social Card" system as a unique register containing data on individuals and their related persons concerning their socio-economic status, the types of social protection rights and services they use or have used, and information about the officials who managed or decided on individual rights. The "Social Card" register serves as a central repository of data on individuals who are or have been entitled to social, veterans', disability, and child protection rights. It consolidates data from the Tax Administration, civil registry, National Employment Service, Central Population Register, Ministry of Interior, Pension and Disability Insurance Fund, and the Real Estate Cadastre.

Regarding social protection rights, the system collects information necessary for obtaining financial social assistance, one-off financial assistance, and caregiver allowance. The register collects more than 135 data points about (potential) recipients without categorizing them based on the particular entitlement. Thus, for example, data about the national affiliation of the beneficiary of financial social assistance or the place of marriage registration are collected, even though these sets of data do not affect the exercise of rights. Most importantly, there is no other context in Serbia with such an extensive collection of personal data.¹²⁸

The law is not fully aligned with the provisions of the overarching Law on Personal Data Protection,¹²⁹ and contains provisions that conflict with the

127 Data collected by the A 11 Initiative based on requests for access to information of public importance. The total number of beneficiaries of financial social assistance in the territory of the Republic of Serbia as of February 1, 2022 (before the application of the Social Card Law) was 211,266, dropping to 182,773 on January 1, 2023, and 167,160 on December 31, 2023. Responses from the Ministry of Labor, Employment, Veteran and Social Affairs no. 07-00-51/2023-05 of February 6, 2023, no. 07-00-395/2022-05 of September 29, 2022, and no. 000580230-2024-13400-009-001-041-00 of February 19, 2024.

128 Partners for Democratic Change Serbia, Privacy and Protection of Personal Data in Serbia, *Analysis of Selected Sectoral Regulations and Their Implementation*, p. 58.

129 "Official Gazette of RS", no. 87/2018. For more information on the inconsistency of the Social Card Law with the obligations prescribed by the Law on Personal Data Protection, see also: Commissioner for Information of Public Importance and Personal Data Protection, Opinion on the Draft Social Card Law, no. 073-12-2598/2020-02 of December 15, 2020.

Law on Social Protection. These inconsistencies of the Social Card Law with regulations governing the protection of personal data and social protection raise the issue of violating the constitutional principle of the unity of the legal order. This principle implies that the fundamental principles and legal institutes set by laws that govern a specific realm of social interactions must also be honored in special laws, unless that law explicitly prescribes the possibility of regulating these issues differently.¹³⁰

The Social Card Law prescribes multiple functions for the register, with the two main functions being: 1) determining the socio-economic status of individuals and their related persons to establish facts necessary for deciding on social protection rights and services; and 2) automating procedures and processes related to social protection.¹³¹

Article 17 of the Social Card Law stipulates that if inconsistencies in user data or related persons' data are found during processing, a notification will be created and sent to the relevant social protection records. These inconsistencies reflect discrepancies between data from source records (maintained by the Ministry of Interior, Tax Administration, Real Estate Cadastre, National Employment Service) and data held by the Centers for Social Work. The notification includes instructions for the data user or the authority responsible for social protection issues – the Centers for Social Work or other authorities responsible for implementing social protection activities. It states that it is necessary to check data by viewing and retrieving data from official records, documentation and public documents, to make a decision at the request of the party or that it is necessary to initiate proceedings ex officio because it has been found out about the facts of significant impact on the exercise, change or termination of social protection rights.

Data from the Social Card register is updated once or twice a month in relation to the source records.¹³² The Social Card system notifies autho-

130 Constitutional Court, UŽ 13652/2018, IUz-361/2012.

131 See Article 4 of the Social Card Law.

132 Information obtained by the A 11 Initiative team based on conversations with personnel of the Centers for Social Work and by reviewing data in the Social Card register with the authorization of individuals who sought legal support due to difficulties in obtaining financial social assistance caused by the application of the Social Card Law.

rized personnel of any changes that might affect the exercise of rights or the provision of services in the field of social protection. The notifications provided by the Social Card system are sorted into multiple categories, and each notification, in addition to the information, contains instructions for action.

If data processing for a financial social assistance recipient indicates a disqualifying factor, the short internal deadlines for action—set by notifications from the Social Card—often lead to decisions to terminate the right without prior hearing from the beneficiary. This not only denies social protection rights but also violates the beneficiary's right to be heard on relevant matters.

Several issues emerged in the first months following the implementation of the Social Card Law, posing challenges to the realization of financial social assistance rights:

- Some beneficiaries had social apartments in which they lived as tenants incorrectly recorded as their property by the Tax Administration.¹³³
- Vehicles sold to scrap yards or destroyed, or those not registered for years, were still recorded as the property of certain beneficiaries.¹³⁴
- Incorrect income data was recorded for some beneficiaries and their family members, showing either non-existent or unrealistically high incomes (e.g., one beneficiary lost the right to financial social assistance after the Social Card system recorded an

income of 345,420.48 dinars,¹³⁵ from selling secondary raw materials over three months, while another lost their right after the system showed they earned from selling nearly 22 tons of cardboard in one month).¹³⁶

- Some beneficiaries were falsely registered as employed due to identity card misuse, resulting in the loss of various social and health protection rights. The Social Card system did not distinguish between actual and fictitious employment.¹³⁷
- The system recorded seasonal work income, although regulations state that such earnings should not affect financial social assistance eligibility.
- Although, according to the Law on Social Protection, individuals or families are entitled to financial social assistance even if they own up to half a hectare of land,¹³⁸ (and in the case of inheriting land, less than half a hectare), the Tax Administration has, in some cases, recorded this inheritance as income. Consequently, it was

135 Decision of the Center for Social Work K. dated May 25, 2022 (a copy of the decision is in the possession of the author). For illustration, if the average purchase price of secondary raw materials at the time the decision was made is considered, an income of about 345,000 dinars could be achieved if approximately 11,500 kilograms of iron were collected within three months.

136 This concerns the case of D. B., who approached the A 11 Initiative in December 2023. D. B. occasionally collected secondary raw materials (paper and cardboard), but during the three months preceding the submission of the application for financial social assistance, he did not sell any secondary raw materials at all. Even in the earlier period when he did sell paper, he earned an amount that did not exceed 2,000 dinars per month. However, at the end of November 2023, his financial social assistance was terminated because the social card indicated that he had earned income that he not only did not earn but was also impossible for him to earn. For example, for September 2023, it was determined that the applicant had earned an income of 61,240 dinars, which, according to the purchase price of cardboard in that period, would mean that he collected and sold 21.4 tons of cardboard and paper during the month, or 713 kilograms daily (the decision and the determination of the purchase prices of secondary raw materials for the given period are in the possession of the author). D. B. withdrew the appeal he initially intended to file because the competent Center for Social Work informed him that he would be granted one-time financial assistance if he refrained from filing the appeal. Faced with the choice between the uncertain outcome of the appeal and the possibility of receiving the one-time financial assistance he desperately needed to secure a minimum level of subsistence, he chose the one-time financial assistance.

137 For more information, see the case study "Fictitious Employment of Roma in Belgrade" in the "Right to Work" section. Also, see the A 11 Initiative, *Report on Monitoring the Implementation of the Law on Free Legal Aid* in 2022, 2022, p. 4.

138 Individuals or families can claim the right to financial social assistance if they do not possess any real estate apart from residential space that is suitable for their living requirements, along with land up to .5 hectares.. See the general conditions for exercising the right to financial social assistance in Article 82 of the Law on Social Protection.

133 It is assumed that this occurred due to the obligation to pay property tax and rent for social housing, leading to the social housing being recorded as their property. This series of inadequate solutions (imposing taxes on social housing users, and then incorrectly recording those apartments as their property) results in a series of rights violations and further deterioration of the position of these particularly vulnerable citizens.

134 This happens, for example, because ownership is not transferred when selling a car or car parts, or when a car is sold for scrap, no certificate of handover is issued, or the car is not deregistered and the license plates are not returned to the Ministry of the Interior.

also displayed as income in the social card, leading to the termination of financial social assistance.

- When selling secondary raw materials as a group or residents of the same settlement, the income is paid to one person who presents their ID, often because some individuals do not possess documents, a problem still prevalent among the Roma community. Although this income is later distributed among all participants involved in selling secondary raw materials, the Social Card system records the income under the person who provided their ID and through whom the payment was processed.
- Another form of improper and illegal income calculation involves classifying donations as income affecting eligibility for financial social assistance (FSA). For instance, a donation to cover utility debts was recorded as earnings, leading to the termination of FSA. Similarly, a donation received to cover the costs of a daughter's funeral was registered as income from temporary or occasional jobs and used as a reason to revoke FSA.¹³⁹

In all these cases, the result is a reduction or termination of financial social assistance. The root cause is the discrepancy between the actual facts and the data recorded in the Social Card register. The discrepancies have a major effect on the lives of those who are already disadvantaged, underscoring the fact that these mistakes are completely unacceptable and must be fully corrected for the Social Card system to function effectively.

Furthermore, a key issue with the implementation of the Social Card Law is the **violation of the principle of data minimization** and the inability of social protection system beneficiaries to participate in decision-making based on the automatic processing of personal data.

¹³⁹ Although in this case, the right to financial social assistance was restored after filing an appeal, it should not be overlooked that the family, which did not have money to bury a family member or pay bills, was left without financial social assistance during the appeal process due to errors in the Social Card register. For more information on this case, as well as other issues caused by the application of the Social Card Law, see, among others, A 11 Initiative, (Anti)Social Cards, available at: <https://antisocialnekarte.org/>.

The Rulebook on Amendments to the Rulebook on the Organization, Norms, and Standards of Centers for Social Work¹⁴⁰ introduced the Social Protection Information System (SOZIS), a software solution in which Centers for Social Work perform tasks and maintain records within their jurisdiction.¹⁴¹ The Centers for Social Work are required to keep records and documentation in SOZIS.

Since April 2022, the A 11 Initiative has been attempting to obtain information from the Ministry of Labor, Employment, Veteran, and Social Affairs about the algorithm used for data processing established by the Social Card Law, as well as the source code of the software application executing the Social Card system, through requests for access to information of public importance. The request was initially denied, citing that the source code represents an ICT system of special importance, protected by the Law on Information Security and considered a property and business secret of the Ministry.¹⁴² After an appeal, the Commissioner for Information of Public Importance and Personal Data Protection upheld the A 11 Initiative's appeal and returned the case for reconsideration, but the Ministry again denied the request with similar reasoning. Another appeal was filed by the A 11 Initiative, which was upheld, and the Ministry's decision was annulled and returned for further review. In its latest decision, the Commissioner instructed the Ministry—if it chooses to conceal the source code—to explain why this is important for a democratic society. The A 11 Initiative is now awaiting the Ministry's third decision.

In the realm of procedure automation, it is crucial to establish two primary requirements for the system responsible for making such decisions. The first requirement pertains to the transparency of the algorithm conducting automatic checks of data (non)compliance in the Social Card with criteria for accessing social protection rights. The second requirement concerns enabling users of the social protection system to express their views on circumstances related to the mentioned automatic processing of personal data. Neither of these two requirements is currently met in practice.

¹⁴⁰ "Official Gazette of RS", no. 83/2022 dated July 28, 2022.

¹⁴¹ See Article 2, item 15 of the Rulebook on the Organization, Norms, and Standards of Work of the Center for Social Work.

¹⁴² Decision of the Ministry of Labor, Employment, Veteran, and Social Affairs no. 07-00-276/2022-05 dated July 4, 2022.

In April 2022, the A 11 Initiative submitted a request to the Constitutional Court to initiate a procedure for reviewing the constitutionality of the Social Card Law due to its inconsistency with the Constitution, ratified international treaties, and the principle of unity of legal order.¹⁴³ This initiative was supported by members of the Network for Economic, Social, and Cultural Rights, who submitted an *amicus curiae* brief (joint legal opinion) to the Constitutional Court.¹⁴⁴ This opinion is based on international human rights standards and examples of the impact of digitalization in similar contexts to the adoption of the Social Card Law. It emphasizes that extensive data processing of social protection system beneficiaries and related persons contradicts principles of personal data protection and affects the right to social protection and the prohibition of discrimination, particularly due to the disproportionate negative impact on Roma in Serbia, given their representation in the social protection system.¹⁴⁵

It is important to note that in other countries, in similar situations where new technologies are used to achieve the proclaimed goal of improving the social protection system, courts have debated the issue of **proportionality of personal data processing**, as well as compliance with the right to private and family life under the European Convention on Human Rights.¹⁴⁶ It is yet to be determined if the arguments presented will be reviewed by the domestic courts and the Constitutional Court of Serbia for compliance with the safeguards outlined in Article 8 of the European Convention on Human Rights.

143 For more information, see the A 11 Initiative, Submission of the Initiative for the Constitutionality Review of the Social Card Law, April 29, 2022, available at: <https://www.a11initiative.org/podne-ta-inicijativa-za-ocenu-ustavnosti-zakona-o-socijalnoj-karti/>.

144 For more information, see the A 11 Initiative, Growing Support for the Initiative to Review the Constitutionality of the Social Card Law, November 29, 2022, available at: <https://www.a11initiative.org/raste-podrska-inicijativi-za-ocenu-ustavnosti-zakona-o-socijalnoj-karti/>.

145 The joint legal opinion submitted to the Constitutional Court in the proceedings to review the constitutionality of the Social Card Law was prepared by Amnesty International, Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia), the Digital Welfare State and Human Rights Project (DWS Project) at the Center for Human Rights and Global Justice at NYU School of Law, the European Roma Rights Centre (ERRC), the Initiative for Social and Economic Rights (ISER), the Kenya Human Rights Commission (KHRC), and the Program on Human Rights and the Global Economy (PHRGE) at Northeastern University. The work on the joint legal opinion was coordinated by the Economic, Social, and Cultural Rights Network (ESCR-Net). The joint legal opinion is available at: <https://www.a11initiative.org/wp-content/uploads/2022/Antisocial%20cards/Social%20Card%20Legal%20Opinion%20-%20Final%20Serbian%20Pub.pdf?t=1669713145>.

146 The Hague District Court, NJCM and others v. The Netherlands (2020), The Hague District Court ECLI: NL: RBDHA:2020:1878 (SyRI).

In its report dedicated to the impact of this law and the introduction of (semi)automation in decision-making on FSA on a range of human rights, Amnesty International underscores the effects of the Social Card Law's enforcement.¹⁴⁷ Within an insufficient social protection structure, the Social Card has compounded the barriers to accessing social welfare and exacerbated prevailing exclusion and inequalities, notably impacting marginalized demographics like the Roma community.

The Illicit Inclusion of Income from Seasonal Work in the Calculation of Eligibility for Financial Social Assistance and a Call for Amendments to the Unlawful Bylaw Regulation

Since the implementation of the Social Card Law in March 2022, one recurring issue has been the loss of entitlement to financial social assistance due to the unlawful inclusion of income from seasonal work in the calculation of eligibility for such assistance.¹⁴⁸ This problem arises from the inconsistency of the Rulebook on Forms in the Process of Obtaining Financial Social Assistance¹⁴⁹ (hereinafter: Rulebook) with the Law on Social Protection, the Regulation on Income and Earnings Affecting the Financial Social Assistance Eligibility, and the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities. The Rulebook inappropriately includes income from seasonal work in the assessment of income for financial social assistance eligibility,¹⁵⁰ contradicting the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities¹⁵¹, which explicitly states in Article 9, Paragraph 3 that "remuneration for work earned in accordance

147 Amnesty International, "Serbia: Trapped by Automation: Poverty and Discrimination in Serbia's Welfare State", December 2023, available at: <https://www.amnesty.org/en/documents/eur70/7443/2023/en/#:~:text=Since%20its%20introduction%2C%20the%20Social,with%20disabilities%2C%20were%20disproportionally%20affected.>

148 For more information, see also Uroš Randelović, "Even the Poor Work" A 11 Initiative Blog, available at: <https://www.a11initiative.org/i-siromasni-rade/>.

149 "Official Gazette of RS" no. 39/2011.

150 See the Application for Financial Social Assistance (Form NSP-Z) and Form NSP-NM - Form containing Findings and Opinion of the Center for Social Work, constituting an integral part of the Rulebook on Forms Required in the Process of Obtaining Financial Social Assistance (Official Gazette of RS, No. 39/2011).

151 "Official Gazette of RS", No. 50/2018.

with this law does not affect the financial social assistance entitlement acquired under social protection regulations.” On the contrary, the Rulebook includes income from seasonal work in the application forms for financial social assistance, which are an integral part of the Rulebook, as the income of the applicant and their family considered when deciding on the application for financial social assistance. When prescribing the content and findings of the opinion of the Center for Social Work, whose form is also an integral part of the Rulebook, it is again stipulated that income from seasonal work should be mentioned, even though, according to the law regulating seasonal work, this income does not affect financial social assistance.

Paradoxically, when calculating missed earnings, income from seasonal work that the applicant or their family could have earned is also considered. Despite a higher legal act explicitly stating that income from seasonal work does not affect FSA, the provisions set forth in the Rulebook encompass the evaluation of eligibility for FSA by factoring in both the funds acquired through seasonal employment and the projected income that the applicant may have missed out as a result of their involvement in seasonal work. In section 6 of the prescribed form pertinent to findings and opinion of the Center for Social Work, income from seasonal work *earned* by the applicant and their family members is included as relevant for determining eligibility. In section 7, income that the applicant may have missed out as a result of their involvement in seasonal work is determined. In each instance, whether the income was generated or not, income derived from seasonal employment influences the attainment of FSA by decreasing the quantity or resulting in the deprivation of FSA eligibility. This is contrary to the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities, which stipulates that such income should not impact the right to financial social assistance. The inconsistency between the Rulebook and the higher legal act has resulted in the reduction or loss of financial social assistance for vulnerable citizens.

The Rulebook also contradicts the Law on Social Protection, which in Article 89, Paragraph 3, stipulates that the type of income and earnings constituting the average monthly income of an individual or family, the method of determining the amount of income and earnings of individuals or families,

and the income and earnings not considered for the purpose of exercising the right to financial social assistance are prescribed by the Government. The Government did this through the Regulation on Income and Earnings Affecting the Financial Social Assistance Eligibility, which does not specify income from seasonal work as relevant for the realization of the right to financial social assistance. The Government is explicitly authorized to prescribe forms of income that are relevant for this financial social assistance eligibility, as per Article 89, Paragraph 3 of the Law on Social Protection. Meanwhile, the minister responsible for social protection is authorized to prescribe the form and content of the application for financial social assistance without altering the eligibility criteria. However, the competent minister did so in the Rulebook by including income from seasonal work as relevant in determining both earned income and missed earnings.

Among the few positive provisions of the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities is the stipulation that remuneration from seasonal work does not affect the financial social assistance eligibility, nor does it lead to removal from the unemployment register, thus preserving social protection and social insurance rights. This encourages citizens without other employment opportunities to engage in these jobs. However, due to the inconsistency of the Rulebook, this provision had little practical effect, leading to increased risk of labor exploitation (due to verbal agreements) and loss of social protection rights. Strangely enough, those who do not obtain any income, whether from seasonal employment or otherwise, might experience a decrease in their FSA equal to the potential earnings from seasonal work as determined by the CSR, even if such earnings were not obtained. This dual reduction of FSA rights, by including both earned and unearned income from seasonal work, is illegal, contrary to the principle of unity of legal order and social justice, and impacts citizens facing marginalization, often at the intersection of social exclusion and labor exploitation risks.

In cases where socially vulnerable individuals approached the A 11 Initiative because their FSA was reduced or terminated due to income from seasonal work, the Center for Social Work obtained data on earned income from seasonal work based on the Social Card Law (the source of information on earned income from seasonal work was the register formed based

on the Social Card Law). The previous decision granting FSA was replaced with a new one that terminated or reduced the FSA amount. For example, a family of six had their FSA amount reduced to 5,974 dinars by a new decision because it was determined that the family's monthly income from seasonal work was 19,891 dinars, although according to the Law on Work Engagement on Seasonal Jobs in Certain Activities, this income should not have been considered in deciding on FSA. Before making the decision, applicants were not given the chance to provide input on the (inaccurately) determined income.

Due to the inconsistency of the Rulebook with higher legal acts, one of the few positive provisions of the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities was not applied. With the implementation of the Social Card Law, there has been a surge in the illicit integration of seasonal labor income in FSA determinations, leading to a heightened occurrence of violations against beneficiaries' entitlements stemming from the gathering and disclosure of seasonal work earnings information, which should not affect the realization of the FSA entitlement.

Therefore, in March 2023, the A 11 Initiative appealed to the Minister of Labor, Employment, Veteran, and Social Affairs to amend the Rulebook on Forms in the Process of Obtaining Financial Social Assistance. It was pointed out that the Rulebook is inconsistent with the Law on Social Protection, the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities, and the Regulation on Income and Earnings Affecting the Financial Social Assistance Eligibility. The appeal highlighted how Centers for Social Work, by applying the illegal Rulebook, violate the rights of financial social assistance beneficiaries and how this practice disrupts the principle of unity of legal order.

In May 2023, the Minister of Labor, Employment, Veteran, and Social Affairs amended the Rulebook on Forms in the Process of Obtaining Financial Social Assistance.¹⁵² The changes were reflected in the application forms for financial social assistance (FSA), constituting an integral part

¹⁵² Rulebook on Amendments to the Rulebook on Forms Required in the Process of Obtaining Financial Social Assistance. The Rulebook was published in the Official Gazette of RS, No. 45/2023, dated June 2, 2023, and entered into force on June 3, 2023.

of the Rulebook. In the section listing income considered when deciding on the right to FSA, the original statement "income from seasonal and other jobs" has been adjusted to *"income from seasonal and other jobs excluding earnings from seasonal jobs acquired in accordance with the laws governing seasonal employment"*.¹⁵³

This is undoubtedly a positive step that could help FSA beneficiaries secure a more dignified life by engaging in seasonal work. However, there is concern that practical problems may arise in interpreting the new formulation: "income from seasonal and other jobs excluding earnings from seasonal jobs acquired in accordance with the laws governing seasonal employment". It remains unclear which "seasonal jobs" would not be covered by the law regulating seasonal employment. In June 2023, the A 11 Initiative addressed the competent minister about this ambiguity but has not yet received a response.

As per current procedure, income derived from seasonal labor is disregarded in the evaluation of beneficiaries; however, their FSA could still be decreased due to the estimated earnings that could have been obtained during the seasonal work stint. Thus, individuals who *did earn income from seasonal work* may see their FSA reduced because they are deemed to *have missed earning income as a result of their involvement in seasonal work*.

¹⁵³ See Form NSP-Z and Form NSP-NM, constituting an integral part of the Rulebook. For more information, see the A 11 Initiative, "Income from seasonal work no longer affects eligibility for financial social assistance," June 28, 2023, available at: <https://www.a11initiative.org/prihod-od-sezonskog-rada-vise-ne-utice-na-ostvarivanje-novcane-socijalne-pomoci/>.

Exclusion of Roma without personal ID and Residence Registration from Financial Aid to Mitigate the Consequences of the Pandemic and Global Market Crisis

Since 2020, the state has provided financial aid multiple times¹⁵⁴ to mitigate the economic impact of the COVID-19 pandemic. This continued into 2022 with the enactment of financial aid for youth, regulated by the Law on the Temporary Registry of Citizens of the Republic of Serbia aged 16 to 29 receiving financial aid (hereinafter: the Law on the Temporary Registry).¹⁵⁵

Article 2 of the Law on the Temporary Registry specifies that a citizen of the Republic of Serbia aged 16 to 29 is defined as "a natural person aged 16 to 29 years on the day this Law enters into force, who is a citizen of the Republic of Serbia, has residence in the territory of the Republic of Serbia in accordance with the law governing permanent and temporary residence, possesses a valid personal ID card, and applies for financial aid in accordance with this Law." Consequently, citizens without a personal ID card or residence registration were excluded from eligibility for this aid.

onsistent with the support mechanisms implemented in the prior biennium, entitlement to this economic relief was not predicated on vulnerability levels but on the possession of an address registration and a personal identification document. This condition appears neutral and unrelated to ethnic origin. Notwithstanding, the application of this unbiased criterion has resulted in an unequal impact on members of the Roma national

154 In 2020, Article 15 of the Regulation on Fiscal Benefits and Direct Payments to Private Sector Entities and Financial Assistance to Citizens to Mitigate the Economic Impact of COVID-19 stipulated that a one-time financial assistance of 100 euros in dinar equivalent shall be paid to all adult citizens of the Republic of Serbia. In 2021, the Law on the Temporary Register of Adult Citizens of the Republic of Serbia Eligible for Financial Assistance to Mitigate the Effects of the COVID-19 Pandemic caused by the SARS-COV-2 Virus ("Official Gazette of RS", No. 40/2021 and 96/2021) prescribed that all adult citizens of the Republic of Serbia would receive financial assistance in the amount of 60 euros, paid in two installments. Subsequent amendments to that law ("Official Gazette of RS", No. 96/2021) introduced additional financial assistance in the amount of 20 euros, which was also available only to adult citizens of Serbia with registered residence and a valid ID card.

155 "Official Gazette of RS", No. 125-2022.

minority, who are the most affected in Serbia due to difficulties in obtaining personal documents¹⁵⁶

The Commissioner for the Protection of Equality highlighted that conditioning support measures on possession of residence registration and a personal ID card most adversely affected members of the Roma community. In line with Article 33, item 9 of the Law on the Prohibition of Discrimination, recommendations have been transmitted by the Commissioner to the Ministry of Finance, advocating for the implementation of measures to uphold equality and prevent discrimination. The recommendations highlighted how residency requirements and the need for a valid ID card may impede certain individuals from accessing financial aid, and that this condition has placed a heavier burden on Roma individuals as they struggle with registering their place of residence.¹⁵⁷ The recommendations emphasized that these individuals are Serbian citizens, among the most vulnerable, and called for their inclusion in support measures, either through amendments to the Law on the Temporary Registry or through a special regulation. Although the recommendations were sent to the Ministry of Finance as early as August 2021, the Ministry ignored the Commissioner's recommendations and took no action to include Roma without personal ID and residence registration in support measures. Furthermore, additional financial aids have been provided since then – in 2022, financial aid was provided for youth aged 16 to 29 – yet the same conditions regarding residence registration and a personal ID card were retained for this type of support, confirming discriminatory treatment of Roma lacking documentation.

156 Praxis, ISI, ENS and ERRC, Joint Submission to the Human Rights Council at the 29th session of the Universal Periodic Review, 2017, 4, para. 12. Committee on the Rights of the Child, Concluding Observations on the Combined Second and Third Periodic Report of Serbia on the Implementation of the Convention on the Rights of the Child, 2017, para. 30. Protector of Citizens, Special Report of the Protector of Citizens on the Reproductive Health of Roma Women, Belgrade, 2017, pp. 3 and 11. UNHCR and CeSID, Persons at Risk of Statelessness in Serbia, Overview of the Current Situation and Recommendations for the Future, 2020, p. 6. Government of the Republic of Serbia, Strategy for Social Inclusion of Roma Women and Men in the Republic of Serbia for the period from 2016 to 2025, p. 53. Protector of Citizens, Special Report of the Protector of Citizens on the Implementation of the Strategy for the Social Inclusion of Roma Women and Men with Recommendations, Belgrade, November 2019, pp. 50 and 60–61. For more information on the issue of exclusion of Roma without documents from measures to mitigate the effects of the pandemic, see the A 11 Initiative, Distorted Picture – Economic and Social Rights in Serbia, op. cit., 45–50.

157 Commissioner for the Protection of Equality, Recommendation of Measures to the Ministry of Finance, 26 August 2021, available at <http://ravnopravnost.gov.rs/rs/preporuka-mera-ministarstva-finansija-2/>.

In April 2022, the Committee on Economic, Social and Cultural Rights also expressed concern about the absence of specific COVID-19 response measures to protect vulnerable and marginalized individuals and groups, recommending that the state "immediately rectify the situation by providing COVID-19-related financial assistance to those who were excluded, including due to a lack of permanent residence and identity documents."¹⁵⁸

As with the Commissioner for the Protection of Equality's recommendation, no steps were taken to implement the Committee's recommendations.

In February 2022, an administrative lawsuit was filed against the Ministry of Finance on behalf of a Serbian citizen who did not have registered permanent or temporary residence due to obstacles faced by Roma in accessing personal documents. After the lawsuit was filed, the Ministry made a payment of financial aid in the amount of 80 euros in July 2022,¹⁵⁹ although her previous application for financial aid and her complaint regarding the same were rejected with the explanation that she must meet all the conditions prescribed to receive financial aid, including possession of residence registration and a personal ID card.¹⁶⁰ As financial aid had been paid in this case, there was no conclusion before the Administrative Court and no consideration of whether there had been discrimination, while Roma without documents continued to be excluded from pandemic relief measures, including those provided to young people. Individuals who subsequently found themselves in the same situation had their applications for financial aid rejected due to failure to meet the conditions, i.e., lack of a personal ID card or residence registration.

In 2023, the government continued to provide such one-off aid payments, stating that the objective of these "one-off financial incentives" is to miti-

¹⁵⁸ Committee on Economic, Social and Cultural Rights, Concluding Observations on Serbia's Third Periodic Report, op. cit., pp. 20 (b) and 21 (b).

¹⁵⁹ She received financial assistance as provided for in 2021: a one-time financial assistance of 60 euros, paid in two installments of 30 euros each, as well as additional financial assistance of 20 euros.

¹⁶⁰ For more information on this case and an overview of all procedures undertaken to secure the right to financial assistance for mitigating the effects of the pandemic and for protection against discrimination, see the A 11 Initiative, Distorted Picture – Economic and Social Rights in Serbia, op. cit. Case study: Financial Assistance for Mitigating Pandemic Effects, pp. 46-50.

gate the effects of the crisis caused by disruptions in the global market.¹⁶¹ These financial aids also remained inaccessible to individuals without documents and residence registration.

* * *

Among the few positive developments in the field of social protection was the Constitutional Court's decision in 2022, which repealed the Regulation on the Social Inclusion of Financial Social Assistance Beneficiaries (indirectly, by abolishing the legal basis for its enactment) —a bylaw that introduced the possibility of forced labor for financial social assistance beneficiaries. However, only the legal basis for adopting this subordinate act was abolished, while there was no response to the substantive issues regarding the permissibility of imposing obligations on social assistance beneficiaries to "earn" the received assistance. Therefore, there is concern that this problem has not been permanently resolved because clear boundaries have not been set for the legislature regarding the possibility of introducing unpaid, involuntary work for material support beneficiaries. While the longevity of this change remains questionable, the Constitutional Court's decision regarding the conditions for the parental allowance outlined in the LFSFC sent an unequivocally discouraging message. The occasion to rectify the terms for the parental allowance concerning education and schooling, which, *inter alia*, the Committee on Economic, Social and Cultural Rights cautioned had a discriminatory effect on Roma families and urged the state to reconsider, was not capitalized on.

Through the example of the conditions for the parental allowance—denied to children who are outside the education system and not covered by immunization, undoubtedly among the most marginalized in Serbia—we see how the conditions for family material support deepen existing exclusion and inequality. Non-attendance at school and non-vaccination of children—behaviors already sanctioned by appropriate regulations—are further sanctioned in an unacceptable manner by denying the right to the parental allowance. The Constitutional Court failed to assess the proportionality of

¹⁶¹ See, for example, the Law on the Temporary Register of Mothers and Other Persons Receiving Financial Assistance, "Official Gazette of RS," No. 62/2023, which provides financial assistance in the amount of 10,000 dinars to mothers, fathers, and guardians of minors aged 16 and below. By the end of 2023, this type of assistance was also provided to pensioners and high school students.

said sanctions and address the issue of whether the disproportionately adverse impacts on Roma children amount to indirect discrimination.

The implementation of the Social Card Law has exacerbated existing problems and placed additional barriers in the way of marginalized citizens in their efforts to access material support rights. Cases encountered by the A 11 Initiative demonstrate that this often occurs due to errors such as incorrectly recorded incomes that users either did not receive, received in the incorrect amount, or involve property or incomes that should not affect the right to financial social assistance. Every error in applying the Social Card Law means that individuals or families who have been granted the right to financial social assistance because they cannot independently satisfy their existential needs are unjustly deprived, reduced, or delayed in exercising their right to much-needed material support.

Over an extended period of time, the issue of an insufficient number of social workers relative to the number of clients has been brought to attention.¹⁶² The integration of the social card system diminishes the role of social workers (at the very least) and escalates the likelihood of generating and perpetuating social exclusion.¹⁶³ The risk of unjustified withdrawal of material support and deepening social exclusion is increased because when financial social assistance is withdrawn or reduced, beneficiaries are not given the opportunity to state the circumstances (and (semi-)automated data processing) that led to the withdrawal or reduction of financial social assistance.

The social protection system once again demonstrates inefficiency in creating an inclusive society. The clearest evidence of unfair solutions and

¹⁶² See, for example, the A 11 Initiative, Second-Class Rights, Social Rights in Light of Austerity Measures, op. cit. Also see the Republic Institute for Social Protection, Annual Report on the Work of Centers for Social Work in 2016: "Compared to the previous year, the total number of employees in Centers for Social Work has decreased by 18%, while the number of beneficiaries has increased by 4%," p. 8. The Ex-ante Analysis of the Impact of Social Protection Policy also highlights that since 2014, there has been a noticeable decrease in the number of employees in Centers for Social Work, with a simultaneous increase in the number of beneficiaries. Over the past seven years, the number of employees in Centers for Social Work has decreased by 18%, while the number of beneficiaries has increased by 6.5%. Ministry of Labor, Employment, Veteran and Social Affairs, Ex-ante Analysis of the Impact of Social Protection Policy in the Period 2022-2030, op. cit., p. 33.

¹⁶³ Some authors point out that the devaluation of professions on which the functioning of schools, hospitals, social welfare, nursing homes depends, as well as the failure to engage quality and talented staff in these institutions, leads to the creation and reproduction of social exclusion. See Michael Walzer, "Exclusion, Injustice and the Democratic State," Dissent, Winter 1993. This risk is even greater if, for example, the role of social workers is taken over or diminished by algorithms.

conditions for accessing material support is the reduction of social assistance by including income from seasonal jobs. Prior to June 2023, because of the contentious sub-legislative provision, economically disadvantaged citizens faced a reduction or negation of their financial social assistance, regardless of their involvement in seasonal work. If an able-bodied individual earned income from seasonal jobs, they often and illegally had their financial social assistance reduced by the amount of compensation earned from seasonal jobs. In case they did not have any seasonal jobs, financial social assistance may be reduced by attributing missed earnings - by incorporating income they might have earned by doing seasonal jobs.

After the A 11 Initiative issued an appeal, the line ministry amended the contentious sub-legislative act and aligned it with the law regulating seasonal work. According to these changes, income from seasonal jobs is no longer taken into account when calculating earnings that affect the right to financial social assistance. However, the (already insufficient) amounts of financial social assistance continue to be reduced by including income that, according to CSR estimates, the applicant could have earned, *inter alia*, through seasonal jobs. This demonstrates that the changes to the sub-legislative act regarding seasonal work were adopted out of necessity—due to inconsistency with higher-level acts—and did not reflect a genuine intention to improve access to social assistance and create opportunities for a dignified life for social assistance beneficiaries through seasonal jobs.

It is worth reminding that in 2023, the A 11 Initiative encountered cases where individuals who *had performed seasonal jobs* (and earned income that should not affect financial social assistance) had their financial social assistance reduced because *they failed to earn income by performing seasonal jobs*.¹⁶⁴

In such cases, it is evident that the social protection system and the (absurd) conditions for accessing material support are not set up to promote social inclusion of beneficiaries but rather to reduce the amount of financial social assistance paid to them or to exclude them from the social protection system altogether. The social cards system has accelerated the process of abolishing and limiting social benefits.

¹⁶⁴ Rešenja u posedu autora. Za više detalja videti Inicijativa A 11 – (Anti)socijalne karte, op. cit.



RIGHT TO ADEQUATE HOUSING

Over the duration of this reporting cycle, there have been no substantial changes in the realization of the right to adequate housing, particularly for the most vulnerable citizens. The previously described problems in this area, which began with the privatization of public housing in the 1990s, exacerbated by wars and the mass arrival of refugees and internally displaced persons, and followed by unsuccessful attempts to establish a social housing system for the most vulnerable, have influenced the current state. The right to housing is almost completely excluded from discussions about how the state fulfills its obligations under the International Covenant on Economic, Social and Cultural Rights, while dialogues pertaining to this issue commonly arise in the context of local self-governing units initiating eviction processes in informal Roma settlements.

When it comes to accessing the right to adequate housing, there are numerous categories of citizens who are prevented from enjoying this right – from Roma¹⁶⁵, internally displaced persons¹⁶⁶, refugees, people experiencing homelessness¹⁶⁷, to those who cannot resolve their housing issues

¹⁶⁵ The latest research conducted by the UN Human Rights Unit in Serbia and the Social Inclusion and Poverty Reduction Unit has shown that there are over 167,000 Roma living in informal settlements. For more information on the research, see: https://serbia.un.org/sites/default/files/2021-02/Mapi-ranje_podstandardnih_romskih_naselja_SRB_web.pdf, May 2021.

¹⁶⁶ According to the research by the Commissariat for Refugees and Migration, there are over 68,000 internally displaced persons in need in Serbia. For more information on the research, see: <https://www.unhcr.org/rs/wp-content/uploads/sites/40/2021/04/02-Stanje-i-potrebe-IRL-2018.pdf>, May 2018.

¹⁶⁷ Insufficient data concerning homelessness underscores the extent of social exclusion experienced by this demographic. Discrepancies exist in the reported figures of homeless individuals. While citizens' associations highlight the number of beneficiaries of their services, government officials, particularly those situated in Belgrade where the highest concentration of homeless individuals is observed, report the number of these individuals solely in relation to the capacity of social welfare facilities and other constrained resources within the system.

in the market due to low wages, unemployment, or ultimately high housing prices that cannot be controlled because there are no mechanisms for their regulation.

During the previous period, a census of the population, households, and housing units was conducted, and the analysis of data collected through the census can somewhat help improve knowledge about housing conditions in residential buildings. In May 2024, the Statistical Office published the "Residential Buildings" publication, presenting data on the territorial distribution and basic characteristics of residential buildings, including the type of residential building, the predominant year of construction, maximum number of floors, elevator systems, and the type of material used for the external walls.¹⁶⁸

Despite the dialogues surrounding the attainment of the right to adequate housing frequently centering on the notion of its high cost and insufficient resources for its realization, the Republic of Serbia has been allocating significant resources towards housing developments in recent years, albeit targeted towards specific demographic groups. Thus, a **program for the construction of affordable housing for members of the security services**, has been established, based on the Law on Special Conditions for Implementation of the Housing Construction Project for Members of the Security Services.¹⁶⁹ This law provides preferential treatment for members of the security services and retired members of the security services who do not have resolved housing issues, as well as for veterans, families of fallen soldiers, war veterans, and peace-time military invalids who have not resolved housing issues. Although a significant amount of budgetary funds has been invested in building these apartments, affordable housing for other categories of individuals needing support to address their housing needs is nearly nonexistent, or it is limited to project support funded by international donors, whether from the European Union or other donors.¹⁷⁰

168 Statistical Office of the Republic of Serbia, Residential Buildings, May 2024, available at: <https://publikacije.stat.gov.rs/G2024/Pdf/G20244002.pdf>

169 "Official Gazette of RS", No. 41/2018, 54/2019, 9/2020, 52/2021, 62/2023.

170 For example, projects under the Regional Housing Program to address the housing needs of refugees or the recently launched EU Support to Social Housing and Active Inclusion Project, which allocates 27 million euros for providing sustainable housing solutions and active inclusion measures for persons with disabilities, young people without parental care, women victims of domestic violence, and Roma.

In this scenario, the most vulnerable citizens do not have the opportunity to exercise the right to adequate housing. Simply put, there are no affordable housing programs, the social housing fund is insufficient to meet the needs of all those requiring support, and a large part of the "solution" in such situations entails informal housing arrangements which may include unregulated renting on the market, informal construction, or in the most extreme cases, informal housing in substandard¹⁷¹ buildings or settlements. A significant proportion of the Roma community finds itself in this circumstance, and the endeavors to ameliorate their housing conditions are notably ineffective, suggesting a lack of anticipation for any prospective alteration in the situation in the foreseeable future. According to data collected through mapping of substandard Roma settlements, over 32,000 Roma lack access to water in these settlements¹⁷² and over 24,000 of them do not have access to electricity.¹⁷³ On the other hand, there has been no progress in improving the position of people experiencing homelessness, so apart from urgent and temporary accommodation, there are no indications that efforts are being made to improve the situation of homeless individuals in Belgrade and other cities where the majority of the homeless population lives.¹⁷⁴

The United Nations Committee on Economic, Social and Cultural Rights has expressed concern about the discrimination faced by the most vulnerable categories of population in Serbia, including in accessing the right to adequate housing.¹⁷⁵ The Committee has also made a series of recommendations to improve the situation regarding access to the right to adequate housing, including:

171 Recently, the term "substandard settlements" is often used interchangeably with "informal settlements". In this report, the term "substandard settlements" is used only in cases where other actors dealing with the right to adequate housing use it.

172 UN Human Rights Unit in Serbia and the Social Inclusion and Poverty Reduction Unit, Mapping of Substandard Roma Settlements according to Risks and Access to Rights, with a special focus on the COVID-19 epidemic, p. 10.

173 *Ibid.*, p. 14.

174 During 2023, the Ministry for Human and Minority Rights and Social Dialogue organized a series of social dialogues focusing on homelessness, creating conditions for better understanding of this phenomenon and exchanging knowledge and experiences on how to address it. However, apart from these dialogues, no progress has been noted in improving the situation of homeless individuals.

175 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Serbia, 6 April 2022, UN Doc. no. E/C.12/SRB/CO/3, paragraph 28.

- increasing the number of social housing units provided to disadvantaged and marginalized individuals and families;
- lift the property taxes imposed on the lease of social housing and housing intended for refugees and internally displaced persons;
- provide durable housing solutions to people living in informal settlements, and in the meantime improve their living conditions in the informal settlements;
- ensuring that evictions, when unavoidable, are carried out in accordance with the law, are preceded by consultations and subject to appeal mechanisms, and that the views of the Committee outlined in General Comment No. 7 on eviction procedures are respected.¹⁷⁶

Application of the Law on Housing and Building Maintenance¹⁷⁷

The overarching law in the field of housing, which regulates issues concerning the management of residential buildings, building maintenance, eviction and resettlement procedures, and social housing (now called "housing support") adopted at the end of 2016, with subsequent amendments in 2020, has not significantly improved the realization of the right to adequate housing. Additionally, the public policy documents envisaged by this law have not yet been adopted, neither has the Housing Council been formed, nor have measures been taken to implement the housing support program.¹⁷⁸ The collective findings point towards the deduction that

¹⁷⁶ *Ibid.*, paragraphs 57-58.

¹⁷⁷ "Official Gazette of RS", No. 104/2016 and 9/2020.

¹⁷⁸ Towards the end of 2021, the Ministry of Construction, Transport, and Infrastructure initiated a discussion on the Draft National Housing Strategy for the period 2022-2032, which has not yet resulted in the adoption of this document. Despite the significance of this strategic document for realizing the right to housing, and the fact that preparation of this strategy has been delayed for years, the line ministry conducted the public consultation process non-transparently, and the steps preceding the adoption of the Draft National Housing Strategy for the period 2022-2032 were absent. Notwithstanding the rejection of inputs from several housing associations and the expert community, the strategic document remains unadopted. For more information, see A 11 - Initiative for Economic and Social Rights, "Distorted Image, Economic and Social Rights in Serbia," May 2022, p. 56, available at: [https://www.a11initiative.org/wp-content/uploads/2022/05/Izves%CC%8Ctaj%20Iskrivljena%20Slika%20\(1\)~.pdf?t=1663934511](https://www.a11initiative.org/wp-content/uploads/2022/05/Izves%CC%8Ctaj%20Iskrivljena%20Slika%20(1)~.pdf?t=1663934511).

in terms of housing support or social housing, there is a prevailing state of neglect, whether intentional or unintentional, which is causing a continued disintegration of the right to adequate housing. Opportunities to exercise this right are reduced to distant possibilities of addressing individual needs only if and when adequate funds are secured in local self-governments and if there is political will to provide housing support to citizens.

Furthermore, the established procedures for **eviction and resettlement**, as mandated by the law, have not been duly observed in instances of collective evictions. Only a few local self-government units have conducted these procedures as stipulated by the Law on Housing and Building Maintenance, and even then, not without shortcomings that were detrimental to the individuals affected by the evictions. One such case involved the forced eviction of secondary raw material collectors who lived on the outskirts of the Vinča landfill due to the construction of a waste incineration plant. In light of the challenges encountered by the aforementioned group of collectors throughout the eviction procedure, the A 11 Initiative has commenced a mediation process before the Independent Project Accountability Mechanism (IPAM) of the European Bank for Reconstruction and Development, which financed the project.¹⁷⁹ This Independent Project Accountability Mechanism resulted in an agreement between the A 11 Initiative, representing the collectors who lived and worked at the Vinča landfill before eviction, the City of Belgrade, the City of Šabac, the Municipality of Vladimirci, and the company "Beo Čista Energija" which, through a public-private partnership, was a recipient of the European Bank for Reconstruction and Development funds. This allowed all collectors from Belgrade who lived at the landfill to access social housing in protected conditions, which were preceded by housing solutions with exceptionally high living costs. Households from Šabac were allowed to buy and repair rural households, while households from Vladimirci were granted the use of newly constructed facilities in that municipality.¹⁸⁰

In light of the aforementioned assessment that there have been no instances of comprehensive enforcement of the stipulations outlined in the Law on Housing and Building Maintenance pertaining to eviction and re-

¹⁷⁹ For more information, see: <https://www.ebrd.com/work-with-us/projects/ipam/2021/01.html>.

¹⁸⁰ Part of the concluded Agreement is a confidentiality clause, which prevents a more detailed presentation of the outcome of this process.

settlement procedures, the attempt to avoid the implementation of legal procedures during an attempted forced eviction recorded in March 2023 in Belgrade, is of particular concern.

Case Study: Attempted Eviction of Antena Settlement in Belgrade

In March 2023, the A 11 Initiative was informed of preparations for the forced eviction of the informal Roma settlement known as "Antena" at the terminus of the bus line 75 in the New Belgrade municipality. In this settlement, around forty Roma families, mostly internally displaced from Kosovo, have been living for nearly two decades in grossly substandard conditions that are beneath human dignity. At the end of March 2023, these families received decisions from the Unit for Inspection Affairs of the New Belgrade Municipal Inspection, instructing them to dismantle their dwellings within 24 hours of the communication.

These decisions were based on the City Decision on Cleanliness Maintenance¹⁸¹, Decision on Municipal Order¹⁸² and Decision on Municipal Inspection¹⁸³, which, along with an inappropriately short eviction notice, practically prevented the settlement residents from exercising their right to a legal remedy as the appeal did not suspend the enforcement of the decision. A cause for significant alarm lies in the New Belgrade Municipality's determination to regard the residences of tens of Roma families as municipal waste necessitating elimination within a 24-hour timeframe, despite the fact that Articles 78-87 of the Law on Housing and Building Maintenance clearly prescribe the procedure for carrying out evictions in such cases.

Since there was a threat that the demolition of these homes would leave settlement residents without shelter and without any means to protect

their basic human rights, the A 11 Initiative approached the relevant institutions – the Commissioner for the Protection of Equality, the Protector of Citizens, the New Belgrade Municipality, the Mayor, and the Ministry of Human and Minority Rights and Social Dialogue. Subsequently, due to the fact that the appeal did not delay enforcement and there was no legal mechanism that could provide protection to the settlement residents from imminent eviction, the A 11 Initiative also filed a request for interim measures with the European Court of Human Rights, seeking an urgent measure to prevent the demolition of the homes of Roma men and women from this settlement.

After mediation by the Ministry of Human and Minority Rights and Social Dialogue and the initiation of proceedings before independent bodies, the European Court of Human Rights ruled and issued an interim measure ordering the Republic of Serbia to refrain from carrying out evictions until April 20, 2023. The Commissioner for the Protection of Equality swiftly proposed a range of actions to the New Belgrade Municipality, underscoring the importance of refraining from implementing eviction measures.¹⁸⁴ In the interim, the New Belgrade Municipality convened meetings with the inhabitants of the settlement to communicate that there were no plans to proceed with their eviction, but rather to tidy up the vicinity near the bus 75 terminal. Part of the area around this informal settlement was subsequently developed with urban infrastructure, a fence to prevent children from running onto the bus terminus, removal of garbage from the settlement, and providing informal water connections to a segment of this settlement. Furthermore, the Unit for Inspection Affairs of the New Belgrade Municipal Inspection has subsequently rendered a decision in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights, thereby nullifying previously issued eviction resolutions. This occurrence marks the second instance of the direct implementation of the Covenant in administrative procedures within the Republic of Serbia.¹⁸⁵

181 "Official Gazette of the City of Belgrade", No. 27/2002, 11/2005, 6/2010, 2/2011, 10/2011, 42/2012, 31/2013, 44/2014, 79/2015, and 19/2017.

182 "Official Gazette of the City of Belgrade", No. 10/2011, 60/2012, 51/2014, 92/2014, 2/2015, 11/2015, 61/2015, 75/2016, 19/2017, 50/2018, 92/2018, 118/2018, 26/2019, 52/2019, 60/2019, 17/2020, 89/2020, 106/2020, 138/2020, 152/2020, 40/2021, 94/2021, 101/2021, 111/2021, 120/2021, 19/2022, 96/2022, 109/2022, 41/2023, 65/2023, and 12/2024.

183 "Official Gazette of the City of Belgrade", No. 18/92, 9/93, 25/93, 31/93, 4/94, 2/95, 6/99, 11/2005, 29/2014, 19/2017, 26/2019, 17/2020, and 96/2022.

184 Commissioner for the Protection of Equality, Recommendation of measures to the Municipality of Novi Beograd to refrain from forced evictions of residents of the Roma settlement "Antena", ref. no. 07-00-175/2023-02, March 31, 2023, available at: <https://ravnopravnost.gov.rs/243-23-preporukamera-go-novi-beograd-da-se-uzdrzi-od-prinudnog-iseljavanja-stanovnika-i-stanovnica-romskog-naselja-antena/>.

185 Municipality of Novi Beograd, Decision no. XIII-355.1-89/23, April 10, 2023.

Temporary Measure by the ECHR Prevented Forced Eviction and Family Separation

In early July 2022, the Š. family faced the risk of homelessness and family separation due to eviction proceedings initiated without providing alternative accommodation. The eviction was prevented thanks to an interim measure by the European Court of Human Rights.

For years, this family of four has been living in an inadequate shack without access to electricity and water, with their residence registered at the address of the Center for Social Work due to the impossibility of registering their actual address. The relevant city authorities treated their shack — their only home — as an illegally constructed structure on public land that needed to be demolished. Therefore, they initiated eviction proceedings and scheduled the eviction for July 5, 2022. The Š. family, whose youngest child was 12 years old at the time, was not offered any alternative accommodation. The only "course of action" suggested to them, which would have also entailed separation of the family unit, involved relocating the minor child to a shelter for children and the adult family members to a shelter for adults and seniors, "pending availability of space". Considering the risk of irreparable harm from forced eviction and family separation, as well as the risk of violating Article 3 of the European Convention on Human Rights, the A 11 Initiative filed a request for interim measures with the European Court of Human Rights. The ECHR imposed an interim measure on the Republic of Serbia, after which the state abandoned the eviction and demolition of the building.¹⁸⁶

¹⁸⁶ For more information, see A 11 Initiative, "European Court of Human Rights Prevents Another Forced Eviction in Belgrade by Interim Measure," July 20, 2022, available at: <https://www.a11initiative.org/evropski-sud-za-ljudska-prava-privremenom-merom-sprecio-jos-jedno-prinudno-iseljenje-u-beogradu/>.

Failure to Address the Issue of Unaffordable Social Housing

As noted in the reports "Second-class Rights" and "Distorted Picture," access to affordable housing in the Republic of Serbia presents a notable challenge for many households, and the escalation in rental and electricity prices in the previous period has not been supported by measures to aid the families that are most affected by these price hikes.

At the end of November 2022, a group of MPs submitted to the National Assembly a draft Law on Rental of Apartments and Houses for Residential Purposes and Controlled Rent¹⁸⁷, with the aim of regulating this issue by establishing rental control mechanisms. However, since these MPs were from the opposition parties, this draft law has not been placed on the agenda to date, and its fate remains unknown.

The social housing system in Serbia is insufficiently developed, resulting in financial unattainability for eligible citizens, even when public calls for social housing leases are sporadically opened.¹⁸⁸ The property tax referred to above, which is required for leases exceeding one year for residential units designated for social housing, refugee housing, and housing for internally displaced individuals (referred to as the "poverty tax"), has been advised for elimination by the United Nations Committee on Economic, Social and Cultural Rights, and previously by the UN Special Rapporteur on Adequate Housing, constitutes a considerable financial hardship experienced by the most disadvantaged individuals, primarily attributable to their financial and housing vulnerability.¹⁸⁹

The examples referred to in the previous reporting period in the settlements Mileva Marić Ajnštajn and Kamendin in Belgrade which demonstrate persistent issues in this domain, remain unresolved. Owing to arrears in social

¹⁸⁷ For more information, see: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/13_saziv/011-2581_22.pdf.

¹⁸⁸ The issue of insufficient affordability of social housing in Serbia was highlighted as early as 2016 by the United Nations Special Rapporteur on the right to adequate housing during her visit. Recommendations made to Serbia following this visit have yet to be implemented to this day. For more information, see the report on the visit to Serbia, UN document no. A/HRC/31/54/Add.2.

¹⁸⁹ On this matter, the Constitutional Court has not yet ruled.

housing rent and utility fees imposed by *Infostan* utility company, as well as outstanding electricity payments, **over 60 households are presently living in the absence of electrical power, and enforcement measures have been taken against over 200 individuals in order to collect outstanding debts owed to the *Infostan* utility company.**¹⁹⁰ Additionally, several households within this community, whose social housing lease contracts typically span five years, are now without valid contracts as their eligibility for renewal does not align with the stipulated conditions, primarily due to their recurrent failure to meet financial obligations to *Infostan*. Aside from sporadic instances of intimidation towards residents of this settlement regarding potential evictions for failure to meet rental and other housing financial obligations, or the lack of valid social housing contracts, there have been no other actions or attempts by the relevant city authorities to adequately address the issue of excessively high social housing costs.¹⁹¹

* * *

Numerous problems related to the realization of the right to adequate housing have remained unresolved for years. This situation has arisen not only due to inadequate legal frameworks (in certain situations) but also because of the lack of political will to address this issue in line with the standards developed by the United Nations Committee on Economic, Social and Cultural Rights for its interpretation. Nevertheless, it is apparent that decision-makers persist in the conviction that affordable housing programs have the potential to meet the housing needs of citizens. That said, the selection of beneficiaries of these programs is conducted in a non-transparent manner, with an absence of public involvement in the development of criteria for selecting those who will address their housing needs by acquiring apartments at subsidized prices. Thus, this program is

¹⁹⁰ Data obtained based on requests for access to information of public importance during 2019 and 2020.

¹⁹¹ Notwithstanding the entreaties to commence tackling the issue of outstanding debts and engaging the appropriate municipal authorities in resolving matters in the Kamendin settlement, as communicated by the inhabitants of said settlement to the Secretariat for Social Protection, Secretariat for Property and Legal Affairs, Mayor of Belgrade, and Protector of Citizens in 2019 and 2020, none of the institutions responded positively to their pleas. As a result, the ongoing challenges related to overdue payments and perpetual concern regarding potential evictions persist as the prevailing situation for a considerable number of families in this settlement.

reduced to addressing the specific needs of certain citizens at a given moment. Such an approach to housing rights does not yield adequate results and deepens housing inequalities.

Furthermore, the absence of consideration of alternative ways to meet citizens' housing needs and measures to improve living conditions for the most vulnerable citizens living in informal settlements and informal collective centers or facing homelessness affirms the assertion that significant adjustments are required in the housing domain to improve the fulfillment of this right in Serbia.



RIGHT TO HEALTH

The right to health is protected by a series of international law documents that the Republic of Serbia has ratified. One of them is the International Covenant on Economic, Social and Cultural Rights, which emphasizes in Article 12 and elaborates in General Comment No. 14 that the states parties recognize the right of every individual to enjoy the highest attainable standard of physical and mental health. This includes, *inter alia*, the obligation to implement measures necessary to create conditions for the provision of medical services and medical care in the event of illness. The Constitution of the Republic of Serbia, in Article 68, states that *everyone* has the right to the protection of their physical and mental health, and in paragraph 2 of the same Article, it specifies particular categories protected by the Constitution: children, pregnant women, mothers during maternity leave, single parents with children up to the age of seven, and the elderly. It provides that the right to health protection of the aforementioned categories will be realized through public revenues if it is not achieved in another way in accordance with the law. In truth, the situation manifests differently – citizens encounter various discriminatory practices, particularly those lacking personal documentation, belonging to the Roma community, are internally displaced persons, homeless, beneficiaries of social protection institutions, precarious workers, and similar.

The provisions of Article 68 of the Constitution do not specify the type and scope of health protection but authorize the legislator to regulate the healthcare system through laws governing health insurance, health protection, and the establishment of health funds. The umbrella laws in this area, the Law on Health Protection¹⁹² and the Law on Health Insurance¹⁹³ and the Law on Health Insurance¹⁹³, were enacted in 2019. One of the

¹⁹² "Official Gazette of RS", No. 25/2019 and 92/2023-384.

¹⁹³ "Official Gazette of RS", No. 25/2019 and 92/2023.

most controversial novelties introduced by the Law on Health Insurance was that insured persons who contract diseases subject to preventive screening and do not respond to or justify their absence from screening will receive treatment covered at a minimum of 65% of the cost of the healthcare service. In other words, they will be forced to bear the remaining 35% of treatment costs themselves.¹⁹⁴

Amendments to the Law on Health Insurance, passed in October 2023,¹⁹⁵ have limited the duration of sick leave approvals by attending physicians, reducing the maximum period from 60 days to 30 days (with particular exemptions),¹⁹⁶ after which the insured person must be referred to the first-instance medical commission. It is important to note that in two opinions on the draft amendments to the Health Insurance Law, the Commissioner for the Protection of Equality pointed out that the obligation to assess the impact of this regulation on socio-economically vulnerable groups had not been fulfilled, even though this responsibility was introduced by amendments to the Law on the Prohibition of Discrimination in 2021.¹⁹⁷

In February 2022, the Serbian Government adopted the Digitalization Program in the Health System of the Republic of Serbia for the period 2022-2026, while the 2022-2023 Action Plan for the Implementation of the Digitalization

Program was enacted in May 2022.^{198 199} In October 2023, the Law on Health Documentation and Records in the Field of Health was adopted.²⁰⁰ One of the most significant innovations introduced by this law is the e-Health Record, an electronic medical file that represents an extract of data from the basic medical documentation maintained in electronic form for patients.²⁰¹ The e-Health Record is expected to be established by January 2025, and it will be accessible via *e-Uprava* portal to patients and to their chosen doctor, as well as to all other specialists to whom the patient is referred to.²⁰²

Istraživanje NALED-a iz marta 2023. godine pokazuje da je svaki drugi građanin Srbije zadovoljan kvalitetom usluga u državnim zdravstvenim ustanovama, a kao glavne probleme ističu lošu organizaciju, nedostatak kadrova i nedovoljnu motivisanost zdravstvenih radnika.²⁰³ Korupciju i mito u zdravstvenim ustanovama kao problem vidi četvrtina ispitanika, a više od trećine građana Srbije u prethodne tri godine nije moglo da dobije uslugu u državnoj ustanovi.²⁰⁴ Kao glavne razloge najčešće navode da nije bilo termina ili da im je usluga bila hitno potrebna, a da je vreme čekanja bilo predugo.²⁰⁵

Despite broadly guaranteed rights to health protection, there is a mismatch between these guarantees and their practical availability. The Fiscal Council persists in its alerts concerning the insufficiency of proficient per-

194 For more information, see the A 11 Initiative, Economic and Social Rights in Serbia: Distorted Picture, op. cit.

195 "Official Gazette of RS", No. 92/2023 dated October 27, 2023, entered into force on November 4, 2023.

196 The initial version of the Draft Law on Amendments to the Law on Health Insurance stipulated that the designated physician could authorize sick leave for a maximum of 15 days instead of the former 60 days, yet the revised version of the draft extended the duration to 30 days. See also, Commissioner for the Protection of Equality, Opinion on the Draft Law on Amendments to the Law on Health Insurance, No. 011-00-20/2023-02, dated August 4, 2023, available at: <https://ravnopravnost.gov.rs/rs/1049-23-misljenje-na-nacrt-zakona-o-izmenama-i-dopunama-zakona-o-zdravstvenom-osiguranju/>.

197 Commissioner for the Protection of Equality, Opinion on the Draft Law on Amendments to the Health Insurance Law, No. 011-00-20/2023-02, dated August 4, 2023, and Opinion on the Draft Law on Amendments to the Health Insurance Law, No. 011-00-23/2023-02, dated September 8, 2023, available at: <https://ravnopravnost.gov.rs/rs/1098-23-misljenje-na-nacrt-zakona-o-izmenama-i-dopunama-zakona-o-zdravstvenom-osiguranju/>. See Article 14 of the Law on Prohibition of Discrimination ("Official Gazette of RS", No. 22/2009 and 52/2021).

198 The Digitalization Program in the Health System and the Action Plan for its implementation are available at: <https://www.zdravlje.gov.rs/tekst/364590/program-digitalizacije-u-zdravstvenom-sistemu.php>.

199 In light of a research study carried out by the Ministry of Health and NALED in March 2023, it has been observed that a substantial portion of the public lacks a coherent understanding of the advantages associated with the digitalization of healthcare procedures. Notably, individuals supporting the advancement of digital technology in healthcare often point out the advantages of electronic scheduling for doctor appointments, a service that is already to some extent in place. *Ibid.*

200 The Law was published in the "Official Gazette of RS", No. 92/2023 dated October 27, 2023, and entered into force on November 4, 2023, from which date it applies, except for Article 17, which applies six months after the entry into force of this Law, Article 23, paragraph 2, Article 24, paragraph 2, Article 28, 34, 46, 47, 49, 50, and 51, which apply from January 1, 2025.

201 For more information, see, for example, Dušan Rajaković, "Commentary on the Law on Health Documentation and Records in Healthcare", *Leges Artis*, No. 1/2024.

202 *Ibid.*

203 NALED, *Citizen satisfaction with the public healthcare system*, March 2023, available at: https://naled.rs/htdocs/Files/12608/Zadovoljstvo-gradjana-i-lekara-zdravstvenim-sistemom-u-Srbiji_NALEd.pdf. Videti i BBS News na srpskom, *Medicina i Srbija: Kako poboljšati zdravstvo u državi – lekari daju devet predloga*, 28. 6. 2023.

204 *Ibid.*

205 *Ibid.*

sonnel in key domains vital for the state's operations, particularly in health-care, with an assessment indicating a deficiency of 3,000 skilled workers.²⁰⁶ Additionally, in its analysis for 2023 with projections for 2024 and 2025, the Fiscal Council highlights the significant gap in equipment and quality of healthcare services between Serbia and Central and Eastern European countries, noting that the existing resources of our healthcare system fail to meet the growing demand for healthcare services. The veracity of this claim is substantiated by the data indicating that close to 60,000 individuals were on surgical waitlists in May 2022.²⁰⁷ The Fiscal Council warns that neither the Fiscal Strategy nor the Economic Reform Program addresses these structural problems, reducing healthcare system reform to digitalization. The aforementioned occurrences bear direct implications on the attainment of the right to health, particularly for individuals belonging to marginalized social strata. This issue has been recognized by the United Nations Committee on Economic, Social, and Cultural Rights, which, when reviewing Serbia's third periodic report, recommended that the state expand the scope and coverage of and improve the quality of health-care services provided under the national health insurance, with a view to eliminating the socioeconomic disparities in access to health-care services.²⁰⁸ The Committee also requested that the state take urgent steps to rectify the situation where individuals without personal documents are denied access to social services, including healthcare services.²⁰⁹ Serbia has also been recommended to ensure that primary health care is provided to all individuals living in the country.²¹⁰ However, individuals without documents, who are almost exclusively Roma in Serbia, still cannot register for health insurance, consequently being denied or significantly hindered in accessing primary and preventive healthcare.

206 Fiscal Council, Assessment of the Draft Budget Law of the Republic of Serbia for 2023, December 2, 2022, available at: https://www.fiskalnisavet.rs/doc/ocene-i-misljenja/2022/FS-Ocena_budzeta_2023_v1.pdf

207 Fiscal Council, Opinion on the Draft Fiscal Strategy for 2023 with projections for 2024 and 2025, May 31, 2022, available at: https://www.fiskalnisavet.rs/doc/ocene-i-misljenja/2022/FS_Misljenje_Nacrt_Strategija_2023-2025.pdf. According to a research conducted by the Ministry of Health and NALED in March 2023, it has been revealed that one out of every ten doctors surveyed intends to relocate abroad within the next five years. NALED, Citizen satisfaction with the public healthcare system, op. cit.

208 Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Serbia, 4. 3. 2022, available at: <https://digitallibrary.un.org/record/3969915>.

209 *Ibid*, p. 31(a).

210 *Ibid*, p. 59(c).

Access to Healthcare for Individuals without Registered Residence and Documents

Pursuant to Article 16, paragraph 1, item 11 of the Law on Health Insurance²¹¹, insured persons include individuals of Roma nationality who, due to their traditional way of life, do not have a registered permanent or temporary residence in the Republic of Serbia if they do not meet the conditions to acquire the status of an insured person in another way or as family members of an insured person. However, in practice, due to inconsistencies between by-laws and higher legal acts, individuals of Roma nationality without a registered residence, whom the legislator recognizes as a special category of insured persons precisely because they lack permanent or temporary residence registration, are still required to provide proof of registered residence at the address of the relevant Center for Social Work when applying for health insurance.

Since 2011, the Law on Permanent and Temporary Residence²¹² has provided the possibility to register residence at the address of the relevant Center for Social Work for persons who cannot register residence otherwise. However, the procedure for residence registration remains complicated and unduly lengthy.²¹³ Citizens are impeded from exercising their healthcare rights due to the absence of a registered permanent residence, which prevents them from acquiring an ID card and health insurance card. This issue predominantly affects members of the Roma community (especially internally displaced Roma and returnees under the readmission agreement) and homeless individuals.

211 "Official Gazette of RS", No. 25/2019.

212 "Official Gazette of RS", No. 87/2011.

213 Data obtained from organizations providing legal aid to undocumented individuals in the residence registration procedure (which is a prerequisite for obtaining personal documents) reveals that this process typically spans a duration ranging from 3 to 12 months. Greater insights are provided in a shared report submitted by a group of organizations and unions to the United Nations Committee on Economic, Social and Cultural Rights in December 2021, available at: <https://www.a11initiative.org/wp-content/uploads/2022/03/Zajednicki-podsetnik-komitetu-UN.pdf>. See also: Platform of Organizations for Cooperation with UN Human Rights Mechanisms, Alternative report to the Committee on Economic, Social and Cultural Rights, January 2022, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=ICEnwWR8rbeJM8O1ALab-Px9WVEvqlcDU7Im8G9kagoVEWKEWk3jQn/QFvBKlzs0yeTCH11ljEVQodM88pJV7gg==. The A 11 Initiative has observed that the process of determining residency typically spans from four to eight months based on experiences from 2022 and 2023. In instances where an appeal is made, the process can extend up to eighteen months.

The impact of permanent residence registration on the realization of the right to health insurance is illustrated by the case of A.T. The mother of minor A.T. contacted the A 11 Initiative in July 2023, seeking assistance in the process of residence registration and health insurance application. A.T. and his mother, returnees under the readmission agreement, were provided with temporary accommodation in the premises of the Asylum Center by the Commissariat for Refugees and Migration. However, more than four months after arriving in Serbia, A.T. and his mother had not managed to obtain the approval of the Commissariat to register residence at the Center's address, nor to resolve residence registration in any other way, prompting them to seek help from the A 11 Initiative. With their assistance, they succeeded in registering residence at the Obrenovac Center for Social Work address, followed by health insurance registration.

A.T. underwent a prolonged and demanding six-month period while waiting to formalize his residence and acquire a health insurance card, a time that was especially challenging due to his longstanding diagnosis of a grave illness—anorectal atresia—and had a colostomy. As a consequence of his illness, A.T. has been dependent on colostomy bags for sixteen years, requiring his family to purchase the necessary medical supplies at their own expense due to the lack of health insurance, resulting in a total cost exceeding 150,000 dinars paid from the social assistance they received from the country they were returned from). With colostomy bags part of the range of medical aids covered by mandatory health insurance, A.T. can now access the crucial healthcare services after successfully registering his residence, a prerequisite for health insurance registration.

The Law on Exercising the Right to Healthcare for Children, Pregnant Women, and Mothers²¹⁴, adopted in November 2013, regulates the way these groups can exercise their right to healthcare if they cannot do so under the law governing health insurance. Thanks to this law, children, pregnant women, and mothers can access healthcare based on a health insurance document (health insurance card), regardless of whether the document is validated. To exercise their right to healthcare, in addition to the health insurance card, pregnant women and mothers need a specialist doctor's report confirming pregnancy or a discharge list from childbirth, while for

214 "Official Gazette of RS", No. 104/2013.

children, a birth date or unique citizen identification number is sufficient.²¹⁵ However, this law only regulates access to healthcare for those who already have a health insurance card²¹⁶, even if it is not validated, leaving out children, pregnant women, and mothers who do not possess (even an unvalidated) health insurance card.

Notwithstanding the provisions outlined in the Law on Exercising the Right to Healthcare for Children, Pregnant Women, and Mothers, which stipulates access to healthcare exclusively for individuals in possession of, or with the ability to procure (even an unverified) health insurance card, it is imperative that all children, pregnant women, and mothers have access to healthcare in accordance with the international agreements Serbia has committed to and the directives issued by the entities overseeing the fulfillment of these commitments.²¹⁷

That being said, it is apparent that children, pregnant women, and mothers from marginalized groups still encounter difficulties in obtaining healthcare services, even in the urgent matter of childbirth, and emergency medical assistance is guaranteed to any individual who does not exercise the right to emergency medical assistance in another way.²¹⁸

A matter of particular concern within the healthcare sector pertains to the **billing or endeavoring to bill expenses associated with childbirth or pregnancy-related medical services to uninsured pregnant women**

215 Republic Health Insurance Fund, Implementation of the Law on the Realization of Rights to Health Care of Children, Pregnant Women, and Mothers, available at: http://www.rfzo.rs/download/zakonikoni/Instrukcija_obrasci_trudnice.pdf

216 Although the term "health insurance card" is used in the regulations, the term "health booklet" will be used in the report for simplicity.

217 In February 2017, the Committee on the Rights of the Child recommended to the Republic of Serbia to ensure the availability of and equitable access to quality primary and specialized care for all children in the country, and strengthen efforts to ensure that access to adequate health care, including prenatal care for uninsured pregnant women, is extended to families living in the most vulnerable situations, particularly those living in marginalized and remote areas. Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Serbia, op. cit.*, paragraph 46. Since then, more than seven years have passed, and no concrete steps have been taken to implement these recommendations and ensure access to health care for children and pregnant women lacking documentation and insurance coverage.

218 Pursuant to Article 17, paragraph 1, item 9 of the Law on Health Care (Official Gazette of RS, No. 25/2019), in the interest of public health care, the Republic of Serbia offers emergency medical aid to individuals of unknown domicile and those who do not meet the criteria for emergency medical aid through other channels in accordance with the law.

and new mothers. The A 11 Initiative encountered cases in 2018,²¹⁹ 2020,²²⁰ i 2022,²²¹ where Roma pregnant women or new mothers without documents received extremely high bills for childbirth or pregnancy-related healthcare services. In 2023, the A 11 Initiative did not encounter new attempts to charge childbirth costs, but three undocumented pregnant women still sought help from the organization, fearing they would have to pay for childbirth costs.²²²

It is important to emphasize that, in addition to the Law on the Right to Healthcare of Children, Pregnant Women, and New Mothers, which fully pertains to healthcare access for these categories, Article 17, paragraph 1, item 9 of the Law on Health Care stipulates that the Republic of Serbia, as a general interest in healthcare, provides emergency medical assistance funded from the budget of the Republic of Serbia to persons of unknown residence, as well as to other persons who do not have access to emer-

219 See A 11 Initiative, Second-class rights, op. cit.

220 There was an incident involving an undocumented seventeen-year-old Romani girl, F. H., who was issued a bill amounting to 249,380 dinars for expenses incurred during childbirth. The charges were eventually waived owing to the intervention of a social worker at the healthcare facility. In a separate instance, an undocumented Romani female, Š. K., was admitted to the hospital following the discovery, through ultrasound, of the absence of fetal heart activity. The pregnancy was concluded via cesarean section, resulting in a stillborn infant. Upon her discharge, a bill surpassing 289,000 dinars was issued to her. The patient borrowed money and paid a deposit of 20,000 dinars, nonetheless, the remainder of the bill was left outstanding due to an absence of income. Subsequent to the patient's discharge, the administrative division of the healthcare facility reached out to request settlement of the outstanding balance, cautioning that failure to comply would result in enforced collection of the bill. The A 11 Initiative facilitated her submission of a petition for exemption from childbirth expenses, yet no reply was forthcoming. For more comprehensive information regarding this issue and attempts to collect childbirth and pregnancy-related health care costs, see A 11 Initiative - Second-class Rights, op. cit.

221 B. H. contacted the A 11 Initiative because she was told at two maternity hospitals that she would be charged childbirth costs because she did not have registered residence in the place where she gave birth (but still had registered residence in Kosovo) and did not have a health booklet. In addition, during the period preceding this event, she resided in Montenegro. Therefore, at the maternity hospital where she gave birth, she was asked to provide a certificate that Montenegrin health insurance would cover childbirth costs or proof that her health booklet was validated in Montenegro, which she could not provide. Finally, with the help of a social worker, B. was discharged from the hospital with her newborn without paying childbirth costs.

222 The most recent instance involving an uninsured pregnant woman lacking proper documentation was documented on October 30, 2023, during a visit to the settlement of Pešćar in Subotica. The A 11 Initiative explained to the pregnant lady, as in analogous cases, the reasoning behind not billing her for childbirth expenses, and then dispatched a list of relevant regulations and copies of documents pertinent to the entitlement to healthcare resources in relation to childbirth. During the visit to Subotica in October 2023, a local Romani coordinator informed us of previous incidents where the costs of childbirth were invoiced, leading him to communicate with the healthcare institution to stress the critical nature of childbirth and that it is important for women without health insurance to be exempt from paying childbirth costs.

gency medical assistance in another way (which undoubtedly includes undocumented pregnant women). Furthermore, the Republic Health Insurance Fund has emphasized that every childbirth, even a scheduled one, is considered an emergency case.²²³

Health Mediators

A noteworthy achievement in the advancement of Roma health, with a special focus on children and women, is the incorporation of healthcare mediators into the healthcare system in 2009. Healthcare mediators are tasked with engaging in direct interventions within Roma settlements—assisting in accessing healthcare services, providing information on prevention, and similar activities to bridge the gap between Roma individuals and healthcare institutions. According to the latest available data, they operate in 70 local government units. However, their employment status remains unresolved, and healthcare mediators still face difficulties in exercising their labor rights. In addition to their positions not being systematized, their engagement is regulated by service contracts, depriving them of rights they would have if they were regularly employed, such as annual leave, sick leave, transportation costs, per diems, and so on. This issue occasionally leads to absurd situations where some healthcare mediators, who have helped many Roma obtain health insurance, face difficulties accessing health insurance themselves. Moreover, healthcare mediators work for a compensation of 22,000 dinars (less than 190 euros), which is less than half the prescribed minimum gross salary in the Republic of Serbia.

To provide more substantial support to Roma in exercising their right to health, **it is necessary to increase the number of healthcare mediators, raise their salaries, and regulate their employment status** (which currently does not involve formal employment but precarious service contracts). This measure would conclusively deal with the issue of formalizing their positions within the healthcare system. The importance of this issue is highlighted by the Strategy for the Social Inclusion of Roma Men and Women in the Republic of Serbia for the period 2022–2030,²²⁴ as well as the

223 Republic Health Insurance Fund, Instruction 02/5 number 54-684/10-1 dated March 16, 2010.

224 Strategy for Social Inclusion of Roma Men and Women in the Republic of Serbia for the period 2022–2030.

Commissioner for the Protection of Equality,²²⁵ but year after year, various recommendations for formalizing the employment status of health mediators are reiterated without yielding any results.

Access to Healthcare After Changing Place of Residence

The A 11 Initiative continues to encounter cases where the Republic Health Insurance Fund (RHIF) branches require insured persons to deregister their mandatory social insurance at the branch where they were previously registered when submitting a new health insurance application. This practice poses a problem for people who have moved and changed their residence but cannot travel to their previous place of residence, often due to travel costs or illness. In 2018, the A 11 Initiative addressed the Republic Health Insurance Fund regarding this issue, requesting that the procedure for changing residence be simplified and that instructions be issued to RHIF branches on how to handle residence changes to avoid unnecessary costs, loss of time, and other difficulties for citizens. In response, the RHIF emphasized that it applies the principle that in the event of a change of residence of the insured person, a notification of the change in mandatory health insurance is submitted, rather than the deregistration and re-registration, and that all branches are informed of this procedure, making a special instruction unnecessary.²²⁶ However, citizens continue to approach the A 11 Initiative, reporting that after changing their residence and attempting to regulate their right to health insurance at their new place of residence, the RHIF branches still require them to deregister at their previous insurance branch. It is clear that irregularities still exist in the procedures of some branches regarding residence changes, and not all are aware that deregistration is unnecessary.

The Savić family's scenario underscores the persisting requirement for branch deregistration and sheds light on the practical impediments that ensue. After a tragic event that led to the death of a family member, the Savić family moved and registered their residence in Belgrade. The mother and the older child had health cards but lost them, while the youngest child had never been registered for health insurance. When they attempt-

ed to register for health insurance in Belgrade, they were required to first deregister the mother and older child from the RHIF branch in the city they had moved from. The family's inability to return to their previous city, attributed to the mother's role as a single parent with two young children, financial restrictions, and the lack of appropriate childcare options, resulted in a prolonged absence of healthcare services for over a year. One child, an infant, had not received any vaccinations except those given at birth, while the second child, at the time the family approached the A 11 Initiative, was in the first grade, could not receive proper healthcare services or sick notes due to the lack of a designated doctor.

The absence of a completed registration at the relevant local branch, should not impede the individual from obtaining medical services, as decreed in 2011 by the Rulebook on the Method and Procedure for Exercising Rights from Mandatory Health Insurance (hereinafter RMPERMHI)²²⁷, which, in Articles 17 and 47, prescribes that the insured person is entitled to primary, secondary, and tertiary healthcare even *outside the area of their home branch* based on a validated health booklet. Article 47 of the RMPERMHI states that an insured person temporarily residing outside their place of permanent residence receives primary healthcare services in the place of temporary residence without having to change their chosen doctor. This healthcare includes diagnosis and treatment, prescription of medication, and monthly prescribed medical aids. Such healthcare is provided based on a validated insurance document, and the insured person can receive prescribed medication and medical aids based on a personal statement that their chosen doctor did not prescribe medication or aids for the same period.

This practice often leaves citizens without healthcare because most are unaware that they are not required to travel to their previous place of residence for insurance deregistration, and often such travel is not feasible due to their health condition, family circumstances, or high travel costs. This issue primarily affects economically disadvantaged citizens, internally displaced persons, and Roma, deepening inequalities in healthcare access. Consequently, the application of regulations and public policies that are not tailored to the needs of the most vulnerable citizens primarily impacts – precisely them.

225 Commissioner for the Protection of Equality, Regular Annual Report of the Commissioner for the Protection of Equality for the year 2023, available at: <https://ravnopravnost.gov.rs/wp-content/uploads/2024/03/RGI-2023.pdf>.

226 Republic Health Insurance Fund, document 02/4 No. 180/1391/18-3 dated October 3, 2018.

227 "Official Gazette of RS", No. 10/2010, 18/2010 – corr., 46/2010, 52/2010 – corr., 80/2010, 60/2011 – decision of the Constitutional Court, 1/2013, 108/2017, 82/2019 – other regulation, 31/2021 – other regulation, and 4/2024 – other regulation.

Access to Safe Drinking Water

The Committee on Economic, Social and Cultural Rights interprets the right to health as encompassing not only timely and appropriate healthcare but also the basic determinants of health, such as access to safe drinking water, adequate sanitation, availability of safe food, the right to housing, and the right to healthy and safe working conditions and a healthy living environment.

Subotica²²⁸ has been identified as one of the 20 municipalities with sub-standard drinking water quality in the recent Report on the Health Safety of Drinking Water from Public Water Systems and Water Facilities in the Republic of Serbia for the year 2022²²⁹ prepared by the Institute of Public Health "Dr. Milan Jovanović Batut". As per the report, the water sourced from the municipal water system in this urban center is categorized within the 12.8% bracket marked as "combined non-compliance".²³⁰ Additionally, water in the urban area of Subotica is further problematic because it contains arsenic. In a general sense, Subotica is facing a considerable challenge related to its water supply, largely attributable to the lack of systematic planning and timely responses to the prevailing geographical and natural disadvantages. The natural water sources in Subotica are of very poor quality, and the water purification process through the water supply network has not reached a level that would provide the broader population of this city with healthy and safe drinking water.

However, not all residents of Subotica enjoy the "luxury" of reducing the

228 The present segment of the report aims to delineate concerns related to the availability of potable water, as identified by disadvantaged demographics during on-site research conducted by the A 11 Initiative. Please consult the publications by the Center for Emancipation Policies for a comprehensive analysis of the entitlement to water among the populace of Serbia. In relation to the long-standing challenges concerning the availability of potable water for the inhabitants of Zrenjanin over the course of two decades, see, for example, the article "Zrenjanin Exactly 20 Years Without Drinking Water: Everyone is Complicit," published by Vreme on January 20, 2024, available at: <https://vreme.com/drustvo/zrenjanin-tacno-20-godina-bez-pijuce-vode-svi-su-saucesnici/#:~:text=Dvadesetog%20januara%202004,%2C%20aktivista%2C%20pokreta%C4%8D%20Novog%20optimizma>.

229 Report available at: <https://www.batut.org.rs/download/izvestaji/Zdravstvena%20ispravnost%20vode%20za%20pice%202022.old>

230 The term "aggregate" non-compliance refers to public water systems that exhibit physicochemical non-compliance in over 20% of the samples tested annually, along with microbiological non-compliance in over 5% of the samples. Physicochemical non-compliant water is that with increased turbidity and elevated concentrations of iron, manganese, ammonia, nitrates, and nitrites, while microbiological non-compliance includes water with increased counts of various bacteria, including those of fecal origin. Both types of non-compliance can cause serious health problems – the former due to toxic and carcinogenic substances and the latter due to the potential to cause waterborne epidemics.

concentration of all the harmful substances mentioned above to acceptable limits through the water purification in public water systems. The locality of "Zorka" in Subotica remains unconnected to the water supply network, despite its proximity to the city center, a mere four kilometers away. During regular field visits, the A 11 Initiative mobile team learned that individuals belonging to the Roma community residing in Ferenc Bodrogvarija and 10. Nova Streets do not utilize the services provided by the Public Utility Company "Water Supply and Sewerage" Subotica. Excluded from the water supply network, the residents of this neighborhood overcome this problem by using private wells that pump water directly from the ground. This water is considered technical as it contains all the contaminants outlined in the initial section, present in significantly higher levels since it has not undergone any treatment in the municipal water supply system. Besides all these shortcomings, this water also has a high sand content due to the sandy terrain in which the "Zorka" neighborhood is located. Often, this water must be boiled to be used for hygiene or cooking. When it comes to drinking water, the extreme poverty characterizing the socioeconomic status of these people creates a completely new dimension. Other residents of this neighborhood (those who are not materially deprived) have the option to overcome the lack of drinking water by purchasing bottled water, which is often not an option for residents of these two streets. Thus, the material deprivation of these people generates dangerous health risks as they primarily use technical water for drinking. The responsible local authorities are allegedly aware of this problem but state that it is not a case of discrimination in this specific instance because this problem is characteristic of many residents, including those of Roma nationality. Embracing an approach that fails to acknowledge the interplay of causes and effects in the development of various shortcomings may lead to a multitude of adverse outcomes based on individual life circumstances. One of those life circumstances is undoubtedly poverty, which in this specific case leads to a large number of people drinking water with dangerous concentrations of ammonia, arsenic, and bacteria. The swift implementation of a public fountain or a cistern for potable water is a cost-effective solution that remains unexplored by the authorities as of the termination of this report.

Health Status as a Condition for Admission to Social Protection Institutions

At the end of 2021, the Law on the Rights of Users of Temporary Accommodation Services in Social Protection was enacted.²³¹ It stipulates that residents have the right to access to and provision of healthcare and that healthcare services can be requested by the residents themselves. Additionally, the law prohibits discrimination against residents based on their health status, including mental disabilities and mental disorders. The law also envisages the establishment of an independent mechanism authorized to ensure the quality of service delivery and the protection of users' rights, to be implemented by independent bodies for the protection of citizens' rights and equality. This mechanism is expected to become operational soon.

However, homeless individuals with mental health issues face significant barriers, if not outright denial, in accessing the Shelter for Adults and the Elderly in Belgrade. During 2022 and 2023, the shelter remained inaccessible to individuals with such health problems. Although the overall admission practice at the shelter complicates the use of this service for people with chronic illnesses, developmental disorders, and disabilities, those discharged from the Clinic for Psychiatric Diseases "Dr. Laza Lazarević" face a particular problem. The shelter lacks the spatial and staff capacities for medical supervision of individuals discharged from the clinic²³², leaving them particularly discriminated against and abandoned to fend for themselves on the streets without any support, despite their already deteriorated health conditions. In addition to the standard admission procedure that requires a referral from the relevant Center for Social Work and an assessment and opinion from a psychiatrist and neuropsychiatrist confirming there are no contraindications for collective accommodation,²³³ it is particularly concerning that, even after the official end of the coronavirus

231 "Official Gazette of RS", No. 126/2021.

232 Notification sent by the Center for Social Work to Department Heads No. 550-422 dated September 29, 2022.

233 Article 4 of the Rulebook on Admission, Service Provision, and Discharge of Users of the "Shelter for Adults and the Elderly" dated March 15, 2019, and Article 3 of the Rulebook on the Amendments to the Rulebook on Admission, Service Provision, and Discharge of Users of the "Shelter for Adults and the Elderly" dated March 12, 2020.

pandemic, the same operational regime was maintained in this institution without any reasonable justification.²³⁴

In light of the manner in which homeless individuals, particularly those with psychiatric conditions, have been handled, the A 11 Initiative, together with ADRA and PIN, lodged a formal complaint on August 5, 2023, with the Commissioner for Protection of Equality citing discrimination on grounds of health status. The Commissioner's findings following the complaint at the conclusion of 2023 established that there was no discrimination evident. She recommended that the director of the Shelter readdress the City Institute for Public Health in Belgrade and the City Secretariat for Social Protection to request the easing of measures, particularly those related to the mandatory PCR testing and the isolation of users upon their return to the shelter, considering that the prescription and implementation of these measures were done at the behest of the relevant social protection inspector, with the consent of the epidemiologist from the City Institute for Public Health.²³⁵

Although the coordinated efforts and pleas of the Network for Combating Homelessness to the relevant institutions were ongoing throughout 2022

234 Compliance with the Shelter's operational regulations necessitated individuals to furnish a negative PCR test result, obtained within a 72-hour timeframe prior to admission, while Shelter residents experienced a specific type of isolation as they did not have the opportunity to leave the institution, save for infrequent instances, such as attending specialized medical appointments.

235 In the Opinion No. 07-00-398/2023-02 dated December 28, 2023, in response to allegations in a complaint that the Shelter refused admission to individuals treated at the "Dr. Laza Lazarević" clinic, the Commissioner established that the Shelter did not unequivocally refuse admission to individuals under current or past treatment at the clinic. With regards to the claims pertaining to the prerequisite of submitting a psychiatrist's or neuropsychiatrist's report for admission to the institution, it was observed by the Commissioner that the A 11 Initiative had previously brought up this concern in 2021. At that time, the Commissioner took the position that the application of this rule did not violate the rights of socially vulnerable and marginalized social groups and that it was not a discriminatory practice. With reference to the directives implemented by the Shelter pertaining to COVID-19 prevention measures, including the stipulation of a recent negative PCR test within 72 hours for incoming individuals and those returning from non-COVID medical facilities, alongside compulsory isolation, she determined that the enactment of said provisions via the prescribed procedure had the indirect effect of impeding or constraining the ability of Shelter service users to exercise their freedom of movement right. Following the issuance of the opinion and recommendation to the Shelter director, the Commissioner recommended to the City Institute of Public Health and the City Secretariat for Social Protection to implement all necessary actions within their jurisdiction to align the preventive protocols in the Shelter's operations with the most recent recommendations of the Ministry of Labor, Employment, Veteran and Social Affairs.

and 2023,²³⁶ aimed at identifying a structured solution for a more simplified, unobstructed, and equitable admission of all our fellow citizens into the shelter, particularly those discharged from the "Dr. Laza Lazarević" clinic and other individuals struggling with mental health issues, they were not able to secure accommodation at the shelter. This is notwithstanding ample data indicating a robust causal relationship between homelessness and mental health issues. The latest available data from the Statistical Office of the Republic of Serbia shows that as many as 44% of primary homeless individuals have mental health problems,²³⁷ which are often caused by or are a consequence of homelessness. Thus, due to the lack of adequate accommodation and support systems, homeless individuals are exposed to increased risks of numerous traumatic experiences that further damage their mental health.²³⁸

The requirement for admission to the shelter of possessing psychiatric and neuropsychiatric assessments of suitability for collective accommodation, as well as COVID-19 measures, does not have to be standard practice, as demonstrated by the shelter in Novi Sad, where such proof and PCR test requirements were not conditions for admission.

Contrary to the described practice, the Decision on Social Protection Rights and Services²³⁹ issued by the City of Belgrade states that the temporary accommodation service in the shelter for adults and the elderly includes temporary care in the form of accommodation, meals, healthcare, and cultural and entertainment activities. Simultaneously, Article 58 of the Law on Social Protection²⁴⁰ provides for the provision of cross-sectoral services, meaning that, depending on the needs of the users, social welfare institutions can, in addition to social services, also provide services offered by educational, healthcare, and other institutions, based on concluded cooperation protocols.

236 On the occasion of World Homeless Day on October 10, the Network to Combat Homelessness sent letters in 2022 and 2023, to relevant institutions highlighting the position and systemic issues faced by individuals experiencing homelessness, including the complicated and discriminatory admission procedures at the Shelter.

237 Statistical Office of the Republic of Serbia, 2011 Census of Population, Households and Dwellings in the Republic of Serbia – Homeless Individuals.

238 See: Jadranović, K. (2022). Mental Health of Persons Experiencing Homelessness: Analysis of Public Policies and Individual Needs. Belgrade: PIN – Network of Psychosocial Innovations.

239 "Official Gazette of the City of Belgrade", No. 55/11, 8/12 – correction, 8/12, 42/12, 65/12, 31/13, 57/13, 37/14, 82/15, 4/16, 37/16, 56/16, 114/16, 102/17, 50/18, 103/18 and 101/19.

240 "Official Gazette of RS", No. 24/2011.

People in situations of homelessness often cite the lack of access to adequate healthcare at the Shelter for Adults and the Elderly as a reason for not seeking temporary shelter there. At the shelter, only primary healthcare services, i.e., general practitioners, are available to users. Additionally, to further elaborate on the earlier discussed issues, the inadequate post-operative care provided by the shelter is cited.

Amendments to the Law on the Protection of Persons with Mental Disabilities

Due to the mass shooting that occurred in May 2023 at the "Vladislav Ribnikar" Experimental Primary School in Belgrade, the Ministry of Health began the process of drafting amendments to the Law on the Protection of Persons with Mental Disabilities,²⁴¹ to address mental health challenges and prevent such tragedies from ever happening again. In furtherance of this initiative, and subsequent to the determination that reducing the age of criminal accountability was not viable, the Ministry of Health established a Task Force to draft Amendments to the Law on the Protection of Persons with Mental Disabilities. Upon completion of this process, the line ministry informed the public on July 27, 2023, that the public discussion on the proposed legal solutions would extend until August 09, 2023. Although the public discussion was extremely short and conducted during the holiday season, a more pressing concern lies in the fact that the suggested remedies stray from safeguarding the rights of individuals with mental disabilities, especially the protection of children with mental disabilities.

This law specifies the criteria for the obligatory placement of juveniles in a segregated unit of a mental health facility who, owing to their minority status, lack criminal culpability yet have perpetrated a crime warranting a minimum ten-year imprisonment term. The draft law states that the ruling on the compulsory confinement of juveniles is to be rendered without a specified timeframe for the period of detention, while requiring the court to review the criteria for prolonged detention and therapy every six months. The stringency of this solution surpasses that of the legal framework governing adults with mental disabilities, who are subject to temporal involun-

241 "Official Gazette of RS", No. 45/2013.

tary detention orders ranging from one to six months, while the regime for children lacks a reasonable medical or legal basis and justification.

The regime established by this draft amendment includes repressive aspects, such as the ability to temporarily restrict social interactions for security purposes—without any specified legal constraints on the duration of the "temporary" prohibition, with the possibility that a child in a closed psychiatric institution with special security may not have the opportunity to communicate with their close family members.

Given that such changes to the existing regime concerning the protection of persons with mental disabilities could violate constitutionally guaranteed rights, as well as rights guaranteed by the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, civil associations proposed extending the duration of the public debate and engaging a wider range of experts from different fields to thoroughly examine all aspects of this suggested system.²⁴²

Given that the public debate duration remained unaltered, the organizations behind this statement also reached out to the UN Special Rapporteur on the Right to Health, who, after receiving a written communication highlighting the contentious aspects of this draft law, addressed the Government of the Republic of Serbia with a series of questions regarding how the obligations undertaken by Serbia through the signing and ratification of several international treaties would be ensured following the adoption of the Amendments to the Law on the Protection of Persons with Mental Disabilities.²⁴³ Although the Government of the Republic of Serbia responded to the written communication sent by the Special Rapporteur on the Right to Health, the draft law was not withdrawn, nor are there any new information regarding the possible opening of a broad public debate on this issue and the alignment of the proposed regime with provisions guaranteeing human rights.

242 Platform of Organizations for Cooperation with UN Human Rights Mechanisms, Statement: Draft Amendments to the Law on the Protection of Persons with Mental Disorders Dehumanize Children in Psychiatric Institutions, August 11, 2023: <https://platforma.org.rs/saopstenje-nacrt-izmena-zakona-o-zastiti-lica-sa-mentalnim-smetnjama-dehumanizuje-decu-u-psihijatrijskim-ustanovama-2/>.

243 UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, OL SRB 3/2023, December 26, 2023.

It is essential for institutions to understand the right to health in the context of their obligations prescribed by international acts such as the International Covenant on Economic, Social and Cultural Rights, the Constitution of the Republic of Serbia, and sector-specific laws, especially considering the multiply marginalized and discriminated groups of the population—undocumented individuals (particularly pregnant women), Roma, homeless individuals, people in social protection institutions, and citizens of low socioeconomic status—whose specific problems are addressed in this report.

Greater investments in our healthcare system and human resources are needed to bring the quality and coverage of healthcare services up to par with Central and Eastern European countries, which we are currently lagging behind.

A good example of bringing institutions closer to the most vulnerable citizens is the system of health mediators, which allows for direct work with vulnerable communities. At the same time, it is necessary to systematically regulate their employment status and increase the number of employees in this position.

In addition to the necessary increase in healthcare funding, it is evident that there are numerous effective legal measures that remain unimplemented due to inconsistencies in laws and inadequate communication among healthcare institutions. It is important to remove these obstacles to prevent illegal denial of emergency medical assistance to pregnant women without personal documents or the denial of healthcare services to citizens due to illegal requests that they deregister from health insurance in their previous place of residence.

Primarily, to diminish health disparities and secure healthcare accessibility for particularly vulnerable groups, a key requirement is mandatory health insurance coverage. To this end, it is also necessary to amend the Law on the Right to Healthcare for Children, Pregnant Women, and Mothers to explicitly guarantee the right to primary and specialized healthcare for every child, pregnant woman, and mother, including those without documents. Taking this action would be a move towards meeting the recommendations provided to the state by the Committee on the Rights of the Child in 2017 and the Committee on Economic, Social and Cultural Rights in 2022.



RIGHT TO EDUCATION

The right to education is guaranteed by the *Constitution of the Republic of Serbia*, which stipulates that primary education is compulsory and free, and secondary education is free. Additionally, the Constitution guarantees access to higher education to all citizens under equal conditions.²⁴⁴

By ratifying the *International Covenant on Economic, Social and Cultural Rights*, the Republic of Serbia has committed to ensuring the full realization of the right to education by making primary education compulsory, accessible to all, and free of charge. Additionally, secondary and higher education should be made accessible to everyone through appropriate measures, particularly through the gradual introduction of free schooling.²⁴⁵

The Strategy for the Development of Education by 2030 in the Republic of Serbia highlights that one of the primary general principles of the entire education system in Serbia is to ensure equality in accessing education and the availability of education to all children, students, and adults, based on social justice and equal opportunities, without discrimination. To make the education system accessible, fair, and inclusive, it is crucial to establish new and improve existing support mechanisms, with particular emphasis on the specific needs of different vulnerable groups (students from low socioeconomic backgrounds, children with developmental disabilities and impairments, the Roma population, especially girls, etc.).²⁴⁶

244 Constitution of the Republic of Serbia, Article 71 ("Official Gazette of RS", No. 98/2006 and 115/2021).

245 Law on the Ratification of the International Covenant on Economic, Social and Cultural Rights, Article 13 ("Official Gazette of RS", No. 7/71).

246 Strategy for the Development of Education in the Republic of Serbia by 2030, p 38 ("Official Gazette of RS", No. 63/2021).

Affirmative Action in Education

Nowadays, affirmative actions are implemented in many countries to promote the social inclusion of marginalized and vulnerable social groups, aiming to enhance their social mobility and participation in decision-making processes, ensuring their equal participation in community social life. The goal of affirmative action is to correct historical injustice resulting from long-term discrimination against certain population groups, particularly minorities, with the intention of achieving real equality with other members of society. Similar reasons justify the introduction of affirmative action measures in the Republic of Serbia.

The possibility of implementing affirmative action measures is rooted in Article 21 of the Constitution of the Republic of Serbia, which states that "special measures that the Republic of Serbia may introduce to achieve full equality of persons or groups of persons who are substantially in an unequal position with other citizens" are not considered discriminatory.²⁴⁷

Regarding the United Nations' international human rights treaties, one of the earliest formulations of affirmative action can be found in the *International Convention on the Elimination of All Forms of Racial Discrimination* from the late 1960s, which states that "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."²⁴⁸

Recognizing the importance of affirmative action measures, the United Nations Commission on Human Rights appointed a Special Rapporteur at the end of the 1990s to prepare a study on the concept of affirmative

247 Constitution of the Republic of Serbia, Article 21 ("Official Gazette of RS", No. 98/2006 and 115/2021).

248 International Convention on the Elimination of All Forms of Racial Discrimination, Article 1 ("Official Gazette SFRY - International Treaties", No. 6, 1967).

action. In his report "Preventing Discrimination: the Concept and Practice of Affirmative Action," the Special Rapporteur states that affirmative action is "a package of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality".²⁴⁹

When discussing affirmative action measures, it is particularly important to highlight domestic regulations such as the *Law on the Prohibition of Discrimination*, which contains provisions stating that the adoption of special measures to achieve full equality, protection, and advancement of individuals or groups of individuals shall not be considered discrimination.²⁵⁰

Affirmative Measures for the Enrollment of Roma Students in Secondary Schools

Enrollment of Roma students under more favorable conditions is regulated by the *Rulebook on Enrollment of Students in Secondary Schools*.²⁵¹ Prijava za upis u srednju školu pod povoljnijim uslovima podnosi se osnovnoj školi koju učenik pohađa, koja listu prijavljenih učenika dostavlja Ministarstvu prosvete.

A Roma student who is registered for enrollment under more favorable conditions at the end of elementary school takes the final exam, together with all other students. The more favorable treatment of Roma students consists of increasing the score awarded for their academic achievements in primary school and the final examination by 30% of the points they fall short of to reach a perfect score of 100 points. For Roma students from families receiving financial social assistance, the score awarded for their academic achievements in primary school and

249 Prevention of Discrimination: The Concept and Practice of Affirmative Action, final report submitted by Marc Bossuyt, Special Rapporteur, in accordance with UN Sub-Commission Resolution 1998/5, dated 17 June 2002, E/CN.4/Sub.2/2002/21, § 6.

250 Law on the Prohibition of Discrimination, Article 14 ("Official Gazette of RS", No. 22/2009 and 52/2021).

251 Rulebook on the Enrollment of Students in Secondary Schools, Articles 91 to 98 ("Official Gazette of RS", No. 23/2023, 34/2023 and 26/2024).

the final examination is increased by 35% of the points they fall short of to reach a perfect score of 100 points.²⁵²

As per the aforementioned Rulebook, the school is required to undertake suitable actions to notify the parents of Roma students about the criteria and process for enrollment under more favorable conditions. The Rulebook further mandates that the National Council of the Roma National Minority shall undertake activities to inform parents. These measures include the obligation of class teachers and professional associates (educators, psychologists, social workers) to inform students and parents about the possibilities for enrolling students using affirmative actions, while also providing guidance to parents on obtaining the necessary documentation and offering professional assistance to students and parents in terms of career guidance and information regarding school and career choices in line with students' inclinations and abilities.

Affirmative measures have been put in place to promote the enrollment of Roma students in secondary schools since the school year 2003/2004. In accordance with the statistics released by the Ministry of Education, a total of over 13,000 students have been registered under these affirmative measures, with a female representation of 55%.²⁵³ In the 2002 census, only 7.8% of Roma had a high school diploma²⁵⁴, compared to 41.07% of the general population²⁵⁵. The 2011 census data illustrates that the percentage of Roma minorities who have completed high school has increased to 11.5%, while the proportion of the general population with a high school diploma stands at 48.9%.²⁵⁶ UNICEF's MICS 6 survey shows that the enrollment rate of Roma students in secondary schools stands at 52.6%, with a graduation rate of 61%. Of particular concern is the finding from the same survey that the graduation rate of high school students from Roma settle-

252 In the scenario where a student achieves 30 points through school performance and another 30 points from the final exam, they would still be short of 40 points out of the total 100. Consequently, said student will be awarded an additional 12 points following the introduction of the affirmative action measure, representing 30% of the 40-point deficit needed to attain a score of 100.

253 Education of students from the Roma national minority, Ministry of Education, November 2022.

254 See: Affirmative Actions for Roma in the Field of Education, Center for Applied European Studies, Belgrade, 2010, p. 16.

255 Qualifications, literacy, and computer literacy, Statistical Office of the Republic of Serbia, Belgrade, 2013, p. 18.

256 Roma in Serbia, Statistical Office of the Republic of Serbia, Belgrade, 2014, p. 74.

ments is only 19%, compared to 98% for students from the general population.²⁵⁷ Based on the available official data, it can be concluded that there has been modest advancement in this domain during the initial eight years of executing affirmative actions for admission to secondary schools. Since the results of the 2022 census regarding the educational structure of the population have not yet been published, it is not possible to make a reliable assessment of the effects of affirmative measures for the enrollment of Roma students in secondary schools from 2011 onwards.

Table 1: Implementation of affirmative measures for the enrollment of Roma students in secondary schools²⁵⁸

School year	Total number enrolled	Share of female students
2016/2017	1713	52%
2017/2018	1696	52%
2018/2019	2220	56%
2019/2020	2209	57%
2020/2021	1894	56%
2021/2022	1900	54%

Affirmative Measures for the Enrollment of Students from the Roma National Minority and Persons with Disabilities in Higher Education Institutions

Every year, the Government of the Republic of Serbia adopts a *Decision on the number of students to be enrolled in the first year of undergraduate, academic, and integrated study programs financed by the budget of the Republic of Serbia at higher education institutions founded by the Republic of Serbia*²⁵⁹. This Decision also stipulates the allotment of places for freshman candidates with disabilities and individuals from the Roma national minority community eligible for admission as beneficiaries of state-funded

257 MICS 6 - Multiple Indicator Cluster Survey 2019 (Statistical Summary), UNICEF, Belgrade, 2020, p. 37.

258 Education of students from the Roma national minority, Ministry of Education, November 2022.

259 Official Gazette of RS", No. 50/2023, 65/2023.

education in the Republic of Serbia. The quota for admission designated for freshman students in these specific categories whose education is financially supported by the budget, is fixed at 1% of the total number of "budget-financed quotas" approved for each higher education institution founded by the Republic of Serbia.

The Ministry of Education then issues *Professional guidelines for the enrollment in the first year of undergraduate and integrated study programs at higher education institutions founded by the Republic of Serbia*²⁶⁰ which regulate the enrollment of persons with disabilities and members of the Roma national minority. The enrollment of persons with disabilities and members of the Roma national minority through affirmative measures is carried out in accordance with the *Program of Affirmative Measures for the Enrollment of Persons with Disabilities* and the *Program of Affirmative Measures for the Enrollment of Members of the Roma National Minority*, constituting an integral part of the Ministry of Education's Professional Guidelines.

According to the *Program of Affirmative Measures for the Enrollment of Members of the Roma National Minority*, candidates who wish to enroll in the first year of studies should provide a written statement confirming their affiliation with the Roma national minority, as well as a recommendation from the National Council of the Roma National Minority when submitting their application and other required documentation to the higher education institution. Enrollment in a higher education institution based on the aforementioned *Program of Affirmative Measures* can be achieved by a student who has passed the entrance exam. Candidates who have passed the entrance exam and who have applied for enrollment based on the *Program of Affirmative Measures* are ranked on a separate ranking list from which the number of candidates specified within the quotas approved by the Government of the Republic of Serbia are enrolled. Should they fail to be registered in this manner, these applicants will be evaluated for standard government-funded student positions alongside other contenders who submitted applications via the conventional process.

Additionally, less strict criteria are applied to the aforementioned categories of students during their studies. Namely, the *Law on Higher Education*

260 "Official Gazette of RS", No. 49/2023.

includes provisions that allow students with disabilities and students enrolled in studies through affirmative measures to maintain student status until the expiration of a period set at three times the number of school years required to complete the study program, which is more favorable compared to other students who, in accordance with the Law, can maintain student status until the expiration of a period set at twice the number of school years required to complete the study program.²⁶¹ The same law mandates that students with disabilities, along with students admitted through affirmative actions, are entitled to funding for their studies in the upcoming academic year from the budget, provided they achieve 36 ECTS credits in the ongoing academic year.²⁶²

Affirmative measures for the enrollment of members of the Roma national minority in higher education institutions have been implemented since the school year 2003/2004. According to the affirmative measures program, a total of 1743 students have been enrolled so far, with females constituting 51% of the total. Over the course of the past five academic years, a total of 733 students have been admitted through affirmative measures, with an average of 144 students per year.²⁶³ As per the statistics derived from the 2002 census, the percentage of Roma who have completed the higher education was only 0.3%²⁶⁴, while the coverage of higher and tertiary education in the general population was 11.03%.²⁶⁵ The 2011 census data shows a slight increase in the percentage of Roma with higher education degree, which was still modest at 0.7%, compared to the share of the general population with higher education, which increased to 16.2%²⁶⁶. Based on the available data, if we were to assess the effects of affirmative measures in terms of Roma access to higher education in the first eight years of

261 Law on Higher Education, Article 109 ("Official Gazette of RS", No. 88/2017, 73/2018, 27/2018 - other law, 67/2019, 6/2020 - other laws, 11/2021 - authentic interpretation, 67/2021 and 67/2021 - other law, and 76/2023).

262 Law on Higher Education, Article 103 ("Official Gazette of RS", No. 88/2017, 73/2018, 27/2018 - other law, 67/2019, 6/2020 - other laws, 11/2021 - authentic interpretation, 67/2021 and 67/2021 - other law, and 76/2023).

263 Education of Roma Students, Ministry of Education, November 2022.

264 See: Affirmative Actions for Roma in the Field of Education, Center for Applied European Studies, Belgrade, 2010, p. 16.

265 Educational Attainment, Literacy, and Computer Literacy, Statistical Office of the Republic of Serbia, Belgrade, 2013, p. 18.

266 Roma in Serbia, Statistical Office of the Republic of Serbia, Belgrade, 2014, p. 74.

their implementation, we could conclude that their effects have been rather modest. Since the results of the 2022 census showing the educational structure of the population have not yet been published, it is not possible to provide a reliable assessment of the effects of affirmative measures in this area between the two most recent censuses.

Table 2: Implementation of affirmative measures for the enrollment of Roma students in higher education institutions founded by the Republic of Serbia²⁶⁷

School year	Total number enrolled	Share of female students
2016/2017	182	49%
2017/2018	154	55%
2018/2019	120	51%
2019/2020	120	52%
2020/2021	157	-
2021/2022	128	-

The Program of Affirmative Measures for the Enrollment of Persons with Disabilities provides for freshman year enrollment for candidates who are wheelchair users or have impaired mobility, partial or complete vision impairment, partial or complete hearing impairment, learning difficulties (dyslexia, dysgraphia, dyscalculia), speech impairments, chronic illnesses (hemophilia, epilepsy, type 1 diabetes, malignant diseases), as well as those with psychological or mental difficulties. In accordance with the Program of Affirmative Measures, in addition to medical and other documentation proving the candidate's health status, it is also necessary for them to provide a confirmation for the use of affirmative measures from the relevant association²⁶⁸ representing the interests of students with disabilities, especially when the higher education institution does not have a dedicated body to support students with disabilities. Based on the submitted medical documentation, the associations issue a recommendation for the enrollment of persons with disabilities in a higher education institution

267 Education of Roma Students, Ministry of Education, November 2022; Letter from the Ministry of Education No. 07-00-130/1/2023-01 dated March 15, 2023; Strategy for the Social Inclusion of Roma in the Republic of Serbia for the period 2022-2030 ("Official Gazette of RS", No. 23/2022).

268 The Program of affirmative action measures for the enrollment of persons with disabilities explicitly names associations that can issue this type of certificate in a specific university center.

in accordance with the Program of Affirmative Measures for Enrollment. According to this program, enrollment in a higher education institution can be achieved by a candidate who has passed the entrance exam. Applicants who have sought admission through affirmative action measures are classified in a distinct ranking roster, from which the educational institution admits candidates up to the quota endorsed by the Decision of the Government of the Republic of Serbia for this affirmative measure.

Persons with disabilities face numerous barriers to access higher education. Physical inaccessibility and spatial barriers, as well as the inadequacy and unavailability of teaching aids and content, are just some of them. These, along with other obstacles, not only make it difficult for persons with disabilities to access higher education but also significantly affect their achievements and progress within the tertiary education system, which impacts their ability to obtain formal qualifications that are necessary for employment in a labor market that is still insufficiently sensitized to employing persons with disabilities. The 2011 census data shows that 6.6% of the population of persons with disabilities hold higher education degrees²⁶⁹, which is significantly lower compared to 11.03% among the general population.

Table 3: Number of students with disabilities enrolled in 63 higher education institutions founded by the Republic of Serbia from the school year 2017/18 to 2020/21²⁷⁰

School year	Number of students with disabilities enrolled	Percentage of students with disabilities
2017/2018	81	0.30
2018/2019	71	0.28
2019/2020	80	0.31
2020/2021	95	0.37
Total	327	0.32

269 Persons with disabilities in Serbia, Statistical Office of the Republic of Serbia, Belgrade, 2014, pp. 62-65

270 More than 72% of students are enrolled in 63 higher education institutions founded by the Republic of Serbia included in the sample. Source: Monitoring the Implementation of Legal Provisions Ensuring Equality for Persons with Disabilities, Association of Students with Disabilities, Belgrade, 2022, p. 4.

271 Monitoring the Implementation of Legal Provisions Ensuring Equality for Persons with Disabilities, Association of Students with Disabilities, Belgrade, 2022, p. 4.

Despite the fact that affirmative actions in education have been implemented over the past 20 years, the ministry responsible for education has not yet established a functional system for data recording, collecting, and managing. Consequently, the Ministry was unable to furnish all the requested data, including data from the latest academic years, citing their focus on enhancing the Unified Education Information System (JISP), which, according to the Ministry, represents an endeavor that has been particularly robust in the last two years. Given this situation, we have used other indirect sources of information to obtain data on the number of Roma students enrolled in the freshman year based on affirmative measures, as well as data on the number of students with disabilities enrolled in the freshman year at higher education institutions founded by the Republic of Serbia. The lack of up-to-date records on the implementation of affirmative measures in education is one of the major obstacles to assessing their real effects, their implementation efficiency, and to creating and formulating proposals that could contribute to their continuous improvement in order to enhance access to higher education for students from vulnerable groups.

Affirmative Measures in the Allocation of Scholarships, Loans, and Accommodation for Students from Vulnerable Social Groups

The Law on Pupils and Student Standards stipulates that pupils and students from vulnerable groups are entitled to loans, scholarships, and accommodation in pupils and student facilities, by applying more lenient criteria prescribed by the Minister of Education.²⁷² As socially vulnerable groups, the Law recognizes, inter alia, materially disadvantaged families, children without parental care, single-parent families, members of the Roma national minority, persons with disabilities, persons with chronic illnesses, persons whose parents disappeared or were kidnapped in Kosovo and Metohija and in the former republics of the SFRY, refugees and displaced persons, returnees under the readmission agreement, and deported pupils and students.

272 Law on Student Standard, Article 4 ("Official Gazette of RS", No. 18/2010, 55/2013, 27/2018 - amended law, and 10/2019).

Pupils who have not experienced any grade retention are eligible to request a loan, whereas those who demonstrate at least a very good academic performance are eligible to apply for a student scholarship. To access a student loan, individuals belonging to underprivileged demographics must submit an application upon their initial enrollment in the winter semester. Applications for student scholarships are open to first-time enrollees in the winter semester who have maintained continuous academic progress and are registered for the upcoming academic year according to the curriculum of the higher education institution. Pupils and students belonging to vulnerable demographics are categorized individually based on the available spots, resulting in distinct rosters being compiled for each vulnerable group. This does not apply to the categories of pupils and students from vulnerable groups who belong to the category of children without parental care, members of the Roma national minority and people with disabilities, who are separately ranked by applying more lenient criteria in accordance with the application of a special program of affirmative measures in the field of education. From the total number of pupil and student scholarships, the Ministry of Education allocates up to 10% for students from vulnerable social groups.²⁷³

From the school year 2015/16 to 2021/22, 6,533 scholarships were awarded to pupils belonging to the Roma national minority attending secondary schools.²⁷⁴ It is important to emphasize that the share of female students in the total number of awarded student scholarships is 65%. The majority of the financial resources allocated for student scholarships are derived from the budget of the Republic of Serbia, with a portion also sourced from external donor funds.²⁷⁵

273 Rulebook on student loans and scholarships, Articles 53-55 ("Official Gazette of RS", No. 36/2019).

274 The monthly scholarship for the school year 2021/22 amounted to 5,400 dinars and was paid in 10 equal monthly installments, Education of students from the Roma national community, Ministry of Education, November 2022.

275 Roma Education Fund and IPA funds.

Table 4: Number of pupils and students from the Roma national minority who exercised the right to loans or scholarships based on affirmative measures from the school year 2015/16 to 2021/22.²⁷⁶

School year	Pupil scholarships	Pupil loans	Student scholarships	Student loans
2015/16	686	-	-	-
2016/17	660	-	-	-
2017/18	803	-	99	14
2018/19	850	-	115	11
2019/20	1207	-	116	9
2020/21	1213	-	108	4
2021/22	1114	-	90	9
Total	6533	-	528	47

During the period from the school year 2015/16 to 2018/19, the Ministry of Education, in cooperation with the Roma Education Fund, implemented a supportive scholarship model for Roma students with lower academic attainment. During this time, the Ministry of Education allocated funds for scholarships for students who achieved excellent academic results, while the Roma Education Fund provided funds for scholarships for students who achieved good academic attainment, aiming to provide additional support to students with lower attainment and reduce the risk of dropout during secondary education. However, a drawback of this model during the first two school years was the exclusion of students who achieved very good academic results from this support measure. This shortcoming was corrected during the academic years 2017/18 and 2018/19, when the Ministry of Education took over the funding of scholarships for students with very good and excellent academic attainment, and the Roma Education Fund continued to fund scholarships for students with good academic attainment. Unfortunately, from the school year 2019/20, this model was practically abandoned when the Ministry of Education fully took over the scholarship funding for Roma students attending secondary school, directing its support only to those with very good and excellent academic attainment.²⁷⁷

²⁷⁶ Education of students from the Roma national community, Ministry of Education, November 2022.

²⁷⁷ Education of students from the Roma national community, Ministry of Education, November 2022.

Table 5: Number of pupils from vulnerable groups broken down by individual categories who qualified for scholarships based on affirmative measures from the school year 2016/17 to 2022/23.²⁷⁸

Categories of candidates	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Children without parental care	68	62	74	86	100	135	196
Children from single-parent families	656	527	633	647	710	710	644
Children with disabilities and/or chronic illnesses	233	248	349	412	389	463	561
Children whose parents were kidnapped or went missing in the territory of Kosovo and Metohija (KIM) or former SFRY	1	3	3	1	1	1	0
Refugees and displaced persons	104	65	61	45	38	24	25
Returnees under the readmission agreement and deported individuals	0	0	0	0	1	1	0

²⁷⁸ Letter from the Ministry of Education No. 07-00-130/2023-01 dated February 23, 2023.

When it comes to the number of students from vulnerable groups who have obtained loans under affirmative actions in the school years 2016/17 and 2017/18, one student loan was awarded to a student from the category of children without parental care. In 2018/19, two student loans were awarded to the same category of candidates. In 2019/20, one student loan was awarded to a student from the category of children without parental care and single-parent families. In the school year 2020/21, there were no students from vulnerable social groups who obtained student loans under affirmative measures. In 2021/22, one student loan was awarded to a student from the single-parent family, while in 2022/23, two student loans were awarded to students from the same category of candidates.²⁷⁹

Table 6: Number of students from vulnerable groups broken down by individual categories who obtained scholarships based on affirmative measures from the school year 2016/17 to 2022/23.²⁸⁰

Categories of candidates	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Children without parental care	54	48	49	59	51	46	42
Children from single-parent families	257	273	299	268	247	232	242
Children with disabilities and/or chronic illnesses	105	115	109	137	105	136	168
Children whose parents were kidnapped or went missing in the territory of Kosovo and Metohija (KIM) or former SFRY	4	1	4	2	3	2	1
Refugees and displaced persons	13	20	25	14	13	15	15
Returnees under the readmission agreement and deported individuals	0	0	0	0	0	0	1

²⁷⁹ Letter from the Ministry of Education No. 07-00-130/2023-01 dated February 23, 2023.

²⁸⁰ Letter from the Ministry of Education No. 07-00-130/2023-01 dated February 23, 2023.

Table 7: Number of students from vulnerable groups broken down by individual categories who obtained loans based on affirmative actions from school year 2016/17 to 2022/23.²⁸¹

Categories of candidates	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Children without parental care	14	15	11	10	9	5	5
Children from single-parent families	812	72	631	561	520	453	452
Children with disabilities and/or chronic illnesses	41	32	36	41	33	23	43
Children whose parents were kidnapped or went missing in the territory of Kosovo and Metohija (KIM) or former SFRY	1	1	2	1	0	1	1
Refugees and displaced persons	95	104	94	62	61	31	26
Returnees under the readmission agreement and deported individuals	0	0	0	0	0	0	0

Pupils and students from vulnerable groups are entitled to accommodation and meals under more lenient criteria; student dormitories or student centers allocate up to 10% of their accommodation capacity for this category of pupils and students. Pupils and students from vulnerable groups who have not obtained accommodation through regular applications have the right to apply for special ranking within designated capacities in student dormitories for individuals from vulnerable groups. A separate ranking list is formed for each vulnerable group based on points attained in the conclusive standard ranking list. This does not apply to students with

²⁸¹ Letter from the Ministry of Education No. 07-00-130/2023-01 dated February 23, 2023

disabilities, chronic illnesses, and convalescents, for whom a ranking list is determined based on a medical assessment of the severity of their condition.²⁸²

²⁸² Rulebook on Accommodation and Meals for Pupils and Students, Articles 29–33 ("Official Gazette of RS", No. 36/2019).

Table 8: Number of students from vulnerable groups who obtained accommodation in student dormitories based on affirmative measures from the school year 2016/17 to 2022/23²⁸³

Categories of candidates	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Economically disadvantaged	95	98	84	82	68	70	65
Children without parental care	47	33	28	24	28	27	27
Children from single-parent families	312	277	251	184	179	194	223
Members of the Roma national minority	89	65	66	56	54	40	55
Children with disabilities and/or chronic illnesses	256	239	241	240	218	254	341
Children whose parents were kidnapped or went missing in the territory of Kosovo and Metohija (KIM) or former SFRY	4	7	7	0	0	4	3
Refugees and displaced persons	110	85	74	52	39	42	33
Returnees under the readmission agreement and deported individuals	0	0	0	0	0	0	0
Total	913	804	751	638	586	631	747

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Table 9: Number of pupils from vulnerable groups who have been granted accommodation in dormitories based on affirmative measures from school year 2016/17 to 2022/23²⁸⁴

Categories of candidates	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Economically disadvantaged	-	-	-	134	96	171	163
Children without parental care	-	-	-	38	19	50	53
Children from single-parent families	-	-	-	137	121	223	202
Members of the Roma national minority	-	-	-	88	61	87	79
Children whose parents were kidnapped or went missing in the territory of Kosovo and Metohija (KIM) or former SFRY	-	-	-	0	0	0	0
Refugees and displaced persons	-	-	-	23	19	25	17
Returnees under the readmission agreement and deported individuals	-	-	-	0	0	0	2
Twins	-	-	-	26	14	17	20
Shortage occupations	-	-	-	16	2	38	20
Dual education	-	-	-	19	22	0	0
Total	-	682	664	481	354	602	547

Implementation of affirmative actions in the field of education that create opportunities for equal access for vulnerable groups to all levels of formal education is of immeasurable importance, not only for their inclusion in the educational system but also for their overall social integration and achieving full equality in society. In addition, this approach creates conditions conducive to social mobility, particularly for members of those social groups historically in a multiply marginalized position. In these final considerations, we will focus on some of the identified shortcomings in the regulatory framework governing the implementation of affirmative measures in education, as well as on certain deficiencies in their practical application.

²⁸⁴ Letter from the Ministry of Education No. 07-00-130/2023-01 dated February 23, 2023.

In order to attain favorable outcomes in the execution of affirmative action programs targeting marginalized groups in education, it is imperative to develop an efficient mechanism for data gathering and oversight of said initiatives at the institutional level. This would enable continuous improvement of affirmative action programs, a more comprehensive understanding of the current educational needs of affirmative action beneficiaries, timely design of adequate responses to these needs, and the provision of appropriate educational support to members of vulnerable groups while they attend educational programs.

Considering that the socio-economic status of families significantly affects students' educational achievements and represents a risk factor for student dropout during secondary education, it is necessary to consider amending the *Rulebook on the Enrollment of Students in Secondary Schools*. These

amendments should address the preferential treatment for the enrollment of students of Roma nationality in secondary school and allow Roma students from families receiving financial social assistance to have their score awarded for their academic achievements in primary school and the final examination increased substantially by certain percentage of the points they fall short of to reach a perfect score of 100 points.

Regarding the conditions provided by affirmative action programs for the enrollment of Roma individuals and individuals with disabilities in higher education institutions founded by the Republic of Serbia, it is necessary to consider changes to the part of affirmative action programs that require Roma students to obtain a recommendation from the National Council of the Roma National Minority and for students with disabilities to obtain a recommendation from the association that represents the interests of students with disabilities. According to the Constitution of the Republic of Serbia, national affiliation may be expressed freely, and no person shall be obliged to declare their national affiliation. Keeping this in mind, as well as internationally accepted standards that treat the feeling of national affiliation as a matter of self-determination, verifying someone's national affiliation in the form of a recommendation from any institution is unusual and purposeless practice. On the other hand, users of affirmative action measures in the category of persons with disabilities prove their status by submitting appropriate medical documentation for admission to higher education institutions, qualifying them for the application of affirmative action measures, so there is no need to additionally obtain a recommendation from an association representing the interests and rights of students with disabilities. The adjustments to the programs for these specific beneficiary groups will help limit potential irregularities in the implementation of preferential treatment for vulnerable social groups in higher education access.

Deported individuals and returnees under readmission agreement undoubtedly constitute one of the most vulnerable groups targeted for affirmative action measures within the realm of education, including a more favorable treatment for the allocation of pupil and student loans and scholarships and the allocation of places in pupil and student dormitories. Nonetheless, based on information provided by the Ministry of Education, those falling under this category continue to be largely overlooked by the affirma-

tive action program, which can be attributed to the insufficient awareness of members of this group, rather than the absence of interest and need for the aforementioned measures. Taking this into account, it is necessary for the Ministry of Education to conduct a more extensive campaign to inform about existing affirmative action measures in the field of education, primarily targeting members of vulnerable groups from the category of deportees and returnees under the readmission agreement, which would, among other things, have positive effects on their integration.

Case Study – Discrimination of Children Due to Political Affiliation of Their Families

In the past year, children were excluded from kindergarten in Pećinci due to their families' political affiliations.

Before this incident, children from two families in Pećinci were enrolled at the preschool "Vlada Obradović Kamenj", specifically at the "Obrež" branch, under open-ended contracts. Family A's children had been attending since 2021 and 2018, respectively, while a girl from family B had been enrolled since 2019. The parents duly presented enrollment applications for the school year 2022/2023; nevertheless, they are still awaiting a verdict from the enrollment commission or any formal correspondence elucidating the grounds for their children's exclusion from the preschool establishment.

Furthermore, parents were notified by phone that their children could no longer attend the "Obrež" facility. The only reason given was that the children were "below the line," with no additional explanation provided.

Notably, these children, who had regularly attended kindergarten until September, were suddenly deemed "below the line." A common factor among these families is their participation in farmers' protests during the summer, which were publicly linked to opposition activities. Parents assert that this involvement is the real reason their children were not re-enrolled in kindergarten.

It is particularly significant that these children had been attending kindergarten from their first or second year, with enrollment spanning at least a year. Their attendance was uninterrupted until the summer protests, after which they were suddenly denied access. Following public disclosure of the situation, parents reported facing hostile behavior from the kindergarten principal, aimed at silencing them regarding the alleged discrimination. The principal further escalated the issue by informing the Center for Social Work in Pećinci of alleged violence, abuse, and neglect of children by the parents, citing an incident where the children were left at the preschool facility "without adult supervision".

The ranking of children "below the line" was marked by numerous irregularities, as confirmed by both the educational inspection and the Commissioner for the Protection of Equality. The educational inspection's findings revealed significant procedural deficiencies related to enrollment and prioritization. It was determined that the commission failed to meet on time, parents were not informed of the ranking outcomes as stipulated by the preschool institution's statute, and no alternative accommodations were offered for their children in other facilities within the same preschool. The educational inspector's decision highlighted this oversight, stating, "The Educational Inspector did not receive an answer as to why parents were not offered the opportunity to enroll their child in another facility of this preschool institution, where there are available places. This possibility is provided for by Article 16, paragraph 1 of the Rulebook, but the enrollment commission did not offer any accommodation in any of the facilities where there are available places".²⁸⁵

In addition to the educational inspection, the Commissioner for the Protection of Equality found violations of the Law on the Prohibition of Discrimination. The evidence demonstrated that the children met all prescribed conditions and that there were no justified or objective reasons for their exclusion from the preschool institution in the school year 2022/23. The preschool "Vlada Obradović Kamenì" failed to substantiate any legitimate reasons for keeping these children, on whose behalf the complaint was filed, on the "waiting list" since September 2022 and preventing them from attending this preschool institution, which are not related to the per-

sonal characteristics of the parents or family members of the children. The Commissioner highlighted that the children in question had attended the "Obrež" facility without interruption in previous years but were denied this opportunity immediately following the political activities of their parents or family members. This led to the conclusion of a causal link between personal characteristics and the preschool institution's actions in this specific case. The Commissioner recommended that the preschool institution apologize to the parents, rectify the consequences of discriminatory conduct, and take urgent measures to ensure that the affected children, on whose behalf the complaint was filed, can attend the "Obrež" facility in Pećinci.

Despite the Commissioner's warning that the preschool institution should comply with the recommendation, no action was taken. Consequently, the public was informed, exhausting the legal avenues available in the complaint procedure. The children, the most affected by this conduct, were left without the opportunity to return to the kindergarten they had previously attended throughout the entire school year 2022/2023, solely due to the political actions of their family members. However, during enrollment for the school year 2023/2024, the parents of both families finally succeeded in enrolling their children in kindergarten, as the waiting lists were lifted, despite the number of groups and children remaining unchanged. This further indicated that the entire incident was retaliation for the political activities of the family members.

In connection with the aforementioned matter, a criminal complaint was lodged against the kindergarten principal in October 2022, citing the offense of negligent work. Regrettably, no measures have been initiated with regard to this legal action.

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CONCLUSION

In previously published reports on the state of economic and social rights, we have pointed out numerous systemic issues regarding the realization and protection of these rights in the Republic of Serbia. These range from insufficient judicial protection of these rights, their unclear definition in so-called "sectoral regulations," inadequate budget allocations for their realization, to depriving certain categories of the most vulnerable citizens of the opportunity to exercise these rights. All of this not only hinders the progressive realization of economic and social rights, which is mandated as a central obligation of every state that has ratified the International Covenant on Economic, Social and Cultural Rights under Article 2(1), but also undermines the preservation of the achieved level of these rights.

The conclusion outlined above holds true when analyzing the situation of economic and social rights in the years 2022 and 2023. Numerous challenges persist, and the consequences of previous policies, such as the introduction of austerity measures or insufficiently targeted measures to combat COVID-19, have not yet been fully addressed. The rising cost of living, coupled with the absence of measures and policies, as well as an institutional framework addressing poverty and its impact on the realization of economic, social, and other human rights, threatens to further undermine the fragile structures on which economic and social rights in Serbia rest.

Henceforth, it will be of utmost importance in the forthcoming period to observe the efforts of the Republic of Serbia in addressing poverty and social exclusion, and in upholding the fundamental rights enshrined in the Constitution, international treaties, and numerous laws.

One of the few positive steps regarding the protection and realization of economic and social rights in Serbia in the previous period was the ratification of the Optional Protocol to the International Covenant on Economic,

Social and Cultural Rights. This ratification was instrumental in paving the way for transforming the implementation of economic and social rights on a daily basis in Serbia. The capacity of this international treaty to bring about such a shift and the timeline for its attainment are still unknown in the approaching period.

