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Protector of Citizens
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INPUT OF THE PROTECTOR OF CITIZENS OF THE REPUBLIC OF SERBIA on the human rights challenges during the COVID-19 pandemic and the positive practices

INTRODUCTION

On 11 March 2020, the World Health Organization declared COVID-19 pandemic, and, in order to curb the spread of this disease, four days later the Government of the Republic of Serbia declared a state of emergency on the territory of the entire country, which was in force until 6 May 2020. The Protector of Citizens intensified monitoring of the work competent state authorities and introduced new telephone lines through which the citizens could approach this independent state body from 8 am to 10 pm, one of them being specially designated for the National Preventive Mechanism. During the state of emergency, 4,702 citizens contacted the Protector of Citizens, encompassing 3,673 phone contacts, 806 complaints and 223 miscellaneous citizens' questions.

The Protector of Citizens has publically pointed out that it was necessary to take additional protective measures in cases of particularly vulnerable groups, and the focus was placed on the rights of those who might be potentially hardest hit by the imposed restrictions or whose health at the time of the pandemic was additionally endangered due to their placement in residential care institutions or their living conditions. ¹ The Protector of Citizens published a Special Report on the Activities during the state of Emergency with Recommendations. ²

Even in such a challenging year, the citizens recognized the Protector of Citizens as an Institution that they can trust and turn to in order for their rights to be promoted and protected, and during the state of emergency, they primarily contacted the Protector of Citizens to express their problems and violations of rights. In cases when citizens contacts did not have a nature of a complaint that this independent body handles, the Protector of Citizens offered explanations and referred them to competent bodies.

Table of contacts to the Protector of Citizens for the period 1 January 2018 – 31 December 2020

	2018	2019	2020.
Number of complaints	3,338	3,276	5,056
Number of telephone contacts	3,350	4,065	11,467
Number of citizens received in-person	2,432	3,532	1,642
Total number of citizens' contacts	9,120	10,862	18,165

¹ Available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=197:zoran-pa%C5%A1ali%C4%87-to-local-selfgovernment-units-provide-basic-living-conditions-for-roma-settlements-inhabitants&catid=49:activities&Itemid=16

² Available at: <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6658-report-on-protector-of-citizens-activities-during-covid-19>

EXERCISING THE RIGHTS OF PARTICULARLY VULNERABLE GROUPS DURING THE STATE OF EMERGENCY - CHALLENGES AND POSITIVE PRACTICE EXAMPLES

Labor rights - Immediately after the declaration of the state of emergency, the Protector of Citizens was contacted by the citizens - employees in health care institutions and with other employers as well - who suffer from chronic diseases, who are single parents and/or parents of children under 12 years of age, requesting to be informed on what grounds they could be exempt from work duty. The Government of the Republic of Serbia's Regulation on Organizing Employers during the State of Emergency³ specifies the obligation of the employer to allow the employees to perform work outside the employer's premises (remote working and work from home) in all job posts where possible in accordance with the general act and employment contract. If the general act and employment contracts did not envisage this type of work, the employer could have enabled, organizational conditions - permitting, the employee to perform work outside the employer's premises. It was specifically underlined that the Regulation envisaged the employer's obligation to enable the employees, if possible, to work from home or work remotely, but not to exempt them from work duty.

One of the problems highlighted by the citizens, and related to work duty amid the state of emergency referred to the impossibility of the employees to commute to their work place that is in another town, since the public transport was suspended. These citizens were informed that the Ministry of Construction, Transport and Infrastructure and the Ministry of State Administration and Local Self-Government have issued a Mandatory Instruction on the implementation of the Regulation on Amendments to State of Emergency Measures in the field of road passenger transport⁴ which has specified that the ban imposed by the Regulation does not encompass taxi, limo service and own-needs transport. With this in mind, the citizens were instructed that it was necessary to contact the employer and reach an agreement, in order to be provided with transportation to and from work.

In the first days following the declaration of the state of emergency, a large number of citizens who pointed out that they were laid off contacted the Protector of Citizens. This mostly concerned the citizens employed on a fixed-term basis and those who were not registered at their employer, i.e. who worked without an employment contract. In such situations, the Protector of Citizens advised citizens not to sign agreed terminations of employment contracts in order to be able to exercise their rights in case of unemployment. In addition, citizens were instructed to contact the Labor Inspectorate if there was an illegal termination of employment.

Safety and Health at Work - A large number of citizens, especially chronically ill, pregnant women, elderly citizens who have not reached the age of 60, and have not been exempt from working obligation, in their contacts to the Protector of Citizens expressed concern for safety at work, especially in companies with more employees that did not provide adequate work conditions, that is, protective equipment and the prescribed physical distance among employees. Having in mind the obligation of the employer to provide work conditions in these situations, citizens were instructed to contact the Labor Inspectorate.

The Protector of Citizens launched an investigation to control the work of the Labor Inspectorate of the Ministry of Labor, Employment, Veteran and Social Policy⁵ regarding the actions of inspection bodies in controlling the implementation of all prescribed measures and recommendations in order to prevent the spread of infectious disease COVID-19 in "Jura" corporation - in Niš and Leskovac branches. The Protector of Citizens ascertained that the conducted inspection supervisions and discharged inspection powers did not provide safe and healthy work in the monitored entity, nor did they exercise their preventive role. Accordingly, the Protector of Citizens, by sending an opinion

³ Official Gazette of RS, No. 31/20

⁴ Available at:

<https://www.mgsi.gov.rs/sites/default/files/OBAVEZNA%20INSTRUKCIJA%20O%20PRIMENI%20UREDBE.pdf>

⁵ Available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=239:protector-of-citizens-to-control-the-ministry-of-labour-due-to-workers-infections-in-yura&catid=14&Itemid=17

to the Labor Inspectorate of the Ministry of Labor, Employment, Veteran and Social Policy, pointed out the need to strengthen inspection supervision in the coming period, while the COVID-19 communicable disease pandemic lasts.

Care for children under the age 12 - As early as the first week following the declaration of the state of emergency, the Protector of Citizens was contacted by the citizens, both those employed with state bodies and those employed with private employers, with questions relating to exercising the right to work from home. The recommendation was difficult to follow in situations where both parents were medical workers or employees in police and armed forces who had the work duty throughout the state of emergency. Single mothers who had work duty and for whom it was not possible to set up work-from-home by the employer also complained. Another problem highlighted by mothers of children under the age of 12, who are healthcare workers, was the order to work in a healthcare institution in a different town that further complicated the organization and functioning of their families. The problem of caring for the children was further deepened by the suspension of schools and kindergartens, since parents who have the work obligation had no one to look after their children.

The child's right to maintain a personal relationship with a parent with whom he or she does not live - The Protector of Citizens was also addressed by parents who do not live with their children and with whom they have contact pursuant to final court decisions, highlighting that children are denied access to them in situations where the duration of the movement ban overlaps with the time set for seeing or taking over and returning the children because the competent authorities do not issue moving permits to the parents. The Protector of Citizens suggested that parents file a request in cases when they are seeing their children without a court decision, and on the grounds of written and oral agreements with the other parent. After the initial problems in interpreting the decisions to ban movement, the Protector of Citizens, through interventions with the relevant ministries and local self-government units, ensured that the parents' requests were respected, so it was possible to maintain personal relations between parents and children, with and without a final court decision.

Freedom of movement for people with disabilities - Due to difficulties to obtain movement permits during the movement ban for those citizens who look after persons with disabilities, the elderly, and especially children, as well as all those who need someone else's care and assistance, upon the Protector of Citizens' initiative issued to the Prime Minister of the Republic of Serbia⁶, a Regulation⁷ was adopted permitting the movement during the movement ban to the children with developmental disabilities and autism as well.

The protection of victims of domestic violence - The Protector of Citizens filed an initiative to the Prime Minister of the Republic of Serbia for amending the Regulation on State Emergency Measures⁸ in order to ensure legal certainty that the measures of movement ban do not apply to the persons leaving home and apartments in order to be protected from domestic violence. In a control investigation, the Protector of Citizens was informed that the Social Welfare Centers did not have major difficulties in the implementation of measures and activities in the protection of violence victims. The length of waiting time for the results of the COVID-19 test before placing the victims in safe houses, i.e. the lack of alternative accommodation services for victims of domestic violence while waiting for the results of the COVID-19 test emerged as one of major issues.

Poor sanitary conditions in informal Roma settlements - The Protector of Citizens organized visits to ten Roma settlements during the COVID-19 pandemic, in order to inspect the hygienic conditions in the settlements, access to water and electricity supply, as well as the needs of residents for the provision of additional assistance measures in the form of packages and social allowances. Moreover,

⁶ Available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=196:protector-of-citizens-press-release&catid=49:activities&Itemid=16

⁷ Official Gazette of RS, No. 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 53/20 and 56/20.

⁸ Available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=204:the-protector-of-citizens-issued-an-initiative-to-the-prime-minister-of-the-republic-of-serbia&catid=49:activities&Itemid=16

after the Protector of Citizens intervened, in the informal Roma settlement "Čukarička šuma" a tank was provided with water which could have been used for drinking and maintaining hygiene, while the Ministry of Labor, Employment, Veteran and Social Policy and Serbian Red Cross provided food and hygiene packages.⁹ Special Report of the Protector of Citizens with Recommendations - Conditions in Roma settlements in a state of emergency and application of protection measures amid the coronavirus epidemic¹⁰ was compiled on the grounds of the gathered data.

Health - During the state of emergency, citizens contacted the Protector of Citizens due to problems in fully exercising the right to treatment and health care, since all interventions that were not urgent during the state of emergency were deferred. Apart from that, the citizens also complained about problems in exercising the right to health insurance as well as the availability of certain medicines. In addition, babies' parents contacted the Protector of Citizens with regard to vaccination, which was deferred due to state of emergency proclamation, expressing concern for their babies' health if the planned revaccination calendar is deviated from. As a good practice example, the Protector of Citizens would like to underline the acting of New Belgrade Health Center, the employees of which, after the complainant approached both the New Belgrade Health Center and the Protector of Citizens at the same time, regarding the carrying out of mandatory immunization for her daughter, contacted immediately the complainant and solved the problem which she pointed out through her approach, and notified the Protector of Citizens on the subject.

The rights of persons deprived of liberty - During the state of emergency as well as in regular circumstances, persons deprived of liberty mostly expressed dissatisfaction with the provision of health care. The Protector of Citizens issued an Opinion to the Ministry of Justice regarding the exercise of the right to a fair trial and called on this Ministry to take all measures within its remit to enable access to alternative means and ways of communication (Skype) between the defendant and defense counsel in a separate room, with video surveillance only, not audio, without limiting the duration of communication to 30 minutes, with the aim of creating necessary conditions of conducting a confidential interview and preparing the defense of the accused.

Ban on movement - After the ban on movement was introduced, the Protector of Citizens was contacted by the citizens, particularly those over 65, who believed that this ban denied them their civil-political rights. Citizens also faced difficulties in obtaining movement permits during the ban on movement.

⁹ Available at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6581-n-f-r-ln-r-s-n-s-lj-cu-ric-shu-d-bil-v-du>

¹⁰ Available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6656-special-report-of-the-protector-of-citizens-with-recommendations>