



REPUBLIC OF SERBIA

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**Protector of Citizens
Ombudsman**

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UN REPORT ON THE RIGHTS OF A CHILD DURING COVID-19 PANDEMIC - REPORT OF THE PROTECTOR OF CITIZENS -

The World Health Organization declared the COVID-19 pandemic on March 11, 2020, and four days later, in order to prevent the spread of the disease, the Government of Serbia imposed a state of emergency on the entire territory of the Republic of Serbia, which lasted from March 15 to May 6, 2020¹. As the Constitution of the Republic of Serbia allows necessary deviations in the exercise of human and minority rights in a State of Emergency, the Protector of Citizens, as an independent state body, has intensified its activities to protect and promote human rights.

Throughout the State of Emergency, acting upon citizens' complaints or based on its own initiative, the Protector of Citizens performed control procedures „in the field“ in order to check the conditions in which citizens were, especially vulnerable groups, including children, persons with disabilities, Roma, migrants, as well as persons deprived of liberty. The work of the Protector of Citizens also included preventive-advisory activities, mediation between the complainant and administrative bodies, and sending initiatives to the competent authorities to change regulations. The Protector of Citizens also introduced five new telephone lines, which citizens could use for help seven days a week, from 8 am to 10 pm. One of these lines was used for psychological support to citizens in crisis situations, provided by a psychologist employed in the Sector for the Rights of the Child.

The Protector of Citizens prepared a Special Report on the Activities During the State of Emergency² in which he indicated to the competent authorities how they can improve the work in order to exercise the rights of citizens, bearing in mind that the duration of the COVID-19 epidemic cannot be predicted. The Protector of Citizens emphasized the need that the competent public authorities should compile an Action Plan and the way of rendering services to citizens in emergency circumstances, establish a method of unhindered and efficient cooperation and communication between competent bodies, as well as a plan to inform citizens about measures and ways to exercise relevant rights and services.

Objective 1: No Poverty

The Protector of Citizens visited locations in Belgrade where people who are considered homeless gather during the day, in order to check the conditions in which they live and whether there are children among them. After making sure that homeless people could still be found on the city streets and that there were no children among them during the visit, the Protector of Citizens sent letters to the Ministry of Labor, Employment, Veterans and Social Affairs and the Belgrade City Center for Social Work, in which he pointed out the particularly difficult position of this sensitive category

¹ Decision on Declaring a State of Emergency, "Official Gazette of the RS", number 29, dated March 15th, 2020.
Decision to Abolish the State of Emergency, "Official Gazette of the RS", number 65, dated May 6th, 2020.

² Available in English at:

<https://www.ombudsman.rs/attachments/article/6658/Report%20on%20Protector%20of%20Citizens'%20activities%20during%20COVID-19%20pandemic.pdf>

during the Coronavirus pandemic. The Ministry was asked to issue instructions to all Centres for Social Work in the territory of the Republic of Serbia to undertake measures within their competences in order to take care of the homeless. The Belgrade City Center for Social Work was requested to issue instructions to all its departments to undertake measures within their competencies in order to take care of the homeless persons.

Objective 3: Good Health and Wellbeing

During the State of Emergency, parents addressed the Protector of Citizens regarding the postponement of the vaccination of babies, expressing concern for the health of their children if the planned revaccination calendar is departed from. As an example of good practice, the Protector of Citizens points out the activities of the Health Center New Belgrade, whose employees, after a complainant simultaneously addressed the Health Center and the Protector of Citizens regarding the mandatory immunization of her daughter, contacted the Complainant and solved the problem she addressed. The Protector of Citizens was informed about the action applied.

At a meeting in early October 2020, members of the "Youth Advisory Panel" of the Protector of Citizens stated that during the State of Emergency they faced feelings of encasement, isolation, fear, and as an additional problem they stated the accomodation to the of a new way of schooling, through online teaching³. They stated that the main wishes of primary and secondary school students throughout Serbia are to return to school desks, regular classes and to socialize with their peers in the breaks between classes.

The Protector of Citizens initiated proceedings against an institution for accommodation of children, since one of its protégés died after falling from the terrace, in the conditions of isolation due to the measures undertaken to prevent the spread of the infection caused by the COVID-19 virus. The Protector of Citizens suggested to the institution urgent mitigation of isolation measures due to negative effects it may have on its beneficiaries, and providing more adequate accommodation for children with severe behavioral disorders. He also suggested that the institution should review the isolation measures taken so far and should also consult with the epidemiological service and the relevant Ministry in relation to them, so that in the case of risk of infection transmission among the accomodated children, less restrictive measures should be implemented. This is primarily due to having in mind the negative effects of long-term isolation on accommodated children⁴.

Objective 10: Reduced Inequalities

During the State of Emergency, the Protector of Citizens pointed out that additional protective measures need to be taken, especially when it comes to members of particularly vulnerable groups, including residents of Roma settlements. The fact is that a large number of residents of informal settlements, of which there are close to six hundred inhabitants in the Republic of Serbia, do not have access to water, electricity or the Internet and are not able to maintain basic hygiene, let alone to enable the children to follow school programme. Taking preventive action, the Protector of Citizens organized meetings with the President of the National Council of the Roma National Minority and the Minister of Labor, Employment, Veterans and Social Affairs and sent letters to all local self-government units, urging them to undertake the necessary activities in all settlements inhabited by Roma, and to secure basic existential living conditions, primarily water for drinking and hygiene, food and hygiene packages. After the intervention of the Protector of Citizens, a cistern with water for drinking and hygiene was provided in the informal Roma settlement "Čukarička šuma", while the Ministry of Labor, Employment, Veterans and Social Affairs and the Serbian

³ Available at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6797-p-vr-n-r-gul-rnu-n-s-vu-gl-vn-z-lj-uc-ni-u-srbi-i>

⁴ <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6831-bl-z-r-iz-l-ci-i-d-v-ni-i-s-sh-d-c-s-p-r-c-u-p-n-sh-nju>

Red Cross provided food and hygiene packages⁵. Based on the data collected in the field, a Special Report of the Protector of Citizens with Recommendations⁶ was prepared and submitted to all local self-government units.

Objective 16: Peace, Justice and Strong Institutions

Already in the first week after the Declaration of the State of Emergency and the adoption of the Decree on the Organization of Work of Employers During the State of Emergency⁷, and then the Recommendations of the Ministry of State Administration and Local Self-Government for Organizing Work in Public Administrations and State Institutions⁸ which recommends that employers, when planning the organization of work should keep in mind that persons with established chronic diseases and persons older than 60 years of age are particularly endangered, and that a parent of a child under 12 years of age enjoys special protection, especially if she/he exercises parental rights alone, or if the work obligation has been imposed on another parent. The Protector of Citizens was addressed by citizens, employees of both state bodies and institutions and employees of private employers, with questions regarding the exercise of the right to work from home. The recommendation was difficult to comply with in situations where both parents were medical workers or police and military employees who had a work obligation throughout the State of Emergency. There were also single mothers under work obligation, whose employer was not able to organize their work from home. Another problem pointed out by the mothers of children under the age of 12, who are also health workers, was the employer's order to work in a health institution in another city, which further complicated the organization and functioning of their families. The child care problem was further exacerbated by the closing of schools and kindergartens, as parents with a work obligation had no one to entrust their children for out-of-school care, especially in circumstances of banning the movement of persons over 65 years of age, when elderly relatives were not able to help parents and children to overcome this problem. The Protector of Citizens has pointed out that in such situations it is necessary to make maximum efforts in organizing the work process and that it is necessary to assess the circumstances in each family respectively, making all decisions in agreement between the employer and the employee, taking into account the possible employment obligations of another parent.

One of the measures for protection against the importing of infectious diseases in the territory of the Republic of Serbia was the temporary suspension of all commercial international flights, as well as the restriction of crossing the state border by road, rail and river traffic. These measures led to a situation where a large number of the citizens of Serbia, including children, remained "trapped" at airports and border crossings across Europe, for which they turned to the Protector of Citizens. Using bilateral contacts with Ombudsmen in other countries and contacts with the competent Ministry and diplomatic and consular missions of Serbia abroad, the Protector of Citizens has made a significant contribution to the return of citizens to Serbia.

Due to difficulties in obtaining movement permits during the ban on movement of citizens caring for people with disabilities, the immobile elderly persons, and especially children, as well as all those who are in need of another person's assistance, the Protector of Citizens addressed the Prime Minister of the Republic of Serbia in order to overcome this problem in a timely manner⁹. The address resulted in the adoption of the Decree Amending the Decrees During the State of Emergency¹⁰

⁵ <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>

⁶ Available in English at: <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6656-special-report-of-the-protector-of-citiyens-with-recommendations>

⁷ „Official Gazette of the RS“, number 31/20.

⁸ Available at: https://www.media.srbija.gov.rs/medsrp/dokumenti/preporuka227_cyr.pdf.

⁹ Available at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6560-s-psh-nj-z-sh-i-ni-gr-d-n>

¹⁰ „Official Gazette of the RS“, numbers 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53/20 and 56/20.

enabling movement during the prohibition of movement of children with developmental disabilities and autism.

The Protector of Citizens was also addressed by parents who do not live with their children and with whom they have contact in accordance with final court decisions, emphasizing that children are denied to see them in situations when the duration of the travel ban overlaps with the time set for picking up and returning the children, because the competent authorities failed to issue movement permission to the parents. In relation to that, the Protector of Citizens addressed the Ministry of Labor, Employment, Veterans and Social Affairs and the Ministry of State Administration and Local Self-Government, pointing out the need to issue permits in the short term. Bearing in mind that the rights of the child cannot be restricted during a State of Emergency, the Protector of Citizens suggested to the parents that they should also apply in cases where they see children without a court decision, just based on a written and oral agreement with the other parent. After the citizens have pointed out that some local self-government units still refused to consider requests for movement during the ban on the movement of parents who maintain contact with children based on a court decision, the Protector of Citizens found out that the Ministry of Labor, Employment, Veterans and Social Affairs has issued an Instruction to Local Self-Governments stipulating that such requests shall not be considered, and that many local self-governments have informed citizens on their websites about its contents. The Protector of Citizens asked the representatives of local self-government units to forward to the competent Ministry of Labor, Employment, Veterans' Affairs and Social Affairs, without exception, requests for movement during the ban on movement submitted by parents whose right to maintain personal relations had been recognized either based on a final court decision or on the basis of written and oral agreements with the other parent, and then through direct contact with the Ministry it has been requested that such requests be approved as soon as possible. Following the intervention of the Protector of Citizens, the requests were approved enabling maintainance of personal relations between parents and children.

The Protector of Citizens sent an initiative to the Prime Minister of the Government of the Republic of Serbia to amend the Decree on Measures During a State of Emergency¹¹ in order to provide legal certainty, so that measures prohibiting movement during a State of Emergency would not apply to persons leaving apartments and houses in order to be protected against domestic violence. The Protector of Citizens also pointed out that it is necessary for the competent authorities to fully implement the Law on Prevention of Domestic Violence and for victims, who might include children, to have access to safe houses or other forms of alternative accommodation, as well as other assistance and support measures even during the State of Emergency.

The Protector of Citizens requested information from the Ministry of the Interior, the Ministry of Justice and the Ministry of Labor, Employment, Veterans' Affairs and Social Affairs regarding implementation of the Law on Prevention of Domestic Violence during the State of Emergency, the number of reported cases of domestic violence, implemented safeguard and support measures, as well as services available to victims of domestic violence. In response to the Protector of Citizens, the Ministry of Labour, Employment, Veteran and Social Affairs pointed out as one of the biggest problems lengthy waiting for the results of COVID-19 testing before accommodating victims in safe houses, which, according to available information, provided accommodation services also during the State of Emergency. This suggests a conclusion that during the State of Emergency there was a problem of non-existence of alternative accommodation services for victims of domestic violence, while they were waiting for the results of COVID-19 tests.

During the state of emergency, one of the problems that citizens pointed out in their addresses was the implementation of educational-pedagogic work by distance learning, where the Protector of Citizens provided additional explanations to citizens. Citizens expressing concern about the position of eighth grade pupils and the obligation to take the final exam were informed that the Protector of

¹¹ „Official Gazette of the RS”, numbers 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53/20, 56/20, 57/20, 58/20 and 60/20.

Citizens would monitor how the rights of the child are respected. Special attention was paid to the enrollment of pupils into secondary schools, due to new circumstances faced by the pupils of the primary schools' final grade. The Protector of Citizens also addressed the Ministry of Education, Science and Technological Development asking for information on how teaching was organized in situations where students could not attend distance learning, i.e. how is it organised for children with disabilities.

The Protector of Citizens has established that the Center for Social Work of the City of Novi Sad, by failing to fulfil its competencies during the State of Emergency declared due to COVID-19 pandemic, denied the right to protection against sexual exploitation, violence, abuse and neglect of children whose family was under corrective supervision of that Center. The Protector of Citizens asked the authorities to provide in the future, direct and continued corrective supervision, especially in case of suspected sexual abuse of a child, and to set clear work priorities in case of state of emergency, emergency situation or extraordinary circumstances¹².

In order to enforce the judgment of the European Court of Human Rights in Strasbourg, *Zorica Jovanović v. Serbia*, the National Assembly of the Republic of Serbia passed the Law on Establishing the Facts on the Status of Newborn Children Suspected of Having Disappeared from Maternity Wards in the Republic of Serbia¹³, which has become effective on March 11th, 2020. Based on this Law, the Protector of Citizens is authorized to initiate the procedures in front of the relevant courts, on behalf of parents and all the other authorized persons, in order to establish the facts about the status of a new-born child who is suspected of having disappeared from a maternity ward in Serbia, which was applied in several cases. The Protector of Citizens pointed out that the legal deadline for initiating court proceedings to establish the facts about "missing babies", which expired on September 11, 2020, should be extended for more than a month and a half, for as long as the State of Emergency had been into force due to the COVID-19 epidemic, because in that period by a Decree of the Government of Serbia, all deadlines in court proceedings ceased to run. In relation to that, the Protector of Citizens invited the courts to take into consideration the Decree of the Government of Serbia on Deadlines in Court Proceedings During the State of Emergency declared on March 15, 2020, which became effective on March 20, 2020¹⁴. Article 1 of the quoted Decree prescribes that the deadlines for initiating out-of-court proceedings (according to which the procedures for establishing the facts about "missing babies" are conducted) cease to run during the State of Emergency. The Decree of the Government of Serbia ceased to be valid on the day of abolition of the State of Emergency, on May 06, 2020, when the legal deadlines continued to run.

¹² Available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/6779-v-nr-dn-s-nj-n-z-bi-i-pr-vd-nj-z-s-vlj-nj-d-c-b-z-z-sh-i>

¹³ "Official Gazette of the RS", number 18, dated March 3rd, 2020.

¹⁴ Available at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6767-o-4>