

**SPECIAL REPORT OF THE OMBUDSMAN**  
**STATUS OF CHILDREN'S RIGHTS IN THE REPUBLIC**  
**OF SERBIA**

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## Table of Contents

1. INTRODUCTION.....	8
2. GENERAL MEASURES TO IMPLEMENT THE CONVENTION ON THE RIGHTS OF THE CHILD .....	10
2.1. Introductory Remarks.....	10
2.2. General Measures to Implement the Convention on the Rights of the Child.....	10
2.3. Recommendations Addressed to the Republic of Serbia.....	12
2.4. Implementation of General Measures in Serbia.....	13
2.4.1. Legislation.....	13
2.4.2. Overarching Policies and Strategies.....	16
2.4.3. Institutional Framework and Inter-Institutional Coordination.....	17
2.4.4. Budgetary Allocations for Children .....	20
2.4.5. Information Dissemination and Training.....	21
2.4.6. Data Collection.....	22
2.4.7. Cooperation with Civil Society Organisations .....	23
2.4.8. International Cooperation .....	23
2.5. Recommendations.....	24
3. GENERAL PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD .....	26
3.1. Introductory Remarks.....	26
3.2. International Standards .....	26
3.2.1. Right to Non-Discrimination.....	26
3.2.2. Respect for the Best Interests of the Child.....	29
3.2.3. Right to Life, Survival and Development.....	30
3.2.4. Respect for the Views of the Child .....	30
3.3. International Bodies' Recommendations Addressed to the Republic of Serbia .....	31
3.3.1. Right to Non-Discrimination.....	31
3.3.2. Best Interests of the Child .....	32
3.3.3. Right to Life, Survival and Development.....	32
3.3.4. Respect for the Views of the Child .....	32
3.4. Elaboration of General Principles in Domestic Law .....	33
3.5. Implementation of General Principles in Practice .....	35
3.5.1. Right to Non-Discrimination.....	35
3.5.2. Respect for the Best Interests of the Child.....	36
3.5.3. Right to Life, Survival and Development.....	37
3.5.4. Respect for the Views of the Child .....	39

3.6.	Recommendations.....	40
3.7.	Recommendations of Children and Youth: .....	41
4.	PROTECTION OF CHILDREN AGAINST VIOLENCE.....	44
4.1.	Introductory Remarks.....	44
4.2.	International Standards .....	44
4.3.	International Bodies’ Recommendations Addressed to the Republic of Serbia .....	49
4.4.	Violence against Children .....	52
4.5.	Legal Framework for the Protection of Children against Violence.....	56
4.5.1.	Laws and Bylaws .....	57
4.5.2.	Rulebooks and Protocols.....	61
4.5.3.	Strategic Documents.....	62
4.5.4.	Alignment of National Legislation with International Standards .....	63
4.6.	Protection of Children against Violence – System-Wide Institutional Response.....	65
4.7.	Recommendations.....	70
4.8.	Recommendations of Children and Youth: .....	75
5.	FAMILY SETTINGS AND ALTERNATIVE CARE FOR CHILDREN.....	77
5.1.	Introductory Remarks.....	77
5.2.	International Standards .....	77
5.3.	International Bodies’ Recommendations Addressed to the Republic of Serbia .....	79
5.4.	Family Settings and Alternative Care for Children in Serbia .....	80
5.4.1.	Legal Framework .....	80
5.4.2.	State of Affairs in Practice.....	83
5.5.	Recommendations.....	89
5.6.	Recommendations of Children and Youth: .....	91
6.	HEALTH CARE AND SOCIAL PROTECTION .....	92
6.1.	Introductory Remarks.....	92
6.2.	International Standards .....	92
6.3.	International Bodies’ Recommendations Addressed to the Republic of Serbia .....	99
6.4.	Legal Framework for Health Care and Social Protection of Children in the Republic of Serbia 101	
6.4.1.	Legislative Overview.....	101
6.4.2.	Legislative Weaknesses.....	107
6.4.3.	Practical Challenges and Difficulties.....	109
6.5.	Recommendations.....	117
6.6.	Recommendations of Children and Youth: .....	119
7.	EDUCATION.....	122

7.1.	Introductory Remarks.....	122
7.2.	International Standards .....	122
7.3.	International Bodies' Recommendations Addressed to the Republic of Serbia .....	126
7.4.	Children's Education in the Republic of Serbia .....	127
7.4.1.	Legislative Overview.....	127
7.4.2.	Legislative Weaknesses.....	134
7.4.3.	Practical Challenges and Difficulties.....	137
7.5.	Recommendations.....	144
7.6.	Recommendations of Children and Youth: .....	146
8.	SPECIAL PROTECTION MEASURES (Children in Street Situations, Children on the Move, Roma Children) .....	149
8.1.	Introductory Remarks.....	149
8.2.	International Standards .....	149
8.3.	International Bodies' Recommendations Addressed to the Republic of Serbia .....	159
8.4.	Special Protection Measures in the Republic of Serbia .....	162
8.4.1.	Legislative Overview.....	162
8.4.2.	Legislative Weaknesses.....	166
8.4.3.	Practical Challenges and Difficulties.....	167
8.5.	Recommendations.....	174
8.6.	Recommendations of Children and Youth : .....	176

## 1. INTRODUCTION

The Constitution of the Republic of Serbia guarantees the enjoyment of human rights by children in line with their age and mental maturity, while leaving the detailed regulation of children's rights to laws. The Republic of Serbia has ratified all key international treaties pertaining to the exercise and protection of children's rights, thus committing to ensure to each child in its territory the highest level of enjoyment of the rights guaranteed under international treaties. Over the past decade, a multitude of regulations affecting the exercise, protection and promotion of children's rights have been enacted or amended, and a range of strategic documents in this area have been adopted.

During this period, the Republic of Serbia submitted its first reports to the Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child and Optional Protocols thereto. In its Concluding Observations, the Committee addressed a number of recommendations to the Republic of Serbia. Acting upon some of them, the Republic of Serbia has improved the institutional and legal framework for children's rights, including the introduction of independent oversight through the establishment of an independent authority – the Ombudsman – whose mandate includes the exercise, protection and promotion of children's rights.

During its almost 11 years of operation, the Ombudsman has raised numerous issues that need to be addressed with a view to promoting children's rights guaranteed under the Convention on the Rights of the Child. A range of recommendations, opinions, positions and proposals by this authority have contributed to improving the status of children in the health care system, education, social protection system, proceedings before law enforcement authorities, sports etc., as well as to remedying deficiencies in a number of areas (civil registration, registration of permanent residence, issuing of documents, freedom of movement for children and others). As a matter of priority, the Ombudsman has addressed the issues of protecting children against violence, abuse, neglect and exploitation, the status of Roma children, children in a street situation and children on the move, promoting and protecting the rights of children with disabilities, as well as the status of every child in a position of vulnerability.

Every year, in its reports to the National Assembly on the status of human rights, the Ombudsman has devoted particular attention to the situation in the area of children's rights. In the Ombudsman's annual reports, this area has been dealt with in a dedicated unit; the improvements and weaknesses in the area of children's rights have been identified precisely and comprehensively, and numerous proposals and recommendations concerning the improvement of children's status in Serbia have been made.

At the end of 2018, the Ombudsman wishes to present the state of affairs in the area of children's rights at this point in time. In the development of this report, the Ombudsman has been guided by the Convention on the Rights of the Child; thus, the Report includes an overview of the relevant provisions of the Convention and an overview of recommendations of the Committee on the Rights of the Child, in each area of children's rights, which are also defined and ordered following the Convention and the practice of the Committee on the Rights of the Child. The

Report also provides an up-to-date overview of the key regulations in these areas, with the legislative weaknesses detected and proposals to improve the legal framework. The Ombudsman's assessments are based on this authority's direct experience of how authorities apply the regulations and what legislative weaknesses present obstacles to authorities in their effective and speedy work to protect and fulfil children's rights in compliance with the standards for action on children.

Further, the Report provides an up-to-date overview of the situation with regard to the modality of authorities' work. Although it includes critical assessments of authorities' work, the Report is not aimed at criticism for criticism's sake; instead, by pointing to weaknesses, it aims to highlight the areas where changes in authorities' approach and work are necessary, or even pressing, in order to ensure that every child can exercise the rights guaranteed under the Constitution, the Convention on the Rights of the Child, the laws and regulations adopted pursuant to the laws. Moreover, the Report also includes an overview of the circumstances and factors that materially hinder, restrict, or even preclude authorities from fully applying the existing instruments and standards for the fulfilment and protection of children's rights and developing new ones.

The Report on the Status of Children's Rights in Serbia is, in a way, a testimony to the progress made, as well as to the weaknesses that evidently still persist, due to which children's rights are not fulfilled and protected to the fullest extent. It is, at the same time, an accurate overview of the areas of greater progress and those where the advancement of children's status has yet to gain full momentum. In that respect, this Report is a tool for authorities at all levels, to be used in planning their future approach to children's rights and status, and working towards the achievement of the highest standard in the fulfilment and protection of children's rights.

## 2. GENERAL MEASURES TO IMPLEMENT THE CONVENTION ON THE RIGHTS OF THE CHILD

### 2.1. Introductory Remarks

General measures to implement the Convention on the Rights of the Child (hereinafter: CRC) comprise all measures geared towards building a just state founded on the rule of law and social justice, which responds to the needs of children and their families and ensures the respect for and protection of children's rights and their equal treatment and social inclusion. General measures create a legal and social environment in which every child under the jurisdiction of the state can enjoy all the rights guaranteed by the CRC under equal conditions, which entails access to all assets in society and the possibility of developing all of his/her potentials to the fullest extent.

### 2.2. General Measures to Implement the Convention on the Rights of the Child

The CRC does not specify the *implementing measures* to be taken by the State Party to ensure the full respect for the rights and principles contained therein. Article 4 of the CRC reads: "*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.*" In its *General Comment No 5: General measures of implementation of the Convention*<sup>1</sup>, the Committee elaborated in more detail the aim and content of general measures.

In the Committee's view, it is essential to ensure that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced. In legislative terms, States Parties should ensure that the provisions of the Convention have legal effect within their legal systems. With regard to the protection of rights guaranteed by the CRC, it is necessary to provide efficient remedies in cases of violations. The Committee's position is that judicial protection should be provided not only for civil and political, but also for economic, social and cultural rights of children<sup>2</sup>. Given that children face real difficulties in pursuing remedies for breaches of their rights owing to their special and dependent status, States are required to give particular attention to ensuring that judicial procedures are available to children and their representatives<sup>3</sup>.

The implementation of the CRC calls for coordination among different sectors and branches of government, as well as among different levels of government and between the state and the civil society, including, in particular, children and youth<sup>4</sup>. On the other hand, all authorities should act on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention<sup>5</sup>. In order to be effective, such a strategy needs to take account of the situation

<sup>1</sup> CRC/GC/2003/5, 27 November 2003, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f9&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f9&Lang=en).

<sup>2</sup> CRC, para. 6.

<sup>3</sup> *Ibid.*, para. 24.

<sup>4</sup> *Ibid.*, para. 27.

<sup>5</sup> *Ibid.*, para. 29.

of all children and all the rights in the Convention, and needs to be developed through a process of consultation, including with children and youth and those living and working with them. Particular attention must be given to identifying and giving priority to marginalized and disadvantaged groups of children<sup>6</sup>. The strategy should set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children, and be underpinned by adequate financial and human resources<sup>7</sup>.

The Committee emphasises the need for coordination of government authorities to ensure effective implementation of the CRC – coordination among central government departments, among different provinces and regions, between central and other levels of government and between Government and civil society. The goal of such coordination is to ensure that the fulfilment of the obligations flowing from the CRC involves not only those authorities that have a substantial impact on children – education, health or welfare – but also all other government authorities, including those responsible for finance, planning, employment etc<sup>8</sup>.

In order for the best interests of the child to be fulfilled in all actions concerning children, it is essential to monitor the impact of laws, policies and budgets on children continuously<sup>9</sup>, while ensuring that children themselves are involved in policy-making<sup>10</sup>. It is necessary to ensure the collection of sufficient and reliable data on children, disaggregated so as to enable the identification of discrimination and/or disparities in the realization of rights<sup>11</sup>.

The Committee stresses the need for sufficient budget allocations for the social sector and, within that, for children, ensuring that children are protected from the adverse effects of economic policies or financial downturns<sup>12</sup> and that structural adjustment programmes and transition to a market economy do not compromise the fulfilment of children's economic, social and cultural rights<sup>13</sup>. The standards with regard to public funds allocated for the realisation of children's rights are elaborated in *General Comment No 19 on public budgeting for the realization of children's rights of 2016*<sup>14</sup>.

An important general measure for CRC implementation is training and capacity building for all those involved in the process of CRC implementation – government officials, parliamentarians and members of the judiciary – and for all those working with and for children<sup>15</sup>. States are expected to carry out periodic evaluations of training effectiveness, looking into not only knowledge of the CRC, but also the extent to which the training contributes to the establishment of attitudes and practices that actively promote the fulfilment of children's rights<sup>16</sup>.

The Committee points to the need to involve all societal stakeholders in CRC implementation, including children themselves, stressing the especially important role of non-governmental organisations and their networks and federations in this. It also notes the importance of independent children's human rights institutions, whose role, in the Committee's

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<sup>6</sup> *Ibid.*, para. 29 and 30.

<sup>7</sup> *Ibid.*, para. 32.

<sup>8</sup> *Ibid.*, para. 37.

<sup>9</sup> *Ibid.*, para. 46.

<sup>10</sup> *Ibid.*, para. 47.

<sup>11</sup> *Ibid.*, para. 48.

<sup>12</sup> *Ibid.*, para. 51.

<sup>13</sup> *Ibid.*, para. 52.

<sup>14</sup> CRC/C/GC/19, 20 July 2016, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en).

<sup>15</sup> *Ibid.*, para. 53 CRC.

<sup>16</sup> *Ibid.*, para. 55 CRC.

view, is to independently monitor States' compliance with obligations and progress in CRC implementation and to do all within their capacities to ensure the full respect for children's rights. Importantly, however, the state may not delegate its CRC monitoring obligations to an independent institutions.

General measures also include comprehensive strategies to disseminate knowledge about the CRC throughout society, as well as to include human rights education in regular education curricula<sup>17</sup>.

The Convention explicitly requires States to make their reports widely available to the public immediately after they are submitted to the Committee, which includes translation into all languages used and into forms accessible to children and to people with disabilities, as well as their dissemination on the Internet<sup>18</sup>.

### **2.3. Recommendations Addressed to the Republic of Serbia**

In the Concluding observations on the combined Second and Third periodic reports on the implementation of CRC of 2017<sup>19</sup>, the Committee noted the positive developments and made several key recommendations.

In the area of legislation, the recommendation is to enact a comprehensive children's act and introduce a child rights impact assessment procedure for all new legislation adopted at the national level, as well as to amend the Law on the means of determining the maximum number of public sector employees to ensure that its austerity provisions do not have negative impacts on the quality and efficiency of services provided to children.

The adoption of a new strategy is also recommended, in consultations with all relevant stakeholders, including children, and accompanied by all the elements for its application, monitoring and regular assessment of its efficiency.

In the area of coordination at the cross-sectoral, national and local levels, the Committee recommends strengthening the role of the Council for Child Rights as the principal institutional coordinating mechanism, which should be provided with the necessary human, technical and financial resources for efficient operation. The Committee further notes that it is necessary to encourage systematic scrutiny of the adoption and implementation of legislation, policies and recommendations by the Committee on Child Rights of the National Assembly.

The Committee's recommendations include changes in the budgeting process to ensure clear and increased allocations for children, specific indicators, systems to monitor and evaluate the allocation and spending of resources, with the participation of the public, especially children.

With regard to data collection and management at the central and local government level, the recommendation is to disaggregate data by, among others, age, sex, disability, geographic location, ethnic and national origin and socioeconomic background, in order to facilitate analysis of the situation of all children, particularly those in situations of vulnerability, and to ensure that data are used by ministries for the formulation, monitoring and evaluation of policies, programmes and projects.

The Committee points to the need to ensure the privacy and protection of child victims, particularly when monitoring and follow-up visits to institutions are undertaken within the Ombudsman's role as the National Preventive Mechanism, as well as to ensure capacity-building

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<sup>17</sup> *Ibid.*, para. 69 CRC.

<sup>18</sup> *Ibid.*, para. 72 CRC.

<sup>19</sup> CRC/C/SRB/CO/2-3, 3 March 2017, available at:

[http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komiteta\\_za\\_prava\\_deteta\\_srb.doc](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_deteta_srb.doc)

and training for staff of the Ombudsman's office on issues related to children's rights; it is also recommended to adopt a law establishing an independent specialist institution on children's rights, with appropriate resources.

Recommendations are given to improve information dissemination and raising awareness of the CRC, in cooperation with civil society organisations and with the involvement of children themselves, while paying particular attention to information dissemination in remote and rural areas and among children from minority groups. The need for adequate and systematic training and sensitisation of professionals working with and for children was noted, as well as the need to include children's rights topics in school curricula at all levels and in media features.

## 2.4. Implementation of General Measures in Serbia

The general measures for the implementation of the Convention in Serbia are linked to the measures undertaken to build a just state founded on the rule of law and social justice, in which all have equal rights and equal opportunities. On the other hand, certain general measures are undertaken to establish an adequate legal, institutional and strategic framework, with a view to improving the situation and attaining the international standards in the area of children's rights.

### 2.4.1. Legislation

The Republic of Serbia, as the successor state of the State Union of Serbia and Montenegro, is party to all core international human rights treaties, including the CRC and the two optional protocols thereto: *Optional Protocol on the sale of children, child prostitution and child pornography* of 2000<sup>20</sup> and the *Optional Protocol on the involvement of children in armed conflict* of 2000<sup>21</sup>. The *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*<sup>22</sup> and the *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* have been ratified.<sup>23</sup> In February 2012, the Republic of Serbia also signed the third *Optional Protocol on a Communications Procedure* of 2011, but has not ratified it yet, although the Ombudsman launched the initiative for it in 2014, with the support of the Network of Organizations for Children of Serbia, which comprises 93 organisations dealing with child rights<sup>24</sup>.

The integration of the concept of child rights in the Republic of Serbia's legal system was strongly encouraged by the Constitution of the Republic of Serbia of 2006, which, for the first time in Serbia's constitutional law, guarantees "the right to the enjoyment of human rights in line with their age and mental maturity" to children. The Constitution, however, does not contain a definition of the child, nor does it expressly proclaim the fundamental principles of the CRC.

In recent years, many areas of law have been reformed and noticeable efforts made to align laws with the international standards of the Convention and improve the status of children. About 100 laws, which are not always mutually consistent, are relevant to the area of child rights, and there are also legal voids, leading to legal uncertainty. This is influenced by the process of legislative alignment and improvement, which is conducted piecemeal rather than in a coordinated and comprehensive manner; in designing legal provisions, the impact of laws on

<sup>20</sup> Official Journal of the Federal Republic of Yugoslavia (FRY) – International Treaties No 22/02.

<sup>21</sup> *Ibid.*

<sup>22</sup> Official Gazette of RS – International Treaties No 20/15.

<sup>23</sup> Official Gazette of RS – International Treaties No 12/13.

<sup>24</sup> Available at: <https://www.ombudsman.rs/index.php/zakonske-i-druge-inicijative/3514-2014-10-21-10-20-25>.

children and the fulfilment of the basic principles of child rights are insufficiently taken into account.

The alignment of the domestic legislation with the CRC standards is also hindered by the absence of a comprehensive framework law – the *Law on the Rights of the Child*; the initiative for its enactment was launched by the Ombudsman, under whose auspices a working draft Law on the Rights of the Child<sup>25</sup> was prepared in 2011. The passage of this law would enable establishing the standards and principles at the state level, in order that all sector-specific laws could be aligned with them.

A single definition of the child consistent with the CRC still does not exist in the Republic of Serbia's legal system. The definition of the “child” may be indirectly deduced from the provision of Art. 37 of the Constitution, which stipulates that majority is attained at the age of 18, and the provision of Art. 11 of the Family Law, which also stipulates that majority is attained at the age of 18. These provision give rise to the conclusion that any human being below the age of 18 is considered a child. On the other hand, terminological confusion is present in legal texts with regard to the terms used to denote the concept of “child”, as the Constitution and laws use different terms that denote children, and in some cases the child is denoted by different terms in the same legal text.

Article 64 of the Constitution of the Republic of Serbia, which guarantees the rights of the child, uses the term “child”, while Art. 32 on the right to a fair trial uses the term “juvenile”. The Family Law also uses the term “child”, without a legal definition of this concept, but its Art. 64 on legal capacity uses the term “younger juvenile” for a child below the age of 14 and the term “elder juvenile” for a child aged 14 and above.

The Criminal Code<sup>26</sup> specifies that “a child is a person who has not attained 14 years of age”, “a minor is a person who has not attained 18 years of age”, while “a juvenile is a person over 14 years of age but who has not attained 18 years of age”<sup>27</sup>.

The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles<sup>28</sup> defines the concept of “juvenile” as a person who, at the time of commission of a criminal offence, has attained the age of 14 but has not attained the age of 18; the Law also distinguishes the concepts of “younger juvenile” – a person who, at the time of commission of a criminal offence, has attained the age of 14 and has not attained the age of 16, and “elder juvenile” – a person who, at the time of commission of a criminal offence, has attained the age of 16 and has not attained the age of 18<sup>29</sup>.

The Law on Health Care<sup>30</sup> uses the terms “child” and “minor”, with the exception of Art. 88 and 128, where the term “youth” is used as well, without a definition.

The Law on Social Protection<sup>31</sup> uses the term “minor” synonymously with “child”, and the expressions “young person”, “young people” and “youth” are used to denote adult persons, up to the age of 26<sup>32</sup>.

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<sup>25</sup> Available at: <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/2012/779-12.pdf>.

<sup>26</sup> Official Gazette of RS Nos 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16.

<sup>27</sup> Art. 112 of the Criminal Code.

<sup>28</sup> Official Gazette of RS No 85/05.

<sup>29</sup> Art. 3 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles.

<sup>30</sup> Official Gazette of RS Nos 107/05, 72/09 – amended by another law, 88/10, 99/10, 57/11, 119/12, 45/13 – amended by another law, 93/14, 96/15, 106/15 and 113/17 – amended by another law.

<sup>31</sup> Official Gazette of RS No 24/11.

<sup>32</sup> Art. 41, para. 2 of the Law on Social Protection.

Owing to the definition of the child in the Criminal Code, which is not consistent with the CRC definition, the scope of criminal protection is determined by the age of child victims. For more information on this matter, see the section “Protection of Children against Violence”.

Given the state of affairs in the legislation described above, legislative interventions are needed in order to define the terms to be used in different laws clearly and precisely. The Ombudsman's position is that the future Law on the Rights of the Child, whose enactment was proposed already in 2009, must contain a definition of the term “child”, which would have an impact on the entire national legislation.

In the process of legal reforms, the Ombudsman provided expert opinions on specific draft laws relevant to the realisation and protection of child rights; some of these opinions, for instance proposals concerning the criminalisation of gender-based violence, were prepared in cooperation with CSOs<sup>33</sup>. A range of Ombudsman's opinions and proposals were accepted:

- *Following the Ombudsman's Opinion<sup>34</sup>, the Bill on Border Control was improved by ensuring its consistency with the provisions of the Family Law and the Law on Travel Documents;*
- *The passage of the Law on Housing and Building Maintenance, in accordance with the opinion provided by the Ombudsman<sup>35</sup>, brought an improvement in the fulfilment of the state's obligations to ensure an adequate standard of living and the necessary conditions for the survival, life and proper development of children, social protection and support and assistance to parents and families with children in the area of housing, undertaken by the ratification of the Convention on the Rights of the Child<sup>36</sup>.*
- *Having taken into account the Ombudsman's assessment that professionals working directly with children lack knowledge of the importance of early age and that programmes of investment in the provision of the most advantageous conditions for development in early age are necessary<sup>37</sup>, as well as this authority's recommendations to organise national campaigns to promote the importance of early childhood development, the Government adopted the Decree on the National Early Childhood Development Programme.*
- *In accordance with the Ombudsman's Opinion<sup>38</sup>, the Law on Financial Support to Families with Children stipulates that a mother who is not a citizen of Serbia (in cases where the father and the child are citizens) and has the status of foreigner with permanent residence may be eligible for the birth grant; in addition, single-parent families are eligible for financial support where the enforcement of the judgment awarding child support cannot be ensured by the available remedies, and the child support amount is no longer included in the family income where income level is an eligibility requirement.*

However, some opinions and proposals of the Ombudsman were not accepted, entirely or partially, which has had a negative impact on the realisation of child rights.

In recent years, practices that result in lowering, instead of improving, the attained level of child rights realisation have been observed in the adoption and amendment of legislation. The Law on the Police lowers the attained standard of child rights realisation in the exercise of police

<sup>33</sup> Initiative to amend the Criminal Code, available at: <https://www.ombudsman.rs/index.php/lang-sr/zakonske-i-druge-inicijative/1529-2011-10-14-09-40-39>.

<sup>34</sup> Available at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/5554-o-2>.

<sup>35</sup> Available at: <http://www.zastitnik.rs/index.php/2011-12-11-11-34-45/4985-ishlj-nj-z-sh-i-ni-gr-d-n-n-s-n-cr-z-n-s-n-v-nju-i-drz-v-nju-zgr-d>.

<sup>36</sup> Official Journal of the Socialist Federal Republic of Yugoslavia (SFRY) – International Treaties No 15/90 and Official Journal of FRY – International Treaties Nos 4/96 and 2/97.

<sup>37</sup> The recommendations are available at: <http://www.zastitnik.rs/index.php/lang-sr/component/content/article/1598>.

<sup>38</sup> Available at: <https://www.ombudsman.rs/index.php/2011-12-11-11-34-45/4583-2016-01-30-12-29-48>.

powers in respect of juveniles, since it no longer contains the provision that police powers may be exercised in respect of a juvenile only in the presence of a parent, guardian or representative of the guardianship authority<sup>39</sup>. In addition, according to the newly enacted Law, police powers may be exercised by all police officers, except in the case of questioning of a juvenile in the capacity of a suspect and gathering information from a minor, whereas, under the former Law, this was allowed only to police officers specifically trained in working with juveniles. The legislation restricting hiring in public institutions<sup>40</sup> has had a particularly negative impact on the provision of child services and, at the same time, suspended the implementation of regulations governing the standards of professional work with children and staffing norms in institutions involved in child service provision and child rights protection (social protection, education etc.). Although, in 2017, the Committee expressed its concern that Serbia's Law on the Modality of Determining the Maximum Number of Public Sector Employees had a negative impact on the provision of child services in the State party<sup>41</sup>, these measures have remained in force.

## 2.4.2. Overarching Policies and Strategies

Improvement in the area of child rights entails a comprehensive and consistent state policy on children, set by strategic documents.

The *National Plan of Action for Children* of 2004<sup>42</sup>, which expired in 2015, did not cover all areas of child rights, and its effects were not formally evaluated. The delay in the adoption of a new strategic document in the area of child rights is especially concerning – a drafting group was established only in April 2018.

The *National Strategy for Preventing and Protecting Children against Violence*<sup>43</sup> and its implementing Action Plan also expired three years ago, and their efficiency and implementation were not evaluated. The *Draft Strategy for Preventing and Protecting Children against Violence* was prepared in 2018, but has not been adopted yet.

Especially important for the prevention of discrimination against children is the *Anti-Discrimination Strategy* of 2013<sup>44</sup>, which recognises children as one of the nine vulnerable groups targeted by specific anti-discrimination measures and activities. The Action Plan for its implementation (2014-2018) is in its final year. Some of the activities from the Action Plan for the implementation of the Anti-Discrimination Strategy have not been performed, although the completion deadline has passed or the activities are of a continuous nature. The achievement of the set indicator targets was assessed inadequately in the reports for the fourth quarter of 2014 and the first quarter of 2015, based on the Action Plan Monitoring Questionnaire prepared and disseminated to the competent authorities by the Office for Human and Minority Rights.

<sup>39</sup> Art. 38 of the Law on the Police, Official Gazette of RS Nos 101/05, 63/09 – amended by Constitutional Court decision, 92/11 and 64/15 – ceased to be in force on 4 February 2016.

<sup>40</sup> The Law Amending the Budget System Law (Official Gazette of RS No 108/13), introducing a public sector hiring freeze, which is still in force, and the Law on the Modality of Determining the Maximum Number of Public Sector Employees (Official Gazette of RS Nos 68/15 and 81/16– amended by Constitutional Court decision).

<sup>41</sup> Para. 6 of the CRC Concluding Observations, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSRB%2fCO%2f2-3&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSRB%2fCO%2f2-3&Lang=en)

<sup>42</sup> Available at: <http://www.savetappravadeteta.gov.rs/content/documents/nacionalni.plan.akcije.za.decu.pdf>.

<sup>43</sup> Available at: [http://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=521:2013-03-14-10-15-24&catid=42:2012-04-09-13-00-07&Itemid=87](http://www.pravadeteta.com/index.php?option=com_content&view=article&id=521:2013-03-14-10-15-24&catid=42:2012-04-09-13-00-07&Itemid=87).

<sup>44</sup> Official Gazette of RS No 60/13.

Some expired strategies have been superseded by new ones, such as the *National Youth Strategy 2015-2025*<sup>45</sup>. However, in some areas, there are delays in the adoption of new strategies, some of which are immediately relevant to the realisation of child rights, such as the *Strategy for the Prevention and Elimination of Domestic and Intimate Partner Violence*<sup>46</sup>.

In the area of child rights, especially relevant are strategic documents addressing specific social groups or specific sectors, including the *Action Plan for the Realisation of the Rights of National Minorities* of 2016<sup>47</sup>, *Strategy for Social Inclusion of the Roma in the Republic of Serbia (2016-2025)*<sup>48</sup>, *National Gender Equality Strategy (2016-2020) with the Action Plan 2016-2018*<sup>49</sup>, *Strategy for the Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children, and Protection of Victims (2017-2022)*<sup>50</sup>, *Strategy for Education Development until 2020*<sup>51</sup> etc. The *Strategy for Fighting High-Technology Crime 2019-2023*<sup>52</sup> has been adopted as well; amongst other things, it foresees enhancing cooperation at the national, regional and international levels to prevent sexual exploitation of children and juveniles.

Despite the numerous strategies, both those concerning children and those concerning all citizens, there is no comprehensive overview of the goals and activities pertaining to children; in addition, the practice of monitoring the implementation of these documents or evaluating their impact on children has not been established.

### 2.4.3. Institutional Framework and Inter-Institutional Coordination

The institutional framework for child rights comprises institutions within the legislative and executive branches of government, as well as courts competent for child rights protection, while the independent oversight authorities for the protection of human rights play a special role.

Some institutions whose primary mandate concerns child rights do not entirely fulfil their role. Thus, the Committee on Child Rights of the National Assembly met only three times during 2018; however, the consideration of bills from the aspect of child rights protection<sup>53</sup>, which is one of its key tasks, was not on the agenda of any of its meetings.

The Council on Child Rights, a governmental advisory body first established in 2002, was restored in 2014, and has operated in its present composition since July 2017.<sup>54</sup> An analysis of the Council's mandate shows that its role is: to propose policies and measures targeting children in accordance with international standards, to raise awareness on child rights in Serbia, to promote children's participation in formulating and implementing policies concerning the protection of their rights, as well as to analyse the impact of the measures taken on the realisation of child rights and monitor the fulfilment and protection of child rights in Serbia. The Council, however, is not

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<sup>45</sup> Official Gazette of RS No 22/15.

<sup>46</sup> Official Gazette of RS No 27/11.

<sup>47</sup> Available at:

[http://www.ljudskaprava.gov.rs/sites/default/files/prilog\\_fajl/akcioni\\_plan\\_za\\_sprovodjenje\\_prava\\_nacionalnih\\_manjina\\_-\\_sa\\_semaforom.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/prilog_fajl/akcioni_plan_za_sprovodjenje_prava_nacionalnih_manjina_-_sa_semaforom.pdf).

<sup>48</sup> Official Gazette of RS No 26/16.

<sup>49</sup> Official Gazette of RS No 4/16.

<sup>50</sup> Official Gazette of RS No 77/17.

<sup>51</sup> Official Gazette of RS No 107/12.

<sup>52</sup> Available at: [http://www.srbija.gov.rs/vesti/dokumenti\\_sekcija.php?id=45678](http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678).

<sup>53</sup> Art. 47 and 67 of the Rules of Procedure of the National Assembly, consolidated text, Official Gazette of RS No 20/12.

<sup>54</sup> Decision on the Relief of Duty and Appointment of the Chair, Secretary and Members of the Council on Child Rights, 24 No 119-7123/2017, dated 27 July 2017.

envisaged as a body tasked with coordinating the work of different sectors; thus, a body with mandate and sufficient capacity and resources to coordinate the operation of state authorities and other societal stakeholders practically does not exist at the state level. Consequently, interministerial and cross-sectoral cooperation and cooperation between different bodies and institutions at all government levels is missing or inadequate.

The *Action Plan for Chapter 23*<sup>55</sup> foresees improving the operation of the Council on Child Rights and ensuring its role in monitoring the impact of reforms, further formulation of policies, as well as securing adequate resources for adequate supervision and monitoring the implementation of action plans and strategies in the area of child rights. However, no changes are foreseen with regard to broadening its mandate, which would enable the Council to play the coordinating role in the operations of different ministries and sectors.

*The Office for Human and Minority Rights*, established in 2012, performs professional tasks for the Government and competent ministries in the area of monitoring the realisation and promotion of human and minority rights, including child rights. However, this body does not engage in systematic supervision in the area of child rights either.

Relevant in the area of child rights are also the *Social Inclusion and Poverty Reduction Unit*, which has been operational since 2009 and is responsible for strengthening Government capacities to develop and implement social inclusion policies, designing development and reform tracks in the social protection, health care and education systems, economic empowerment of deprived and marginalised groups etc.; the *Commissariat for Refugees and Migration*, which performs professional tasks in the area of setting and implementing migration policy and policy on asylum seekers<sup>56</sup>, which include large numbers of children, as well as specialised advisory bodies and task forces – the *Council for Monitoring and Advancing the Implementation of Criminal Proceedings and Criminal Sanctions towards Juveniles*, *Council on Persons with Disabilities*, *Youth Council*, *Council for Monitoring the Implementation of the Action Plan for the Implementation of the Anti-Discrimination Strategy 2014-2018*, etc.

Some municipalities and cities have functioning *local councils on child rights*, responsible for monitoring the situation in the area of child rights and promoting child rights, and *local youth offices*, established with a view to promoting youth participation and active involvement in local policymaking. The effects achieved by these bodies largely depend on local authorities' support, resources available to the bodies and the level of coordination between the bodies at the national and local levels.

An important role in the realisation of child rights is played by the independent human rights institutions. The Ombudsman is fully committed supervising the realisation of child rights. The Constitution and the Law on the Ombudsman enshrine the standards contained in the key international instruments governing or promoting and proposing standards for ombudspersons and national child rights institutions<sup>57</sup>.

The mandate of the Ombudsman is set by the Constitution and the Law on the Ombudsman. The Ombudsman protects and promotes human and minority freedoms and civil rights and scrutinises the legal compliance and regularity of the work of public authorities and

<sup>55</sup> Available at: <https://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nacr-%20Konacna%20verzija1.pdf>.

<sup>56</sup> Art. 5 of the Law on Asylum and Temporary Protection, Official Gazette of RS No 24/18.

<sup>57</sup> UN General Assembly Resolution 48/134, known as the "Paris Principles", available at:

<http://www.un.org/documents/ga/res/48/a48r134.htm>; CRC General Comment No 2, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en).

organisations to which public powers are delegated. No civil freedoms or rights are exempted from the protection, oversight and promotion-oriented role of the Ombudsman. The Ombudsman acts within the framework of the Constitution, laws, other regulations and statutory instruments, as well as ratified international treaties and generally accepted rules of the international law. The Ombudsman scrutinises the legal compliance, as well as regularity of the work of public authorities and organisations. In its practical work, the Ombudsman is guided by the principle of equity within the positive law. The Ombudsman scrutinises the work of state authorities, authorities competent for the legal protection of the Republic of Serbia's property rights and interests, as well as other authorities and organisations, enterprises and institutions to which public powers are delegated (public authorities and organisations). Under the provisions of the Constitution and the Law, among all public authorities and organisations, only the work of the National Assembly, the President of the Republic, the Prime Minister, the Constitutional Court, courts and public prosecutors offices is not subject to scrutiny by the Ombudsman.

Particular attention is paid to improving the legal framework. The Ombudsman is authorised to propose bills to the National Assembly. This authority is also authorised to submit initiatives to the Government or the National Assembly for amendments to laws or other regulations and statutory instruments, as well as to initiate the enactment of laws, other regulations and statutory instruments, and the Government or the relevant parliamentary committee are responsible to consider initiatives submitted by the Ombudsman. In the process of drafting legislation, the Ombudsman is authorised to give opinions on draft laws/bills and other regulations to the Government and the National Assembly.

One of the four Deputy Ombudspersons is responsible for the area of child rights.

The Ombudsman was the first state authority to include children directly in its work, through the establishment of the *Ombudsman's Young Advisors Panel*. The panel was formed in 2010 and comprises 30 children and youth selected through an open call. Young advisors meet the Deputy Ombudsman in charge of child rights at least three times per year. Their key role is to point to topics of importance for children and youth and problems they face, to voice their views and raise issues relevant to the improvement of their status in Serbia. In 2017, the Ombudsman's Young Advisors Panel held two regular meetings with a view to preparing for a peer survey into violence in schools and delivered peer training in child rights during the Children's Week by visiting five basic and five upper secondary schools in Apatin, Sremska Mitrovica, Kučevo, Užice and Kruševac.

In order for the Ombudsman to fulfil its numerous roles and tasks successfully, it is essential to strengthen the capacities of the authority's Secretariat. The Action Plan for Chapter 23 foresees strengthening the Ombudsman's capacities, especially with regard to its role of the National Preventive Mechanism, as well as the capacities of the Provincial Ombudsman and local ombudspersons. The capacities of the Ombudsman's Secretariat are planned to be strengthened through recruitment of staff on a full-time basis in order to raise the total staff number to the required level and ensure the number and profile of staff needed for the efficient performance of tasks within the authority's mandate. The Action Plan also foresees the provision of permanent premises for the Ombudsman, as well as the passage of amendments to the Law on the Ombudsman in order to strengthen its independence and raise its efficiency. Although these measures were planned for 2016, they have yet to be implemented.

Especially concerning is the fact that the Ombudsman's annual reports for 2014, 2015, 2016 and 2017 in the area of child rights were not considered by the Committee on Child Rights of the

National Assembly, which is a legally stipulated obligation<sup>58</sup>, and the Ombudsman and the Deputy Ombudsman in charge of child rights were not involved or invited to participate in the Committee's activities.

An initiative for the establishment of a dedicated institution with the mandate of an ombudsman in charge of child rights – a children's ombudsman has existed for the past few years. The *Response of the Republic of Serbia to the Recommendations from UN Member States received in the Third Cycle of UPR*, submitted in April 2018 states, with regard to the recommendation to establish a dedicated children's ombudsman, that "the Republic of Serbia remains committed to further promoting and improving the rights of the child by establishing a competent and independent oversight body responsible for the exercise of child rights". In the Ombudsman's assessment, not even the prerequisites for this authority's work have been fully provided by the state<sup>59</sup>, although this is an institution designed in accordance with international standards, with a ten years' track record of successful work in the area of child rights. At this time, the establishment of a children's ombudsman is not in the interest of children in the Republic of Serbia; rather, it is the interest of children to invest in the discontinued and missing services to improve their situation in their family and social environments and everyday life.

At the international level, in the area of child rights, the institution of the Ombudsman is recognised as an important stakeholder in child rights protection. The report by the Global Alliance of National Human Rights Institutions "Children's Rights in National Human Rights Institutions: A Mapping Exercise" stresses the Ombudsman's role in the protection and promotion of child rights, citing successfully handled cases and campaigns in the area of child rights conducted by the institution as good practice examples.<sup>60</sup>

#### 2.4.4. Budgetary Allocations for Children

There are substantial difficulties in monitoring the level of funds allocated for children, since the programme-based budgeting system is still not fully functional. Under Art. 3 of the Budget System Law<sup>61</sup>, the Republic of Serbia's budget system comprises the Republic of Serbia budget, local government budgets and statutory social insurance organisations' financial plans. The measures, services and interventions to realise child rights are funded from local government unit budgets and from the national or provincial level. In some systems, such as the education system, funds have not followed clients so far; however, the Strategy for Education Development until 2020<sup>62</sup> foresees the shift to funding per student, which is an important positive step. Social care services are also funded from both levels, with a division of funding responsibilities by service types. Local government units make decisions on funding specific services, depending on the needs, and in particular on the availability of funds and expenditure plans. Other than earmarked transfers in the area of social protection, no national or provincial interventions are in place in the event that the necessary child services are not provided in a local government unit.

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<sup>58</sup> Law on the Ombudsman, Official Gazette of RS Nos 79/05, 54/07, and Rules of Procedure of the National Assembly, Official Gazette of RS No 20/12.

<sup>59</sup> For instance, the Ombudsman has used temporary premises for ten years already, while the building intended for this authority has been allocated to another authority, and the recruitment of staff to fill the total envisaged number was not approved by the National Assembly until 2016.

<sup>60</sup> Children's Rights in National Human Rights Institutions: A Mapping Exercise, GANHRI/UNICEF, 2018. Available at: <https://nhri.ohchr.org/EN/News/Documents/GANHRI%20UNICEF%20%20Children%E2%80%99s%20Rights%20in%20National%20Human%20Rights%20Institutions.pdf>.

<sup>61</sup> Official Gazette of RS Nos 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13, 108/13, 142/14, 68/15, 103/15, 99/16 and 113/17.

<sup>62</sup> Official Gazette of RS No 107/12.

Many community-based services are, therefore, funded on a project basis and are available for the duration of the project only, since local government units do not provide funding to continue the services. Earmarked transfers in the area of social protection have not proved to perform well either, since, in almost eight years of implementation, they have not contributed to system-wide establishment of services in the area of social protection.

The budget preparation methodology itself allows neither the clear identification of budget allocations for children in the relevant sectors and authorities, at different levels, nor the ascertainment of the budget funding amounts specifically earmarked for children from marginalised and vulnerable groups, such as Roma children, children with disabilities, migrants, children on the move. Such approach makes children invisible in the budget. On the other hand, no mechanisms are in place to ensure assessing the total amount of funds planned and spent for CRC implementation at the national, provincial and local levels, nor is there the practice of public dialogue in the budget preparation process that would also involve children.

#### 2.4.5. Information Dissemination and Training

Although, in recent years, progress has been observed in information dissemination and sensitisation of society to the challenges hindering the realisation of child rights and interests, the concept of child rights is still not broadly accepted, nor is the public sufficiently aware of the CRC and the state obligations flowing therefrom. Children themselves are also insufficiently aware of the CRC and the rights it guarantees to them. The systematic dissemination of information about the Convention among children, parents, authorities' staff, local governments and public agencies is missing, although information provision is crucial for changing the attitude to children and child rights.

In order for child rights to be effectively realised and protected, systematic and continuous training for decision-makers and professionals is essential. Staff training in specific areas (such as social protection) is delivered owing to the licence renewal requirement, which entails attending accredited professional development programmes. Some of these programmes include topics of child rights realisation and promotion. Training programmes targeting specific groups, such as civil servants, journalists etc. are delivered occasionally. However, no compulsory training in the area of child rights has been introduced in the health care and education systems; hence, training is sporadic and unsystematic. On the other hand, the professionals in different systems do not have enough specialised knowledge for working with children from vulnerable groups, including children victims of violence, children with disabilities and other group of children at increased risk of violation of their rights.

Public authorities' staff competence in the area of human rights, including child rights, is inadequate.<sup>63</sup> Training planning is commonly divided between the authority whose staff is to be trained and the training provider; however, under this arrangement, the authorities lack information on training effects, while training providers lack the data necessary to plan training in line with the needs of the authorities and their staff.<sup>64</sup> Neither party is able to assess whether

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<sup>63</sup> For instance, in 2015, the Ombudsman of the Republic of Serbia ascertained that only 14% of health care professionals and associates had attended training on domestic violence and violence against women, while 235 civil servants out of the total of over 25000 had attended such training. *Poseban izveštaj Zaštitnika građana o obukama za sticanje i unapređenje znanja i kompetencija za prevenciju, suzbijanje i zaštitu žena od nasilja u porodici i partnerskim odnosima (2015)*, available at <https://www.rodnaravnopravnost.rs/attachments/article/230/Poseban%20izvestaj%20Zastitnika%20gradana%20%D0%BE%20bukama.pdf>.

<sup>64</sup> Reljanović, M. Jerinić, J., *Analiza relevantnih pravnih akata u oblasti stručnog usavršavanja i licenciranja nastavnika, vaspitača i stručnih saradnika*, available at: <https://www.ombudsman.rs/index.php/4540-2016-01-15-08-19-55>.

the training delivered is efficient and applicable, or whether and to what extent the knowledge and skills gained through training are applied in practice. Adequate monitoring of training efficiency, applicability of the knowledge gained and how the knowledge and skills gained are applied at work is also missing.<sup>65</sup>

*Ombudsman's recommendation for the introduction of authorities' staff training in protection against violence*

*Taking into account the specific needs of authorities and of employees whose duties include the protection of women from domestic and intimate partner violence, the Ministry of Public Administration and Local Government and the Human Resources Management Service should include training courses on the protection of women against violence, protection of children against abuse and neglect, gender equality and gender-based violence in professional development programmes.<sup>66</sup>*

#### 2.4.6. Data Collection

Data on children are collected by competent ministries, within their respective mandates. Data are processed by the Statistical Office of the Republic of Serbia, which releases publications, studies and analyses.

The DevInfo database, aimed at monitoring social development, and the municipal-level DevInfo database, which provides ample data on education, health care and social protection at the municipal level, have been developed.

Data from the social protection system are collected and processed by the National Institute for Social Protection, and the Social Inclusion and Poverty Reduction Unit has established indicators for monitoring the attained level of social inclusion and poverty reduction and alignment of social inclusion monitoring with European Union Member States.

Data on children are still not collected systematically; instead, the realisation of child rights is monitored on the basis of data from different sources, which are often not comparable, given that they are collected according to different methodologies. The lack of reliable and comparable data and records hinders the development of effective policies on children, as well as efficient cross-sectoral cooperation. An example is the Ombudsman's survey<sup>67</sup> conducted in 2011, where it was found that none of the competent authorities kept precise records of the number of children in street situations, and that the data and records in different systems (social protection, health care, Ministry of the Interior (MoI), prosecutors' offices, courts) were inconsistent, incompatible and gave rise to contradictory and disparate conclusions. The lack of systematic and comprehensive records that would compile cross-sectoral data presents an obstacle to planning national policies and strategies, as well as to organised, coordinated and consistent activity to fight this phenomenon. The same applies to children witnesses of victims: no monitoring system for these cases is in place, and the lack of such records is an obstacle to ensuring and providing measures and services for victims, which is a state obligation undertaken by the ratification of international instruments (protection of children against retraumatisation during the proceedings, victim recovery, reintegration and compensation). Comprehensive data

<sup>65</sup> Poseban izveštaj Zaštitnika građana o obukama za sticanje i unapređenje znanja i kompetencija za prevenciju, suzbijanje i zaštitu žena od nasilja u porodici i partnerskim odnosima (2015), available at: <https://www.rodnaravnopravnost.rs/attachments/article/230/Poseban%20izvestaj%20Zastitnika%20gradana%20%D0%BE%20bukama.pdf>.

<sup>66</sup> *Ibid.*

<sup>67</sup> Poseban izveštaj Zaštitnika građana: Prevencija eksploatacije dece u Jugoistočnoj Evropi – Dečje prosjačenje u Republici Srbiji, 2011, available at <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/1597-2011-12-05-14-39-25>.

on the prevalence and types of rare diseases in Serbia, the number of diseased children and children with disabilities, as well as the number of these children without access to the existing services and measures are not available. The palliative care service provision policy is not based on the number of children in the terminal phase of illness and their families who need such services; instead, it is determined solely by the limits to be set by the Ministry of Finance for the next two fiscal years (on a lump-sum basis).<sup>68</sup>

#### **2.4.7. Cooperation with Civil Society Organisations**

Civil society organisations are highly important stakeholders in the development, protection and promotion of child rights in Serbia. The most active among them are non-governmental organisations, whose key activities include efforts to introduce and monitor the implementation of laws, policies and practices, conduct independent surveys, advocate and promote child rights and raise public awareness of child rights. Owing to their knowledge and experience, many NGOs provide technical assistance and support to state authorities in preparing laws and designing policies on children, in training judges and civil servants, etc. Especially important are alternative reports on the implementation of the Convention and protocols thereto, submitted by organisations to the Committee on the Rights of the Child.

The Ombudsman has extensive cooperation with civil society organisations, especially organisations directly dealing with child rights. Cooperation takes the form of work on joint projects, participation of Ombudsman's representatives in conferences and round-table discussions organised by civil society organisations, and proposals for advancing child rights protection.

#### **2.4.8. International Cooperation**

International Cooperation is an important factor in the reform processes in the area of child rights. The sustainability of specific support programmes and child services developed under international projects is not ensured to a sufficient extent; hence, some of them were discontinued upon departure of international partners, thus lowering the attained level of protection.

In recent years, the Ombudsman's international cooperation activities, which contribute to child rights promotion, have been intensified. The Ombudsman has extensive long-standing cooperation with UNICEF, as well as with international organisations engaged in the area of child rights, such as Save the Children and others.

The Ombudsman is a full member of the European Network of Ombudspersons for Children (ENOC) and is actively involved in the fulfilment of its role. In recognition of the Ombudsman's work in the area of child rights to date, Deputy Ombudsman Gordana Stevanović was unanimously elected member of the ENOC Bureau by this organisation's General Assembly in 2017. The Ombudsman developed the Draft ENOC Statement on the Right to Education of Children on the Move, which was unanimously adopted at the 22<sup>nd</sup> ENOC General Assembly (September 2018) as the Network's position statement<sup>69</sup>. The development of this Draft is part of the Ombudsman's continuing efforts to improve the situation of children on the move, following

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<sup>68</sup>Decree on the National Programme for Palliative Care for Children in the Republic of Serbia, Official Gazette of RS No 22/16.

<sup>69</sup> Available at: <http://enoc.eu/wp-content/uploads/2014/12/ENOC-2018-Statement-on-Children-on-the-Move-Education-FV.pdf>.  
<http://enoc.eu/wp-content/uploads/2018/09/ENOC-2018-Statement-on-Children-on-the-Move-Education-FV-Serbian-cyr.pdf>.

participation in the development of ENOC recommendations on the inclusion of children on the move in receiving states, adopted at the ENOC conference in Athens in November 2017.<sup>70</sup>

## 2.5. Recommendations

1. **The Criminal Code, the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles and other legislation governing the status of children in criminal and other penal proceedings should be aligned with ratified international instruments by defining the concept of the child in accordance with the definition of the child in the Convention on the Rights of the Child and ensuring equal and full criminal and other protection to every child victim of a criminal or other punishable offence, regardless of age, in accordance with the recommendations of the Ombudsman and the UN Committee on the Rights of the Child, Optional Protocol on the sale of children, child prostitution and child pornography, ILO Convention on the Worst Forms of Child Labour, UN Convention against Transnational Organized Crime and its supplementing protocols (in particular the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime), Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and Council of Europe Convention on Action against Trafficking in Human Beings.**
2. **It should be ensured, by amending the Law on the Police, that police powers may be exercised in respect of a juvenile only in the presence of a parent, guardian or representative of the guardianship authority and only by police officers specifically trained in working with juveniles.**
3. **A legal ban on corporal punishment of children in all settings should be stipulated by amending existing regulations or enacting new ones, in accordance with the recommendations of the Ombudsman and the UN Committee on the Rights of the Child.**
4. **The Ombudsman's initiative should be considered and the Bill Ratifying the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure should be prepared and introduced before the National Assembly by the Government.**
5. **The Government should review and evaluate the implementation of the expired National Plan of Action for Children and adopt a new one, in accordance with the recommendations of the Ombudsman and the UN Committee on the Rights of the Child.**
6. **The Government should evaluate the efficiency and implementation of the expired National Strategy for Preventing and Protecting Children against Violence and adopt a**

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<sup>70</sup>Available at:

<https://www.pravadeteta.com/attachments/article/394/ENOC%20Regional%20Meeting%2013%2011%202017Rec%20SR.docx>  
<https://www.pravadeteta.com/attachments/article/394/ENOC%20Regional%20Meeting%2013.11.2017-Rec.pdf>

new document, in accordance with the recommendations of the Ombudsman and the UN Committee on the Rights of the Child.

7. The Government should plan and take economic policy measures without compromising children's economic, social and cultural rights, in a manner that will not lower the attained standards of child rights realisation, while sustaining the existing and developing new child services, in particular those targeting children in especially vulnerable situations.
8. The Government should modify the adopted austerity measures and regulations restricting employment in public institutions<sup>71</sup>, since they have decreased the number and quality of child services, as well as the number of employed professionals providing these services to children, and increased the risk of child poverty.
9. In budget reallocations, the Government should provide clear and transparent indicators of financial allocations dedicated to child services, in particular those targeting children in especially vulnerable situations, marginalised and vulnerable position, and to ensure systems for funds allocation and expenditure monitoring and evaluation.
10. In adopting strategic documents, enacting and amending legislation, plans and guidelines in the area of child rights, the Government should also ensure mechanisms to monitor the implementation of these documents and evaluate their impact on children.
11. The Ministry of Justice, High Judicial Council, State Prosecutorial Council, Ministry of the Interior and Ministry of Labour, Employment, Veteran and Social Affairs should take measures to implement the child-friendly justice standards in the Republic of Serbia's judicial system.
12. The Ministry of Justice, High Judicial Council, State Prosecutorial Council, Ministry of the Interior and Ministry of Labour, Employment, Veteran and Social Affairs should intensify the efforts to establish an efficient and child-friendly system for enforcing court decisions concerning children.
13. The Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health, Ministry of the Interior, Ministry of Justice and Ministry of Education, Science and Technological Development should establish cross-sectoral cooperation with a view to developing unified mechanisms and procedures for the collection of high-quality and reliable data, disaggregated, *inter alia*, by age, sex, disability, geographic location, ethnic and national background and socio-economic status, as well as a system for exchanging these data, with a view to monitoring the impact of policies, programmes

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<sup>71</sup> The Law Amending the Budget System Law (Official Gazette of RS No 108/13), introducing a public sector hiring freeze, which is still in force, and the Law on the Modality of Determining the Maximum Number of Public Sector Employees (Official Gazette of RS Nos 68/15 and 81/16).

and measures aimed at improving the status of Roma children, children victims, children in street situations, children with disabilities and diseased children.

14. The Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health, Ministry of Justice, Ministry of the Interior, Ministry of Education, Science and Technological Development, High Judicial Council and State Prosecutorial Council should provide system-wide education about child rights, as well as regular specialist training in the domains of professionals, judges and prosecutors, and carry out periodic evaluations of training efficiency, looking into not only knowledge of the CRC, but also the extent to which the training contributes to the establishment of attitudes and practices that actively promote the fulfilment of child rights.

### **3. GENERAL PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD**

#### **3.1. Introductory Remarks**

Although child rights are indivisible, certain child rights guaranteed by the CRC are considered general principles, as, without them, no other right can be fully realised. These are: the right to non-discrimination (Art. 2), respect for the best interests of the child (Art. 3), the right to life, survival and development (Art. 6), and respect for the views of the child (Art. 12). This section outlines the international standards and the findings and recommendations about the fulfilment of these principles.

#### **3.2. International Standards**

##### **3.2.1. Right to Non-Discrimination**

The Convention on the Rights of the Child proclaims the non-discrimination principle in its introductory provisions, in particular in Art. 2, which requires states parties to ensure all the rights set forth in the CRC to every child and every group of children within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social

origin, property, disability, birth or other status. The ban on discrimination, both direct and indirect, encompasses discrimination on the grounds of any personal characteristic of the child, as well as on the grounds of any personal characteristic of his/her parents or guardians.

States are required to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members, as expressly stipulated in Art. 2(2). The non-discrimination principle is embedded in other CRC articles, for instance Art. 22 on the rights of refugee children and Art. 23 on children with disabilities.

The Committee's general comments stress the scope of the ban on discrimination and the states' obligations to ensure that every child enjoys all the guaranteed rights under equal conditions.

In the *General Comment No 1: The Aims of Education*<sup>72</sup>, the Committee notes that discrimination on any grounds offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. An example in the document concerns discrimination on the grounds of sex, and the ban on discrimination against children with disabilities and children living with HIV/AIDS is particularly emphasised. The Committee also points to the need for education itself to promote an understanding and appreciation of the value of every human being, including respect for differences among people, and notes that fighting discrimination is the way towards overcoming prejudice.

The *General Comment No 2: The role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*<sup>73</sup> is imbued with the spirit of non-discrimination as well. The Committee points to the need for these institutions to be geographically and physically accessible to all children and to reach out to all groups of children, in particular those most vulnerable and disadvantaged.

The *General Comment No 3: HIV/AIDS and the Rights of the Child*<sup>74</sup> stresses the need to fight discrimination against children living with HIV/AIDS and children of parents living with HIV/AIDS, and points to its harmful consequences in terms of access to information, education, health care and social services or participation in community life. The Committee also notes gender-based discrimination against girls, which often limits their access to preventive measures and other agencies and services, and emphasises the prevalence of discrimination against children based on sexual orientation.

The Committee's views presented in the *General Comment No 7: Implementing Child Rights in Early Childhood*<sup>75</sup> are also based on the non-discrimination principle. The Committee stresses that the right to non-discrimination means that young children must not be discriminated against on any grounds, and also that they are especially at risk of discrimination because they are relatively powerless and depend on others for the realization of their rights. Discrimination against them may take different forms: reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; inhibition of free expression of feelings

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<sup>72</sup> CRC/GC/2001/1, 17 April 2001. Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en).

<sup>73</sup> CRC/GC/2002/2, 15 November 2002. Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en)

<sup>74</sup> CRC/GC/2003/3, 17 March 2003. Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en)

<sup>75</sup> CRC/C/GC/7/Rev.1, 20 September 2006. Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f7%2fRev.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f7%2fRev.1&Lang=en)

and views; harsh treatment and unreasonable expectations, which may be exploitative or abusive, etc. The increased risk of discrimination against girls, children with disabilities and children living with HIV/AIDS is also noted. Discrimination may be manifested in public policies, in the provision of and access to services, as well as in everyday practices that violate child rights. The Committee especially stresses the disadvantage of young children who suffer multiple discrimination on the grounds of multiple personal characteristics.

The right to non-discrimination is the key right in focus of the *General Comment No 9: The Rights of Children with Disabilities*<sup>76</sup>. The Committee stresses that it is essential that states fulfil their obligations to ensure the enjoyment of all the guaranteed rights without discrimination on any grounds by children with disabilities under their jurisdiction. This entails the obligation for the state to take appropriate measures to prevent discrimination against children, including discrimination on the grounds of disability. The Committee emphasises the harmful consequences of discrimination in service provision, such as high-quality education, access to high-quality health care and social services etc.

The non-discrimination principle is also embedded in other general comments concerning specific areas of child rights. Thus, the *General Comment No 10: Children's Rights in Juvenile Justice*<sup>77</sup> highlights states' obligations to take all necessary measures to ensure equal treatment of all children in conflict with the law. The Committee stresses the need to pay special attention to discrimination against children at increased risk, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law. The *General Comment No 12: The Right of the Child to Be Heard*<sup>78</sup> stresses the need to ensure that the right of the child to express his/her views is realised without any discrimination on any grounds, and the *General Comment No 13: The Right of the Child to Freedom from All Forms of Violence*<sup>79</sup> points to states' obligations to provide protection against all forms of violence to every child, without any discrimination on any grounds. The Committee particularly emphasises the need to fight and provide protection against discrimination based on prejudices towards commercially sexually exploited children, children in street situations, children in conflict with the law, or based on children's clothing and behaviour.

The right to non-discrimination is also proclaimed and guaranteed by the international treaties of the Council of Europe.

The *European Convention for the Protection of Human Rights and Fundamental Freedoms* of 1950<sup>80</sup> provides in Art. 14 that the enjoyment of the proclaimed rights must be secured without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Under Protocol No 12 to the Convention, of 2000, which entered into force on 1 April 2005, the ban on discrimination is extended to all rights recognised by the state for its citizens.

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<sup>76</sup> CRC/C/GC/9, 27 February 2007. Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f9%2fCorr.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f9%2fCorr.1&Lang=en)

<sup>77</sup> CRC/C/GC/10, 25 April 2007. Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en).

<sup>78</sup> CRC/C/GC/12, 20 July 2009. Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en).

<sup>79</sup> CRC/C/GC/13, 18 April 2011. Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en).

<sup>80</sup> Official Journal of Serbia and Montenegro (SMN) – International Treaties No 9/03.

Article 2 of the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*<sup>81</sup> requires states parties to implement all the provisions of the Convention, in particular those concerning measures to protect the rights of victims, without discrimination on any grounds.

The principle of equality and non-discrimination is also proclaimed in Art. 4 of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*<sup>82</sup>. States parties are required to ensure the implementation of the provisions of the Convention, in particular measures to protect the rights of victims, without discrimination on any grounds, with the proviso that special measures necessary to prevent and protect women from gender-based violence are not to be considered discrimination.

### 3.2.2. Respect for the Best Interests of the Child

The right of the child to have his/her best interests respected is guaranteed in Art. 3(1) of the CRC, which reads: *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.* In 2013, to facilitate the implementation of the best interests of the child principle, the Committee on the Rights of the Child adopted the *General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*<sup>83</sup>, elaborating the said principle. The Introduction to the General Comment states that *“the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.”* To achieve this, the best interests of the child are defined as a *threefold concept*.

The best interests of the child are a *substantive right* and entail the right of the child to have his or her best interests assessed and taken as a primary consideration in relation to the interests of other entities whenever a decision is to be made concerning a child. The right to respect for the best interests of the child is directly applicable and is subject to judicial protection if violated. The best interests of the child are also a *fundamental, interpretative legal principle*, which means that a legal provision must be interpreted in the manner that most effectively serves the child's best interests. Finally, the best interests of the child principle is also a *rule of procedure*, and states parties are required to establish appropriate procedures to enable assessing, in each individual case, what is considered to be in the child's best interests, what criteria it is based on, and how the child's interests have been weighed against other factors, be they broad issues of policy or individual cases under consideration.

The best interests of the child must be a *primary consideration*, which means that they must outweigh other considerations, precisely because of the special situation of children, whose dependency, maturity, legal status etc. allow them less possibility than adults to make a strong case for their own interests. Hence, those who make decisions affecting children must be fully aware of children's interests, since there is a risk of overlooking them unless they are highlighted. The right of the child to have his/her best interests respected is further strengthened in respect of adoption – in this case, the best interests of the child are *“the paramount consideration”* and constitute the determining factor when taking a decision on adoption, but also in other situations relating to adoption.

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<sup>81</sup> Official Gazette of RS – International Treaties No 1/10.

<sup>82</sup> Official Gazette of RS – International Treaties No 12/13.

<sup>83</sup> CRC/C/GC/14, 29 May 2013, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en).

The implementation of the best interests of the child principle involves the “best interests assessment” and the “best interests determination”. In the *General Comment No 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*<sup>84</sup>, the Committee offers a list of possible elements on the basis of which the best interests of the child is to be assessed: the child’s views, the child’s identity, preservation of the family environment and maintenance of relationships, care, protection and security, situations of vulnerability, the child’s health and the child’s education.

The best interests of the child principle is binding on all public and private social welfare institutions, courts of law, administrative authorities or legislative bodies dealing with children, as well as on parents, whose “basic concern” must be the best interests of the child<sup>85</sup>. Respect for the best interest of the child applies to all decisions and actions that directly or indirectly affect a specific child, children as a group or children in general. With regard to courts, the best interest of the child principle applies to criminal and civil proceedings conducted by them, including alternative dispute resolution proceedings.

### 3.2.3. Right to Life, Survival and Development

The right to life, survival and development, guaranteed by Art. 6 of the CRC, constitutes the fundamental principle of child rights and a prerequisite for the realisation of all other child rights. The CRC states that “*every child has the inherent right to life*”, which implies the absolute ban on capital punishment. *Survival* encompasses two different types of situations: natural disasters and destruction that cannot be prevented by man and man-made situations such as armed conflict, famine, poverty etc. The child’s right to development entails the *right to balanced development, embracing the child’s physical, mental, spiritual, moral, psychological and social development*, as noted in the *General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child*<sup>86</sup>. Adults’ obligation to take care of children’s needs, their future, as well as their preparation for adult roles, arises from this right. Article 5 of the Convention, which defines the role of parents/guardians, stresses that the child needs parental direction and guidance in a manner consistent with the evolving capacities of the child.

### 3.2.4. Respect for the Views of the Child

The right to respect for the views of the child entails the right of every individual child, as well as groups of children, to be heard and to express their views on matters concerning them. In its *General Comment No 12: The Right of the Child to be Heard*<sup>87</sup>, the Committee highlights the obligation of all who decide on matters concerning the child, namely parents, guardians, as well as all other individuals and authorities that make decisions in matters concerning the child, to hear the child or group of children, as appropriate, when a decision concerning them is taken. The right of the child to express his/her views is strictly an individual right; hence, no one may exercise this right on behalf of the child. In addition, expressing his/her views is the child’s right, rather than an obligation. On the other hand, this right entails the participation of children, whose active

<sup>84</sup> CRC/GC/2003/4, 21 July 2003, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f4&Lang=en).

<sup>85</sup> Art. 18(1) of the CRC.

<sup>86</sup> CRC/GC/2003/5, 27 November 2003, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en).

<sup>87</sup> CRC/C/GC/12, 20 July 2009, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en).

participation in family and social life, as members of the family, community and state, needs to be facilitated.

In the *General Comment No 12*, the Committee emphasizes that Article 12 imposes no age limit on the right of the child to form and express his/her views, and discourages States parties from introducing age limits, as this would restrict the child's right to be heard in all matters concerning him/her<sup>88</sup>. The right of the child to express his/her views implies that the child should be informed about the matters, options and possible decisions to be taken, and their consequences by those who are responsible for hearing the child or by the child's parents or guardians. The child must also be informed about the conditions under which he/she will be asked to express his/her views. According to the Committee's position, a child that has decided to be heard should also decide how to be heard: directly or indirectly. The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.

Article 12 of the CRC provides that the views of the child must be "given due weight in accordance with the age and maturity of the child". The Committee stresses that hearing the child's views is not sufficient and that his/her views must be given a serious consideration, "in accordance with the age and maturity of the child", implying that, *the older and more mature the child, the more weight will be given to his/her views*.

### **3.3. International Bodies' Recommendations Addressed to the Republic of Serbia**

#### **3.3.1. Right to Non-Discrimination**

In its Concluding Observations of 2017<sup>89</sup>, the Committee gives a positive assessment of the state's activities to address the problem of discrimination, in particular against Roma children; however, it also pointed to persistent discrimination against Roma children in all areas of life, which is, in the Committee's view, among the principal reasons leading to the placement of Roma children in institutions, as well as to discrimination against Roma children, children with disabilities, children on the move, minority children, children living in remote areas, children in street situations, children with HIV/AIDS and LGBT children in access to education, health care and adequate housing. The Committee is also concerned that the Equality Commissioner, as the central national authority for protection against discrimination, does not have a designated unit to deal with cases of discrimination against children.

The state is given the recommendation to ensure the full implementation of the laws prohibiting discrimination by strengthening public education campaigns to address negative social attitudes towards Roma children, children with disabilities, minority children, children on the move, children in street situations, LGBTI children and children with HIV/AIDS. It is also recommended that the state should ensure that children living in rural areas have access to quality education and adequate health care and housing; ensure the availability of sufficient human, technical and financial resources for the effective implementation of the adopted Anti-Discrimination Strategy (2013-2018); and introduce a specific mechanism under the Equality Commissioner to address cases of discrimination against children.

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<sup>88</sup> General comment No 12, para. 21.

<sup>89</sup> CRC/C/SRB/CO/2-3, 3 March 2017. Available at:

[http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komiteta\\_za\\_prava\\_deteta\\_srb.doc](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_deteta_srb.doc)

The need for a more efficient fight against discrimination was also highlighted in the Third Cycle of Universal Periodic Review; the state accepted the recommendations received in this area and highlighted some measures already taken in that respect.<sup>90</sup>

### **3.3.2. Best Interests of the Child**

With regard to the fulfilment of the best interest of the child principle, the Committee notes that a sound general legal framework has been established to ensure its application, but is concerned about the lack of consistent understanding with respect to its meaning and the responsibilities it entails, particularly among the judiciary, stressing the excessively long court cases and the non-enforcement of judgments. The state is given the recommendation to strengthen its efforts to ensure that this right is appropriately integrated and consistently interpreted and applied in all proceedings, decisions, policies, programmes and projects that are relevant to and have an impact on children. To achieve this, it is necessary to develop procedures, criteria and guidelines for determining the best interests of the child and for giving the interests of the child due weight as a primary consideration.

### **3.3.3. Right to Life, Survival and Development**

The Committee notes that child mortality has decreased, but that the infant mortality rate remains above the European Union average. It is also concerned about the high rate of infant and under-5 mortality among Roma children due to limited access to neonatal services. The state is given the recommendation to improve the regional organisation of neonatal services; to expand access to adequate health care and neonatal services to the most vulnerable families, including Roma families and those living in marginalized and remote areas. It is also recommended that the provision of health care to Roma women and children should be strengthened through effective outreach services, and that the “Health Mediators” project should have sufficient human, technical and financial resources to ensure that regular home visits are carried out effectively.

### **3.3.4. Respect for the Views of the Child**

In its Concluding Observations on the combined Second and Third Periodic Reports of Serbia on the implementation of the CRC, the Committee notes as positive the state efforts to ensure respect for the views of the child, including in the area of social protection, but expresses its concern that traditional practices and cultural attitudes in the family, schools and social and judicial settings continue to impede the full realisation of the rights of children to express their views freely. The fact that children in alternative care and children with disabilities are often not consulted in matters concerning them is also noted.

The state is given the recommendation to ensure that children’s views are given due consideration in the family, at school, in courts and in all relevant administrative and other processes concerning them, through the adoption of appropriate legislation, the training of professionals, the establishment of specific activities at schools, awareness-raising and other measures. The Committee also points to the need to create conditions for children to influence public policy.

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<sup>90</sup> Government Conclusion Adopting the Response of the Republic of Serbia to the Recommendations from UN Member States received in the Third Cycle of Universal Periodic Review, 05 No 337-3138/2018 dated 26 April 2018.

### 3.4. Elaboration of General Principles in Domestic Law

The *non-discrimination principle* constitutes a general principle proclaimed by Article 21 of the Constitution of the Republic of Serbia. *The Anti-Discrimination Law of 2009*<sup>91</sup> prohibits discrimination, regulates forms and cases of discrimination, stipulates legal protection against discrimination, establishes the Equality Commissioner and regulates the Commissioner's mandate and modality of operation. Especially important is the provision of Article 22 of the Law, which provides that every child or juvenile is entitled to equal rights and protection in the family, society and state, irrespective of his/her own or his/her parents', guardians' and family members' personal characteristics. Paragraph 2 of this article expressly prohibits discrimination against children or juveniles on the grounds of health status or birth in or out of wedlock; publicly advocating the prioritisation of children of one sex over the other; as well as differentiation on the grounds of health status, property status, occupation and other markers of social status, activities, expressed opinions or beliefs of the child's parents, guardians and family members.

The prohibition of and protection against discrimination are governed by the *Law on the Protection of Rights and Freedoms of National Minorities* of 2002<sup>92</sup>, *Law on the Prevention of Discrimination against Persons with Disabilities* of 2006<sup>93</sup> and *Gender Equality Law* of 2009<sup>94</sup>.

Serbia's anti-discrimination legislation includes anti-discrimination clauses contained in a range of laws governing specific areas of social relations. Thus, the Law on the Foundations of the Education System<sup>95</sup> expressly prohibits direct and indirect discrimination against children and students on the grounds of any of their personal characteristics, as well as personal characteristics and status of their parents or close persons<sup>96</sup>. Every child/student is entitled to protection against discrimination in the educational process<sup>97</sup>. The ban on discrimination is also stipulated by the Law on Social Protection (Art. 79), Law on the Protection of Persons with Mental Health Disorders<sup>98</sup> and other laws.

Compatible mechanisms for protection against discrimination under civil, misdemeanour and criminal law have been put in place by legislation, thus establishing an integral system for legal protection against discrimination.

The Action Plan for Chapter 23 foresees amending the Anti-Discrimination Law with a view to ensuring its full alignment with the *acquis communautaire*, especially with respect to the scope of exemptions from the principle of equal treatment, definition of indirect discrimination and the requirement to provide reasonable accommodation to persons with disabilities. Although the amending law was planned for 2016, it has yet to be enacted. A new Gender Equality Law, planned for the first half of 2016, has not been enacted either.

The best interests of the child principle is stipulated as one of the key guiding principles in all activities concerning children. This principle is also referred to in the Constitution, in the context of parental rights: Art. 65 of the Constitution provides that "*All or specific rights of one or both parents may be terminated or restricted[...], if this is in the best interests of the child*". The Family Law of 2005<sup>99</sup> provides that everyone must be guided by the best interests of the child in all

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<sup>91</sup> Official Gazette of RS No 22/09.

<sup>92</sup> Official Journal of FRY No 11/02, Official Journal of SMN No 1/03 and Official Gazette of RS Nos 72/09 and 97/13.

<sup>93</sup> Official Gazette of RS No 33/06.

<sup>94</sup> Official Gazette of RS No 104/09.

<sup>95</sup> Official Gazette of RS Nos 88/17 and 27/18.

<sup>96</sup> Art. 110 of the Law on the Foundations of the Education System.

<sup>97</sup> *Ibid.*, Art. 79.

<sup>98</sup> Official Gazette of RS No 45/13.

<sup>99</sup> Official Gazette of RS Nos 18/05, 72/11 and 6/15.

activities concerning the child (Art. 6, para. 1), and the duty of authorities to take decisions in accordance with the best interests of the child is referred to in many legal provisions governing specific rights of the child. As a principle, the best interest of the child is embedded in many other laws in the areas of education, health care, social protection, juvenile justice etc.

Under the provisions of the Family Law, the best interests of the child principle is not adequately elaborated in normative terms or operationalised in procedural terms; hence, its practical impact is unclear and fluid: the best interest of the child is not conceived as a stand-alone substantive right of the child; a rule specifying that the best interest of the child has priority, i.e. that it is a primary consideration in relation to other factors, is missing; there are no rules stipulating that the best interest of the child is an interpretative rule; rules to clearly differentiate between “best interests assessment” and “best interests determination” are missing; the duty of competent authorities to include the respect of the right of the child to express his/her views freely in best interests assessment and determination is not emphasised; no adequate guarantees have been established to ensure proper best interest assessment and determination – regulations on the key elements of best interest assessment are missing, and decision-makers’ duty to substantiate in detail each step taken in best interest assessment and determination is not prescribed.

The legal framework for the right of the child to life is provided by the Constitution of the Republic of Serbia, which guarantees this right to everyone as an undeniable right, prohibits capital punishment and cloning of human beings, and classifies the right to life as a right that cannot be derogated from<sup>100</sup>. The right to life is also protected by criminal law, which criminalises many offences against life and limb and other forms of violent deprivation of life, as well as offences against human health and public transport safety. The right of the child to survival and development is guaranteed by the Family Law, which provides that the child *has the right to be provided with the best possible living and health conditions for his/her proper and full development*<sup>101</sup>, which entails the parents’ and competent state authorities’ duty to provide such conditions.

Respect for the views of the child is governed by the provisions of the Family Law, which expressly provides that *a child who is capable of forming his/her own views has the right to express those views freely*<sup>102</sup>. For the purpose of exercising this right, the following “ancillary” child rights are recognised: to receive, in a timely manner, all information necessary for forming his/her views; to express his/her views freely and directly; if over 10 years of age, to address a court or administrative authority personally or through another person or institution and seek assistance in the exercise of his/her right to free expression of his/her views. The weakness of the legal provisions lies in the fact that the right of the child to express his/her views freely is not guaranteed as a general right of the child, which would imply that the obligation to hear the child's views would apply both to parents and to all authorities’ and institutions’ staff. Although it is in the family that most matters concerning the child are decided on, no provision of the Family Law foresees the obligation and responsibility of parents to provide the child with the relevant information about important decisions to be taken by adult family members, to enable him/her to express his/her views about all aspects of those decisions and to take the views expressed by the child into consideration when taking those decisions.

On the other hand, the right of the child to express his/her views directly before a court/administrative authority is recognised only in respect of children aged over 10, which is

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<sup>100</sup> Art. 202 of the Constitution of the Republic of Serbia, Official Gazette of RS No 98/06.

<sup>101</sup> Family Law, Art. 62.

<sup>102</sup> *Ibid.*, Art. 65.

contrary to the principle of evolving capacities of the child and to the CRC, which imposes no age limitation on the right of the child to express his/her views directly. It is not stipulated that the child has the right, but not a duty to express his/her views, nor is the obligation to provide the child with information thereon prescribed. With respect to proceedings in which rights of the child are decided on, the Family Law provides that the child has this right only if it is formally party to the proceedings, which restricts the right of the child to be heard in proceedings where the child is formally not a party – which is the case with some proceedings in which decisions are taken on the child's position, status, rights and interests (such as proceedings for the award of sole custody and maintenance of personal ties). No remedy is stipulated in case the child is unjustifiably denied the right to express his/her views, and there are no adequate procedural guarantees that the child's views will indeed be given due consideration.

### 3.5. Implementation of General Principles in Practice

Although efforts to ensure full respect for the general principles have been evident in recent years, considerable difficulties are encountered in their implementation.

#### 3.5.1. Right to Non-Discrimination

Violations of children's right to non-discrimination still frequently occur in practice. Children are most often discriminated against in the area of education, with Roma children and children with disabilities most frequently discriminated against in preschools and schools; the most common reason for discrimination is that education institutions have not taken timely and adequate prevention measures, and adequate response on the part of responsible persons in situations where discrimination has already occurred is also missing.<sup>103</sup>

Roma children are a group whose right to non-discrimination is violated very frequently. Only 6% of Roma children aged up to 5.5 participate in preschool education programmes. In the general population, the coverage of children aged 3-5.5 by preschool education stands at about 50%. Roma children are not fully covered by the compulsory preparatory preschool programme or attend irregularly and for shorter time periods. The general population coverage by the compulsory preparatory preschool programme is almost full (about 98%), in contrast with the Roma community, where the coverage stands at only 63%. Moreover, an even lower proportion of Roma children living in poverty attends the preparatory preschool programme (46%). Finally, Roma children attend the preparatory preschool programme irregularly and for shorter time periods than stipulated, as a result of which they are inadequately prepared for basic education<sup>104</sup>. In school year 2014/2015, 6% of the students of schools for students with disabilities were from socio-economically deprived backgrounds. A high proportion of socially deprived students (15%) has also been observed in special classes of basic schools<sup>105</sup>. Further, almost 10% of students from socio-economically deprived families and almost 7% of children from Roma families have dropped out of school<sup>106</sup>. The segregation of Roma children in schools, manifested in segregated

<sup>103</sup> Poverenik za zaštitu ravnopravnosti, *Poseban izveštaj o diskriminaciji dece (2013)*, available at: <http://ravnopravnost.gov.rs/poseban-izvestaj-o-diskriminaciji-dece/>.

<sup>104</sup> Strategija za socijalno uključivanje Roma i Romkinja za period od 2016. do 2025, available at: [http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/strategija\\_za\\_socijalno\\_ukljucivanje\\_roma\\_i\\_romkinja\\_2016\\_2025\\_0.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/strategija_za_socijalno_ukljucivanje_roma_i_romkinja_2016_2025_0.pdf).

<sup>105</sup> *Obrazovanje u školama i odeljenjima za obrazovanje dece sa smetnjama u razvoju u Srbiji u inkluzivnom obrazovnom okruženju*, grupa autora, Beograd, 2015, available at: <http://defektologiz Srbije.org/wp-content/uploads/2016/05/UNICEF.pdf>

<sup>106</sup> *Ibid.*

classes attended by Roma children only or entire schools in which Roma children are a vast majority, has yet to be eliminated.<sup>107</sup> Support services for children are underdeveloped, and not even those services that have had a good impact on Roma children's social inclusion are mainstreamed by competent authorities. Thus, despite the strategic documents adopted by the Republic of Serbia, recommendations of international organisations and bodies and Ombudsman's recommendations<sup>108</sup>, health mediators are not part of the health care system although they have played a crucial role in raising the coverage of Roma children by health care and education.

Children with disabilities are a particularly vulnerable group, and stereotypes and prejudice about their capacities, needs and rights are deep-rooted and widespread. Despite the legislation guaranteeing inclusive education, practice reveals that problems occur at all levels, from accessibility in the broadest sense to ensuring adequate support needed by a specific child. Children with disabilities are overrepresented in institutional care, and a large number of children in specialised institutions for children and youth with disabilities still do not have access to school.<sup>109</sup> Education of children with disabilities in "special schools" is still present. In school year 2014/2015, less than 1% of students transferred from special to mainstream education, and somewhat over 4% transferred from mainstream schools to special schools or special classes, while somewhat over 3% dropped out of school<sup>110</sup>.

The status of children in the area of education is considered in more detail in Chapter 6 of this Report.

### 3.5.2. Respect for the Best Interests of the Child

The implementation of the best interests of the child principle, which is not elaborated and operationalised by legislation, causes difficulties in practice with regard to proper best interests assessment. In some decisions concerning the child, the modality of assessing best interest elements and reasons why more weight is given to certain elements are not substantiated properly. In practice, there is a misunderstanding of the relationship between the best interests of the child principle and consideration of the child's views, since the fact that they are complementary and that the child's opinions and views should be included in best interest assessment is often disregarded.

This situation is best illustrated by the proportion of complaints maintaining violation of the right to respect for the best interests of the child, submitted to the Ombudsman in 2017:

2017	Total cases	340	Respect for the best interests of the child	45.90% <sup>111</sup>
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<sup>107</sup> Poverenik za zaštitu ravnopravnosti, Redovni godišnji izveštaj za 2016, available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2017/06/Redovan-godisnji-izvestaj.pdf>

<sup>108</sup> Poseban izveštaj o reproduktivnom zdravlju Romkinja sa preporukama, available at: <https://www.rodnaravnopravnost.rs/attachments/article/276/Poseban%20izvestaj%20ZG%20Rep%20zdravlje%20Romkinja%201.pdf>

<sup>109</sup> Srednjoročni izveštaj o sprovođenju aktivnosti u okviru programa saradnje između Vlade Republike Srbije i UNICEF-a za period 2011-2015, Beograd, 2013.

<sup>110</sup> Obrazovanje u školama i odeljenjima za obrazovanje dece sa smetnjama u razvoju u Srbiji u inkluzivnom obrazovnom okruženju, grupa autora, Beograd, 2015, available at: <http://defektoloziisrbije.org/wp-content/uploads/2016/05/UNICEF.pdf>

<sup>111</sup> Annual Report of the Ombudsman 2017, available at: <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/5671-2017>

*Protection of the Child's Interests – Public Authorities' Duty*

*In all activities concerning children, it is the public authorities' duty to be guided by their best interests, to ensure the conditions for healthy, balanced and proper growth and development and to protect the well-being of the child to the greatest extent possible. This duty encompasses both activities aimed at protecting children against all influences and factors harmful to the child's well-being, and those aimed at establishing and improving the relationship between the authorities and children and children's participation.*

*Building trust in the police and police officers among children contributes significantly to raising the quality of protection of children's lives, integrity and safety. The activities undertaken by the police to that end should represent a good practice in appreciating children and including them in social life. These activities should be organised in an environment suitable primarily for children (rather than to police work) and implemented in such a way as to insulate children from contents not appropriate for their age, e.g. exposed firearms, use of force, members of the police wearing balaclavas, police dogs while agitated (but not while calm). Children should never be "extras" in demonstrations of police skills either.*

*The activities should promote in particular awareness-raising and educational contents for children on personal safety, in a manner appropriate to children's ages.*

*It is essential not only that the police be accessible to children and reach out to them on formal occasions, but also that police procedures, training, organisational structure and understanding of "safety" be developed on an ongoing basis and adapted to the needs of protecting child safety and other rights in the domain of police work and tasks.<sup>112</sup>*

### **3.5.3. Right to Life, Survival and Development**

With regard to the exercise of the right to life, survival and development, the following should be borne in mind: The infant mortality rate stands at 6, and in Roma settlements – at 13 (per 1000 live births); the under-5 mortality rate stands at 7, and in Roma settlements – at 14. The average national prevalence of stunting among children aged up to 5 is 6%, and in Roma settlements – 19%<sup>113</sup>.

In order to realise children's right to survival and development, it is crucial to reduce poverty, which affects children to the greatest extent. The at-risk-of-poverty rate is, however, on the increase in Serbia: in 2012, it stood at 24.6%, and in 2017 – at 25.5%.<sup>114</sup> Among the children clients of centres for social work, the majority are financially disadvantaged children (57.5% in 2014, 62% in 2015 and 54.8% in 2016) receiving different forms of financial assistance<sup>115</sup>. The Committee on the Rights of the Child expressed deep concern that "with more than 30 per cent of all children accessing the child allowance, the allocated amount is relatively low and is insufficient to cover the basic needs of children living in poverty" and addressed several recommendations to the state, including recommendations concerning the fact that the state's

<sup>112</sup> Ombudsman's Opinion addressed to the Ministry of the Interior available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=603:2014-05-21-19-07-11&catid=41:2012-04-09-12-59-57&Itemid=86](https://www.pravadeteta.com/index.php?option=com_content&view=article&id=603:2014-05-21-19-07-11&catid=41:2012-04-09-12-59-57&Itemid=86).

<sup>113</sup> Srbija – Istraživanje višestrukih pokazatelja položaja žena i dece 2014. i Srbija – romska naselja – Istraživanje višestrukih pokazatelja položaja žena i dece, Konačni izveštaj, UNICEF, 2015.

<sup>114</sup> Data of the Statistical Office of the Republic of Serbia, available at: <http://www.stat.gov.rs/>.

<sup>115</sup> Deca u sistemu socijalne zaštite, 2016, Republički zavod za socijalnu zaštitu, available at <http://www.zavodsz.gov.rs/PDF/izvestaj2017/PS%20Deca%20u%20sistemu%20socijalne%20zastite%202016.pdf>.

budgeting process does not target budget allocations for children in marginalized and vulnerable situations.<sup>116</sup>

Since 2014, the Ombudsman has warned that austerity measures have led to a reduction in the already insufficient support measures for children and families with children, as well as community-based services. *The Law on the Modality of Determining the Maximum Number of Public Sector Employees*<sup>117</sup> determines the maximum number of employees in state and other authorities, agencies and other organisations funded from the national budget, many of which provide services to children. The Law imposes a linear restriction on recruitment by these authorities, institutions and agencies. This restriction has led to a reduction in the number of employees in authorities, institutions and agencies dealing with children (schools, health care institutions, social care institutions, inspectorates etc.), whose services are vital to the right of the child to life, survival and development. Given that the maximum number of employees set by the Law was already lower than the actual number (and in many cases also lower than needed), that attrition has occurred owing to retirement and job change, and that the resulting vacancies could not be filled owing to the *Law on the Modality of Determining the Maximum Number of Public Sector Employees*, the number of employees has been reduced further.

Already in 2016, the National Institute for Social Protection assessed that the downward trend in the number of professional staff would lead to “impaired efficiency and quality of professional work...”.<sup>118</sup> The shortage of professionals resulting from the application of the *Law on the Modality of Determining the Maximum Number of Public Sector Employees* has suspended the application of regulations on professional work standards and staffing norms in public agencies working with children, caused direct harm to child rights, and significantly contributes to further omissions on the part of centres for social work, to the detriment of child rights.

For financial and economic reasons, Serbia also lacks a sufficient number of children and adolescents’ counselling units, which are essential for this population. In its report, the state also noted that youth counselling units are available to youth in only 40 primary health care centres. The number of developmental counselling units (for preschool- and preadolescent-age children) is even smaller – they are available in only 36 municipalities<sup>119</sup>. The number of primary health care centres in Serbia totals 151.<sup>120</sup>

#### *Ombudsman's Recommendations*

*Having considered a large number of cases of domestic violence and violence against and abuse and neglect of children, the Ombudsman has addressed recommendations to the Ministry of Labour, Employment, Veteran and Social Affairs and the Provincial Secretariat for Social Policy, Demography and Gender Equality to establish whether centres for social work are staffed in accordance with the norms and standards and in line with the growing number of cases of domestic and intimate partner violence and child abuse and neglect.*

<sup>116</sup> Concluding Observations of the Committee on the Rights of the Child on the combined second and third periodic reports of Serbia, available at <http://www.ljudskaprava.gov.rs/sr/node/143>.

<sup>117</sup> Official Gazette of RS Nos 68/15 and 81/16.

<sup>118</sup> Available at: <http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>

<sup>119</sup> Aneks 1 Drugog i Trećeg periodičnog izveštaja o primeni Konvencije o pravima deteta u Republici Srbiji, p. 94.

<sup>120</sup> Data of the National Health Insurance Fund, available at: <http://www.rfzo.rs/index.php/linkovi/zdravstvene-ustanove>.

*If they find that centres for social work are not staffed in accordance with the norms and standards and in line with the growing number of cases of domestic and intimate partner violence and child abuse and neglect, they should take action to ensure the necessary and prescribed number of employees.*<sup>121</sup>

The optimum development of many children, especially those with disabilities, is also hampered by problems in the domain of health care and social service provision, which is considered in more detail in Chapter 5 of this Report.

### 3.5.4. Respect for the Views of the Child

Although discernible progress has been achieved in the realisation of the right of the child to be heard in specific procedures in which his/her rights are decided on, or which concern him/her, the exercise of this right is not fully ensured, especially with respect to children from vulnerable groups; moreover, as a rule, the reasons why the child's opinion is not taken into account are not properly substantiated.

On the other hand, adequate inclusion of and consultation with children and youth in the law- and policy-making process is missing at all decision-making levels. It is only since recently that children have been included in the work of the Council on Child Rights, and local youth offices are not adequately involved in designing and overseeing the implementation of local policies.

In some areas, children's participation is reduced to a formality, instead of creating conditions for children to be informed, for their opinions and views to be heard and to have an appropriate impact on the contents of decisions, plans and programmes. This is primarily a result of the prevailing traditional views about and cultural attitudes to children, as well as lack of awareness of children's rights.

A relatively small number of complaints has been addressed to the Ombudsman with regard to the realisation of the right to respect for the views of the child. In 2017, complaints about the violation of this right comprised only 0.77% of the complaints in the area of child rights. This, however, is an indication that there is poor awareness of this right, rather than that the right is respected. The fact that children and youth lack sufficient knowledge about the right to respect for their views is a natural result of the fact that adults, especially decision-makers, fail to apply the laws and regulations concerning the consideration of children's views, and underplay the views of children and youth.

The recommendations given by children and youth – members of the Young Advisors Panel, together with the Equality Commissioner's Youth Panel, Children's Council of the Network of Organizations for Children of Serbia (MODS) and Open Club from Niš<sup>122</sup> – have been forwarded to the competent authorities. None of the authorities receiving children's recommendations have reported to the Ombudsman or children on whether and how they have considered the recommendations, or what they have done or plan to do with respect to them.

<sup>121</sup> Ombudsman's Recommendations available at: [https://www.rodnaravnopravnost.rs/index.php?option=com\\_content&view=article&id=214:2016-08-12-08-16-56&catid=21&Itemid=26](https://www.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=214:2016-08-12-08-16-56&catid=21&Itemid=26).

<sup>122</sup> The recommendations of children and youth are available at: [https://www.pravadeteta.com/attachments/394\\_Liflet%20-%20priprema%20343x240mm.pdf](https://www.pravadeteta.com/attachments/394_Liflet%20-%20priprema%20343x240mm.pdf).

### **3.6. Recommendations**

- 1. Amendments to education laws should stipulate and regulate the right of the child to participation in education institutions and the institutions' and authorities' duty to ensure child and student participation at all levels.**
- 2. Amendments to education laws should stipulate and regulate student participation in the work of national authorities and bodies, as well as in the work of local government units through relevant bodies consisting of children and youth.**
- 3. Amendments to legislation should prescribe authorities' duty to obtain informed views from children, to give children's views due consideration and to substantiate the reasons why children's expressed views are (not) taken into account when making decisions about their rights, obligations and interests in all areas.**
- 4. Guidelines and procedures for best interests determination in proceedings for making decisions about children's rights, obligations and interests in all areas should be developed.**
- 5. The Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Education, Science and Technological Development should intensify the activities aimed at deinstitutionalisation and transformation of residential care institutions for children, reducing the number of children in such care and the number of children with disabilities and Roma children enrolled in schools, classes and groups for children with disabilities.**
- 6. The Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs and local government and autonomous province authorities should intensify activities and increase investments aimed at establishing services for children with disabilities, Roma children and children in street situations to support their inclusion in the community and the mainstream education system.**
- 7. The Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Youth and Sport and Ministry of Culture and the Media should launch and continuously implement awareness-raising activities to eliminate negative societal attitudes towards Roma children, children with disabilities, children on the move, children in street situations, LGBTI children and other marginalised groups of children.**
- 8. The Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Justice, Ministry of the Interior, High Judicial Council and State Prosecutorial Council**

should ensure that the best interests of the child principle is applied in procedures and proceedings in all cases where decisions are made about children's rights, obligations and interests.

9. The Ministry of Health, in cooperation with other authorities, should ensure full access to health care for every child, introduce missing services and develop existing ones, and provide adequate human, technical and financial resources.
10. The Ministry of Health, in cooperation with other authorities, should ensure an adequate number of health care professionals and associates and mainstream health mediators in the health care system by amending legislation in a manner that will ensure the continuity of this service for Roma children and families.
11. The Ministry of Health, in cooperation with other authorities, should ensure the availability of health care in remote and rural areas, an adequate number of developmental counselling units and adolescents' counselling units in line with the needs of children and youth, as well as the full implementation of the legal provision that children are entitled to health care at the expense of health insurance funds).

### **3.7. Recommendations of Children and Youth<sup>123</sup>:**

1. Use new technologies, the internet, social networks etc. to inform children about their rights and involve them in the process of making state and local authorities' decisions affecting their status.
2. For children living in remote communities and those without access to the internet, provide other modalities of information dissemination (leaflets, flyers, pamphlets, brochures, posters, guest appearances of public personalities and experts etc.).
3. Children should be informed about child rights protection mechanisms within their country, as well as the possibilities for child rights protection at the international level.
4. Municipalities and cities should establish bodies consisting of children, modelled after student parliaments in schools, in order for children to be informed about and involved in making decisions affecting their status.
5. The authorities and institutions involved in child rights should organise regular meetings with children to hear the views and beliefs of children and youth, and thus update their own.

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<sup>123</sup> The Ombudsman's Young Advisors Panel, in cooperation with the Equality Commissioner's Youth Panel, Children's Council of the Network of Organizations for Children of Serbia (MODS) and Open Club from Niš, has formulated recommendations to the competent state authorities and institutions, available at: [https://www.pravadeteta.com/attachments/394\\_Liflet%20-%20priprema%20343x240mm.pdf](https://www.pravadeteta.com/attachments/394_Liflet%20-%20priprema%20343x240mm.pdf)

6. In schools, it should be ensured that student parliament members are elected by students, rather than form teachers or other school staff.
7. The potentials of student parliaments should be utilised to a greater extent.
8. Awareness that well organised student parliaments are useful for addressing students' problems should be raised.
9. Student parliaments should be enabled to organise experts' guest appearances to enable students to gain new knowledge and skills.



## 4. PROTECTION OF CHILDREN AGAINST VIOLENCE

### 4.1. Introductory Remarks

Violence against children is one of the most hazardous phenomena, since it leaves multiple, deep and lasting consequences on the child's physical and mental health, his/her psychosocial development and future life, and leads to the child's death in the most extreme cases. For this reason, the protection of children against all forms of violence is one of the state's priority tasks, and also an obligation flowing from international human rights treaties, including the CRC.

This section of the Report concerns protection against all forms of violence classified in the "Violence against Children" cluster by the Committee on the Rights of the Child, which instructs states parties to systematically present the measures and activities in the domain of prevention and protection of children against violence in their reports on CRC implementation.

In recent years, the Republic of Serbia has established the legal and institutional framework for the prevention and protection of children against violence, both within the family and in schools, social care institutions and other settings in which children are found, as well as in the digital space and the community. The domestic provisions governing the protection of children against violence, abuse and neglect are contained in numerous laws, bylaws and protocols, whose adoption is a manifestation of efforts to efficiently fight violence against children and provide effective protection, assistance and support to children who have experienced violence.

Despite the measures taken to prevent violence and protect children against it, violence against children is still widespread in practice, which is primarily aided by legislative shortages and omissions in competent institutions' work.

### 4.2. International Standards

At the global level, the eradication of all forms of violence against children is set as a target in the UN document *Global Goals for Sustainable Development (2015-2030)*<sup>124</sup>, under goal 16: *Peace, justice and strong institutions*<sup>125</sup>.

In international law, violence against children, which includes any act that violates the child's personal physical, psychological and moral integrity, is viewed as a violation of the child's right to life, survival and development – one of the fundamental rights of the child. Accordingly, all forms of violence against, maltreatment, abuse and neglect of children that violate and jeopardise children's personal physical, psychological and moral integrity are prohibited.

Article 19 of the CRC stipulates the duty of states parties to take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child. Such measures include the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as other forms

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<sup>124</sup> Available at: <https://www.globalgoals.org/>.

<sup>125</sup> Paragraph 16a of Global Goals for Sustainable Development (2015-2030).

of protection and the prevention, identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment, including judicial protection.

Article 34 of the CRC requires states parties to protect children from all forms of sexual exploitation and sexual abuse and, to that end, to take appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; and the exploitative use of children in pornographic performances and materials.

The Convention on the Rights of the Child also requires states parties to take appropriate national, bilateral and multilateral measures to prevent the abduction, sale of or trafficking in children for any purpose or in any form<sup>126</sup>. All other forms of child exploitation harmful to any aspect of the child's well-being are also prohibited<sup>127</sup>.

Article 37 stipulates the duties of states parties with regard to respecting the right of the child to protection against inhuman and degrading treatment or punishment. States are required to take measures to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment, capital punishment or life imprisonment, and that arrest, detention or imprisonment are imposed in conformity with the law and used only as a measure of last resort, for the shortest period of time possible. The specific rights of a child deprived of liberty are also stipulated: he/she must be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account his/her needs, and must be separated from adult inmates unless it is considered in the child's best interest not to do so. The child is guaranteed the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances; prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, which is required to make a prompt decision on such action.

State obligations in the area of preventing and prosecuting sexual violence against children flow from the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* of 2003<sup>128</sup>. It specifies clear obligations of states parties with respect to the criminalisation of these forms of violence against children, whether committed in the country or transnationally, or individually or in an organised manner.

With regard to child labour as a form of violence, the relevant instruments are the *ILO Worst Forms of Child Labour Convention* (No 182) and the *ILO Recommendation concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (No 190)<sup>129</sup>. Article 7 of the Convention requires states parties to take effective and time-bound measures to prevent the engagement of children in the worst forms of child labour; provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; ensure access to free basic education, and, wherever possible and appropriate, vocational training, for the children removed from the worst forms of child labour; identify and reach out to children at special risk; and take account of the special situation of girls.

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<sup>126</sup> CRC, Art. 35.

<sup>127</sup> *Ibid.*, Art. 36.

<sup>128</sup> Law Ratifying the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Official Gazette of FRY – International Treaties No 7/02.

<sup>129</sup> Law Ratifying the ILO Worst Forms of Child Labour Convention (No 182) and the ILO Recommendation concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No 190), Official Gazette of FRY – International Treaties No 2/03.

The key international standards for the protection of children against violence are elaborated in the general comments of the Committee on the Rights of the Child.

The *General Comment No 13: The Right of the Child to Freedom from All Forms of Violence*<sup>130</sup> of the Committee on the Rights of the Child is based on the assumptions that no violence against children is justifiable and that all violence against children is preventable<sup>131</sup>. The concept of “violence against children” encompasses all types of violence against children: physical and mental injury, abuse, neglect or negligent treatment, maltreatment and exploitation, whether intentional or unintentional<sup>132</sup>. The General Comment places special emphasis on the following forms of violence against children: neglect or negligent treatment<sup>133</sup>, psychological (mental) violence<sup>134</sup>, physical violence<sup>135</sup>, corporal punishment<sup>136</sup>, sexual abuse and exploitation<sup>137</sup>, torture and inhuman or degrading treatment or punishment<sup>138</sup>, violence among children<sup>139</sup>, self-harm<sup>140</sup> and different harmful practices towards children, such as corporal punishment, forced and early marriages etc<sup>141</sup>. The Committee also points to institutional and system violations of child rights due to authorities’ failure to adopt/revise legislation, ensure the implementation of laws and provide sufficient material, technical and human resources to effectively prevent and protect children against violence, as well as due to professionals’ failure to execute their responsibilities adequately and disregard for the best interests, views and developmental objectives of the child<sup>142</sup>.

The Committee consistently maintains the position that all forms of violence against children, however light, are unacceptable, and that not even the mildest forms of legalised violence against children are acceptable. Further, according to the Committee, the ban on violence against children must not be informed by its frequency, severity of harm or the perpetrator's intent<sup>143</sup>.

The Committee stresses that the prevention of all forms of violence against children is crucial for the advancement of all rights of the child guaranteed by the CRC, including the right of the child to respect for his/her human dignity and physical and psychological integrity, and that the approach to establishing systems to prevent and respond to violence must be based on child rights rather than on welfare, which is of special importance in proceedings for the protection of children against violence.

According to the Committee, the state's duty to provide protection to children against violence applies to all children, irrespective of who the perpetrators are and in what settings the violence occurs. These may be parents, neighbours, peers or strangers, and violence may take

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<sup>130</sup> CRC/C/GC/13, 18 March 2011, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en)

<sup>131</sup> General Comment No 13, para. 3.

<sup>132</sup> *Ibid.*, para. 4.

<sup>133</sup> *Ibid.*, para. 20.

<sup>134</sup> *Ibid.*, para. 21.

<sup>135</sup> *Ibid.*, para. 22.

<sup>136</sup> *Ibid.*, para. 24.

<sup>137</sup> *Ibid.*, para. 25.

<sup>138</sup> *Ibid.*, para. 26.

<sup>139</sup> *Ibid.*, para. 27.

<sup>140</sup> *Ibid.*, para. 28.

<sup>141</sup> *Ibid.*, para. 29.

<sup>142</sup> *Ibid.*, para. 32.

<sup>143</sup> *Ibid.*, para. 17.

place in the family, in educational and social institutions, police stations, judicial institutions etc<sup>144</sup>.

With respect to measures required of the states, the Committee notes that the measures should be comprehensive and efficient, in order to prevent and respond to all forms of violence against children, and that it is necessary to establish an integrated, cohesive, interdisciplinary and coordinated system which incorporates the full range of measures, with children's participation being crucial for its development, monitoring and evaluation<sup>145</sup>. Beside legislative measures, including the budget, and implementing and enforcing measures, the states are also required to set appropriate strategies and programmes and establish systems for monitoring and coordination thereof, including data collection and impact assessment of the measures taken. Measures to be taken at the institutional level and within civil society organisations, including setting professional standards, protocols of cooperation etc., are highlighted as well<sup>146</sup>. Social policies aimed at risk reduction and prevention of violence against children are highlighted as especially important, as are social programmes to promote optimal positive child-rearing by providing necessary support for the child as an individual and for the child's family and others who have the care of the child<sup>147</sup>. The importance of educational measures is also stressed; they should address attitudes, traditions, customs and behaviours which condone and promote violence against children; contribute to the development of children's social skills and enhance the competencies of parents and professionals working with children<sup>148</sup>.

With regard to the range of interventions, the Committee points to three key areas of action.

In the area of prevention of violence against children, it notes the need to take measures targeting the general public, children, families and the community, professionals and institutions. In particular, it stresses the duty to identify risk factors for particular children/groups of children and identifying signs of maltreatment in order to respond in a timely manner, with the proviso that children themselves, including those especially vulnerable, must be provided with opportunities to signal emerging problems before they reach a state of crisis, and that adults must recognise violence in a timely manner and react even if the child does not explicitly ask for help.

The Committee provides clear guidelines about the establishment of safe, confidential and accessible support mechanisms for children and other persons to report violence, including the establishment of 24-hour toll-free hotlines and other ICTs<sup>149</sup>. Especially important are protocols on cooperation, which provide clear guidelines about the coordinated action of institutions and agencies in a manner that ensures immediate and long-term protection and fulfilment of the child's needs. The investigation of every case of violence must be rigorous, while ensuring that the child is protected from secondary victimisation and his/her views taken into consideration<sup>150</sup>. Every child who has experienced violence should be provided with adequate treatment with the aim of physical and psychological recovery and social reintegration in an environment which fosters the health, self-respect and dignity of the child<sup>151</sup>. Established procedures must be in place to ensure that, at any time, it is clear who has responsibility for the child and family from the

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<sup>144</sup> *Ibid.*, para. 34.

<sup>145</sup> *Ibid.*, para. 39.

<sup>146</sup> *Ibid.*, para. 42.

<sup>147</sup> *Ibid.*, para. 43.

<sup>148</sup> *Ibid.*, para. 44.

<sup>149</sup> *Ibid.*, para. 49.

<sup>150</sup> *Ibid.*, para. 51.

<sup>151</sup> *Ibid.*, para. 52.

moment of reporting violence, what measures are taken and in what timeframe, what their duration is, who and when evaluates them etc.; with the proviso that the child and other interested parties should be consulted on each measure<sup>152</sup>.

With regard to the prosecution of cases of violence against children, the Committee notes that the prevention of repeat offence is of primary importance. Children and their parents should be promptly and adequately informed, and children victims of violence should be treated in a child-friendly and sensitive manner, taking into account their personal situation, needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity: the speed of proceedings is of particular importance, as is the provision of the full range of available child care and protection services<sup>153</sup>. The Committee also points to the need to apply the restorative approach, as well as to ban the practice of impunity, in particular of professionals working with children. Further, it stresses the duty to provide adequate compensation and rehabilitation to children survivors of violence<sup>154</sup>.

With respect to the corporal punishment of children, which is still widespread in the family and other settings, the Committee stresses that banning it is not only a duty of states parties under the Convention, but also a key strategy for reducing and preventing all forms of violence in society. In the *General Comment No 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment*<sup>155</sup>, the Committee defines corporal (physical) punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light, and notes that there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention, such as punishment which belittles, humiliates, scares or ridicules the child etc<sup>156</sup>. The Committee is of the view that corporal punishment is invariably degrading and ineffective as a means of discipline, and that there are positive ways of teaching, correcting or disciplining children, which are better for children's development and contribute to building relationships with children based on trust and mutual respect. Hence, its position is that corporal punishment should be banned in all settings where children are found, including the family/home, alternative care settings, day care centres, schools and other educational institutions, as well as in the justice system, penal and other institutions, in situations of child labour, as well as in the community in which children live. This implies that the ban applies to the child's parents or guardians, as well as all those who care for or work with children.

The standards for the protection of children against violence are also stipulated by the treaties adopted under the auspices of the Council of Europe.

The *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* of 2007 (Lanzarote Convention)<sup>157</sup> states that the sexual exploitation of children, in particular child pornography and prostitution, and all forms of sexual abuse of children, are destructive to children's health and psycho-social development. The Convention prescribes comprehensive measures to prevent and protect children against these forms of violence, punish perpetrators and ensure children's participation in the development and implementation of state

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<sup>152</sup> *Ibid.*, para. 53.

<sup>153</sup> *Ibid.*, para. 54.

<sup>154</sup> *Ibid.*, para. 55.

<sup>155</sup> CRC/C/GC/8, 21 August 2006, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f8&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f8&Lang=en)

<sup>156</sup> General Comment No 8, para. 10.

<sup>157</sup> Law Ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Official Gazette of RS – International Treaties, No 1/10.

policies, programmes or other initiatives to fight the sexual exploitation and sexual abuse of children.

*The Convention on Cybercrime* of 2009 (Budapest Convention)<sup>158</sup> prescribes the duties of states parties with respect to the criminalisation of producing child pornography for the purpose of its distribution through a computer system; offering or making available, distributing or transmitting, and procuring child pornography through a computer system; and possessing child pornography in a computer system or on a computer-data storage medium. The term "child pornography" includes pornographic material that visually depicts a minor or a person appearing to be a minor engaged in sexually explicit conduct, as well as realistic images representing a minor engaged in sexually explicit conduct. The ban covers persons under 18 years of age; however, states parties may require a lower age-limit, but not less than 16 years (Art. 9).

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of 2011 (Istanbul Convention)<sup>159</sup> recognises that children are domestic violence victims, as well as witnesses. The Convention provides for the duty of states parties to take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of the Convention are taken into account<sup>160</sup>, as well as the duty to take the necessary legislative or other measures to ensure that, in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of the Convention, including age-appropriate psychosocial counselling for child witnesses, with due regard to the best interests of the child<sup>161</sup>. The duty to take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the women victims or their children is particularly emphasised.

### **4.3. International Bodies' Recommendations Addressed to the Republic of Serbia**

Having considered the Second and Third Periodic Reports of Serbia on the implementation of the CRC, the Committee on the Rights of the Child adopted the Concluding Observations<sup>162</sup> in which it welcomes the state's efforts and the progress made in the development of a system for the protection of children against violence, but also expresses its concern about the high number of reported cases of violence against children; cases of inhuman or degrading treatment of children living in institutional care homes, especially children with disabilities; reports indicating that children with disabilities, particularly those with intellectual impairments, are more likely to be victims of physical and sexual violence; widespread instances of violence in schools, particularly in basic schools, often perpetrated against children with disabilities and LGBTI children, as well as instances of cyberbullying. The Committee also points to the inadequate implementation of the protocols on response to cases of violence against children, the lack of a general understanding as to what constitutes violence against children, the limited ability of professionals

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<sup>158</sup> Law Ratifying the Convention on Cybercrime, Official Gazette of RS – International Treaties No 19/09.

<sup>159</sup> Law Ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Official Gazette of RS – International Treaties No 12/13.

<sup>160</sup> Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Art. 31.

<sup>161</sup> *Ibid.*, Art. 25.

<sup>162</sup> CRC/C/SRB/CO/2-3, 3 March 2017, available at:

[http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komiteta\\_za\\_prava\\_deteta\\_srb.doc](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_deteta_srb.doc)

to recognise cases of violence, insufficient cooperation and information sharing at the interdepartmental level and among relevant agencies, as well as inadequate follow-up<sup>163</sup>.

The Committee recommends the state to take measures to ensure mandatory compliance with the general protocol on the protection of children from abuse and violence and to provide sufficient human, financial and technical resources; further, in coordination with the office of the Ombudsman, in its capacity as the national preventive mechanism, to establish a monitoring mechanism to ensure that all children in institutions and alternative care are free from all forms of torture and inhumane or degrading treatment, and to ensure that they have access to an adequate mechanism for complaints related to their deprivation of liberty, their conditions of detention and their treatment. It is strongly recommended that preventative mechanisms are established to protect children with intellectual and other psychosocial impairments from any kind of physical or sexual violence, including compulsory training courses on violence against children for all relevant professionals. With regard to addressing violence in schools, it is recommended to establish standards, mentoring programmes and peer review, with support from the Ministry of Education, Science and Technological Development and teacher training agencies, and to provide training on the risks of cyberbullying. The Committee also recommends developing a public awareness campaign to change prevailing attitudes in relation to violence against children and move towards zero tolerance; ensuring efficient cooperation, coordination and data sharing between child protection agencies, the police and the justice system, together with the possibility of cooperation with the UNICEF and the World Health Organization in this matter<sup>164</sup>.

With regard to protection from abuse and neglect, the Committee notes positive developments, but stresses its concern about gaps in coordination, which prevent multidisciplinary teams at the local level from functioning properly. It is further concerned about prevailing societal attitudes according to which domestic abuse is perceived to be a private matter, and in that context recommends more intensive efforts to raise awareness and deliver education programmes and campaigns, with the involvement of children, in order to formulate a comprehensive strategy for preventing and combating child abuse. It is also recommended that a national database on all cases of domestic violence against children should be established; a comprehensive assessment of the extent, causes and nature of such violence undertaken; the Deputy Ombudsman in charge of child rights should be provided with more resources to be able to implement long-term programmes for addressing the root causes of violence and abuse; and community-based programmes aimed at preventing and tackling domestic violence, child abuse and neglect should be encouraged<sup>165</sup>.

With regard to the corporal punishment of children, the Committee expresses its expectation that it will be banned by the Family Law, as announced by the state, but is concerned that the practice of corporal punishment is widely accepted in society as a means of disciplining children. The state received the recommendation to explicitly prohibit corporal punishment in legislation; to monitor enforcement in all settings; to promote positive, non-violent and participatory forms of child-rearing and discipline through awareness-raising campaigns; and to ensure that offenders are punished<sup>166</sup>.

With regard to the harmful practices affecting children, the Committee stresses the problem of child marriage among ethnic groups, particularly Roma girls, and recommends that

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<sup>163</sup> Concluding Observations 2017, para. 32.

<sup>164</sup> *Ibid.*, para. 33.

<sup>165</sup> *Ibid.*, para. 35.

<sup>166</sup> *Ibid.*, para. 37.

the state party provide child victims with shelter, appropriate rehabilitation and counselling services, and develop awareness-raising campaigns about the harmful consequences of child marriage<sup>167</sup>.

The recommendations adopted by the Committee in 2010, after considering the Initial Report of the Republic of Serbia under the Optional Protocol on the sale of children, child prostitution and child pornography<sup>168</sup>, are also relevant for the establishment of effective protection of children against violence. In terms of prevention, it is recommended that the state centralise and further develop its mechanism for systematic data collection, in order to effectively analyse, monitor and assess the impact of laws, policies and programmes for all the areas covered by the Optional Protocol, and undertake research to identify the root causes and extent of sale of children, child prostitution and child pornography. It is recommended that laws be amended to criminalise the sale of children. It is also recommended that the state strengthen an institutional mechanism for effective coordination among ministries and between the national and local authorities and consultations with civil society organisations; to disseminate information and raise awareness; to integrate the provisions of the Optional Protocol in the curricula at all education system levels<sup>169</sup>; to provide training to professionals working for and with children<sup>170</sup>; and to provide sufficient resources to the Deputy Ombudsman in charge of child rights protection to exercise her mandate in this area<sup>171</sup>. Part of the recommendations concerns the prevention of cybercrime, especially child pornography on the Internet, which entails more intensive efforts to inform children and their parents about safe use of the Internet, and the adoption of legislation on the duties of Internet providers to prevent the dissemination of and access to child pornography etc.<sup>172</sup>

In the domain of child protection, it is recommended that the state take action to ensure that child victims are not treated as offenders and to avoid their stigmatisation, marginalisation and secondary victimisation.<sup>173</sup> It is also recommended that all children be provided with access to an adequate procedure to seek compensation for damages from those legally responsible and adequate services for their physical and psychological recovery and social reintegration, access to shelters<sup>174</sup>, as well as a national helpline<sup>175</sup>.

The Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee) issued multiple recommendations in the second monitoring round of the implementation of the Convention<sup>176</sup>. The Republic of Serbia received the recommendation to ensure that mandatory screening, which is currently confined only to specific professionals, is extended to the recruitment of all professionals (public or private) in contact with children, including those engaged on a voluntary basis, as well as to conduct screening continuously, rather than only during the recruitment process<sup>177</sup>. The

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<sup>167</sup> *Ibid.*, para. 38.

<sup>168</sup> CRC/C/OPSC/SRB/CO/1, 22 June 2010, available at

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fSRB%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fSRB%2fCO%2f1&Lang=en)

<sup>169</sup> Concluding Observations 2010, para. 16.

<sup>170</sup> *Ibid.*, para. 17.

<sup>171</sup> *Ibid.*, para. 20.

<sup>172</sup> *Ibid.*, para. 30.

<sup>173</sup> *Ibid.*, para. 40.

<sup>174</sup> *Ibid.*, para. 44.

<sup>175</sup> *Ibid.*, para. 45.

<sup>176</sup> 2<sup>nd</sup> implementation report "Protection of Children against Sexual Abuse in the Circle of Trust - The Strategies", available at:

<https://rm.coe.int/t-es-2017-12-en-final-lanzarotecomiteereportcircleoftruststrategies/16807b8959>.

<sup>177</sup> 2<sup>nd</sup> implementation report "Protection of Children against Sexual Abuse in the Circle of Trust - The Strategies", para. 95.

Committee recommends putting in place effective programmes for persons, including children, who are at risk of committing sexual offences against children, appropriate procedures to assess risk of repetition of sexual offences against children, and appropriate mechanisms to evaluate the effectiveness of the intervention programmes or measures<sup>178</sup>. It is also recommended that the Republic of Serbia put in place procedures to assess risk of repetition of sexual offences<sup>179</sup>, provide services and appropriate assistance programmes and measures for children who commit sexual offences, including those who are below the age of criminal responsibility<sup>180</sup>, put in place effective intervention programmes and measures to evaluate and prevent the risk of these offences being committed, in the pre-trial phase of the procedure<sup>181</sup>, and put in place effective intervention programmes and measures in penal institutions.<sup>182</sup>

In the Third Cycle of Universal Periodic Review, the state received recommendations in the area of enhancing the fight against violence against children, especially physical and gender-based violence, as well as recommendations concerning the ban on corporal punishment of children, which were accepted by Serbia, with references to specific measures already taken in this sphere.<sup>183</sup>

#### 4.4. Violence against Children

Violence against children is widespread and manifested in various forms. According to the data from the study titled *Violence against Children in Serbia: Determinants, Factors and Interventions*, prepared by the UNICEF Office of Research relying on the research findings of domestic researchers and published in 2017<sup>184</sup>, violence against children occurs as direct, interpersonal, physical, psychological, or sexual violence; as neglect that deprives a child from needs satisfaction and prevents his/her development; and also in less direct and more complex forms, as structural violence that appears in different forms, such as child marriage, child labour or other types of exploitation, or multifaceted social exclusion.

Many children are exposed to domestic violence, whether as direct victims of violence or witnesses of a violent act, and corporal punishment, considered a legitimate and even advisable practice in child-rearing, is widespread. Younger children, aged up to 14, are at particularly high risk and more often exposed to physical violence than older children, and girls are exposed to severe physical punishment more than boys, although a relatively small share of children are subjected to this disciplining method. Children are also exposed to violence when they witness domestic violence against their mothers.

Peer violence in school settings is widespread. According to the findings of a survey conducted in 2013, 44% of students reported having been exposed to peer-to-peer violence, of whom 45.8% had suffered verbal violence, 33% – physical violence, another 33% – social violence (plotting, manipulative relations, etc.), while 21% of children had perpetrated violence. Boys were slightly more likely to offend others than girls and were more often exposed to violence by peers and adults. One quarter of the students in grades 5-8 of basic education reported having been

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<sup>178</sup> *Ibid.*, para. 106.

<sup>179</sup> *Ibid.*, para. 109.

<sup>180</sup> *Ibid.*, para. 124.

<sup>181</sup> *Ibid.*, para. 127.

<sup>182</sup> *Ibid.*, para. 137.

<sup>183</sup> Government Conclusion Adopting the Response of the Republic of Serbia to the Recommendations from UN Member States received in the Third Cycle of Universal Periodic Review, 05 No 337-3138/2018 dated 26 04. 2018.

<sup>184</sup> Available at:

[http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2017/09/Nasilje\\_prema\\_deci\\_u\\_Srbiji\\_Nacionalni\\_izvestaj.pdf](http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2017/09/Nasilje_prema_deci_u_Srbiji_Nacionalni_izvestaj.pdf).

offended by a teacher, 15% said that they had been hit by a teacher, and 5% – that they had been threatened by a teacher<sup>185</sup>. These figures show that no significant progress has been achieved in protection against violence in schools compared to the previous period, when the Ombudsman, in a survey conducted with the Young Advisors Panel, found widespread violence in schools and inadequate response on the part of the education system.<sup>186</sup>

#### Special Report of the Ombudsman and the Young Advisors Panel on Violence in Schools

*The Special Report of the Ombudsman and the Young Advisors Panel on violence in schools, of 2011, was prepared as a result of a peer survey conducted by members of the Young Advisors Panel in 72 basic and upper secondary schools, with a total of 1257 respondents, in the areas covered by 13 regional school administrations in Serbia. This is the first survey into violence in schools conducted by a state authority, with direct participation of children/students themselves. The survey findings show that violence is very widespread in school settings, with no effective institutional response implemented, despite the numerous regulations and protocols. Thus, almost 90% of the respondent basic school students reported having (directly or indirectly) experienced peer violence, while 60% of upper secondary school students had had such experience. The survey also revealed the ineffectiveness of the education system in cases of violence, with about 70% of basic and upper secondary school students reporting that the school did not have, or they did not know whether it had a team for protection against violence, abuse and neglect.<sup>187</sup>*

Violence against children, including peer violence, also occurs in residential social care institutions, and physical restraint and isolation of children in care institutions for children with intellectual difficulties, mainly as a measure in cases of self-harm.

Children are also exposed to violence in the digital domain: almost two thirds of basic school students (62%) and 84% of upper secondary school students have been exposed to at least one risky situation online during a year<sup>188</sup>.

Different forms of violence against children in the community, based on ethnic and political affiliation (e.g. right-wing groups' attacks on the LGBT movement), support for a given sports club etc., are also widespread. Violence is also perpetrated in sports clubs, by fellow athletes and opponent players, and 61% of young athletes have experienced violence at the hands of a coach<sup>189</sup>.

The abuse of child labour is present to a greater extent in poor families and rural environments. According to the findings of the Serbia Multiple Indicator Cluster Survey of 2014<sup>190</sup>, 10% of children in Serbia were involved in child labour, including 3% of children working in hazardous conditions, while a total of 5% of children in Roma settlements were involved in child labour, including 4% of children working in hazardous conditions. Children in street situations are exposed to multiple forms of violence, are likely to become victims of exploitation,

<sup>185</sup> Popadić, D., Plut, D. et al. (2014). *Nasilje u školama u Srbiji: Analiza stanja od 2006. do 2013. godine*, Beograd: Institut za psihologiju, UNICEF.

<sup>186</sup> Poseban izveštaj Zaštitnika građana i Panela mladih savetnika – Zaštita dece od nasilja u školama, available at <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/1668-2011-12-20-11-02-43>.

<sup>187</sup> *Ibid.*

<sup>188</sup> Popadić, D. i Kuzmanović, D. (2013). *Korišćenje digitalne tehnologije, rizici i zastupljenost digitalnog nasilja među učenicima u Srbiji*, Beograd: Ministarstvo prosvete, nauke i tehnološkog razvoja, kancelarija UNICEF-a, Telenor

<sup>189</sup> Popadić, Bačanac Lj. et al. (2011). *Nasilno ponašanje prema i među decom i mladima u sportu – rezultati istraživanja i preporuke*, Beograd: Centar za prava deteta, MOS, GIZ 2011.

<sup>190</sup> Srbija – Istraživanje višestrukih pokazatelja položaja žena i dece 2014. i Srbija – romska naselja – Istraživanje višestrukih pokazatelja položaja žena i dece, Konačni izveštaj, UNICEF, 2015.

especially sexual exploitation, and are at risk of being trafficked<sup>191</sup>. The first national-level, system-wide survey into the causes and factors leading to the worst forms of child labour was conducted by the Ombudsman. Survey findings revealed the key system weaknesses that precluded a substantial and effective response to this phenomenon. Lack of knowledge and understanding of the circumstances and risk factors leading to child labour in the streets on the part of authorities with mandate to take measures to protect children, failure to involve children in street situations and to consider their views and perspectives has precluded the implementation of any systematic measures to respond to the needs of these children. This is especially noticeable in the fact that the children and the authorities' staff have diametrically opposed views of the causes of child labour: while the children refer to extreme poverty as the cause, the authorities identify parental responsibility and child exploitation by parents as the sole cause<sup>192</sup>.

*"It was 6 years ago, I was 6 years old, we didn't have a single dinar at home."*

*A child involved in child labour in the streets*

*Lack of knowledge and, consequently, also lack of understanding of the phenomenon and significance of children's involvement in street situations; lack of records and data; lack of understanding of the causes and risk factors; insufficient understanding of the crucial importance of the early age; child exclusion and unavailability of services; lack of authorities' outreach activities and harm reduction measures and services for children in street situations; incomplete and inadequate legal framework for combating and preventing children's involvement in street situations – these are some of the Ombudsman's findings after conducting the survey into the status of this group of children. This survey was the first systematic research and mapping exercise conducted by a state authority concerning the status of children in street situations and the competent authorities' response.*

*The recommendations addressed to the authorities in this report have not been fulfilled; consequently, the status of children in street situations has not been improved, and some of the services established (such as the Drop-In Centre for Street Children) were discontinued in 2014 owing to austerity measures and have not been re-established.* <sup>193</sup>

Despite the numerous strategic documents, child and early marriage persists in the Republic of Serbia, primarily in the Roma population and especially in the southern part of Serbia and some parts of Vojvodina. Arranged marriage is not present in the City of Belgrade area, but underage marriage is present. Child marriage, as a form of violence against children, particularly affects girls from Roma settlements. According to the data of the Serbia Multiple Indicator Cluster Survey of 2014<sup>194</sup>, 7% of women aged 20-49 were married before the age of 18, and as many as 17% of girls living in Roma settlements were married before the age of 15, and more than half – before the age of 18. The adolescent birth rate among Roma females aged 15-19 is 7 times higher than in the general population, the measures taken are inadequate, these forms of parental neglect and exploitation are inadequately assessed and identified, adults' responsibility is minimised, and children's involvement in these activities is attributed to their own independent choice. Many

<sup>191</sup> Nasilje prema deci u Srbiji – determinante, faktori i intervencije, UNICEF, 2017.

<sup>192</sup> Poseban izveštaj Zaštitnika građana: Prevencija eksploatacije dece u Jugoistočnoj Evropi – Dečje prosjačenje u Republici Srbiji, 2011, available at <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/1597-2011-12-05-14-39-25>.

<sup>193</sup> *Ibid.*

<sup>194</sup> Srbija – Istraživanje višestrukih pokazatelja položaja žena i dece 2014. i Srbija – romska naselja – Istraživanje višestrukih pokazatelja položaja žena i dece, Konačni izveštaj, UNICEF, 2015.

Roma women's lives are characterised by exclusion from education, early school leaving, marriage at an early age, multiple short-spaced pregnancies, lack of information, and financial and other dependency on older family members or partners. Such position of Roma women is primarily a result of gender and other stereotypes, cultural patterns and, in particular, absence of a system-wide response to this phenomenon on the part of the state<sup>195</sup>. Such and similar omissions have already been pointed out by the Ombudsman<sup>196</sup>; in addition, at the request of the Special Rapporteur of the Office of the UN High Commissioner for Human Rights, the Ombudsman also submitted a report on the lack of progress in protecting children from these harmful practices in May 2017. On this occasion, the Ombudsman reported on the typical omissions of the competent state authorities, institutions and agencies identified in the handling of several cases of arranged and forced child marriage (such as the arrangement of a wedding between a girl and a boy aged 13 and 12, respectively, who were subsequently forced to engage in child begging and commit petty theft abroad). Parental neglect, sexual abuse and exploitation of children were not adequately assessed or identified, since the competent agencies' staff lacked sufficient knowledge about sexual violence against children, and the responsibility of adults and family members was minimised and downplayed. Omissions were also identified in the incorrectly conducted procedures for the questioning of children and taking their statements, as this was done in the presence of family members and other adults responsible for these forms of abuse and exploitation; further, protection of children from influence, threats and coercion while giving statements was not provided, nor was the obligation to obtain children's authentic statements and views fulfilled. In case of Roma children, competent authorities even showed a certain level of tolerance of such violations of child rights, as a result of which they failed to immediately separate Roma children from the hazardous situations until the conclusion of the proceedings, although this was foreseen by the General Protocol.

*The sexual exploitation of a girl in the family was not stopped because of the need to collect evidence for the proceedings to be conducted by the competent authorities.*

*In 2017, the Ombudsman found omissions in the work of the Zrenjanin Centre for Social Work in the case of procuring a Roma girl aged 11 to a juvenile aged 17 for sexual exploitation and entry into underage marriage. Although it found indications that the sexual abuse of the girl had taken place in the family home, in the presence of her two younger brothers, the Centre failed to immediately separate the child from the hazardous conditions and ensure the full interruption of the child's relationship with the suspect until the conclusion of the proceedings.<sup>197</sup> Instead, the Centre postponed all measures within its mandate until a medical specialist verified that the girl had been sexually abused, owing to the need for the police to obtain material evidence of sexual abuse. Such response by the competent authorities not only failed to stop the violence against the child, but also enabled the child abuse to be repeated. Following direct oversight by the Ombudsman, the Centre took the foreseen protection measures in cases of suspicion of child sexual abuse*

<sup>195</sup> Poseban izveštaj Zaštitnika građana o reproduktivnom zdravlju Romkinja, available at:

<https://www.rodnaravnopravnost.rs/attachments/article/276/Poseban%20izvestaj%20ZC%20Rep%20zdravlje%20Romkinja%201.pdf>.

<sup>196</sup> Ombudsman's publication Prevenција i zaštita dece od seksualnog zlostavljanja i seksualnog iskorišćavanja, available at:

[http://www.pravadeteta.com/attachments/394\\_publicacija%20Lanzarot%20pdf.pdf](http://www.pravadeteta.com/attachments/394_publicacija%20Lanzarot%20pdf.pdf).

Ombudsman's Recommendation available at: <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/1663-2011-12-19-08-47-00>.

<sup>197</sup> General Protocol on the Protection of Children against Violence, Abuse and Neglect, available at:

[http://www.paragraf.rs/propisi/opsti\\_protokol\\_za\\_zastitu\\_dece\\_od\\_zlostavljanja\\_i\\_zanemarivanja.html](http://www.paragraf.rs/propisi/opsti_protokol_za_zastitu_dece_od_zlostavljanja_i_zanemarivanja.html)

*and initiated proceedings against the parents for the abuse and exploitation of the child, whose sexual abuse was verified by medical findings*<sup>198</sup>.

Violence against children is influenced and caused by different factors. At the macro level, they are manifested in broader socio-economic, cultural or institutional determinants leading to increased risk of violence, such as economic underdevelopment or instability, poverty, social conflicts, non-existent or inadequate legislation etc. At the meso level, these are socio-economic, cultural or institutional factors specific to a given local community or region, as well as factors related to a specific part of the protection system. At the micro level, these are family-related factors (socio-economic status, dysfunctional relations, domestic violence, drug and alcohol abuse etc.) or factors related to specific institutions that create a specific environment characterised by factors that increase or decrease the risk of violence. In addition, there are specific factors related to individuals, which increase the risk of violence, such as sex, age, national affiliation, disability or certain behavioural characteristics.<sup>199</sup>

An important factor that contributes to the persistent difficulty of detecting sexual violence is the fact that neither children and youth nor adults have relevant information about what sexual violence and exploitation is, what its manifestations are and what protection mechanisms are available to victims. The Ministry of Education withdrew the prepared sex education materials after public displeasure at the availability of topics such as sexual abuse in the family and persons of different sexual orientation and gender identity. The Ministry announced the development of new educational contents in this area, but this has not happened to date; hence, children, education system staff and parents still have no adequate and competent source of information about sexuality, reproductive health, privacy and protection against sexual abuse and exploitation.<sup>200</sup> The educational packages were prepared after the publication of the first National Study on the Social Problem of Sexual Child Abuse in the Republic of Serbia<sup>201</sup>, whose development was also supported by the Ombudsman and which showed that “at the ages of 10-18, in every school class in Serbia, there are 4 children who have experienced a form of sexual violence and another 4 children who know somebody who has experienced it.”

#### **4.5. Legal Framework for the Protection of Children against Violence**

The legal framework for the protection of children against violence consist of the Constitution of the Republic of Serbia, numerous laws, bylaws and protocols governing the modality of response by competent authorities and agencies.

<sup>198</sup> The procedure for oversight of legal compliance and regularity was concluded by instrument No 132-2673/2016 dated 29 December 2017, after the Ombudsman assessed that the guardianship authority had rectified the omissions found by the Ombudsman in the procedure for oversight of legal compliance and regularity.

<sup>199</sup> Srbija - Istraživanje višestrukih pokazatelja položaja žena i dece 2014. i Srbija - romska naselja - Istraživanje višestrukih pokazatelja položaja žena i dece, Konačni izveštaj, UNICEF, 2015.

<sup>200</sup> Available at: <http://www.politika.rs/scc/clanak/378953/%D0%94%D1%80%D1%83%D1%88%D1%82%D0%B2%D0%BE/%D0%9F%D0%BE%D0%B2%D1%83%D1%87%D0%B5%D0%BD%D0%B8-%D0%BF%D1%80%D0%B8%D1%80%D1%83%D1%87%D0%BD%D0%B8%D1%86%D0%B8-%D0%B7%D0%B0-%D1%81%D0%B5%D0%BA%D1%81%D1%83%D0%B0%D0%BB%D0%BD%D0%BE-%D0%BE%D0%B1%D1%80%D0%B0%D0%B7%D0%BE%D0%B2%D0%B0%D1%9A%D0%B5>

<sup>201</sup> The first National Strategy to Address the Social Problem of Sexual Child Abuse in the Republic of Serbia was developed by the organisation Incest Trauma Centre of Belgrade, in partnership with the Ministry of Education, Science and Technological Development and the organisation Women's Health Promotion Centre of Belgrade.

#### 4.5.1. Laws and Bylaws

The ban on all forms of physical, psychological, sexual and any other form of violence against children, irrespective of the context in which it occurs and who the perpetrators are, flows from the constitutional norm governing the inviolability of the physical and psychological integrity of the person<sup>202</sup> and human dignity, which must be respected and protected by all.<sup>203</sup>

The ban on violence against children within the family is encompassed by the general ban on domestic violence, stipulated by the Family Law of 2005, which expressly recognises the right of family members to protection against this form of violence.<sup>204</sup> Under this Law, domestic violence is defined as “*behaviour whereby one family member jeopardises the bodily integrity, mental health or peace of mind of another family member*”, with examples of some characteristic forms of violence, such as infliction or attempted infliction of bodily injury, causing fear by threat of murder or infliction of bodily injury on a family member or person close to him/her, forced sexual intercourse, sexual intercourse or inducement to sexual intercourse with a person below the age of 14 or an incapacitated person, restriction of freedom of movement or communication with third parties, and insults. The law also prohibits any other brazen, inconsiderate and malicious behaviour.<sup>205</sup> The Family Law, however, does not prohibit the corporal punishment of children.

The *Family Law* also stipulates protection measures against domestic violence, aimed at preventing the repetition of violence, providing the necessary protection of the victim's physical and psychological integrity and personal safety, and eliminating the circumstances that are conducive or stimulative to repeated violence. The essence of the protective measures under family law is the restriction or temporary barring of personal relations between the perpetrator and the victim, including the restriction of certain rights and freedoms of the perpetrator of violence<sup>206</sup>. The Law also regulates the special proceedings for the protection against domestic violence, which may be brought by the child himself/herself.

The ban on violence among and against children in education institutions is governed by the *Law on the Foundations of the Education System*<sup>207</sup>, which expressly prohibits physical, psychological, social, sexual, digital and any violence, abuse and neglect of children and students<sup>208</sup>. Each form of violence is legally defined, which facilitates the identification of and response to violence. Compared to the former *Law on the Foundations of the Education System*<sup>209</sup>, this Law has introduced novelties, such as the definition of digital violence and abuse; education institutions' duty to report to the competent authority all forms of violence, abuse and neglect in the institution committed by parents, other legal representatives or third parties; the prohibition of conduct that offends reputation, honour or dignity, both by adults against children or students or vice versa, and among children or students; the principal's duty to undertake appropriate actions and measures within three days of becoming aware of the violation of this ban; high fines for misdemeanours imposed on institutions and principals or institutions' responsible officers if they fail to undertake appropriate measures in cases of violation of the ban on violence, abuse and neglect, or if they undertake them in an untimely manner; and fines for the parents of

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<sup>202</sup> Constitution of the Republic of Serbia, Art. 25.

<sup>203</sup> *Ibid.*, Art. 23.

<sup>204</sup> Family Law, Art. 10.

<sup>205</sup> *Ibid.*, Art. 197.

<sup>206</sup> *Ibid.*, Art. 198, para. 2.

<sup>207</sup> Official Gazette of RS Nos 88/17 and 27/18.

<sup>208</sup> Law on the Foundations of the Education System, Art. 111.

<sup>209</sup> Official Gazette of RS Nos 72/09, 52/11, 55/13, 35/15, 68/15 and 62/16.

children and students for violence and offence to reputation, honour and dignity. The Law foresees that this area is to be regulated in more detail by bylaws.

The corporal punishment of children in the family, in day care centres and the alternative care system is not expressly prohibited, nor are sanctions stipulated for it, despite the fact that the Ombudsman, as an independent state authority, has long since made recommendations and publicised its view<sup>210</sup> that an express ban on the corporal punishment of children in all settings should be introduced in the legal system, together with the establishment of support services for parents to adopt positive parenting<sup>211</sup>.

The Ombudsman is the first state authority to have consulted children and youth on the issue of corporal punishment, which most directly affects children's everyday life, proper development and well-being. Through the peer survey into the attitudes of children and youth towards the corporal punishment of children, the Ombudsman's Young Advisors Panel has collected the views of over 800 peers, and the survey findings show that children and youth have a negative view of corporal punishment. A vast majority (84%) of children and youth are of the view that it is possible to admonish children for harmful behaviour without beating them, that beating can harm the child's body and person (82%) and that parents' explanations have more impact than beating (81%). Four fifths of children and youth (82%) believe that they will not corporally punish their own children. Most children and youth (58%) hold that, over time, beatings become ineffective and have no impact in terms of changing behaviour, and 77% believe they should be accorded equal protection against corporal and any other degrading punishment as adults and equal protection against corporal punishment at home as in school. Most children and youth find that parents should use words to explain to the child what is acceptable, and what is not (90%), that parents should encourage the child to behave well by praises and attention (88%), that an explanation from parents why something should not be done would have more impact on them personally than a beating (82%). More than one half of the respondents agree that other sanctions, such as being grounded or a reduction of the allowance, is more effective than beating, while about one quarter of the interviewed children and youth disagree with this statement.<sup>212</sup>

The gravest forms of violence against children are criminalised in the Criminal Code of the Republic of Serbia of 2005, with multiple subsequent amendments.<sup>213</sup> The provisions of the Law Amending the Criminal Code of 2016 are, to a substantial extent, based on the Ombudsman's initiative<sup>214</sup>, recommendations and proposals for the alignment of legislation with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.<sup>215</sup> Violence against children is criminalised under many criminal offences, such as the criminal offences of *Domestic violence*<sup>216</sup>, *Threat to security*<sup>217</sup>, *Maltreatment and torture*<sup>218</sup>, *Disclosure*

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<sup>210</sup> Ombudsman's Position on the corporal punishment of children available at:

[http://www.pravadeteta.com/attachments/394\\_Stav%20ZG%20o%20telesnom%20kaznjavanju-FINAL.doc](http://www.pravadeteta.com/attachments/394_Stav%20ZG%20o%20telesnom%20kaznjavanju-FINAL.doc)

<sup>211</sup> Ombudsman's Annual Reports.

<sup>212</sup> Available at: [https://www.pravadeteta.com/attachments/394\\_Istrazivanje%20Panela.ppt](https://www.pravadeteta.com/attachments/394_Istrazivanje%20Panela.ppt).

<sup>213</sup> Official Gazette of RS Nos 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/2014 and 94/16.

<sup>214</sup> The initiative is available at: [http://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=506:2013-01-24-18-32-27&catid=41:2012-04-09-12-59-57&Itemid=86](http://www.pravadeteta.com/index.php?option=com_content&view=article&id=506:2013-01-24-18-32-27&catid=41:2012-04-09-12-59-57&Itemid=86).

<sup>215</sup> Law Ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Official Gazette of RS - International Treaties No 19/09.

<sup>216</sup> Criminal Code, Art. 194.

<sup>217</sup> *Ibid.*, Art. 138.

<sup>218</sup> *Ibid.*, Art. 137.

of personal and family circumstances<sup>219</sup>, Stalking<sup>220</sup>, criminal offences against life and limb<sup>221</sup>, criminal offences against sexual freedoms<sup>222</sup>, Neglect and abuse of a minor<sup>223</sup> and others.

Some less severe forms of psychological and physical violence are punishable as misdemeanours under the Law on Public Peace and Order:<sup>224</sup> rude, brazen and inconsiderate behaviour<sup>225</sup> and insults, perpetration of violence, threats or brawling<sup>226</sup>.

Protection against sexual exploitation and sexual abuse under criminal law is provided through the Criminal Code provisions on criminal offences against sexual freedoms and the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors<sup>227</sup>. All criminal offences of sexual violence, except sexual harassment, are prosecuted ex officio, irrespective of the relationship between the perpetrator and the victim. Under domestic legislation, every person over 14 years of age is legally competent to consent to a sexual act, while any consent of a person under 14 years of age to a sexual act does not exclude the perpetrator's culpability.

Forced marriage, as a form of violence against children, was criminalised in 2016 by amendments to the Criminal Code which stipulate the criminal offence *Forced entry into marriage*<sup>228</sup>. The law criminalises *genital mutilation* by stipulating the separate criminal offence *Mutilation of female genitalia*<sup>229</sup>. Further, *Unlawful abortion*<sup>230</sup>, *Cohabitation with a juvenile*<sup>231</sup> and *Incest*<sup>232</sup> are also specified as separate criminal offences.

The criminal protection of children against sale and trafficking is provided under the Criminal Code, which criminalises these acts under the criminal offences *Trafficking in human beings*<sup>233</sup>, *Trafficking in minors for adoption*<sup>234</sup> and *Establishment of slavery and transfer of persons in slavery*<sup>235</sup>. Trafficking in children is the qualified offence of trafficking in human beings; when it comes to the criminal offence of trafficking in minors for adoption, it is restricted to cases of abduction of children under 16 years of age.

All criminal offences whereunder forms of violence against children are criminalised are punishable by imprisonment, with the exception of sexual harassment, indecent assault if committed through abuse of power and against a person who is in a subordinated or dependent position in relation to the perpetrator<sup>236</sup>, indecent assault if committed through abuse of power by a school or preschool teacher, caregiver, adoptive parent, parent, step-father, step-mother or another person against a minor entrusted to him/her for learning, child-rearing or care<sup>237</sup> and some less severe forms of psychological violence. However, there are various possibilities for

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<sup>219</sup> *Ibid.*, Art. 171.

<sup>220</sup> *Ibid.*, Art. 138a.

<sup>221</sup> Chapter 13 of the Criminal Code.

<sup>222</sup> Chapter 18 of the Criminal Code.

<sup>223</sup> Criminal Code, Art. 193.

<sup>224</sup> Official Gazette of RS Nos 6/16 and 24/18.

<sup>225</sup> Law on Public Peace and Order, Art. 8.

<sup>226</sup> *Ibid.*, Art. 9.

<sup>227</sup> Official Gazette of RS No 32/13.

<sup>228</sup> Criminal Code, Art. 187a.

<sup>229</sup> *Ibid.*, Art. 121a.

<sup>230</sup> *Ibid.*, Art. 120, para. 3.

<sup>231</sup> *Ibid.*, Art. 190.

<sup>232</sup> *Ibid.*, Art. 197.

<sup>233</sup> *Ibid.*, Art. 388.

<sup>234</sup> *Ibid.*, Art. 389.

<sup>235</sup> *Ibid.*, Art. 390.

<sup>236</sup> Art. 182 with reference to Art. 181, para. 1 of the Criminal Code.

<sup>237</sup> Art. 182 with reference to Art. 181, para. 2 of the Criminal Code.

more lenient criminal penalties: ordering the perpetrator to perform work in the public interest<sup>238</sup> (for a criminal offence punishable by imprisonment of up to three years or a fine, including the offences of sexual harassment and the basic offence of domestic violence); “home imprisonment”<sup>239</sup> with or without electronic surveillance<sup>240</sup> (if the perpetrator is sentenced to imprisonment of up to one year); conditional sentence<sup>241</sup> if the perpetrator is sentenced to imprisonment of under two years; judicial admonition (for a criminal offence punishable by imprisonment of up to one year or a fine, committed under such mitigating circumstances that particularly reduce its severity). Home imprisonment is, however, not allowed for persons convicted of criminal offences against marriage and family who live in the same household as the victim<sup>242</sup>. With regard to sex crimes against children, the possibilities for more lenient penalties are considerably narrower, since the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors provides that the penalty for these crimes may not be lowered, nor may conditional release be granted. The provision that the prosecution and enforcement of penalties for sex crimes against minors are not subject to statute of limitations is especially important.<sup>243</sup> The Law on Special Measures to Prevent the Commission of Sex Crimes against Minors was enacted in 2014, in line with the Ombudsman’s initiative addressed to the competent authorities already in 2011.

*Security measures* may be imposed on *person convicted of a criminal offence against a child*, with the aim of precluding the situations or conditions that may affect the likelihood of the perpetrator committing criminal offences in the future. Amongst other things, the court is authorised to order mandatory psychiatric treatment and admission of the perpetrator to a health care institution, mandatory psychiatric treatment at liberty, mandatory treatment for drug addiction and alcoholism, seizure of items. The court may also bar the perpetrator from approaching the victim below a certain distance, accessing the surroundings of the victim’s home or workplace, further harassing or communicating with the victim, if it is reasonable to believe that such actions by the perpetrator would be hazardous for the aggrieved party.<sup>244</sup>

The court may also order *protective supervision*<sup>245</sup>, whereunder the perpetrator is ordered to comply with one or more obligations (e.g. to refrain from using drugs or alcoholic beverages, to visit specific professional or other counselling units or institutions and comply with their instructions, etc.).

Special measures, implemented after serving the sentence of imprisonment, are stipulated for perpetrators of sexual violence against minors:<sup>246</sup> obligation to present themselves before the competent authority; ban on visiting locations in which minors are found (kindergartens, schools etc.); obligation to visit professional counselling units and institutions; obligation to report any change of permanent or temporary residence, change of job, and trip abroad. The measures apply for up to 20 years after the completion of the sentence. Special records are kept of the perpetrators of sex crimes against minors.<sup>247</sup>

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<sup>238</sup> Criminal Code, Art. 52.

<sup>239</sup> *Ibid.*, Art. 45, para. 5.

<sup>240</sup> Art. 424, para. 2 of the Criminal Proceedings Code, Official Gazette of RS Nos 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.

<sup>241</sup> Criminal Code, Art. 65.

<sup>242</sup> *Ibid.*, Art. 45, para. 7.

<sup>243</sup> *Ibid.*, Art. 77.

<sup>244</sup> Art. 5 of the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors, Official Gazette of RS No 32/13.

<sup>245</sup> Criminal Code, Art. 71.

<sup>246</sup> Art. 3 of the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors.

<sup>247</sup> Art. 13 and 14 of the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors.

Relevant to the prevention of all forms of violence against children is the *Law on the Prevention of Domestic Violence (LPDV)* of 2016<sup>248</sup>, which, in a general and unified way, regulates the organisation and actions of state authorities and institutions with the aim of ensuring the effective prevention of domestic violence and the provision of urgent, timely and effective protection and support to domestic violence victims (Art. 2 of the LPDV). The Law aims to “fill the legal void between the reporting of violence or danger of violence to the commencement of the relevant court proceedings, since it is during that time that the victim is at an especially high risk of repeated or escalated violence”, as well as to “solve the problem of insufficiently coordinated cooperation among the authorities in charge of preventing domestic violence and protecting and supporting the victim, as well as insufficient coordination between these authorities and other authorities, organisations and individuals that assist in the provision of protection and support to victims”.<sup>249</sup> The LPDV establishes and regulates a *specific procedure for preventing domestic violence*, which consists of a range of measures and activities to be undertaken by different authorities in order to ensure victims’ safety and provide appropriate assistance and support. The LPDV provisions on cooperation among the competent authorities and institutions in preventing domestic violence, as well as the provisions on the provision of protection and support to victims, apply by analogy to other offences of gender-based violence, the taxative list of which is provided in Art. 4 of the LPDV; these include offences whose victims are children only, such as the display, procurement and possession of pornographic materials and exploitation of minors for pornography<sup>250</sup>, incitement of children to be present during sexual acts<sup>251</sup>, and neglect and abuse of a minor<sup>252</sup>.

#### 4.5.2. Rulebooks and Protocols

With a view to establishing a comprehensive and coherent system for preventing and protecting children against violence, which will ensure the timely and coordinated system-wide institutional response in order to prevent violence, stop it, and enable the child’s recovery and reintegration, the Government and line ministries have adopted protocols.

The *General Protocol on the Protection of Children against Abuse and Neglect* of 2005 establishes a cross-sectoral network for the protection of children against abuse, neglect, exploitation and violence. Special protocols on response to cases of violence against children regulate internal procedures within the system and within individual institutions. They were adopted by the Ministry of Labour, Employment, Veteran and Social Affairs (*Special Protocol on the Protection of Children against Abuse and Neglect in Social Care Institutions* of 2005, governing the procedures in the social protection system and assigning the coordination role in the child protection process to centres for social work); Ministry of the Interior (*Special Protocol on Police Officers’ Actions in the Protection of Minors against Abuse and Neglect* of 2007, governing the procedures for police officers’ response to cases of violence against children); Ministry of Education, Science and Technological Development (*Special Protocol on the Protection of Children and Students against Violence, Abuse and Neglect in Education Institutions* of 2007, which was translated into a binding regulation in 2010, by the adoption of the *Rulebook on the Protocol on Education Institutions’ Response to Violence, Abuse*

<sup>248</sup> Official Gazette of RS No 94/16.

<sup>249</sup> Explanatory Memorandum to the LPDV.

<sup>250</sup> Criminal Code, Art. 185.

<sup>251</sup> *Ibid.*, Art. 185a.

<sup>252</sup> *Ibid.*, Art. 193.

and Neglect<sup>253</sup>); Ministry of Justice (*Special Protocol on Judicial Authorities' Actions in the Protection of Minors against Abuse and Neglect* of 2009, focused on specific measures and actions to be undertaken by judicial office holders in proceedings with the aim of protecting children against abuse and neglect and intensifying cooperation with other holders of public powers in this area); Ministry of Health (*Special Protocol of the Health Care System on the Protection of Children against Abuse and Neglect* of 2009, specifying the procedure for health care professionals and associates' response and their cooperation with other sectors in cases of child abuse and neglect).

All protocols foresee relevant staff training in order to enhance their competencies and ensure the understanding of the phenomenon of violence against children and efficient response aimed at the provision of effective protection.

With the aim of preventing and protecting children against violence in education institutions, the *Rulebook on the Protocol on Education Institutions' Response to Violence, Abuse and Neglect*<sup>254</sup> was adopted in 2010; it regulates in detail the actions of all education process stakeholders, including parents, in preventing, precluding, detecting and responding to violence in education institutions. The Rulebook foresees the establishment of a dedicated team for protection against violence, abuse and neglect and the adoption of a programme on protection against violence, abuse and neglect, which should specify prevention and intervention activities, responsible parties and implementation timeframe. *The Rulebook on Detailed Criteria for Recognising Forms of Discrimination by Employees, Children, Students or Third Parties in Education Institutions of 2016*<sup>255</sup> further improves the protection mechanism by expanding it to include discrimination and specifying the behaviours which, in substance, constitute violent conduct (e.g. hate speech).

The *Rulebook on the Performance of Community or Humanitarian Service*<sup>256</sup> was adopted in 2018; it regulates in detail the performance of community or humanitarian service imposed on a student by the school in conjunction with a reformatory or reformatory and disciplinary measure. The Rulebook is based on the principles of restorative discipline, as an approach to reduce or remedy the harm done or its consequences, develop awareness of responsibility and consequences of one's own and others' behaviour, and improve the relations between the parties involved. The goal of imposing community or humanitarian service in schools is to prevent students' undesirable and socially unacceptable behaviours through developing desirable and positive behaviours.

Relevant to the protection of children against violence in the digital sphere is the *Decree on Child Safety and Protection in the Use of Information and Communication Technologies*<sup>257</sup>. It specifies prevention measures aimed at ensuring children's safety and protection when using information and communication technologies, i.e. the Internet, and response to cases of compromising or threatening child safety on the Internet.

### 4.5.3. Strategic Documents

A strategic document on the protection of children against violence is currently missing in the Republic of Serbia. The *National Strategy for Preventing and Protecting Children against Violence (2009-2015)*<sup>258</sup> expired, and was not subjected to an evaluation. The *Draft Strategy for Preventing*

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<sup>253</sup> Official Gazette of RS No 30/10.

<sup>254</sup> Official Gazette of RS No 30/10.

<sup>255</sup> Official Gazette of RS No 22/16.

<sup>256</sup> Official Gazette of RS No 68/18.

<sup>257</sup> Official Gazette of RS No 46/16.

<sup>258</sup> Official Gazette of RS No 122/08.

and *Protecting Children against Violence* (2018-2022) was prepared in 2018<sup>259</sup>, but has not been adopted yet. The draft document, which represents a vision for the future strategy, envisages all children in Serbia growing up in a safe and stimulating environment where children's right to protection against all forms of violence is fully respected, and sets the overarching goal of continuous comprehensive societal response to violence against children, in line with the dynamics of challenges, risks and threats, through an improved prevention, protection and support system. The planned measures and activities are geared towards three goals: 1. Improved prevention and systematic efforts to change the attitudes, values and behaviours relating to violence against children; 2. Improved interventions aimed at protecting children against violence; and 3. Improved regulatory, institutional and organisational mechanisms to prevent and protect children against violence.

A review of the planned measures and activities shows that their design is sound and that their implementation can improve the state response to violence against children. It is, however, uncertain when the new strategy will be adopted, what its final text will be and how it will be put into operation through an implementing action plan.

#### 4.5.4. Alignment of National Legislation with International Standards

The legal framework for the prevention and protection of children against violence is largely aligned with international standards. Certain regulations, however, are inconsistent with international standards, and some are inadequate or incomplete; hence, relevant revisions and amendments are needed.

The Ombudsman's recommendations to introduce an explicit ban on the corporal punishment of children in all settings and establish systematic information dissemination, awareness raising and knowledge sharing about good parenting practices, the harm of corporal punishment, and non-violent child-rearing and disciplining methods. Parenting schools are established under projects and grants from international and non-governmental organisations, but without competent state authorities' strategic and system-wide planning. The Committee on the Rights of the Child recommended the state to "explicitly prohibit corporal punishment in legislation; ensure that the prohibition of corporal punishment is adequately monitored and enforced in all settings; promote positive, non-violent and participatory forms of child-rearing and discipline through awareness campaigns"<sup>260</sup>.

Although the regulatory framework for the protection of children against sexual abuse and sexual exploitation has been improved in the recent period<sup>261</sup>, the Criminal Code is still not fully aligned with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the Ombudsman's initiative<sup>262</sup> has not been accepted in full. The policy of lenient penalties remained in place for some criminal offences<sup>263</sup>, such as the criminal offences of *Indecent assault* and *Sexual harassment*. Certain criminal offences are not included among criminal offences against sexual freedoms, despite the fact that they involve

<sup>259</sup> Available at: [https://minrzs.gov.rs/files/nacrt\\_nacionalne\\_strategije\\_zaprevenciju\\_i\\_zastitu\\_dece\\_od\\_nasilja.docx](https://minrzs.gov.rs/files/nacrt_nacionalne_strategije_zaprevenciju_i_zastitu_dece_od_nasilja.docx)

<sup>260</sup> Concluding Observations of the Committee on the Rights of the Child on the combined second and third periodic reports of Serbia, available at: <http://www.ljudskaprava.gov.rs/sr/node/143>.

<sup>261</sup> Godišnji izveštaj Zaštitinika građana za 2016. god., available at: <http://www.ombudsman.rs/attachments/article/5191/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202016.%20godinu.pdf>.

<sup>262</sup> Available at: [http://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=521:2013-03-14-10-15-24&catid=42:2012-04-09-13-00-07&Itemid=87](http://www.pravadeteta.com/index.php?option=com_content&view=article&id=521:2013-03-14-10-15-24&catid=42:2012-04-09-13-00-07&Itemid=87).

<sup>263</sup> Such as: *indecent assault* and *intercourse with a child*.

sexual activity with a child<sup>264</sup>; as a result, it is not possible to apply the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors. This is the case with the criminal offences of *Incest* and *Cohabitation with a juvenile*<sup>265</sup>, which are not subject to the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors, since the said law foresees that it is applicable to “the perpetrators of criminal offences against sexual freedoms committed against minors”<sup>266</sup>. Consequently, the foreseen level of protection is lower compared to the enhanced protection in case of other criminal offences of sexual abuse of children. Moreover, the criminal offence of *Incest* criminalises intercourse or an equal sexual act with a minor relative only when committed by a lineal blood relative or a sibling, while other close relatives by blood are excluded from the circle of potential perpetrators of this offence.

Despite the fact that it specifies the criminal offence of neglect and abuse of a minor (Art. 193), the Criminal Code does not define child abuse in accordance with the definition provided by the World Health Organization<sup>267</sup>, which would provide criminal protection to children exposed to traumatic events, such as domestic violence or the commission of a criminal offence against their family members or close persons<sup>268</sup>. This problem was highlighted by the Ombudsman already in 2011, in its Initiative for Amendments to the Criminal Code, which, *inter alia*, proposed amendments to the provisions on this criminal offence<sup>269</sup>.

The criminalisation of trafficking in children for adoption is restricted to cases of abduction of children under 16 years of age, which is incompatible with the CRC.<sup>270</sup>

Owing to the definition of the child in the Criminal Code, which is not consistent with the CRC definition, the scope of criminal protection is determined by the age of child victims. The Criminal Code uses three terms to denote children (persons below 18 years of age): a *minor* is a person between 0 and 18 years of age; a *child* is a person between 0 and 14 years of age; a *juvenile* is a person over 14 and below 18 years of age. For many criminal offences, the potential penalties and modalities of prosecution differ depending on the victim's age, with the tendency of more lenient penalties and less stringent conditions of prosecution where the children victims are aged 14 or over.

The new LPDV does not contain any specific rules on actions to be taken where children are the primary victims of domestic violence and other criminal offences subject to this law. The list of risk factors for the assessment of imminent risk of the perpetration or repetition of violence<sup>271</sup> does not include any factors specific to situations in which children are violence victims. On the other hand, although, in practice, it is often the case that domestic violence victims are, simultaneously, one of the parents (most commonly the mother) and the children, the law does not specify whether a dedicated individual plan for the child is to be developed in such cases. Further, the LPDV does not provide adequate protection and support to children exposed to domestic violence against an adult family member, which makes them indirect violence

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<sup>264</sup> Criminal offences against sexual freedoms are specified by Art. 178-186 of the Criminal Code.

<sup>265</sup> The criminal offence of incest is specified by Art. 197, cohabitation with a juvenile – by Art. 190, and criminal offences against sexual freedoms – by Art. 178-186. of the Criminal Code.

<sup>266</sup> Art. 3 of the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors.

<sup>267</sup> The definition adopted by the World Health Organization at the Consultation on Child Abuse Prevention in Geneva in 1999.

<sup>268</sup> Initiative to amend the Criminal Code available at: <https://www.ombudsman.rs/index.php/lang-sr/zakonske-i-druge-inicijative/1529-2011-10-14-09-40-39>.

<sup>269</sup> *Ibid.*

<sup>270</sup> This omission is highlighted in the *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia*, prepared by the Group of Experts on Action against Trafficking in Human Beings (GRETA), [https://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA\\_2013\\_19\\_FGR\\_SRB\\_public\\_sr.pdf](https://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_19_FGR_SRB_public_sr.pdf).

<sup>271</sup> LPDV, Art. 16, para. 2.

victims. The LPDV is thus incompatible with the international standards in this area, including the standards laid down by the Istanbul Convention; in addition, no mechanisms are in place to ensure that the exercise of any visitation or custody rights by the perpetrator of violence does not jeopardise the rights and safety of the women victims or their children.

The Law on the Police<sup>272</sup> has lowered the attained standard of child rights realisation in the exercise of police powers in respect of juveniles. It does not contain the provision of the former Law on the Police<sup>273</sup> that police powers may be exercised in respect of a juvenile only in the presence of a parent, guardian or representative of the guardianship authority, which was a requirement in the former Law<sup>274</sup>. Police powers may be exercised by all police officers, except in the case of questioning of a juvenile in the capacity of a suspect and gathering information from a minor, whereas, under the former Law on the Police, the exercise of police powers in respect of minors was allowed only to police officers specifically trained in working with juveniles.

The Law on Public Peace and Order is not compliant with the Convention on the Rights of the Child, Optional Protocol on the sale of children, child prostitution and child pornography<sup>275</sup>, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>276</sup>, ILO Worst Forms of Child Labour Convention<sup>277</sup> and other international instruments. This Law, as well as the former one, does not contain provisions excluding the child's responsibility for participation in child begging, child prostitution, child labour in the streets and other forms of child exploitation, and a child involved in these most severe forms of exploitation, including sexual exploitation, is not granted the status of a victim and accorded protection. Hence, a child who attains the age of misdemeanour liability may be punished as a perpetrator of a misdemeanour, instead of receiving protection as a victim of abuse and exploitation.

The General and Special Protocols on the protection of children against abuse and neglect refer to the regulatory situation at the time of their adoption. Given that many regulations have since been amended and a new LPDV adopted, it is essential to revise the General and Special Protocols.

#### **4.6. Protection of Children against Violence – System-Wide Institutional Response**

The competent authorities and agencies' actions to prevent and protect children against violence are still below a satisfactory level. This is evidenced by the fact that, in 2017, as many as 20.8% of the complaints filed with the Ombudsman in the area of child rights concerned violations of the child right to protection against violence, abuse and neglect.

No authority/body for the coordination, monitoring, evaluation and guidance of policies and measures to prevent and protect children against violence has been established at the state level. No centralised database of cases of violence against children has been established to facilitate straightforward and reliable access to data for all who need such data for monitoring and analytical purposes. The processes of monitoring and evaluation of legislation, policies, measures, programmes and services are not integrated into the prevention and protection system.

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<sup>272</sup> Official Gazette of RS Nos 6/16 and 24/18.

<sup>273</sup> Official Gazette of RS Nos 101/05, 63/09, 92/11 and 64/15.

<sup>274</sup> Art. 38 of the former Law on the Police.

<sup>275</sup> Official Journal of FRY – International Treaties No 7/02.

<sup>276</sup> Official Gazette of RS – International Treaties No 1/10.

<sup>277</sup> Official Journal of FRY – International Treaties No 2/03.

The methodology for systematic monitoring of the implementation of the General and most special protocols on the protection of children against abuse and neglect is still underdeveloped. Adequate human and material resources for the operation of authorities, institutions and agencies involved in preventing and protecting children against violence are not provided, nor are violence prevention programmes adequately developed.

The implementation of legislation and prescribed procedures remains weak. Despite the numerous prescribed procedures and protocols for action, the competent agencies' staff fail to take adequate measures to protect children or do so in an inadequate and untimely manner. The presence of domestic violence against a family member is still not recognised as a form of emotional and psychological abuse of children. In particular, there is no recognition of continued domestic violence after parents' separation, at which point it often intensifies and takes new forms, such as hindering visits and contacts with the child, threats of child abduction and threats of the use of force in case of attempt at communication with the child etc., which is crucial for the enforcement of child rights protection measures within the mandate of the guardianship authority.

Almost 12 years since the adoption of the General and Special Protocols on the protection of children against abuse and neglect, no functioning and efficient system for coordination and protection of children against violence has been established. The absence of cross-sectoral cooperation among authorities, which remain confined to the silos of their respective mandates, is still noticeable, which affects the efficiency and effectiveness of protecting children against violence.

*Ignoring domestic violence enables further violations of children's rights to be cared for by their parent before anyone else and the severance of children's contacts with their only surviving parent<sup>278</sup>*

*Over a period of three years, the Loznica Centre for Social Work failed to provide assistance to the children's mother in maintaining contacts with children, after she left the household owing to violence at the hands of her husband, and in assuming care of her children after their father's death. Although it notified the court that "conditions were not in place to apply guardianship protection measures, as the children had a mother", the Centre appointed a relative who did not meet the legal requirements and who hindered the mother from seeing the children as the children's temporary guardian, and bestowed wider powers on the guardian than foreseen by the law. The Ministry dismissed the mother's appeal against the Centre's decision, assessing that "by the very act of leaving the household, the mother ceased to exercise the custody of children". The Centre and the Ministry failed to align their decisions with the judgment whereby the sole custody of children was awarded to the mother, in contravention of the provision that the exercise of custody of children may only be restricted by a court. The Ombudsman issued recommendations and noted that the authorities' irregular actions created the opportunity to forcibly hinder the mother from exercising custody of children, thus violating children's right to be cared for by their parent before anyone else, and that the relative was enabled to violate children's right to maintain personal ties with the parent with whom they do not live and to cause the children to stop all contact with their only surviving parent.<sup>279</sup>*

<sup>278</sup> Recommendations available at: [http://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=827:црп-лозница-да-хитно-поново-одлучи-о-потреби-старатељске-заштите-детета-&catid=40:2012-04-09-12-59-47&Itemid=85](http://www.pravadeteta.com/index.php?option=com_content&view=article&id=827:црп-лозница-да-хитно-поново-одлучи-о-потреби-старатељске-заштите-детета-&catid=40:2012-04-09-12-59-47&Itemid=85).

<sup>279</sup> Available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5524-csr-l-znic-d-hi-n-p-n-v-dluci-p-r-bi-s-r-ljs-z-sh-i-d>.

Line ministries failed to fulfil or only partly fulfilled the recommendations addressed to them by the Ombudsman in 2016<sup>280</sup> with a view to remedying system-wide omissions made by the police, centres for social work and health care institutions in protection against domestic violence, child abuse and neglect in a large number of cases.

*One hundred and one system-wide recommendations of the Ombudsman concerning the competent authorities' actions in cases of violence against women and violence against children*

*With respect to a large number of cases of violence against women, some of which had fatal consequences, and violence against and abuse and neglect of children, the Ombudsman carried out oversight procedures and found numerous omissions in the competent authorities and agencies' work. Thus, it was found that violence was designated as "family problems" and "marital conflicts" and hence not looked into; that no measures were taken in cases of reported domestic and intimate partner violence or were taken in an inadequate and untimely manner. Children exposed to domestic or intimate partner violence against their mothers were not treated as victims of abuse and neglect; hence, measures to protect children against violence, abuse and neglect were missing. In proceedings for the award of sole custody to one parent and regulation of the maintenance of personal ties with the other, domestic violence was not taken as a material fact in the assessment of parental competencies and best interests of the child. The court did not receive information on the suspicion or presence of domestic or intimate partner violence against the mother to which children were or had been exposed; thus, the deliberation and decisions of the court in family disputes were mainly not founded on complete and accurate information on all facts relevant to decision-making and determination of the best interests of the child. The unlawful detention of the child and preventing the child's contacts with the parent with whom he/she does not live were not met with an adequate response on the part of the authorities, nor were they treated as child abuse and neglect; consequently, no measures were taken to protect children against abuse and neglect.*

*A total of 141 recommendations were addressed to the Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health and Provincial Secretariat for Social Policy, Demography and Gender Equality with the aim of addressing these omissions in a system-wide manner.*

The consequences of the failure to address the status of the child victim in a comprehensive and system-wide manner are borne by children. Owing to the absence of support for victims and lack of cooperation among authorities (the police, centres for social work, health care institutions and judicial authorities (prosecutors' offices and courts)), which fail to share notifications of suspicion or knowledge of violence, or other information, some of which is vital to victim protection, the child victim is sometimes not provided even with the basic protection services. This is especially the case with non-physical forms of violence and parental neglect, which is often not even recognised as such.

*The social protection system fails to protect the child against parental neglect and leaves the child without shelter and food*

*The Ombudsman was approached by a sixteen-year-old boy because he had not been provided with emergency care by the centres for social work from which he had sought assistance after being expelled from*

<sup>280</sup> Available at: <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4869-z-sh-i-ni-gr-d-n-pr-p-zn-i-n-silj-u-p-r-dici> и <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4833-2016-07-28-08-59-32>.

*the family home by his mother in December 2017. Over the course of several winter days, the boy was left to his own devices to find shelter and food, maintain hygiene and satisfy other basic needs. The shelter and emergency shelter stations operated by the Belgrade Institute for Child and Youth Care and the Shelter for Abused and Neglected Children operated by the Belgrade Centre for Infant, Child and Youth Protection refused to admit the boy, citing lack of capacities. At that time, the on-duty telephone line of the Belgrade City Centre for Social Work did not function. After the Ombudsman became involved in the case, the boy was provided with emergency care at the shelter operated by the Centre for Infant, Child and Youth Protection, and the Nova Crnja Centre for Social Work brought proceedings for gross neglect of parental duties.*

Violence in schools remains a major problem in the realisation and protection of child rights. The Ombudsman still receives a significant number of complaints concerning violence in education institutions, which indicate that measures are often missing or are taken in an inadequate and untimely manner, and that the education inspectorate fails to ensure the necessary timely, efficient and effective oversight of the implementation of prescribed measures in cases of violence, abuse and neglect. Inadequate, ineffective and untimely response, or even lack thereof, is especially visible when it comes to staff violence against children.

*Preschool institution violates the child's right to protection against violence, abuse and neglect*

*With regard to multiple reports of violence against a child by a preschool teacher, the Smederevo-based Naša radost Preschool Institution's team for protection against violence, abuse and neglect failed to undertake the actions stipulated by the Rulebook on the Protocol on Education Institutions' Response to Violence, Abuse and Neglect, and no disciplinary proceedings were brought to assess the staff member's responsibility for violating the ban on violence, abuse and neglect. Owing to untimely response by the preschool institution, its director and the management board, the disciplinary proceedings for the first reported instance of violence were past the statute of limitations, while the proceedings for the new reported instance of violence were not even brought. Owing to her failure to ensure the protection of children against violence, the director of the Naša radost Preschool Institution was relieved of duty.<sup>281</sup>*

*Competent authorities take no measures in response to students' reports of sexual abuse and harassment by a teacher*

*In the oversight procedure undertaken at the Ombudsman's own initiative, this authority found that the Secondary School of Nursing and the Secondary School of Food and Hospitality Industry in Čačak, the Čačak City Administration and the Ministry of Education, Science and Technological Development had failed to undertake measures within their respective mandates to protect several female students who had reported direct and indirect sexual abuse and harassment by a teacher, and to assess the responsibility of the reported teacher and sanction him for the violation of the ban on abuse and sexual abuse. The*

<sup>281</sup> Ombudsman's Recommendation available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5330-vr-ic-p-vr-di-pr-v-d-n-z-sh-i-u-d-n-silj-zl-s-vlj-nj-i-z-n-riv-nj>; информација о разрешењу директорке Предшколске установе објављена је у више медија (<http://rs.n1info.com/a420227/Vesti/Sarcevic-smenio-direktora-predskolske-ustanove-u-Smederevu.html> <http://m.novosti.rs/vesti/srbija.73.html:749739-HAOS-U-SMEDEREVU-Smenjena-direktorka-vrtica-zbog-nasilja-nad-detetom> <https://www.danas.rs/drustvo/ uvedene-privremene-mere-u-pu-nasa-radost-smederevo/>).

*recommendations issued in this case were fulfilled by the Ministry of Education, Science and Technological Development only, while the other authorities fulfilled them only partly or took no action on the recommendations. Owing to their failure to take measures in respect of the teacher, failure to protect the students and failure to act on the Ombudsman's recommendations, the principals of these schools were relieved of duty.*<sup>282</sup>

Children victims of criminal offences are not provided with sufficient protection against secondary traumatisation and victimisation, which was noted and reported on by the Ombudsman on multiple occasions<sup>283</sup>, with proposals and recommendations addressed to the competent authorities. This weakness in the child protection system was also identified by the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee) in the first monitoring round of the implementation of the Convention. The Committee noted that in Serbia a child could be questioned multiple times during the proceedings. It stressed that the questioning of children should be limited strictly to cases where it is necessary for the criminal proceedings and that states parties were required to adhere to this principle. The Republic of Serbia received the recommendation to find alternative means in order for child victims not to be repeatedly interviewed during the proceedings.<sup>284</sup>

*Ombudsman's Opinion concerning the need to improve the status of children victims in judicial and other proceedings*

*With a view to the consistent application of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, and in particular with a view to improving the status of children victims of criminal offences, it is essential to ensure that:*

*– courts make more use of the existing and available specially equipped and child-friendly facilities (screen rooms) and technical means for image and sound transmission and recording and consistently apply the legal provisions adopted for the purpose of protecting the child victim against further victimisation and traumatisation;*

*– state authorities plan and take measures to ensure that all courts are provided with screen rooms and technical means for image and sound transmission and recording, to be used for taking child victims' statements in a manner that prevents the re-traumatisation of the child.*<sup>285</sup>

The Ombudsman has repeatedly highlighted the absence of improved assessments in the recruitment of staff for jobs that involve regular contacts with children, and proposed that the relevant regulations further elaborate the disqualifying criteria for entry into an employment relationship and licensing and grounds for termination of employment or loss of licence, as appropriate, for persons whose jobs involve direct and regular contact with children (primarily in the areas of education and social protection).

<sup>282</sup> Available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5161-n-dl-zni-nisu-pr-duz-li-r-p-v-d-pri-v-uc-ni-d-su-d-ziv-li-s-su-ln-zl-s-vlj-nj-zl-up-r-bu-i-uzn-ir-v-nj-d-s-r-n-n-s-vni>.

<sup>283</sup> Ombudsman's Annual Reports and Opinion available at: [https://www.pravdeteta.com/index.php?option=com\\_content&view=article&id=506:2013-01-24-18-32-27&catid=41:2012-04-09-12-59-57&Itemid=86](https://www.pravdeteta.com/index.php?option=com_content&view=article&id=506:2013-01-24-18-32-27&catid=41:2012-04-09-12-59-57&Itemid=86).

<sup>284</sup> 1<sup>st</sup> implementation report „Protection of Children against Sexual Abuse in the Circle of Trust: The Framework“, p. 39, available at: <https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>.

<sup>285</sup> Ombudsman's Opinion available at: [https://www.pravdeteta.com/index.php?option=com\\_content&view=article&id=506:2013-01-24-18-32-27&catid=41:2012-04-09-12-59-57&Itemid=86](https://www.pravdeteta.com/index.php?option=com_content&view=article&id=506:2013-01-24-18-32-27&catid=41:2012-04-09-12-59-57&Itemid=86).

*The right of the child to protection against all forms of violence would be promoted by amending the Law on the Foundations of the Education System to stipulate the following disqualifying criteria for entry into an employment relationship with an education institution and appointment of principal/director:*

- other criminal offences whose material elements include the use of force, threat or coercion, if committed against minors, irrespective of the penalty imposed;*
- measures for the protection of a child against violence, imposed in the proceedings for the protection against domestic violence in accordance with the provision of the Family Law.<sup>286</sup>*

Children are increasingly recognised in the media as violence victims, including cases where they are witnesses of domestic violence. In contrast with this, tabloid reporting on domestic violence or violence in schools is characterised by the publication of data that facilitate the identification of the child and violate his/her right to privacy.<sup>287</sup> Such actions by the media are, as a rule, not followed by an adequate response on the part of the authorities competent for overseeing compliance with the media regulations, which contain numerous provisions to protect children.

*The specific status of children victims of sexual abuse and exploitation requires extra attention by all state authorities. The dissemination of information on sexual abuse or sexual exploitation of children significantly reduces the chances of their successful rehabilitation and social reintegration and may have lasting consequences for their psychosocial development.<sup>288</sup>*

*The fact that a **timely** report of the aired feature was not received, given that the feature had violated multiple legal provisions and the child's interests and rights, was not a justification for the Regulatory Authority's failure to bring the relevant proceedings. This authority had the opportunity and duty to review the broadcaster's conduct ex officio, to determine whether the broadcaster had acted in compliance with the law or not, and – in accordance with the findings – to decide on any measure to be imposed.<sup>289</sup>*

## 4.7. Recommendations

<sup>286</sup> Ombudsman's Opinion available at [https://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=623:2014-08-07-11-31-29&catid=41:2012-04-09-12-59-57&Itemid=86](https://www.pravadeteta.com/index.php?option=com_content&view=article&id=623:2014-08-07-11-31-29&catid=41:2012-04-09-12-59-57&Itemid=86).

<sup>287</sup> Zaštitnik građana, Redovan godišnji izveštaj za 2017, p. 5. Available at: <https://www.ombudsman.rs/attachments/article/5671/Godisnji%20izvestaj%20za%202017.%20godinu.pdf>.

<sup>288</sup> Ombudsman's Opinion available at: [https://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=174:2012-05-16-21-40-30&catid=40&Itemid=85](https://www.pravadeteta.com/index.php?option=com_content&view=article&id=174:2012-05-16-21-40-30&catid=40&Itemid=85).

<sup>289</sup> Ombudsman's Recommendations available at: [https://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=742:2016-01-11-11-55-13&catid=40&Itemid=85](https://www.pravadeteta.com/index.php?option=com_content&view=article&id=742:2016-01-11-11-55-13&catid=40&Itemid=85).

1. The implementation of the expired National Strategy for Preventing and Protecting Children against Violence should be reviewed and evaluated and a new National Strategy adopted.
2. A National Strategy for Preventing and Combating Domestic and Intimate Partner Violence and an accompanying Action Plan should be adopted.
3. A legal ban on corporal punishment of children in all settings, including the family, should be stipulated and a comprehensive campaign launched to raise public awareness of the unacceptability of corporal punishment of children and its consequences, as well as an information campaign targeting children.
4. The Criminal Code should be amended by defining the term "child" in accordance with the Convention on the Rights of the Child.
5. The Criminal Code should be amended by defining child abuse and neglect in accordance with the generally accepted principles of international law.
6. The Criminal Code should be amended to ensure that all criminal offences involving sexual activity committed against children are subject to the Law on Special Measures to Prevent the Commission of Sex Crimes against Minors.
7. The Criminal Code should be amended to ensure that criminal offences committed against children are subject to adequate penalties and to preclude pecuniary fines for criminal offences against sexual freedoms committed against children.
8. The Law on the Prevention of Domestic Violence should be amended by stipulating specific provisions on actions in cases of violence against children, including provisions specifying that the child is a violence victim whenever exposed to domestic violence against a family member or close person.
9. The Law on Public Peace and Order should be amended to ensure that children in street situations are treated as victims of violence, abuse and neglect, rather than as perpetrators of punishable offences.
10. A law governing the provision of free legal aid should be passed; its beneficiary groups should include vulnerable persons, especially children, women, violence victims, LGBTI persons and trafficking victims.
11. Unified records of cases of violence against children should be established.
12. The Government of the Republic of Serbia, Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health and Ministry of Justice should align

the General and Special Protocols on the protection of children against violence, abuse and neglect and the General and Special Protocols on the actions and cooperation of institutions, authorities and organisations in situations of domestic and intimate partner violence against women with the Law on the Prevention of Domestic Violence.

13. Laws in the areas of education, social protection, health care, interior affairs, sport and other public sector areas that involve direct work with children should be amended by stipulating the disqualifying factors for the employment and work of persons convicted of criminal offences against sexual freedoms and criminal and other punishable offences whose material elements include the use of force, threat and coercion committed against children, as well as for persons on whom measures for protection against violence have been imposed under regulations in the area of family law.
14. The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles should be amended in order to be aligned with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on the Rights of the Child and in order to ensure the full protection of children against secondary traumatisation.
15. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Justice, High Judicial Council, State Prosecutorial Council, Ministry of Youth and Sport and Ministry of Culture and the Media should undertake comprehensive measures to prevent and eliminate early, arranged and forced child marriage and ensure the access of these children to the available services to exercise their rights, in line with the Ombudsman's recommendations and the recommendations of the UN Committee on the Rights of the Child.
16. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development and Ministry of Health should undertake comprehensive measures to prevent and combat the life and work of children in the streets and ensure the access of these children to the available services to exercise their rights, in line with the Ombudsman's recommendations and the recommendations of the UN Committee on the Rights of the Child.
17. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Justice, High Judicial Council and State Prosecutorial Council should ensure that the procedures prescribed by the Law on the Prevention of Domestic Violence, General and Special Protocols on the protection of children against abuse and neglect and General and Special Protocols on the actions and cooperation of institutions, authorities and organisations in situations of domestic and intimate partner violence against women are applied in full in the actions in cases of child abuse and neglect, domestic violence, domestic and intimate partner violence against women.

18. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Justice, High Judicial Council and State Prosecutorial Council should ensure that, in cases of child abuse and neglect, domestic violence, domestic and intimate partner violence against women, every child who is exposed to domestic violence against a family member or a close person or has direct or indirect knowledge of such violence is treated as a violence victim.
19. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Justice, High Judicial Council and State Prosecutorial Council, when handling family law matters, including the prosecution of the criminal offences of domestic violence and domestic and intimate partner violence against women, should treat the prevention, obstruction, barring or hindering of the maintenance of the child's personal ties with the parent with whom he/she does not live as a form of violence and child neglect.
20. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Justice, High Judicial Council and State Prosecutorial Council should improve the oversight of the implementation of the prescribed measures and protocols on actions to protect children against violence, abuse and neglect.
21. The Ministry of Youth and Sport should adopt a Special Protocol on the Protection of Children against Abuse and Neglect in Sport.
22. The Ministry of the Interior, Ministry of Justice, High Judicial Council, State Prosecutorial Council and Ministry of Labour, Employment, Veteran and Social Affairs should ensure greater use of the existing possibilities of protecting children against secondary traumatization, such as refraining from questioning children multiple times, questioning children through the use of technical means for sound and image transmission, questioning children out of the courtroom and without the presence of parties, participation of professionals and trusted persons in the conduct of procedural actions with the child, questioning in the child's home or on the premises of institutions with facilities for interviewing children (screen rooms) etc.
23. The Ministry of Education, Science and Technological Development and education inspectorates should considerably increase the scale and effectiveness of oversight of education institutions' actions in cases of violence against students, especially with a view to ascertaining personal responsibility of institutions' employees and managers for violations of the ban on violence, abuse and neglect, violations of work duties and omissions in the implementation of measures to protect children against violence, abuse and neglect.
24. The Ministry of Labour, Employment, Veteran and Social Affairs should provide appropriate staff numbers in centres for social work to perform the tasks concerning the protection of children against abuse and neglect.

25. The Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of the Interior, Ministry of Justice and autonomous province and local government authorities should ensure the availability of services and institutions for the provision of emergency care to trafficking victims.
26. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Justice, High Judicial Council and State Prosecutorial Council should provide an adequate number of training courses for gaining and enhancing the knowledge and competencies to prevent, combat and provide protection against domestic violence and child abuse and neglect.
27. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Justice, High Judicial Council and State Prosecutorial Council should provide training to the staff of the authorities and institutions handling cases of domestic violence, domestic and intimate partner violence against women, and violence against and abuse and neglect of children, about the correct application of the Law on the Prevention of Domestic Violence, about the contents and application of the General and Special Protocols on the protection of children against abuse and neglect and General and Special Protocols on the actions and cooperation of institutions, authorities and organisations in situations of domestic and intimate partner violence against women, and about the full implementation of the existing regulations and the responsibility of involved officers in case of failure to apply them.
28. The Ministry of Education, Science and Technological Development and National Educational Council should ensure that the topics of violence, its forms and ways of protection against violence are covered in the curricula.
29. The Ministry of Education, Science and Technological Development, National Educational Council and National Higher Education Council should ensure that education on sexual and reproductive health, including topics concerning gender relations, sexual orientation and gender identity, gender-based violence and protection against sexual abuse and exploitation, are introduced in the curricula at all levels.
30. The Ministry of Labour, Employment, Veteran and Social Affairs and local government and autonomous province authorities should establish support services for young LGBTI persons who have been compelled to leave their homes because of rejection by their families after learning of their sexual orientation and gender identity.
31. The Ministry of Culture and the Media and the Regulatory Authority for Electronic Media should intensify the oversight of the application of media laws and the activities to prevent the secondary traumatising of children victims in media work and the reporting that violates the child right to privacy.

#### **4.8. Recommendations of Children and Youth<sup>290</sup>:**

- 1. Children should be explained what violence is, how it is manifested, that it is not allowed and must not be a common occurrence, and that it is punishable.**
- 2. Children should be taught how to fight violence and whom to approach if they experience violence.**
- 3. Children should be involved in the fight against violence against a child, because peer influence is very important for the child.**
- 4. Everyone in the child's environment should be involved and supervision should be improved by including the child's environment, neighbours and schoolmates, because children often do not dare to say or report what is happening because they are easily intimidated.**
- 5. Centres for social work should record accurate and complete information when a child approaches them about a problem.**
- 6. It is necessary to improve information sharing between kindergartens/schools, health care institutions, the police, centres for social work and other authorities about whether a child is exposed to violence and abuse.**
- 7. Children in conflict with the law should not be excluded from society. If children who already have bad experiences are isolated as well, they will feel that society does not accept them.**
- 8. Children should not be placed in correctional institutions and prisons. They should be helped to learn why such behaviour is harmful for them and how to change it.**

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<sup>290</sup> The Ombudsman's Young Advisors Panel, in cooperation with the Equality Commissioner's Youth Panel, Children's Council of the Network of Organizations for Children of Serbia (MODS) and Open Club from Niš, has formulated recommendations to the competent state authorities and institutions, available at: [https://www.pravdeteta.com/attachments/394\\_Liflet%20-%20priprema%20343x240mm.pdf](https://www.pravdeteta.com/attachments/394_Liflet%20-%20priprema%20343x240mm.pdf).



## 5. FAMILY SETTINGS AND ALTERNATIVE CARE FOR CHILDREN

### 5.1. Introductory Remarks

The family is the basic unit of the community and is considered a natural environment for child development, well-being and protection. Although the family has the primary responsibility for the child and the realisation of child rights, it is the state's duty to provide assistance to families when they are not able to fulfil their function in respect of children. Further, the state is required to intervene in family relations by separating the child from the family settings when his/her life and development are jeopardised, and to provide appropriate alternative care to children without parental care.

This section focuses on the matters concerning the provision of effective assistance and support to families, measures to intervene in family relations in order to protect child rights, and alternative care for children.

### 5.2. International Standards

Under Art. 5 of the CRC, states parties are required to respect the responsibilities, rights and duties of parents or, where applicable, legal guardians or other persons legally responsible for the child (members of the extended family or community as provided for by local custom) to provide appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention, in a manner consistent with the evolving capacities of the child.

Article 18 of the CRC requires states parties to recognise and ensure the fulfilment of the principle of parents' equality in parenting and their common responsibilities for the upbringing and development of the child. It is stressed that parents have the primary responsibility for the upbringing and development of the child, and that the best interests of the child are their basic concern. The same Article provides for the duty of states parties to provide appropriate assistance to parents in the performance of their child-rearing responsibilities and to ensure the development of institutions, facilities and services for the care of children, including the provision of child-care services and facilities for children of working parents. States are also required to ensure that a child is not separated from his/her parents against their will, except when this is in his/her best interest, and only pursuant to the competent court's decision; in the event of the child's separation from the parents, states are required to respect the child's right to contact with the parents, unless this is contrary to the child's best interests<sup>291</sup>. The Convention adopts a broad understanding of the family and, depending on local customs, recognises the responsibility of extended family and community for the exercise of child rights, and requires states to provide direction and guidance in the process<sup>292</sup>. Such arrangements suggest that child rights are best ensured in family settings, which entails making efforts to provide such settings for a child whenever possible.

When the child is temporarily or permanently deprived of a family environment, special protection measures and assistance by the state are guaranteed to him/her, as is alternative care,

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<sup>291</sup> CRC, Art. 9.

<sup>292</sup> *Ibid.*, Art. 5.

which may include foster placement, adoption or, if necessary, placement in suitable institutions for the care of children<sup>293</sup>. In the event of adoption, the child is guaranteed a procedure for the authorisation of adoption by competent authorities in accordance with the law. Inter-country adoption is allowed as an alternative means of care for the child only if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in his/her country of origin<sup>294</sup>.

Within the European child protection system, especially important are the standards laid down by the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>295</sup> (ECnHR) and the case law of the European Court of Human Rights (ECtHR), in particular with regard to the guarantees of the exercise and protection of the right to respect for private and family life<sup>296</sup>.

The *UN Guidelines for the Alternative Care of Children of 2009*<sup>297</sup> stress that efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members, and that every child should live in a supportive, protective and caring environment that promotes his/her full potential. However, where the child's own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the state is responsible for protecting the rights of the child and ensuring appropriate alternative care, with or through competent local authorities and authorised organisations. It is the task of the state, through its competent authorities, to ensure the supervision of the safety, well-being and development of every child placed in alternative care and to conduct regular review of the care arrangement.

The Guidelines set several key *principles of alternative care*. The first principle affirms the right to family life and measures to prevent the separation of children from their parents, in order to prevent the need for alternative care. With respect to a child in need of alternative care, it is essential to determine the most appropriate form of care<sup>298</sup>. The decision-making process should take place through a judicial, administrative or other adequate procedure, with legal representation of children where possible. The procedure should be based on rigorous planning, review and checks carried out by suitably qualified professionals and multidisciplinary teams, on a case-by-case basis. To achieve the best possible results, consultations with the child are necessary at all stages of the procedure<sup>299</sup>.

A child who is in alternative care should remain as close as possible to his/her habitual place of residence; siblings should not be separated; arrangements should be durable; children should be treated with respect and dignity; and the environment should be safe. Children must be treated with dignity and respect at all times and must be effectively protected against abuse, neglect and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves<sup>300</sup>.

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<sup>293</sup> *Ibid.*, Art. 20.

<sup>294</sup> *Ibid.*, Art. 22.

<sup>295</sup> Official Journal of SMN – International Treaties Nos 9/03, 5/05 and 7/05 and Official Gazette of RS – International Treaties No 12/10.

<sup>296</sup> Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>297</sup> Distr. LIMITED A/HRC/11/L.13, 15 June 2009, available at:

[https://www.pravadeteta.com/attachments/288\\_SMERNICE%20UN%20YA%20ALTERNATIVNO%20STARANJE%20O%20DECI\\_redacted.pdf](https://www.pravadeteta.com/attachments/288_SMERNICE%20UN%20YA%20ALTERNATIVNO%20STARANJE%20O%20DECI_redacted.pdf).

<sup>298</sup> UN Guidelines for the Alternative Care of Children, para. 57-68.

<sup>299</sup> *Ibid.*, para. 7.

<sup>300</sup> *Ibid.*, para. 13.

The duty to regularly monitor all decisions on care placement is particularly emphasised. Irrespective of whether the child is placed in a public or private institution, family-based care or informal care, the state is responsible for the regular monitoring of the conditions of alternative care. Periodic oversight of care arrangements certainly includes regular inspections, as well as the licensing of care providers.

A child without parental or family care should be provided with a legal representative or appropriate aid, right to respect of his/her culture, language and religion should be observed, and access to education, health care and other basic services should be provided.

Since institutional care is the worst solution for children without parental care, the use of institutional care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the child concerned and in his/her best interests<sup>301</sup>, as stipulated by the CRC, which states that this form of care may be applied only if it is necessary<sup>302</sup>.

In the European legal area, relevant are the standards on the protection of the right to respect for family life<sup>303</sup>, laid down by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights.

### **5.3. International Bodies' Recommendations Addressed to the Republic of Serbia**

In its Concluding Observations of 2017<sup>304</sup>, the Committee notes the progress made in the deinstitutionalisation process, reflected in the reduction of the number of children living in institutions and increase of the number of children in family-based care. However, it highlights the fact that the number of children, including children under 3 years of age, placed in formal care is still significant, with the risk of family separation and institutionalisation remaining high, especially for children from the most disadvantaged groups, including Roma children and children with disabilities. It is stressed that the legal provision limiting the number of children per residential institution to 50 is not observed; that children with disabilities continue to be significantly overrepresented in residential care institutions; that living conditions in institutions for children with disabilities are inadequate; that they are neglected and have no access to their rights, including the right to education. The Committee also points to the problem of separation of children from their parents and draws attention to insufficient support and inadequate training for social workers, as well as gaps in the child protection system. In the Committee's judgment, a satisfactory level of support for children and young people leaving institutional and alternative care is not provided<sup>305</sup>.

The Committee stresses in particular that poverty, or conditions directly and uniquely attributable to poverty, should never be the sole justification for removing a child from parental care, for placing a child in alternative care or for preventing a child's social reintegration, and recommends that the state urgently reduce the placement of children under the age of 3, including those with disabilities, in residential care institutions and expedite placement in family-based care; and ensure adequate safeguards and clear criteria, particularly for Roma children and

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<sup>301</sup> *Ibid.*, para. 21.

<sup>302</sup> *Ibid.*, Art. 20, para. 3.

<sup>303</sup> Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>304</sup> CRC/C/SRB/CO/2-3, 3 March 2017, available at

[http://www.ljudskoprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komiteta\\_za\\_prava\\_deteta\\_srb.doc](http://www.ljudskoprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_deteta_srb.doc)

<sup>305</sup> Concluding Observations 2017, para. 38.

children with disabilities, on the basis of the needs and best interests of the child, for determining whether a child should be placed in alternative care<sup>306</sup>.

With regard to the placement of children in residential care institutions, the Committee recommends that the state “implement the provisions outlined in the Law on social welfare of 2011 that limit the number of children per residential institution to 50”; implement measures to reduce the number of children in large-scale institutions for children with disabilities and ensure that institutionalisation is used only as a last resort. Several recommendations are made with regard to the treatment of children in residential care institutions: the strict implementation of the Rulebook on Prohibited Practices that was prepared for employees in the area of social protection, in order to prevent any form of physical or psychological abuse and neglect; holding to account those responsible for such practices and for the use of seclusion, physical restraints and isolation as means of discipline; and respecting the best interests of the child when deciding on necessary and appropriate medical treatment, which includes taking the views of children into account<sup>307</sup>.

The Committee recommends establishing clear criteria for determining whether a child should be separated from his/her family and placed in alternative care, taking into consideration the views and best interests of the child. Another recommendation is to strengthen support to children and young people leaving care, including those with disabilities, to enable them to reintegrate into society, by providing access to adequate housing, legal, health and social services and education and training opportunities<sup>308</sup>.

With respect to adoption, as a form of alternative care, the Committee notes that the number of adoptions of children with disabilities and special needs has increased, but remains concerned that the number of adoptions of children with severe disabilities and Roma children remains very low. The recommendation to the state is to take appropriate measures to prevent discrimination against children with disabilities and Roma children in the adoption process. The state is also expected to ensure enhanced coordination among competent authorities and adequate staff training, to ensure appropriate long-term support for the adopted child and adoptive parents<sup>309</sup>.

## 5.4. Family Settings and Alternative Care for Children in Serbia

### 5.4.1. Legal Framework

The Constitution of the Republic of Serbia<sup>310</sup> guarantees special protection to the child and family, in conformity with the law<sup>311</sup>. Under Art. 65 of the Constitution, the family is the best environment for the development of every child, and parents have the right and duty to support, raise and educate their children, while the termination and restriction of these rights are only allowed

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<sup>306</sup> *Ibid.*, para. 39a.

<sup>307</sup> *Ibid.*, para. 39d.

<sup>308</sup> *Ibid.*, para. 39f.

<sup>309</sup> *Ibid.*, para. 40 and 41.

<sup>310</sup> Official Gazette of RS No 98/06.

<sup>311</sup> Art. 66, para. 1 of the Constitution.

pursuant to a court decision, when this is in accordance with the law and in the best interest of the child.

Parental rights and child rights in the family context are governed by the Family Law<sup>312</sup>. The exercise of parental rights is based on the principle of equality between the parents<sup>313</sup>. The child is guaranteed the right to live with his/her parents and to be cared for by his/her parent before anyone else, as well as the right to maintain personal ties with the parent with whom he/she does not live<sup>314</sup>. Parental rights are exercised by both parents, jointly and consensually, and the sole custody of the child is granted to one parent if the other has died or is unknown, fully deprived of parental rights or of legal capacity<sup>315</sup>. In cases of parents' divorce or dissolution of domestic partnership, sole custody may be based on the parents' agreement or court decision. In decision-making on child custody, courts always assess parents' agreements from the aspect of the best interest of the child standard. Where the parents do not live together, the Family Law provides for additional child protection mechanisms.

An important role in the family protection system is played by centres for social work, which also discharge the role of guardianship authorities. They are tasked with preventive and corrective oversight of the exercise of parental rights<sup>316</sup>. Preventive oversight is focused on the prevention of situations of conflict between the parents and timely resolution of other issues that may jeopardise adequate care for the child (e.g. by providing financial assistance to the family, informing the parents about the child's developmental needs, etc.). Corrective oversight includes various measures, from warning parents of weaknesses in the exercise of their parental rights, to referring parents to a family counselling unit or another institutions for an interview, to bringing relevant court proceedings with a view to protecting the child. In the selection of concrete measures and services, the guardianship authority must be guided by the least restrictive environment principle<sup>317</sup> (Art. 12 of the Law on Social Protection).

The Family Law stipulates the conditions for the termination and restoration of parental rights. The notions of "abuse of parental rights" and "gross neglect of parental rights" are legally defined as grounds for full deprivation of parental rights, and "*mala fide* exercise of parental rights" as grounds for partial deprivation of parental rights<sup>318</sup>.

A child without parental care is placed under guardianship upon decision of the guardianship authority, which includes the care plan, as well as the placement decision, with the proviso that the guardianship authority is expressly required to try to place the child in a kinship family as the measure of first choice<sup>319</sup>. A similar provision is contained in Art. 6, para. 6 of the Family Law, which provides that the state is required to provide family-based care to a child without parental care whenever possible. The Law also stipulates the conditions and procedure for foster care and adoption if one of these legal institutions are in the child's best interest.

The Law on Social Protection<sup>320</sup> guarantees the right to social protection to every individual and family in need of social assistance and support in order to overcome different social and life difficulties<sup>321</sup>. The child is a social service client when his/her health, safety and

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<sup>312</sup> Official Gazette of RS Nos 18/05, 72/11 and 6/15.

<sup>313</sup> Family Law, Art. 7.

<sup>314</sup> *Ibid.*, Art. 60-61.

<sup>315</sup> *Ibid.*, Art. 77, para. 1.

<sup>316</sup> *Ibid.*, Art. 79-80.

<sup>317</sup> Art. 12 of the Law on Social Protection, Official Gazette of RS No 24/11.

<sup>318</sup> Art. 81 and 82 of the Family Law.

<sup>319</sup> *Ibid.*, Art. 124 and 125.

<sup>320</sup> Official Gazette of RS No 24/11.

<sup>321</sup> Law on Social Protection, Art. 4.

development are jeopardised owing to family and other life circumstances, or if it is certain that he/she cannot attain the optimum level of development without support from the social protection system<sup>322</sup>. The Law stipulates a range of measures to protect children, as well as services to support and assist families with a view to preserving and strengthening them. The standards and conditions for the implementation of these measures and services are governed by relevant bylaws.

Under the Law on Social Protection, children without parental care are placed in kinship or foster families (family-based care), residential care institutions or shelters<sup>323</sup>; family-based care may be standard, or accompanied by intensive or additional support, emergency care or intermittent care<sup>324</sup>. The Law expressly foresees that institutional care is provided only where it is not possible or is not in the best interest of the child to stay in the family, to be provided with community-based services or to be placed in family-based care, with the proviso that a child below three years of age may not be placed in a residential care institution, unless there are special justified reasons; in such cases, the placement may last up to two months, unless otherwise approved by the ministry in charge of social protection<sup>325</sup>.

The Law on Financial Support to Families with Children of 2018<sup>326</sup> provides for different forms of financial support to families with children with the aim of improving the conditions for meeting children's basic needs, reconciling work and parenthood, providing parents with distinct incentives and support to reach the desired number of children, and improving the financial status of families with children, families with children with disabilities and families with children without parental care<sup>327</sup>. The Ombudsman has addressed initiatives and opinions to the Ministry of Labour, Employment, Veteran and Social Affairs concerning the Law on Financial Support to Families with Children<sup>328</sup>, and an initiative to the relevant committee of the National Assembly to amend the Bill on Financial Support to Families with Children<sup>329</sup>, in which the need to amend or elaborate more precisely certain provisions is stressed, in order to preclude the lowering of the attained level of human rights and violations of child rights, to protect the interests and financial status of families with children and to ensure that children remain with their birth families as long as possible.

An analysis of the regulations on the protection of children under family law and social protection shows that some regulatory arrangements are incomplete, mutually inconsistent and give rise to different interpretations, and in some cases, their adequate implementation is missing, which results in the inability to exercise some child rights in the spheres of family and social protection.<sup>330</sup>

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<sup>322</sup> *Ibid.*, Art. 41, para. 1.

<sup>323</sup> *Ibid.*, Art. 48.

<sup>324</sup> *Ibid.*, Art. 49.

<sup>325</sup> *Ibid.*, Art. 52.

<sup>326</sup> Official Gazette of RS Nos 113/17 and 50/18.

<sup>327</sup> Art. 1 of the Law on Financial Support to Families with Children.

<sup>328</sup> Available at: [http://www.ombudsman.rs/index.php/lang-sr\\_YU/2011-12-11-11-34-45/4583-2016-01-30-12-29-48](http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-11-11-34-45/4583-2016-01-30-12-29-48), [https://www.pravdeteta.com/index.php?option=com\\_content&view=article&id=674:2014-12-04-15-06-54&catid=42:2012-04-09-13-00-07&Itemid=87](https://www.pravdeteta.com/index.php?option=com_content&view=article&id=674:2014-12-04-15-06-54&catid=42:2012-04-09-13-00-07&Itemid=87)

<sup>329</sup> Available at: <https://www.ombudsman.rs/index.php/zakonske-i-druge-inicijative/5598-s-upsh-ins-i-db-ri-upuc-n-inici-iv-z-p-dn-sh-nj-nd-n-n-pr-dl-g-z-n-fin-nsi-s-p-drshci-p-r-dici-s-d-c>

<sup>330</sup> Arsić, J. Analiza implementacije domaćeg zakonodavstva, međunarodnih dokumenata i opšteprihvaćenih standarda međunarodnog prava u ostvarivanju porodičnopravne i socijalne zaštite dece, p. 5, available at: <https://www.ombudsman.rs/index.php/4540-2016-01-15-08-19-55>

## 5.4.2. State of Affairs in Practice

### 5.4.2.1. Child Right to Family Life

The exercise of child rights in the sphere of family relations is burdened with numerous problems. In 2017, among the complaints concerning child rights violations filed with the Ombudsman, a considerable proportion concerned violations of the right to maintain personal ties with the parent with whom the child does not live and the right to live with parents:

Right to maintain personal ties with the parent with whom he/she does not live	12.82%	Right to live with parents	1.54% <sup>331</sup>
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A crucial problem is the non-enforcement of final judgments awarding custody of children. In 2017, the Ombudsman also received a substantial number of complaints concerning the non-enforcement of judgments on child custody, maintenance of personal ties with the parent with whom the child does not live, surrender of the child, child support and protection of the child against violence, which enables further violations of child rights, neglect, abuse, and parental abuse of children. The Ombudsman has already addressed recommendations to the competent Ministry of Labour, Employment, Veteran and Social Affairs and centres for social work<sup>332</sup>, which have not been entirely fulfilled.

#### *Judgment on custody of the child enforced after four years*

*Acting in compliance with the Ombudsman's recommendations, the Petrovac na Mlavi and Žagubica Municipalities' Centre for Social Work remedied the omissions in its work and took measures within its mandate, which were necessary to enforce the court judgment, delivered more than 4 years before, awarding the sole custody of the child to the mother in accordance with the best interests of the child; after several years' failed attempts, the child was surrendered to the parent to whom custody had been awarded by judicial decision.<sup>333</sup>*

#### *Children must not be victims of the guardianship authority's unresolved problems<sup>334</sup>*

*During an extended period of time, the Despotovac and Jagodina Centres for Social Work failed to take measures within their mandate to enforce the final judgment awarding the sole custody of children to their mother. In this case, the competent guardianship authorities noted that they did not have professionals with appropriate competencies on staff to perform the guardianship authority tasks in the judicial decisions*

<sup>331</sup> Godišnji izveštaj Zaštitnika građana za 2017. godinu.

<sup>332</sup> Recommendations available at: <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4974-d-c-n-gu-bi-i-zr-v-n-r-sh-nih-pr-bl-unu-r-ins-i-uci-rg-n-z-s-r-ljs-v>.

<sup>333</sup> Available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4899-n-sn-i-n-prihv-ljiv-dlu-c-n-r-z-s-ci-lni-r-d-p-r-v-c-n-l-vi>.

<sup>334</sup> Available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85&limitstart=14&limit=7](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85&limitstart=14&limit=7).

*enforcement process, in accordance with the Law on Enforcement and Security*<sup>335</sup>. The children were not protected, and the irregular actions on the part of the guardianship authorities enabled their neglect and abuse, as well as parental abuse.

*Unclear and unacceptable decisions of the Petrovac na Mlavi Centre for Social Work*

*During an extended period of time, the Žagubica Department of the Petrovac na Mlavi Centre for Social Work failed to take measures and activities within its mandate to enforce the final court decision awarding the sole custody of a child to the mother and to protect the rights and interest of the child against several years' abuse of parental rights by the father.*<sup>336</sup>

Failure to enforce decisions on custody of children and maintenance of personal ties between parents and children leads to violations of the right to respect for family life, given that delays and the passage of time may have a great impact on the enjoyment of this right. An analysis of the judgments of the European Court of Human Rights (ECtHR) against Serbia<sup>337</sup> reveals that procedural actions are undertaken in an untimely manner, frequently delayed, and that adequate cooperation and coordination between courts and guardianship authorities is missing. In some of the cases, failure to take the legally stipulated actions to ensure contact between the parent and the child resulted in this relationship being severed, which the ECtHR particularly stressed, noting the duty to take action to maintain the family ties between parents and children and prevent its weakening or eventual severance. It is for this reason that, in cases concerning the protection of parents and children's right to family life, the adequacy of the measures taken by the state is assessed by the ECtHR on the basis of speed of implementation, without tolerance for any omissions or delays in undertaking the legally stipulated measures available to the competent authorities.

Absence or poor maintenance of personal ties with the parent with whom the child does not live, most commonly due to obstruction and hindrance by the parent and/or relative with whom the child lives, remain a major source of child rights violations, as evidenced by the fact that 12.85% of the complaints filed with the Ombudsman in the area of child rights concern the right to maintain personal ties with the parent with whom the child does not live<sup>338</sup>. Although the Law on Enforcement and Security<sup>339</sup> has expanded the range of measures that may be imposed in enforcement proceedings, their implementation is insufficiently efficient; thus, the enforcement of a court decision on the maintenance of personal ties may be pending for years. During this time, children are, as a rule, instrumentalised, brought into a conflict of loyalty, and affected by parental delegation of responsibility for the maintenance of personal ties. The competent authorities' response is untimely, ineffective and unresponsive to the fact that the passage of time causes irreparable harm to the maintenance of the child's personal ties with the parent with whom he/she does not live, especially in cases where the child is instrumentalised. Similar omissions on the part of the authorities were noted by the European Court of Human Rights in multiple instances. "[...] the adequacy of a measure is to be judged by the swiftness of its implementation,

<sup>335</sup> Official Gazette of RS No 106/15.

<sup>337</sup> Petrušić, N. Presuda Evropskog suda za ljudska prava protiv Srbije u predmetima koji se tiču vršenja roditeljskog prava. Available at: <https://www.ombudsman.rs/index.php/4540-2016-01-15-08-19-55>.

<sup>338</sup> Godišnji izveštaj Zaštitinika građana za 2017. godinu, available at: <https://www.ombudsman.rs/attachments/article/5671/Godisnji%20izvestaj%20za%202017.%20godinu.pdf>.

<sup>339</sup> Official Gazette of RS Nos 68/15 and 81/16.

as the passage of time can have irremediable consequences for relations between the child and the parent who do not cohabit [...]. Finally, the Court has held that although coercive measures against the children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the children live..."<sup>340</sup>

#### 5.4.2.2. Alternative Care and Deinstitutionalisation

Although children are guaranteed the right to live with their parents, efficient family support systems for enhancing family strengths and capacities to prevent child separation are missing in practice.<sup>341</sup> According to the data of the National Institute for Social Protection<sup>342</sup>, children clients of the social protection system live in their birth families in 95% of the cases, while 5% are without parental care. In 2016, according to the records of centres for social work, a total of 10,097 children were subject to guardianship protection measures. The number of children under guardianship is on the constant increase, with the exception of year 2013, in which a slight decrease was recorded. In 2016, centres for social work, acting in the capacity of guardianship authorities, applied guardianship protection measures in respect of 2,756 children (new clients/children under guardianship).

Some centres for social work make omissions in implementing the regulations stipulating the conditions for the appointment of a child's guardian, especially with regard to temporary guardianship.

#### *Loznica Centre for Social Work to urgently take a new decision on the need for child protection under guardianship*

*In the complaint-handling procedure, the Ombudsman ascertained that the Loznica Centre for Social Work: had not taken protection measures upon learning that relatives were violating the children's right to maintain personal ties with their mother, who had left the household owing to intimate partner and domestic violence; had not treated children exposed to domestic and intimate partner violence against their mother as neglect and abuse victims and had not provided them protection; had not taken measures to reunify the children and the mother as the only surviving parent after their father's death; had appointed a temporary guardian for the children, despite the fact that they had a parent who had not been deprived of parental rights and who was able and motivated to assume the care of children; had appointed a relative who did not fulfil the legal requirements as the children's temporary guardian; had empowered the children's temporary guardian to "undertake all legal transactions and actions for the protection of children's persons, rights and interests", in contravention of the law, thus equalising him with a parent, who is the children's legal representative; had consistently omitted to supervise the exercise of temporary guardianship by the relative and to record and penalise the non-performance of duties by the temporary guardian, in particular the actions taken to the detriment of the children's right to maintain personal ties with the parent with whom they did not live and actions to prevent the parent from assuming the sole custody of the children; had not adopted plans of services and measures for the children in the prescribed manner; had not included the children's only surviving parent in the planning of services and measures, and had not implemented the planned activities.*<sup>343</sup>

<sup>340</sup> Judgment of the European Court of Human Rights dated 13 March 2007 in the case of V.A.M. v. Serbia, Application No 39177/05.

<sup>341</sup> Arsić, J. *op. cit.*, p. 10.

<sup>342</sup> RZSR, Deca u sistemu socijalne zaštite, 2016. Available at: <http://www.zavodsz.gov.rs/PDF/izvestaj2017/PS%20Deca%20u%20sistemu%20socijalne%20zastite%202016.pdf>.

<sup>343</sup> Available at: [https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85).

A total of 7.8% of the children under guardianship are in institutional care. However, it is concerning that institutional care for children up to the age of three is still present, despite being banned. During 2016, a total of 40 children below the age of three were placed in residential care institutions, and 32 were in institutions at the end of 2016.<sup>344</sup> In addition, the proportion of children with disabilities is increasing – from 62% in 2011 to 80% in 2016 – and these children prevail among those in institutional care.<sup>345</sup>

A total of 1,072 children, most of whom were aged 6-14, were separated from their families in 2016. The most common reasons for separation in 2016 were inadequate parental care (49.9%) and violence against children (15%). Most children separated from their families in 2016 were placed in family-based care (55.3%), 21.5% were placed in shelters or emergency shelter stations, 13.2% – with their relatives, and 5.5% in residential care institutions. Since 2012, the number of children in foster care increased by 4%, while the number of those in institutional care decreased by 24%.<sup>346</sup>

A survey conducted on a sample of 5155 children placed in non-kinship and kinship foster care and institutions between 1 June 2006 to 31 May 2011<sup>347</sup> shows that the families of children in the care system are faced with poverty and serious difficulties in meeting their basic needs. Half of the families live in inadequate housing, and more than 60% are not able to cover the basic needs with their income. Child neglect and poverty prevail among the reasons for child separation. A UNICEF survey found that the number of children in financially disadvantaged families was on the increase; thus, in 2016, 13% of all children in Serbia lived in these families, which constituted a 27% increase relative to 2011. It was also found that the risk of child separation was the highest in municipalities with the lowest economic activity levels, and decreased in proportion to the rise in municipal economic activity level.<sup>348</sup>

It is evident that the share of Roma children in the care system is disproportionately high. The estimated disproportionality rate (rate of uneven representation) of Roma children in care in Serbia is 3.7, i.e. the share of Roma children in care is 3.7 times higher than their share in the population. Roma children are overrepresented in foster care as well, at 26% of the total number of children in foster care<sup>349</sup>. Roma children also enter the care system at lower ages and are placed in kinship foster families to a lesser extent than other children. The parents' markedly unfavourable educational profile is noticeable, as is the fact that prior to placement in care, compared to other children in the sample, a significantly higher share of Roma children had lived in conditions that were not conducive to development or jeopardised the child's safety. Most families of Roma children in care are characterised by poverty and adverse material living conditions.<sup>350</sup>

With regard to foster care, specialised foster care for children in need of additional, intensive support and children urgently separated from their families is still underdeveloped. Thus, out of the total number of children with disabilities in care, over 54.6% are in institutional

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<sup>344</sup> Ministry of Labour, Employment, Veteran and Social Affairs, information system (2012).

<sup>345</sup> RZSR, Deca u sistemu socijalne zaštite, 2016, available at: <http://www.zavodsz.gov.rs/PDF/izvestaj2017/PS%20Deca%20u%20sistemu%20socijalne%20zastite%202016.pdf>.

<sup>346</sup> RZSR, Deca u sistemu socijalne zaštite, 2016, available at: <http://www.zavodsz.gov.rs/PDF/izvestaj2017/PS%20Deca%20u%20sistemu%20socijalne%20zastite%202016.pdf>.

<sup>347</sup> Žegarac, N. U lavirintu socijalne zaštite, Pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju, Beograd, Fakultet političkih nauka, 2014.

<sup>348</sup> TransMonEE, UNICEF, 2017.

<sup>349</sup> Žegarac, N. *op. cit.*, p. 17.

<sup>350</sup> Žegarac, N. *op. cit.*, p. 22.

care, under unsatisfactory conditions and without adequate rehabilitation and stimulation programmes. The number of children with disabilities in institutional care is 7 times higher than the number of those in foster care.<sup>351</sup>

Research into alternative care practices shows that, prior to separation, no preventive measures are taken in half of the families to prevent separation. In contacts with families, professionals from centres for social work aim to provide advice to parents, and have much less contact with children and extended family members. Financial assistance is provided to about one third of the families, while in-kind assistance and, in particular, earmarked assistance for repairs and furnishing the household are used sporadically; this applies to referrals to community-based services as well (about 5%). The practice of child separation and placement in foster care owing to the family's adverse economic status still prevails, instead of providing the child and family with financial assistance and other forms of support. In that respect, a key problem in practice is the lack of community-based services. Although the Law on Social Protection and Rulebook on Detailed Conditions and Standards of Provision of Social Care Services<sup>352</sup> regulate numerous social care services, as well as the conditions for their provision, equal access to such services is not ensured, which is a result of the community-based services funding modality; these services are within the mandate of local governments and their development level is, consequently, uneven among municipalities and cities.

Noteworthy is fact that, in 2016, as in prior years, by far the most common reason for child separation and placement in foster care was the assessment that the parents “were temporarily incapable of caring for the child” (as many as 61% of the children in foster care are separated for this reason).<sup>353</sup> Owing to the absence of intensive support measures and services for families in crises to reduce the risk of separation, children are separated from their families, which is one of the most traumatic childhood experiences, especially for young children.

This situation is evidenced by the fact that, in 2017, almost 3% of the complaints to the Ombudsman concerned the failure to provide assistance to parents in discharging the parental role, which constituted a significant increase compared to prior years, in which the proportion of complaints maintaining violations of this right had been negligible.

A system weakness is that the focus is on foster care development and deinstitutionalisation, while little attention is paid to family support services and services to prevent child separation. Family support services are not developed to an extent that would allow the provision of efficient support to families at risk in each specific case.<sup>354</sup> The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia of 2014<sup>355</sup> states that, given the process of deinstitutionalisation and expansion of foster care, the development of community-based services is insufficient, uneven and often unsustainable. No significant improvement has been made in this respect. According to the available data, there are only 17 specialised counselling units in Serbia, only 15% of the families received continuous support before having the child placed in alternative care, and in 19% of the cases, no measures were taken to strengthen the family prior to child separation from the birth family.<sup>356</sup>

Parents who personally care for their children who need uninterrupted care and assistance owing to disabilities or severe diseases have access to few services and benefits, which

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<sup>351</sup> Poseban izveštaj o diskriminaciji dece, Poverenik za zaštitu ravnopravnosti, Beograd, 2013.

<sup>352</sup> Official Gazette of RS No 42/13.

<sup>353</sup> TransMonEE, UNICEF, 2017.

<sup>354</sup> Arsić, J. *op. cit.*, p. 11.

<sup>355</sup> Drugi nacionalni izveštaj o socijalnom uključivanju i smanjenju siromaštva u Republici Srbiji, Beograd, 2014.

<sup>356</sup> Drugi i treći periodični izveštaj o sprovođenju KPD, 2014.

cannot meet these families' needs. Services, whether provided at the state or local level, are insufficiently developed, and financial assistance under the existing legal provisions is confined to financial social assistance and a cash benefit when the parent meets the retirement requirements. The Law on Financial Support to Families with Children has removed the possibility of leave benefit for the parent during childcare leave and special childcare leave if he/she is a care allowance recipient. The Ombudsman's objections to this provision, raised in the opinion on the Draft Law on Financial Support to Families with Children, and subsequently also in the Ombudsman's Amendments to the Bill on Financial Support to Families with Children submitted to the National Assembly, were not accepted.

*Ombudsman's Amendments to the Bill on Financial Support to Families with Children*

*By denying the entitlement to the special childcare leave benefit to care allowance recipients, the attained level of realisation of rights is lowered, since two complementary entitlements are unjustifiably made mutually exclusive. The entitlement to the care allowance and the augmented care allowance refers to funds for **additional** assistance provided by **professionals**, rather than funds for care provided by parents, since the children in question are children with disabilities who primarily need professional assistance by third parties (nurses, special educators, physiotherapists, carers etc.). The labour rights (including the entitlement to the childcare leave and special childcare leave benefits) are guaranteed to all citizens of the Republic of Serbia by the Constitution and under different international conventions ratified and laws passed by the Republic of Serbia. The guarantee of these rights entails the state creating the conditions for their realisation rather than suspending, terminating or diminishing them, and passing laws for their realisation with a view to aligning the legislation with citizens' real needs.* <sup>357</sup>

In a situation where appropriate services are not available, the parents are faced with only two choices: not to seek work, or to quit work and continue caring for the child, thus being left without income, or to leave the child in the social care system (place the child in a social care institution or a foster family) in order to be able to find or retain employment and earn a living to support other family members. The status of single-parent families with children in need of uninterrupted care is especially difficult.

The number of children with disabilities and severe diseases living in their families and in need of uninterrupted care and assistance is not known, as such records are not available.

In May 2013, the Ombudsman submitted the Bill Amending the Labour Law and the Bill Amending the Law on Financial Support to Families with Children<sup>358</sup> to the National Assembly. The bills contain new entitlements for parents of children in need of uninterrupted care and assistance in cases where the care and assistance services cannot be provided within the existing community-based service system (in the systems of health care, social protection, child care, education support measures and services in the local community). The new rights proposed by the Ombudsman in these two bills are aimed at providing financial support and labour-related benefits to parents who personally care for their children until the system can offer them adequate services, at which time they would be able to resume working or seeking employment. The National Assembly did not consider the bills, and the Ministry of Labour, Employment, Veteran

<sup>357</sup> The Ombudsman's document available at <https://www.ombudsman.rs/index.php/zakonske-i-druge-inicijative/5598-s-upsh-ins-i-db-ri-upuc-n-inici-iv-z-p-dn-sh-nj-nd-n-n-pr-dl-g-z-n-fin-nsi-s-p-drshci-p-r-dici-s-d-c>.

<sup>358</sup> Available in Serbian at [http://www.pravdeteta.com/index.php?option=com\\_content&view=article&id=539%3A2013-05-14-07-34-54&catid=42%3A2012-04-09-13-00-07&Itemid=87&lang=sr](http://www.pravdeteta.com/index.php?option=com_content&view=article&id=539%3A2013-05-14-07-34-54&catid=42%3A2012-04-09-13-00-07&Itemid=87&lang=sr).

and Social Affairs formed a multidisciplinary working group in 2013, in the belief that it was able to offer a better and more financially sustainable proposal. So far, neither the Ministry nor other authorities have proposed an adequate solution for improving the status of children who, owing to disabilities or severe diseases, need the uninterrupted care and assistance of their families.

Children and parents are often not prepared for separation and placement in care (about 40%), while more than half of the children (about 60%) do not have a formal plan for contacts with parents, relatives and other significant persons. Children's contacts with parents and relatives slightly decline over time, as they are arranged on an *ad hoc* basis and left to their own initiative. Children are relatively often transferred from one foster family to another, the percentage of children transferred from family-based to institutional care is concerning, as is the frequency of transfers from foster families to residential care institutions<sup>359</sup>, which indicates the instability and inadequate quality of child care and services within the existing alternative care system.

Children's participation in choosing the care arrangement depends on the age – children referred to the care system at an early age are not given an opportunity to express their view of the situation. Professionals mainly think that children's participation in making decisions that concern them is low, but hold that this is in their “best interest” since they are either not “mature enough” to make the decision or are “not realistic” in assessing their possibilities.

Adoption, as a form of alternative care, is not widely used. A total of 128 children were adopted in 2016 and an increase in adoptions by foreign citizens was recorded. The adoption procedures are relatively lengthy and not child-friendly.<sup>360</sup> In this area, it is essential to improve the legal framework, stipulate service provision standards in the area of adoption, and improve the provisions governing inter-country adoption. In addition, developed systems for counselling and support services for children going through the adoption process are missing, as well as complaints mechanisms to enable the child to seek protection in the event his/her rights are violated during the adoption process.<sup>361</sup>

## 5.5. Recommendations

1. **The Law on Financial Support to Families with Children should be amended to ensure that the exercise of the entitlement to the special childcare leave benefit is not precluded by the exercise of the child’s right to the care allowance.**
2. **The Ministry of Labour, Employment, Veteran and Social Affairs, in cooperation with other authorities, should provide a sufficient number of professionals at centres for social work and regular and high-quality training for them, for the purpose of assessment of needs for support to families with children.**
3. **The Ministry of Labour, Employment, Veteran and Social Affairs, in cooperation with other authorities, should provide a sufficient number and adequate structure of**

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<sup>359</sup> According to the data from the 2016 report *Deca u sistemu socijalne zaštite (Children in the Social Protection System)* of the National Institute for Social Protection, in 2016 transfers of children from family-based to institutional care were recorded, as well as an increase in the number of transfers from one foster family to another (during the year, 4% of the total number of children were transferred from family-based to institutional care and 8% – from one foster family to another).

<sup>360</sup> Žegarac, N. *op. cit.*, p. 17.

<sup>361</sup> Arsić, J. *op. cit.*, p. 13.

professionals at centres for social work and regular and high-quality training for them, for the purpose of exercise of powers in the enforcement of court decisions on the protection of the child right to family life.

4. The Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Justice, High Judicial Council and State Prosecutorial Council should take measures to ensure the efficient and fast conduct of proceedings and making of decisions whereby the status of children under family law is regulated and their rights protected on a permanent or temporary basis, as well as to ensure the efficient and fast enforcement of those decisions.
5. In the protection of children under family law, the Ministry of Labour, Employment, Veteran and Social Affairs should shift the focus and resources from intrusive policies and measures to supportive programmes and support services for families with children whereby families are strengthened, parents' competencies developed and all family members' strengths and competencies promoted.
6. The Ministry of Labour, Employment, Veteran and Social Affairs and National Institute for Social Protection, in cooperation with other authorities, should put additional efforts and resources into developing new and flexible support programmes and services for families with children, with different intensities, and ensure their equal availability to the most vulnerable families, including Roma families and those living in marginalised, remote and rural areas.
7. The Ministry of Labour, Employment, Veteran and Social Affairs, National Institute for Social Protection and local government units, in cooperation with other authorities, should establish legislative and other measures to ensure that children with disabilities and children in need of uninterrupted care and assistance can stay with their birth families, through developing community-based services for children and parents and ensuring equal availability of these services to the children and families who need them, as well as financial support and assistance for parents who are not able to work and generate income on account of providing uninterrupted care and assistance to the child with disabilities.
8. The Ministry of Labour, Employment, Veteran and Social Affairs, in cooperation with the National Institute for Social Protection and through cross-sectoral cooperation with the Ministry of Health and Ministry of Education, Science and Technological Development, should put additional efforts and resources into developing and establishing an efficient system for the identification of families with children at high risk in need of support, in order to prevent child separation.
9. The Ministry of Labour, Employment, Veteran and Social Affairs should ensure that omissions are prevented in decision-making on child separation by centres for social work and that children are only separated for legally stipulated reasons, with the proviso that poverty and conditions directly and solely attributable to poverty must

never be the justification, and in cases of child separation on the grounds of “inadequate parenting”, it is necessary that the measures and services to promote parenting practices are exhausted beforehand.

10. The Ministry of Labour, Employment, Veteran and Social Affairs, in cooperation with other authorities, should intensify the activities aimed at deinstitutionalisation and transformation of residential care institutions for children, reducing the total number of children in such care and the number of children with disabilities and Roma children.
11. The Ministry of Labour, Employment, Veteran and Social Affairs, in cooperation with other authorities, should intensify the activities aimed at preventing the unjustified overrepresentation of Roma children in residential care institutions.
12. The Ministry of Labour, Employment, Veteran and Social Affairs should urgently take measures to prevent the placement of children below the age of 3, including children with disabilities, in residential care institutions, and accelerate their placement in family-based care.
13. The Ministry of Labour, Employment, Veteran and Social Affairs, National Institute for Social Protection and autonomous province and local government authorities should strengthen support for children and young people leaving institutional and alternative care, services and programmes to support their independence and social integration, by ensuring access to adequate housing, employment, legal, health care and social services, as well as opportunities for further education, vocational training and other training modalities.

## 5.6. Recommendations of Children and Youth<sup>362</sup>:

1. Every child should be enabled to live, grow and develop in a family-like environment, and children's care homes do not offer conditions for such development.
2. With regard to children in foster families, checks to ascertain whether and which foster families suit them should be improved. Such checks should be more frequent, to avoid situations where a child is transferred between foster families multiple times, or where spells in foster families are several years apart, during which time the child resides in a care institution.

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<sup>362</sup> The Ombudsman's Young Advisors Panel, in cooperation with the Equality Commissioner's Youth Panel, Children's Council of the Network of Organizations for Children of Serbia (MODS) and Open Club from Niš, has formulated recommendations to the competent state authorities and institutions. Available at: [https://www.pravadeteta.com/attachments/394\\_Liflet%20-%20priprema%20343x240mm.pdf](https://www.pravadeteta.com/attachments/394_Liflet%20-%20priprema%20343x240mm.pdf).

## 6. HEALTH CARE AND SOCIAL PROTECTION

### 6.1. Introductory Remarks

Health care and social protection constitute a broad area of child rights that comprises the right to health preservation and treatment and the right to various forms of social assistance and support, including the right to an adequate standard of living. This section provides an overview of the international standards in this area, the legislative weaknesses in the health care and social protection systems, as well as the key challenges and difficulties faced by children and their parents in the exercise of the right to health care and social protection.

### 6.2. International Standards

The right to health care and social protection is guaranteed by the International Covenant on Economic, Social and Cultural Rights<sup>363</sup>, which prohibits any discrimination on any grounds in the enjoyment of these rights<sup>364</sup>. The revised European Social Charter of 1996<sup>365</sup> recognises numerous social rights, such as the right to protection of health<sup>366</sup>, right to social security<sup>367</sup>, right to social and medical assistance<sup>368</sup>, right to benefit from social welfare services<sup>369</sup>, right of persons with disabilities to independence, social integration and participation in the life of the community<sup>370</sup>, right of the family to social, legal and economic protection<sup>371</sup>, right to housing<sup>372</sup> etc.

The right of the child to the enjoyment of the highest attainable standard of health is guaranteed in Art. 24 of the CRC, which provides for the duty of states parties to recognise the right of the child to the highest level of medical assistance and health care and rehabilitation and to take all measures necessary to ensure that no child is deprived of this right. Special emphasis is placed on the states' duty to take appropriate measures to diminish infant and child mortality; to ensure the provision of necessary medical assistance and health care to all children, especially primary health care; to combat disease and malnutrition, including the application of readily available technology and the provision of adequate foods and clean drinking water. The states also have a duty to ensure appropriate care for mothers; and to ensure that all, in particular parents and children, are informed about health preservation, nutrition, advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents. The duty to develop preventive health care, guidance and education for parents and family planning services is also stipulated. The states' duty to take all effective and appropriate measures to abolish harmful traditional practices is also emphasised.

With regard to social protection, Article 26 of the CRC provides that states parties are required to recognise the right of every child to benefit from social security, including social

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<sup>363</sup> Art. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, Official Journal of SFRY No 7/71.

<sup>364</sup> Art. 2 of the International Covenant on Economic, Social and Cultural Rights.

<sup>365</sup> Official Gazette of RS No 42/09.

<sup>366</sup> Revised European Social Charter, Art. 11.

<sup>367</sup> *Ibid.*, Art. 12.

<sup>368</sup> *Ibid.*, Art. 13.

<sup>369</sup> *Ibid.*, Art. 14.

<sup>370</sup> *Ibid.*, Art. 15.

<sup>371</sup> *Ibid.*, Art. 16.

<sup>372</sup> *Ibid.*, Art. 31.

insurance, and to take all measures necessary for the full realisation of this right, with the proviso that the living conditions and all other circumstances of the child must be taken into account in the recognition of such benefits.

The Committee has devoted considerable attention to child health care and social protection by adopting general comments to elaborate the key provisions of the CRC.

The *General Comment No 3: HIV/AIDS and the Rights of the Child*<sup>373</sup> specifies the measures to be taken by states with a view to more efficient prevention of the HIV/AIDS epidemic and provision of greater support, care and protection to children infected or affected by this global epidemic. Amongst other things, the Committee notes the need for health care services to be more responsive to the needs of children aged below 18, especially adolescents, which implies being friendly and supportive, providing a wide range of services geared to their needs, giving them the opportunity to participate in decisions affecting their health, being accessible, affordable, confidential and non-judgmental, not requiring parental consent and not being discriminatory<sup>374</sup>. The obligation of the states to provide the children with sustained and equal access to comprehensive treatment and care, including necessary HIV-related drugs, goods and services on a basis of non-discrimination is also emphasised<sup>375</sup>. According to the Committee, special attention must be given to children orphaned by AIDS and to children from affected families, who are exposed to stigmatisation and social isolation, which increases the risk of neglect or violation of their rights to access to education, health and social services.

*The General Comment No 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*<sup>376</sup> elaborates the right of adolescents to health care, since this group of children is faced with specific health risks owing to their vulnerability and pressures to adopt risky health behaviour. The Committee stresses the need to create a safe and supportive environment<sup>377</sup>, provide appropriate assistance to parents through the development of institutions, facilities and services that adequately support the well-being of adolescents<sup>378</sup>, and notes the preventive role of schools<sup>379</sup>, the importance of information dissemination, training, counselling and health care service provision<sup>380</sup>. A set of recommendation is addressed to the states with the aim of ensuring adequate health care and support<sup>381</sup>, including the provision of counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns.

In the *General Comment No 15: on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)*<sup>382</sup>, the Committee points to the importance of approaching children's health from a child-rights perspective that all children have the right to opportunities to survive, grow and develop, within the context of physical, emotional and social well-being, to their full potential.

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<sup>373</sup> CRC/GC/2003/3, 17 March 2003, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en)

<sup>374</sup> General Comment No 3, para. 20.

<sup>375</sup> *Ibid.*, para. 28.

<sup>376</sup> CRC/GC/2003/4, 21 July 2003, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f4&Lang=en).

<sup>377</sup> General Comment No 4, para. 15.

<sup>378</sup> *Ibid.*, para. 17.

<sup>379</sup> *Ibid.*, para. 18.

<sup>380</sup> *Ibid.*, para. 27-34.

<sup>381</sup> *Ibid.*, para. 40.

<sup>382</sup> CRC/C/GC/15, 17 April 2013, available at

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en)

Children's right to health is interpreted as an inclusive right, which includes not only timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health<sup>383</sup>. The Committee endorses the World Health Organization's definition of health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"<sup>384</sup>. The Committee stresses that children are entitled to quality health services, including prevention, promotion, treatment, rehabilitation and palliative care services. At the primary level, these services must be available and of high quality, functional, within the physical and financial reach of all sections of the child population. The health care system should not only provide health care, but also report to relevant authorities on cases of rights violations and injustice. Secondary- and tertiary-level health care should also be made available, to the extent possible<sup>385</sup>. States have a duty to provide for comprehensive primary health care programmes at the local community level, which must be universally available to children. It is also essential to ensure an appropriately trained workforce of sufficient size, conditions for their work and appropriate oversight<sup>386</sup>. The Committee also highlights states' duty to reduce child mortality and urges particular attention to neonatal mortality and addressing adolescent morbidity and mortality<sup>387</sup>. The Committee also points to the increase in mental ill-health among adolescents, including developmental and behavioural disorders, excessive use of and addiction to the Internet and other technologies, self-harm and suicide.<sup>388</sup>

States' duty to ensure children's access to nutritionally adequate food, especially in early childhood, and to ensure the adequate nutrition of pregnant women, breastfeeding promotion etc.<sup>389</sup> States' obligations also include ensuring access to drinking water and environmental protection<sup>390</sup>. The Committee also devotes appropriate attention to maternal health care before and after giving birth<sup>391</sup>.

The Committee stresses that all States, regardless of their level of development, are required to take action to implement their obligations with respect to the right of the child to health, as a matter of priority, and where the available resources are demonstrably inadequate, to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of children's right to health<sup>392</sup>.

In the context of the non-discrimination principle, the Committee notes the pervasive gender-based discrimination, with numerous consequences, from female infanticide/foeticide to discriminatory infant and young child feeding practices, gender stereotyping and access to services. States are urged to pay attention to the differing needs of girls and boys, the impact of gender-related social norms and values on their health and development, as well as harmful gender-based practices and norms of behaviour that are ingrained in traditions and customs and undermine the right to health of girls and boys<sup>393</sup>.

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<sup>383</sup> General Comment No 15, para. 2.

<sup>384</sup> *Ibid.*, para. 4.

<sup>385</sup> *Ibid.*, para. 25.

<sup>386</sup> *Ibid.*, para. 26 and 27.

<sup>387</sup> *Ibid.*, para. 33.

<sup>388</sup> *Ibid.*, para. 38.

<sup>389</sup> *Ibid.*, para. 43, 44 and 45.

<sup>390</sup> *Ibid.*, para. 48 and 49.

<sup>391</sup> *Ibid.*, para. 51.

<sup>392</sup> *Ibid.*, para. 71.

<sup>393</sup> *Ibid.*, para. 9.

*The General Comment No 7: Implementing Child Rights in Early Childhood*<sup>394</sup> is dedicated to children's rights in early childhood, where this term is understood by the Committee as the period from birth to age 8<sup>395</sup>. Recalling the right of the child to life, survival and development, the Committee points to states' duty to take all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children during this critical phase of their lives. The Comment stresses that malnutrition and preventable diseases are still major obstacles to realising rights in early childhood, that a young child's health and psychosocial well-being are in many respects interdependent and may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realising human potential. Special emphasis is placed on young children growing up in especially difficult circumstances, who require particular attention on the part of the state<sup>396</sup>.

Recalling the primary responsibility of parents and respect for their primacy, the Committee stresses the duty of states parties to support parents, legal guardians and extended families in fulfilling their child-rearing responsibilities, including by assisting parents in providing living conditions necessary for the child's development and ensuring that children receive the necessary protection and care<sup>397</sup>. Accordingly, the Committee invites states parties to ensure that all young children, as well as those primarily responsible for their well-being, are guaranteed access to appropriate and efficient services, including health, care and education programmes specifically designed to promote their well-being. Special attention should be given to the most vulnerable groups of young children and those at risk of discrimination: girls, children living in poverty, children with disabilities, children belonging to indigenous or minority groups, children from migrant families, children who are orphaned or lack parental care for other reasons, children living in institutions, children living with mothers in prison, refugee and asylum-seeking children, children infected with or affected by HIV/AIDS, and children of alcohol- or drug-addicted parents<sup>398</sup>. It is necessary to establish comprehensive services for early childhood, which should begin at birth; this requires ensuring the registration of all children at birth. To achieve this, a universal, well-managed registration system that is accessible to all and free of charge needs to be established. An effective system must be flexible and responsive to the circumstances of families, for example by providing mobile registration units where appropriate; it is also necessary to ensure late registration of birth, as well as that children who have not been registered have equal access to health care, protection, education and other social services<sup>399</sup>.

With regard to standard of living and social security, the Committee recalls that young children are entitled to a standard of living adequate for their physical, mental, spiritual, moral and social development, and that growing up in relative poverty undermines children's well-being, social inclusion and self-esteem and reduces opportunities for learning and development, while growing up in conditions of absolute poverty has even more serious consequences, threatening children's survival and their health, as well as undermining the basic quality of life. It is, therefore, necessary to implement systematic strategies to reduce poverty in early childhood, as well as combat its negative effects on children's well-being. All possible means should be

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<sup>394</sup> CRC/C/GC/7/Rev.1, 20 September 2006, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f7%2fRev.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f7%2fRev.1&Lang=en)

<sup>395</sup> General Comment No 7, para. 4.

<sup>396</sup> *Ibid.*, para. 10.

<sup>397</sup> *Ibid.*, para. 20.

<sup>398</sup> *Ibid.*, para. 24.

<sup>399</sup> *Ibid.*, para. 25.

employed, including “material assistance and support programmes” for children and families, and children should be allowed to benefit from social security, including social insurance<sup>400</sup>.

In the area of health care in early childhood, the Committee highlights states’ duty to ensure that all children have access to the highest attainable standard of health care and nutrition during their early years, in order to reduce infant mortality and enable children to enjoy a healthy start in life. This includes access to clean drinking water, adequate sanitation, appropriate immunisation, good nutrition and medical services, which are essential for young children’s health, as is a stress-free environment, promotion of education in child health and development, including about the advantages of breastfeeding, nutrition, hygiene and sanitation, the provision of appropriate prenatal and post-natal health care for mothers and infants etc<sup>401</sup>. Children in need of special protection include children victims of abuse and neglect, sexual abuse and exploitation, children without families, refugees, children with disabilities, children involved in harmful work, children of substance abusers, children victims of sale, trafficking and abduction, and children in conflict with the law<sup>402</sup>.

With regard to young children with disabilities, the Committee firmly holds that disability must not be the grounds for their institutionalisation, and that priority should be given to creating equal opportunities for them to participate fully in education and community life, including by the removal of barriers that impede the realisation of their rights. Young children with disabilities are entitled to appropriate specialist assistance, including support for their parents (or other caregivers), and must be treated with dignity and in ways that encourage their self-reliance<sup>403</sup>.

*The General Comment No 20: on the Implementation of the Rights of the Child during Adolescence*<sup>404</sup> is focused on the rights of adolescents, with the aim of providing guidance to states on the legislation, policies and services to promote comprehensive adolescent development, to raise awareness of the opportunities afforded by and challenges faced during adolescence, to enhance understanding of and respect for the evolving capacities of adolescents and the implications for the realisation of their rights, and to stimulate greater visibility and awareness of adolescents<sup>405</sup>

The Committee emphasises the importance of valuing adolescence and its associated characteristics as a positive developmental stage of childhood and notes the widespread negative characterisation of adolescence leading to interventions and services focused on problems, rather than on building optimum environments to guarantee the rights of adolescents and support the development of their physical, psychological, spiritual, social, emotional, cognitive, cultural and economic capacities. Hence, through dialogue and engagement with adolescents themselves, it is necessary to promote environments that acknowledge the intrinsic value of adolescence and introduce measures to help them to thrive, explore their emerging identities, beliefs, sexualities and opportunities, balance risk and safety, build capacity for making free, informed and positive decisions and life choices, and successfully navigate the transition into adulthood. In other words, an approach is required that builds on strengths and recognises the contribution that adolescents can bring to their lives and those of others, while addressing the existing barriers<sup>406</sup>.

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<sup>400</sup> *Ibid.*, para. 26.

<sup>401</sup> *Ibid.*, para. 27.

<sup>402</sup> *Ibid.*, para. 36.

<sup>403</sup> *Ibid.*, para. 36, point d).

<sup>404</sup> CRC/C/GC/20, 6 December 2016, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f20&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f20&Lang=en)

<sup>405</sup> General Comment No 20, para. 7.

<sup>406</sup> *Ibid.*, para. 14 and 15.

The General Comment places emphasis on the groups of adolescents that require special attention: girls, boys, adolescents with disabilities, lesbian, gay, bisexual, transgender and intersex adolescents, minority and indigenous adolescents<sup>407</sup>. The Committee notes that during adolescence, gender inequalities become more significant, resulting in more serious violations of their rights, including child and forced marriage, early pregnancy, female genital mutilation, gender-based physical, mental and sexual violence, abuse, exploitation and trafficking<sup>408</sup>. On the other hand, traditional concepts of masculinity and gender norms linked to violence and dominance can compromise boys' rights; this calls for promoting positive masculinities, overcoming cultural values based on machismo and promoting greater recognition of the gender dimension of the abuses of boys<sup>409</sup>.

The Committee also stresses the adverse status of adolescents with disabilities, which requires introducing measures to overcome the barriers, promote their full inclusion and facilitate transitions from adolescence to adulthood. It is especially important to provide them opportunities for supported decision-making on matters concerning them<sup>410</sup>.

According to the Committee, vulnerable groups also include lesbian, gay, bisexual, transgender and intersex adolescents, who commonly face persecution, violence, stigmatisation, discrimination, exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information. The Committee condemns the imposition of so-called "treatments" to try to change sexual orientation and forced surgeries or treatments and urges states to eliminate such practices and to effectively protect these adolescents from all forms of violence, discrimination or bullying.

The Committee also points to the need to prevent discrimination against minority and indigenous adolescents and their social exclusion, marginalisation and exclusion from public spaces, since these phenomena increase the risks of poverty, social injustice and mental health issues, leading to disproportionately high suicide rates, poor educational outcomes and high levels of crime. States are expected to introduce measures to support adolescents from minority and indigenous communities, paying particular attention to adolescent girls.

When it comes to adolescents' health, the Committee notes that their health is predominantly informed by social and economic determinants and structural inequalities, that health services provided to adolescents are not adapted to their specific health needs, and that they often experience legal and financial barriers, discrimination, lack of confidentiality and respect, stigma and judgmental attitudes<sup>411</sup>. The Committee, *inter alia*, recommends that states adopt gender-sensitive sexual and reproductive health policies for adolescents<sup>412</sup>; ensure adolescents' access to commodities, information and counselling on sexual and reproductive health; decriminalise abortion; ensure care for pregnant adolescents; provide age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards<sup>413</sup>. States are also expected to intensify their efforts to provide treatment to adolescents infected with HIV and adolescents with mental health problems, to address drug-related problems, improve adolescents' standard of living etc<sup>414</sup>.

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<sup>407</sup> *Ibid.*, para. 26-35.

<sup>408</sup> *Ibid.*, para. 26.

<sup>409</sup> *Ibid.*, para. 27.

<sup>410</sup> *Ibid.*, para. 31.

<sup>411</sup> *Ibid.*, para. 55 and 56.

<sup>412</sup> *Ibid.*, para. 58.

<sup>413</sup> *Ibid.*, para. 59.

<sup>414</sup> *Ibid.*, para. 60.

In the area of social protection, the Committee stresses that poverty in adolescence has profound implications, leading to extreme stress and insecurity and to social and political exclusion, dropping out of school, entering into child or forced marriage, sexual exploitation, trafficking, exploitative work etc. It is, therefore, recommended that states introduce social protection floors that provide adolescents and their families with basic income security, protection against economic crises and access to social services.<sup>415</sup>

In the European area, the standards and courses of development of child and adolescent health care are based on the *European Strategy for Child and Adolescent Health and Development of 2005*<sup>416</sup>. The Strategy sets 7 priority areas for action with the aim of preserving and promoting child and adolescent health in Europe: Maternal and newborn health, Nutrition, Communicable diseases, Injuries and violence, Physical environment, Adolescent health, Psychosocial development and mental health.

In 2011, the Committee of Ministers of the Council of Europe adopted the *Guidelines on Child-Friendly Health Care*<sup>417</sup>, which stresses that all children should have equitable access to quality health care services, including prevention, promotion, protection and provision of services with the active involvement of children.

The Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Committee of the Council of Europe released the report *Ensuring access to healthcare for all children in Europe*<sup>418</sup>. On the basis of this report, Resolution 2139<sup>419</sup> was adopted, whereby the Council of Europe drew attention to the weaknesses and gaps between legislation and practice in the area of child health care in the EU.

The issue of children's sexual and reproductive health has also been addressed by the European Network of Ombudspersons for Children (ENOC). At the 21<sup>st</sup> ENOC General Assembly, held in Helsinki in 2017, the *Position Statement on a "Comprehensive Relationship and Sexuality Education: The right of children to be informed"* was adopted; the Ombudsman, as a full member of the European Network of Ombudspersons for Children, participated in the development of this document outlining the views of children's ombudspersons of Europe<sup>420</sup>. According to the ENOC definition, this education is "a process of acquiring information and informing opinions, beliefs and values as well as acquiring skills to generate closeness and to be safe. It also means supporting and protecting an age-appropriate positive attitude towards oneself, respecting diversity and experiences of safe closeness. CRSE has a rights-based and gender-focused approach. CRSE includes scientifically accurate information about human development, interpersonal relationships, affection, body image, anatomy and reproductive health." The ENOC insists that there must be national regulations and programmes for comprehensive relationship and sexuality education, and that schools must have mandatory, consistent, systematic plans and content based on the needs of children. Teachers need high-level training and competences. Sexual health services for children should be close to them and

<sup>415</sup> *Ibid.*, para. 65 and 66.

<sup>416</sup> The European strategy for child and adolescent health and development, Copenhagen: WHO Regional Office for Europe, 2005, available at: [http://www.euro.who.int/\\_data/assets/pdf\\_file/0003/81831/E91655.pdf](http://www.euro.who.int/_data/assets/pdf_file/0003/81831/E91655.pdf).

<sup>417</sup> Available at: [https://www.coe.int/t/dg3/health/Guidelines\\_on\\_child\\_friendly\\_health\\_care\\_English\\_version.pdf](https://www.coe.int/t/dg3/health/Guidelines_on_child_friendly_health_care_English_version.pdf).

<sup>418</sup> Available at: <http://website-pace.net/documents/19855/2463558/20161017-healthcare-children-EN.pdf/d13d886d-f5d3-4aae-b8a3-80f93b46f41e>.

<sup>419</sup> Available at:

<http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnVveG1sL1hSZWYvWDJILURXLWV4dHl1YXNwP2ZpbGVpZD0yMzIxOSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdc9QZGYvWFllZi1XRClBVC1YUWyUERGLnhzbA==&xsltparams=ZmlsZWlkPTlzMjE5>.

<sup>420</sup> Available at: [http://enoc.eu/wp-content/uploads/2014/12/ENOC-position-statement-on-CRSE\\_SR.pdf](http://enoc.eu/wp-content/uploads/2014/12/ENOC-position-statement-on-CRSE_SR.pdf).

available to help them. There should be educational campaigns to empower young people to form their own identities and sexual orientation. Further, the ENOC urges governments to support parents and professionals to hear children and empower them to express their views and also fears. Parents and professionals must be guided in fulfilling this task and helped in giving sexuality and relationship education. The ENOC recommends that a mandatory high-quality comprehensive relationship and sexuality education is included within early-childhood education, primary, elementary and secondary education, and that teachers, supported by external actors must have adequate education and in-service training.

### **6.3. International Bodies' Recommendations Addressed to the Republic of Serbia**

In the *Concluding observations on the combined Second and Third periodic reports on the implementation of CRC*<sup>421</sup>, the Committee on the Rights on the Child notes the efforts made by the state to improve access to adequate health care, stressing in particular the Decree on the National Health Care Programme for Women, Children and Young People of 2010 and the National Early Childhood Development Programme of 2016.

With regard to children's access to health care, the Committee stresses the persistence of regional disparities and equity gaps, combined with financial constraints and inadequate health insurance coverage, owing to which a considerable portion of the rural population and vulnerable groups still lack access to basic health-care services. The Committee also notes that Roma mothers and young children are particularly vulnerable and still have limited access to adequate health care, resulting in high mortality rates, early births and low rates of immunisation against childhood diseases. In addition, there are significant challenges in regular and timely vaccine procurement, leading to delays in immunisation coverage for children, particularly Roma children. High levels of malnutrition and stunting persist among Roma children, whose situation is further exacerbated by poverty and social isolation. The Committee assesses as negative the fact that the position of health mediators, introduced in 2009, is not institutionalised within the health care system and they continue to operate on a project basis. According to the Committee, access to early childhood development services, including referral to appropriate health and paediatric care, remains limited, particularly for children with developmental difficulties and from poor families, while regional disparities prevent equal access to the developmental counselling units throughout the country. Information on breastfeeding is limited (para. 44).

On the basis of the insights gained, the Committee recommends that the state ensure the availability of and equitable access to quality primary and specialised health 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 marginalised and remote areas. Another recommendation is to allocate adequate human and financial resources to ensure full implementation of the Decree on the National Health Care Programme for Women, Children and Young People. In addition, the Committee recommends strengthening and expanding support in Roma communities for newly appointed health mediators and ensure their institutionalisation within the health care system; ensuring equal access to counselling and other health-related support services for children with developmental difficulties; promoting immunisation through the media and

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<sup>421</sup> CRC/C/SRB/CO/2-3, 3 March 2017. Available at:

[http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komiteta\\_za\\_prava\\_deteta\\_srb.doc](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_deteta_srb.doc).

implementing policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age<sup>422</sup>.

In the area of mental health preservation and promotion, the Committee points to the shortage of qualified child psychiatrists and community-based mental health services. The Committee's recommendation is to take measures to ensure that community-based mental health services are readily available, to strengthen preventive work, particularly in the home environment and care centres, and to increase the number of child psychiatrists and psychologists<sup>423</sup>.

With respect to adolescent health, the Committee is concerned about the lack of a comprehensive national programme and poor coordination among agencies, which undermine the potential to develop a strategic and sustainable response to preventing early pregnancies. It is also concerned about the high incidence of drug, tobacco, alcohol and other toxic substance use among children and adolescents.<sup>424</sup>

The Committee's recommendation is to develop comprehensive, age-appropriate education on sexual and reproductive health, including information on family planning and contraceptives, the dangers of early pregnancy and the prevention and treatment of sexually transmitted diseases. In addition, it is necessary to ensure unimpeded access to sexual and reproductive health services, including confidential counselling and modern contraception for adolescent girls and boys. Measures should be taken to reduce the incidence of drug use and provide accessible and youth-friendly drug dependence treatment<sup>425</sup>.

The Committee notes as positive the state's efforts to address poverty and social exclusion, but remains concerned that children in marginalised, remote and rural communities continue to be disproportionately affected by poverty, while Roma families, families with four or more children and families with children with disabilities are at higher risk of multidimensional poverty. One of the problems is inadequate housing, particularly for Roma families, who are often subjected to forced evictions, which leaves children without access to basic services, including clean and safe drinking water and sanitation, therefore rendering them vulnerable to serious health problems. Access to financial social assistance is also hindered, while its amount is relatively low and is insufficient to cover the basic needs of children living in poverty.<sup>426</sup>

In this area, it is recommended that the state consider holding targeted consultations with families and children, including those in vulnerable situations, in particular Roma families, and with children's rights civil society organisations, with a view to strengthening the strategies and measures for reducing child poverty; strengthen the support to children living below the poverty line, in particular single-parent families, families with four or more children and families with children with disabilities, and ensure that social protection measures cover the real costs of decent living for the children. The state is also given the recommendation to review its legislation, policies and programmes on housing in order to overcome the problem of homelessness, taking into account the special needs of children, including Roma children and children with disabilities and their families and young people leaving alternative care. The Committee also recommends reviewing the adequacy of cash benefits for children from the perspective of securing a minimum standard of living and access in terms of information, outreach and user-friendly procedures; and

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<sup>422</sup> CRC Concluding Observations, para. 45.

<sup>423</sup> *Ibid.*, para. 46.

<sup>424</sup> *Ibid.*, para. 47.

<sup>425</sup> *Ibid.*, para. 49.

<sup>426</sup> *Ibid.*, para. 50.

simplifying the administrative procedures and provisions of support for cash benefits to facilitate access by families living in the most vulnerable situations<sup>427</sup>.

The Committee recommends that the state raise capacities for effective climate change-related planning and management and ensure the collection of disaggregated data identifying the types of risk faced by children in different disasters<sup>428</sup>.

Relevant recommendations concerning health care for children with disabilities are also given by the Committee on the Rights of Persons with Disabilities in its *Concluding Observations on the Initial Report of Serbia*<sup>429</sup>. The Committee is concerned at the lack of early identification of and intervention for children with disabilities, limited access to health services, particularly access to sexual and reproductive health services. Another problem is the lack of adequate training of health professionals in caring for persons with disabilities and the inaccessibility of medical services and health facilities<sup>430</sup>. The state is recommended to expedite the implementation of the National Early Childhood Development Programme, improve access to health care, including access to sexual and reproductive health services, adequately train health professionals on providing care to persons with disabilities, and ensure the accessibility of medical services and health facilities<sup>431</sup>.

In the area of social protection, the Committee is concerned at the lack of accessible social housing and recommends the full implementation of the law guaranteeing a 10% quota of accessible housing for persons with disabilities<sup>432</sup>.

## 6.4. Legal Framework for Health Care and Social Protection of Children in the Republic of Serbia

### 6.4.1. Legislative Overview

The right to the protection of physical and mental health is guaranteed by the *Constitution of the Republic of Serbia* of 2006. The right to the protection of physical and mental health is guaranteed to all, and children, pregnant women, mothers on maternity leave and single parents with children up to seven years of age are entitled to health care funded from public revenues, unless it is provided to them in some other manner in accordance with the law<sup>433</sup>. The Constitution also guarantees the right to social protection to citizens and families in need of social assistance in order to overcome social and life difficulties and meet the basic needs, and foresees that its provision is based on social justice, humanity and respect for human dignity.<sup>434</sup> Special protection is guaranteed by the Constitution to families, mothers, single parents and children. Mothers are provided special support and protection before and after childbirth, and children without parental care and children with mental or physical disabilities are entitled to special protection. The Constitution expressly provides that children below 15 years of age may not be employed

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<sup>427</sup> *Ibid.*, para. 51.

<sup>428</sup> *Ibid.*, para. 52.

<sup>429</sup> CRPD/C/SRB/CO/1, May 2016, available at: [http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komiteta\\_za\\_prava\\_osoba\\_sa\\_invaliditetom\\_srb.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_osoba_sa_invaliditetom_srb.pdf).

<sup>430</sup> Concluding Observations of the Committee on the Rights of Persons with Disabilities, para. 52.

<sup>431</sup> *Ibid.*, para. 52.

<sup>432</sup> *Ibid.*, para. 57 and 58.

<sup>433</sup> Constitution of the Republic of Serbia, Art. 68.

<sup>434</sup> *Ibid.*, Art. 69.

and that children below 18 years of age may not be employed in jobs detrimental to their health or morals<sup>435</sup>.

The area of health care is governed by the *Law on Health Care* of 2005<sup>436</sup>, with several subsequent amendments. The Law expressly provides that children up to the age of 18 are entitled to the highest attainable standard of health and health care<sup>437</sup>.

The *Law on Health Insurance* of 2005<sup>438</sup>, with several subsequent amendments, provides that an insured person's child holds the rights under statutory health insurance until the age of 18 or until the completion of the legally regulated secondary or tertiary education, and at the latest until the attainment of 26 years of age. A child whose schooling is interrupted owing to illness continues to hold the rights under statutory health insurance during the period of illness; if schooling is resumed, he/she retains these rights beyond the age threshold, at most for the period equal to the duration of the interruption of schooling. If a child becomes incapable of independent living and work before the expiry of time limits for the completion of schooling, he/she retains the rights under statutory health insurance during such period of incapacity<sup>439</sup>.

The *Law on the Exercise of the Right to Health Care by Children, Pregnant Women and New Mothers* of 2013<sup>440</sup> provides that children, pregnant women and new mothers are entitled to health care whose content, scope and standard are covered by statutory health insurance, and to reimbursement of transport costs in connection with the use of health care services, as well as that they exercise these rights irrespective of any prior health insurance periods, at the expense of statutory health insurance funds<sup>441</sup>. The Law expressly provides that children, pregnant women and new mothers are entitled to health care on the basis of a health insurance document, irrespective of whether the document is validated<sup>442</sup>.

The *Law on Public Health* of 2016<sup>443</sup> governs actions in the area of public health with the aim of pursuing public interests by creating the conditions for population health preservation and promotion through comprehensive societal activities<sup>444</sup>. Health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or incapacity"<sup>445</sup>.

The *Law on Patient Rights* of 2013<sup>446</sup> governs patient rights in the use of health care and the modalities of exercise and protection of these rights. Amongst other things, the right of each patient to accessible and high-quality health care is recognised, in accordance with his/her health status, within the boundaries of financial capacities of the health care system<sup>447</sup>.

The patient has the right to be informed about the diagnosis, prognosis and proposed medical procedure, its effects and risks, and a child capable of making judgments, regardless of age, has the right to confidential counselling even without parental consent, when this is in the best interest of the child<sup>448</sup>.

<sup>435</sup> *Ibid.*, Art. 66.

<sup>436</sup> Official Gazette of RS Nos 107/05, 72/09, 88/10, 99/10, 57/11, 119/12, 45/13, 93/14, 96/15, 106/15 and 113/17.

<sup>437</sup> Art. 26 of the Law on Health Care.

<sup>438</sup> Official Gazette of RS Nos 107/05, 109/05, 57/11, 110/12, 119/12, 99/14, 123/14, 126/14, 106/15 and 10/16.

<sup>439</sup> Art. 26 of the Law on Health Insurance.

<sup>440</sup> Official Gazette of RS No 104/13.

<sup>441</sup> Law on the Exercise of the Right to Health Care by Children, Pregnant Women and New Mothers, Art. 3.

<sup>442</sup> *Ibid.*, Art. 4.

<sup>443</sup> Official Gazette of RS No 15/16.

<sup>444</sup> Law on Public Health, Art. 1.

<sup>445</sup> *Ibid.*, Art. 2.

<sup>446</sup> Official Gazette of RS No 45/13.

<sup>447</sup> Law on Patient Rights, Art. 6.

<sup>448</sup> *Ibid.*, Art. 11.

The Law regulates consent to medical procedures<sup>449</sup> and expressly provides that a medical procedure may be undertaken in respect of a child with consent of his/her legal representative. The responsible health care professional or associate is required to enable the child him/herself to participate in making the decision on consent to the proposed medical procedure, in line with his/her maturity and ability to make judgments. If the health care professional believes that the child's legal representative is not acting in the best interest of the child, he/she is required to notify the competent guardianship authority immediately. A child who has attained the age of 15 and is capable of making judgments may independently give consent to the proposed medical procedure; if the child declines the proposed medical procedure, the responsible health professional is required to seek consent from the legal representative.

A child who has attained the age of 15 and is capable of making judgments, as a patient, has the right of access to his/her medical documentation<sup>450</sup>, as well as the right to confidentiality of the data in his/her medical documentation<sup>451</sup>. However, in the event of serious risk to the child's life and health, the health care professional is required to disclose the information about his/her health status to his/her legal representative, even if the child requests that the information about his/her health status not be disclosed to the legal guardian.

The Law expressly provides that the child may be involved in medical research in exceptional cases, only with a view to direct benefit to the patient him/herself and with his/her legal guardian's written consent, which may be revoked at any time. A child above the age of 15 may be involved in public health research if it does not lead to any direct benefit or direct risk to the child, if the research is aimed at facilitating better understanding of this population's health status, with written consent of the child him/herself or his/her legal guardian<sup>452</sup>.

*The Law on the Protection of Persons with Mental Health Disorders* of 2013<sup>453</sup> recognises the right of persons with mental health disorders to mental health protection and promotion through prevention, care, treatment and psychosocial rehabilitation in appropriate health care and other institutions, recovery and inclusion in the family, work and social environment, taking their choices into consideration<sup>454</sup>. These persons also have the right to equal conditions of treatment, appropriate to their health needs, under the same terms as other health care service users, as well as the right to treatment in the least restrictive environment, with the application of the least restrictive and coercive medical procedures, appropriate to their religious and cultural background<sup>455</sup>.

With respect to the restriction of rights of persons with mental health disorders, the Law provides that this is only possible where necessary to protect the health or safety of with mental health disorders or others. Health care professionals have a duty to organise the application of medical procedures and treatment of persons with mental health disorders in a manner that restricts their rights and freedoms as little as possible, and only where a different solutions is not possible<sup>456</sup>.

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<sup>449</sup> *Ibid.*, Art. 19.

<sup>450</sup> *Ibid.*, Art. 20.

<sup>451</sup> *Ibid.*, Art. 24.

<sup>452</sup> *Ibid.*, Art. 25.

<sup>453</sup> Official Gazette of RS No 45/13.

<sup>454</sup> Law on the Protection of Persons with Mental Health Disorders, Art. 7.

<sup>455</sup> *Ibid.*, Art. 8.

<sup>456</sup> *Ibid.*, Art. 11.

*The Law on the Prevention and Diagnosis of Genetic Diseases, Genetic Anomalies and Rare Diseases* of 2015<sup>457</sup> governs the treatment of children with rare diseases<sup>458</sup> and comprehensively regulates the reasons and conditions for genetic tests and genetic screenings.

The *Law on Patient Rights* provides that patients may file a complaint with the patient rights protection advisor about health care professionals' work

From the aspect of child rights protection, especially important are the decrees laying down national health care programmes.

*The Decree on the National Health Care Programme for Women, Children and Young People* of 2009<sup>459</sup> stipulates that the Programme is based on the following guiding principles: life-course approach; equality and access; age- and gender-sensitive (oriented) approach to health care provision; human rights protection; care for vulnerable groups; community participation; individual participation; partnership for health (cross-sectoral cooperation); women, children and youth health care services' work quality; and a unified health information system. The Programme is aimed at health preservation and promotion through evidence-based primary, secondary and tertiary prevention measures and activities. The groups addressed by the Programme are women in connection with family planning, pregnancy, childbirth and maternity; newborns and infants; children up to the age of four; preschool- and younger school-age children; youth up to the attainment of the age of majority; young adults up to the age of 26. Programmatic units of particular importance include: mental health promotion and protection; health care for children and youth with acute and emergency conditions and diseases of major socio-medical importance; health care for children and youth with chronic diseases and conditions and disabilities; these are combined with units by abovementioned population groups, thus following the life course, from prenatal period to young adulthood. Under each programmatic unit, one or more general goals are defined. The programmatic units encompass the priority areas defined in the European Strategy for Child and Adolescent Health and Development: maternal and newborn health; nutrition; communicable diseases; injuries and violence; adolescent health; psychosocial development and mental health; protection of children with chronic diseases and disabilities.

The *Decree on the National Early Childhood Development Programme*<sup>460</sup> lays down the measures and activities aimed at promoting the proper development of every child, which, according to the Decree, implies good physical health, satisfactory nutrition, adequate early development stimulation, a functioning family with a positive and interactive relationship between the parents or caregivers and the child, as well as the prevention of numerous and highly diverse risk factors in the prenatal, perinatal and postnatal periods and early childhood. The Programme is based on the principles of best interest of the child, non-discrimination, family-centredness and continuity, comprehensive and timely approach, multidisciplinary and cross-sectoral cooperation, and active client participation.

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<sup>457</sup> Official Gazette of RS No 8/15.

<sup>458</sup> This Law provides for the establishment of centres for clinical genetics and rare diseases at tertiary-level health care institutions, within which diagnostic committees are formed. The committee is required to decide to send a biological sample abroad or refer the patient abroad for treatment in case of suspicion of a rare disease, where the undertaken genetic analysis is inconclusive with respect to a targeted test, as a result of which the patient is left without a confirmed diagnosis and without the possibility of further diagnostic measures for longer than six months (Art. 30 and 31).

<sup>459</sup> Official Gazette of RS No 28/09.

<sup>460</sup> Official Gazette of RS No 22/16.

The *Decree on the Programme for Population Protection against Communicable Diseases*<sup>461</sup> sets the priority Programme goals in the areas of epidemiology, hygiene, health education, epidemiology and hygiene in emergencies, microbiology and health information science.

The *Decree on the National Programme for Palliative Care for Children in the Republic of Serbia*<sup>462</sup> contains the fundamental principles of palliative care for children.

The development of health care, including child health care, is governed by numerous strategies, such as the *Public Health Strategy of the Republic of Serbia 2018-2026*<sup>463</sup>, *Mental Health Care Development Strategy*<sup>464</sup>, *Youth Health Development Strategy of the Republic of Serbia*<sup>465</sup>, *Drug Abuse Prevention Strategy 2014-2021*<sup>466</sup>.

The social policy to ensure appropriate living standard and well-being of children includes various modalities of social assistance and protection targeting families and children, governed by the *Law on Social Protection* of 2011<sup>467</sup> and other laws. The Law on Social Protection governs, *inter alia*, the conditions for the provision of financial support to families unable to meet their basic needs with their income and provide children with a standard of living conducive to their development. The Law also regulates other forms of social support aimed at overcoming difficulties in family functioning and attaining child well-being. As family household members, children may be the beneficiaries of all material support entitlements: financial assistance, care allowance – especially important for children with disabilities, one-off financial assistance, in-kind assistance and others<sup>468</sup>. Children may also be the beneficiaries of soup kitchens and other forms of in-kind assistance provided by local governments. Children are recognised in particular as family and social protection service clients, especially when they are in a vulnerable situation.

The *Law on Financial Support to Families with Children* of 2017<sup>469</sup> is also relevant to ensuring an adequate standard of living for children. This Law governs financial support to families with children provided with the aim of improving the conditions for meeting children's basic needs, reconciling work and parenthood, providing parents with distinct incentives and support to reach the desired number of children, and improving the financial status of families with children, families with children with disabilities and families with children without parental care<sup>470</sup>. The Law recognises and regulates the conditions for the exercise of entitlements to the child allowance, child care and special child care leave benefits and the birth grant. The Law provides that the preschool attendance costs of children without parental care and children with disabilities, as well as preschool attendance subsidies for children from financially disadvantaged families are funded from public revenues. All these entitlements are treated as public interest and their exercise is funded from the national budget<sup>471</sup>. The improvements introduced by this Law compared to the former Law are in accordance with the Ombudsman's proposals addressed to the competent authorities in the form of opinions, recommendations and initiatives. For more information on this matter, see the section “General Principles”.

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<sup>461</sup> Official Gazette of RS No 22/16.

<sup>462</sup> Official Gazette of RS No 22/16.

<sup>463</sup> Official Gazette of RS No 61/18.

<sup>464</sup> Official Gazette of RS No 8/07.

<sup>465</sup> Official Gazette of RS No 104/06.

<sup>466</sup> Official Gazette of RS No 1/15.

<sup>467</sup> Official Gazette of RS No 24/11.

<sup>468</sup> Art. 79 of the Law on Social Protection.

<sup>469</sup> Official Gazette of RS Nos 113/17 and 50/18.

<sup>470</sup> Law on Financial Support to Families with Children, Art. 1.

<sup>471</sup> *Ibid.*, Art. 9.

In the area of housing, especially important is the *Law on Housing and Building Maintenance*<sup>472</sup>, which governs social housing, i.e. the provision of housing support and procedures for eviction and resettlement from legal and unlawfully built structures. The Law improves the status of particularly vulnerable groups, especially children, in eviction and resettlements and procedures and in the assessment of criteria for the award of housing support, and the designed arrangements are in line with the Ombudsman's positions presented in the Opinion issued during the development of this Law<sup>473</sup>.

In the event of eviction from unlawfully built structures, the Law provides that, if the individual concerned and his/her household members do not own another residential property and are without sufficient funds to provide other accommodation for themselves, they are entitled to resettlement in adequate accommodation. The Law defines the term “adequate accommodation” and provides that, in the event of resettlement, the accommodation must satisfy certain standards and principles: adequate location, in terms of access to the basic municipal infrastructure, non-polluted soil, earning opportunities and access to public services, in particular education, health care and social protection; affordability, meaning that the portion of housing costs to be borne by the occupants is to be reduced depending on household income; adequate dwelling area, meaning that the net floor area per household member may not be below 8 m<sup>2</sup>; the presence and adequate condition of the basic electric power, water supply and sanitation installations; physical safety and protection against cold, moisture, heat, precipitation, wind and other adverse climate impacts; physical accessibility and due consideration for the cultural appropriateness of the housing for the individual being resettled<sup>474</sup>. The Law regulates in detail the eviction and resettlement procedures, which are based on the principles of legality, proportionality, protection of dignity, protection of particularly vulnerable persons, including women, children, single parents, families with three or more children, domestic violence victims, persons with disabilities etc. The duty of collaboration is stipulated, meaning that state and other authorities, as well as other entities involved in eviction and resettlement procedures, are required to collaborate with a view to protecting human and minority rights and fulfilling the best interests of the individuals affected by those procedures<sup>475</sup>. The Law also regulates housing support, i.e. housing assistance provision to persons who are not able to meet their own and their households' housing needs under market conditions owing to social, economic or other reasons<sup>476</sup>.

The *Labour Law*<sup>477</sup> foresees a range of rights in the area of labour to enable work-family reconciliation, especially for working mothers, single parents and parents of children with disabilities. Amongst other things, the employer is required to provide a breastfeeding break for an employed woman who returns to work before the expiry of one year of childbirth<sup>478</sup>, may not assign a single parent to overtime or night work without his/her consent, etc.

Attention to children's social status is reflected in various preschool and nursery attendance subsidies for children of employed parents, provided by local governments. There are great differences among local governments in terms of preschool capacities and subsidy levels, leading to wide disparities in subsidy types and coverage of children, primarily dependent on

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<sup>472</sup> Official Gazette of RS No 104/16.

<sup>473</sup> The opinion is available at:

<http://www.zastitnik.rs/index.php/2011-12-11-11-34-45/4985-ishlj-nj-z-sh-i-ni-gr-d-n-n-s-n-cr-z-n-s-n-v-nju-i-drz-v-nju-zgr-d>

<sup>474</sup> Law on Housing and Building Maintenance, Art. 79.

<sup>475</sup> *Ibid.*, Art. 80.

<sup>476</sup> *Ibid.*, Art. 88.

<sup>477</sup> Official Gazette of RS Nos 24/05, 61/05, 54/09, 32/13 and 75/14.

<sup>478</sup> Art. 93a of the Labour Law, Official Gazette of RS Nos 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 and 113/17.

local government economic development levels. The social status of children and their families, hence, differs between different areas.

The *Decree on Protected Energy Customers and Vulnerable Heating Customers*<sup>479</sup> provides for energy subsidies for the poorest citizens of Serbia under more favourable conditions compared to the Decree of 2013.

The social care service activities and standards are regulated by a range of bylaws. In 2017, the *Decree on Earmarked Transfers in Social Protection*<sup>480</sup>, the Employment and Social Reform Programme<sup>481</sup>, and the *Recommendations and Guidelines for Improving the Principles of Ethical Conduct of Social Protection Professionals*<sup>482</sup> were adopted.

The strategic and planning documents adopted at the national provincial and local government levels are relevant in the area of health care and social protection.

The *National Youth Strategy 2015-2025*<sup>483</sup> has been adopted; amongst other things, it foresees the measures and activities to address the problem of addiction, early engagement in sexual relations, growing number of people with sexually transmitted diseases, low proportion of physically active population and low level of knowledge about and care for own health. The national plan contains a description of the current situation of child health care with concrete quantitative parameters. The average infant mortality rate in Serbia is twice as high as the European Union average. This figure is indicative of the level of health care for children, as well as women during pregnancy and after childbirth. The causes of child mortality differ, depending on age. Other relevant documents include the *Strategy for Social Inclusion of the Roma in the Republic of Serbia 2016-2025*, *National Social Housing Strategy*<sup>484</sup>, *National Strategy for Refugees and Internally Displaced Persons*<sup>485</sup> etc.

#### 6.4.2. Legislative Weaknesses

The legislation in the areas of health care and social protection is mainly aligned with international standards and, formally, provides a high level of protection in these areas. However, there are also legal provisions that are inconsistent with international standards in the area of child rights.

The *Family Law*, which allows marriage for persons aged 16, has not been amended yet, despite the fact that the Committee on the Rights of the Child recommends “that the State party amend the Family Law to remove all exceptions that allow marriage for those under the age of 18 years”<sup>486</sup>.

Children with severe diseases and with disabilities still lack access to adequate support services and measures. The Ombudsman’s proposal to enhance support measures for parents of

<sup>479</sup> Official Gazette of RS No 113/15.

<sup>480</sup> Official Gazette of RS No 18/16.

<sup>481</sup> Program reforme politike zapošljavanja i socijalne politike, available at:

<http://www.minrzs.gov.rs/lat/aktuelno/item/5782-program-reformi-politike-zaposljavanja-i-socijalne-politike-u-procesu-pristupanja-evropskoj-uniji-employment-and-social-reform-programme>.

<sup>482</sup> Preporuke i smernice za unapređenje principa etičkog ponašanja stručnih radnika socijalne zaštite,

<http://www.komorasz.rs/propisi/normativni-akti/pravilnici.html>.

<sup>483</sup> Available at: [http://www.mos.gov.rs/mladisuzakon/attachments/article/389/nacionalna\\_strategija\\_za\\_mlade0101\\_cyr.pdf](http://www.mos.gov.rs/mladisuzakon/attachments/article/389/nacionalna_strategija_za_mlade0101_cyr.pdf)

<sup>484</sup> Official Gazette of RS No 13/12.

<sup>485</sup> The Strategy covers the period of 2015-2020.

<sup>486</sup> Concluding Observations of the Committee on the Rights of the Child on the combined second and third periodic reports of Serbia, available at: <http://www.ljudskaprava.gov.rs/sr/node/143>.

children with severe diseases and with disabilities in need of uninterrupted care and assistance has not been acted upon.

Already six years ago, the Ombudsman submitted the Bill Amending the Labour Law<sup>487</sup> and the Bill Amending the Law on Financial Support to Families with Children<sup>488</sup>, introducing additional rights for these families, to the National Assembly. The bills have not been considered to date, and the parents' status has been further exacerbated by the provision of the new Law on Financial Support to Families with Children<sup>489</sup> whereby the parent's entitlement to the special childcare leave benefit is denied if the child is a recipient of the care allowance<sup>490</sup>. The Ombudsman's objections that this provision was unlawful and irregular, multiply harmful and especially unfair to children with severe diseases and with disabilities and their families, and that the provision had the effect of lowering the attained level of human rights, were not taken into account.

The right to VAT refund on baby food and supplies was abolished as of 1 July 2018<sup>491</sup>. The Ombudsman stressed<sup>492</sup> that the termination of this benefit had lowered the level of parents' right to support in safeguarding the standard of living, since the terminated right to VAT refund was not compensated for in an adequate manner<sup>493</sup>, given that the right to a one-off payment of a lump sum for baby supplies<sup>494</sup> provided a lower level of support compared to VAT refund.

In accordance with the Ombudsman's Opinion<sup>495</sup>, the Law on Financial Support to Families with Children stipulates that a mother who is not a citizen of Serbia (in cases where the father and the child are citizens) and has the status of foreigner with permanent residence may be eligible for the birth grant; in addition, single-parent families are eligible for financial support where the enforcement of the judgment awarding child support cannot be ensured by the available remedies, and the child support amount is no longer included in the family income where income level is an eligibility requirement.

In the Annual Report 2016<sup>496</sup>, the Ombudsman notes that the Law on Public Peace and Order<sup>497</sup> does not exclude children's liability for involvement in child begging and other forms of child exploitation and does not grant the status of victim to children involved in these activities. This weakness has also been highlighted by the Human Rights Committee, which is concerned about the "situation of children [...] who are forced to work, beg or engage in prostitution" and recommends that the state "fully recognize children as victims rather than perpetrators of crimes".<sup>498</sup>

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<sup>487</sup> Available at: <http://www.ombudsman.rs/index.php/zakonske-i-druge-inicijative/2826-2013-05-14-08-12-28>.

<sup>488</sup> Available at: <http://www.ombudsman.rs/index.php/zakonske-i-druge-inicijative/2825-2013-05-14-07-58-42>

<sup>489</sup> Official Gazette of RS No 113/17.

<sup>490</sup> Art. 12 of the Law on Financial Support to Families with Children.

<sup>491</sup> Art. 9 of the Law Amending the Law on Value-Added Tax, Official Gazette of RS No 108/16.

<sup>492</sup> The Annual Report is available at <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/5191-2016-pdf>.

<sup>493</sup> *Ibid.*

<sup>494</sup> Art. 22 of the Law on Financial Support to Families with Children, Official Gazette of RS No 113/17.

<sup>495</sup> Opinion on the Draft Law on Financial Support to Families with Children, filing number 37867, dated 13 October 2017.

<sup>496</sup> The Annual Report is available at <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/5191-2016-pdf>.

<sup>497</sup> Official Gazette of RS No 94/16.

<sup>498</sup> Concluding Observations of the Human Rights Committee on the Third Periodic Report of Serbia, available at: [http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komitaccpr\\_c\\_srb\\_co\\_3\\_27019\\_e\\_srp.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komitaccpr_c_srb_co_3_27019_e_srp.pdf).

### 6.4.3. Practical Challenges and Difficulties

Some progress has been made in recent years in the area of health care and social protection of children. Nevertheless, the situation is still not satisfactory.

The continuous decline in the coverage of children by mandatory immunisation during 2014, 2015 and 2016<sup>499</sup> culminated in a measles epidemic, which claimed several lives and compromised the health of many citizens, especially young children. As a result of this<sup>500</sup>, as well as of the circumstances in the countries bordering Serbia,<sup>501</sup> public health was at high risk of communicable diseases and the population was exposed to epidemic hazard.

In 2015, as part of its services, having assessed that the health care system did not respond adequately to the several years' decline in the vaccination coverage of children, the Ombudsman pointed out the importance of preventive and education work to the Ministry of Health, Dr Milan Jovanović Batut Institute of Public Health and the National Health Insurance Fund and advised these authorities of the need to take action to inform and raise awareness of parents and the general public in a systematic and organised manner. The health care system has not undertaken the measures recommended by the Ombudsman and stipulated by the Decree on the Programme for Population Protection against Communicable Diseases<sup>502</sup>; there have been no campaigns or other systematic and comprehensive information dissemination efforts to enhance awareness and knowledge; and no instructions are currently available on the immunisation of adults born before 1971, who were not covered by the systematic immunisation against measles, launched at that time, which increases the risk of epidemic spreading further. It was only after several health care professionals fell ill with measles that the regulations on the mandatory immunisation of health care institutions' staff against measles, mumps and rubella were amended, so that this measure was launched on 10 February 2018, instead of 2020. The health care system should, therefore, document whether and how it implemented the measures regulated by the Decree before and during the epidemic.<sup>503</sup>

*It is the responsibility and duty of public authorities to inform citizens about all aspects of protection against communicable diseases, and thereby – and, if needed, through the implementation of other planned and structured measures – ensure the protection of population health.*

*In its opinion with recommendations, the Ombudsman notes that the public authorities competent for the affairs in the areas of health care, public health, education, family and social protection, media, culture and information, interior affairs, justice and judiciary, in cooperation with other authorities where necessary,*

<sup>499</sup> According to the data of the Dr Milan Jovanović Batut Institute, between 2014 and 2016, the coverage of children by the mandatory MMR immunisation declined significantly below the recommended level of 95%: the mandatory MMR vaccine, foreseen for the second year of life, was administered to fewer than 85% of the children in the relevant age group, and the MMR revaccination, foreseen for the seventh year of life, was administered to fewer than 90% of the children in the relevant age group.

<sup>500</sup> On herd immunity, see <http://www.who.int/bulletin/volumes/86/2/07-040089/en/> and the information on the website of the Dr Milan Jovanović Batut Institute of Public Health.

<sup>501</sup> A measles epidemic has spread in Romania since 2016; in June 2017, 6,616 cases and 29 deaths due to measles were registered, and the state has also faced a vaccine shortage (Mandatory vaccination: an individual choice or a matter of public health ESPN Flash Report 2017/47, available at: <http://www.ec.europa.eu/social/BlobServlet?docId=17995&langId=en>).

<sup>502</sup> Official Gazette of RS No 22/16.

<sup>503</sup> Sustaining a high vaccination coverage, of at least 95% at the level of each municipality; extraordinary review of vaccination files; vaccination of unvaccinated and incompletely vaccinated persons; information dissemination to the population about the importance and scale of the communicable diseases problem, prevention, treatment and control possibilities; organised dissemination and acquisition of knowledge conducive to the development of positive habits and attitudes relevant to the prevention of communicable diseases; bringing about changes in the attitudes and behaviours contributing to the occurrence and spreading of communicable diseases.

*must immediately undertake measures to regularly, continuously and comprehensively inform citizens about:*

- risks to life and health in case of falling ill with tuberculosis, poliomyelitis, diphtheria, tetanus, pertussis, Haemophilus influenzae type B bacterial infection, hepatitis B, measles, mumps and rubella;*
- risks of population morbidity owing to reduced immunisation coverage against tuberculosis, poliomyelitis, diphtheria, tetanus, pertussis, Haemophilus influenzae type B bacterial infection, hepatitis B, measles, mumps and rubella;*
- reasons why the vaccination of children against tuberculosis, poliomyelitis, diphtheria, tetanus, pertussis, Haemophilus influenzae type B bacterial infection, hepatitis B, measles, mumps and rubella is mandatory;*

*parents' rights and duties;*

- citizens' rights and duties with regard to public health matters;*
- other facts relevant to the formulation of citizens' convictions about and attitudes towards mandatory vaccination against tuberculosis, poliomyelitis, diphtheria, tetanus, pertussis, Haemophilus influenzae type B bacterial infection, hepatitis B, measles, mumps and rubella.<sup>504</sup>*

The number of developmental and adolescents' counselling units is insufficient, which presents a barrier to improving preventive health care, and the number of health care professionals is insufficient to meet the needs of children and youth, according to expert assessments.<sup>505</sup> In 2016, youth counselling units were available in only 40<sup>506</sup> of the 151 primary health care centres in Serbia. Developmental counselling units (for preschool- and preadolescent-age children) were available in only 36 municipalities<sup>507</sup>. Further, the work of counselling units within the health care system is unregulated and inconsistent with regard to topics and areas of counselling work with young children and youth; hence, parents with children are often referred to developmental counselling units to address family conflicts and during divorce proceedings, owing to the absence of appropriate family counselling units, etc. The number of places for children and youth in specialised secondary- and tertiary-level mental health care institutions is insufficient; thus, there is only one Neurology and Psychiatry Clinic for the entire Autonomous Province of Vojvodina, at the University Medical Centre of Vojvodina, with only nine beds for in-patient treatment of children and youth<sup>508</sup>. Besides, the Strategy for Education Development in Serbia until 2020<sup>509</sup> does not recognise prevention in preschool and basic education; instead, it foresees that healthy lifestyles (combating the use of psychoactive substances, tobacco and alcohol, reproductive health care) should be promoted by upper secondary education institutions only.

At the request of the Special Rapporteur of the Office of the UN High Commissioner for Human Rights, the Ombudsman provided the data on young people's inadequate access to sexual and reproductive health information and services, stressing that formal sex education for children and youth does not exist in Serbia, nor is systematic information dissemination ensured. The deadline for the introduction of reproductive health and sex education contents foreseen by the

<sup>504</sup> Available at: <https://www.ombudsman.rs/index.php/2011-12-11-11-34-45/5742-n-dl-zni-d-spr-v-du-ivn-s-i-u-cilju-p-diz-nj-buhv-d-c-b-v-zn-v-cin-ci-i-s-rucn-g-inf-r-is-nj-gr-d-n>.

<sup>505</sup> Decree on the National Early Childhood Development Programme, Official Gazette of RS No 22/16.

<sup>506</sup> Aneks 1 Drugog i Trećeg periodičnog izveštaja o primeni Konvencije o pravima deteta u Republici Srbiji, p. 94, available at: [http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/drugi\\_treci\\_periodicni\\_izvestaj\\_kpd\\_anex\\_srb.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/drugi_treci_periodicni_izvestaj_kpd_anex_srb.pdf).

<sup>507</sup> National Health Insurance Fund, <http://www.rfzo.rs/index.php/linkovi/zdravstvene-ustanove>

<sup>508</sup> Data obtained in the course of Ombudsman's proceedings.

<sup>509</sup> Available at: [http://www.srbija.gov.rs/vesti/dokumenti\\_sekcija.php?id=45678](http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678).

Action Plan for the Implementation of the National Gender Equality Strategy 2016-2020<sup>510</sup> has expired, and the activity has not been implemented. That the present situation is unsustainable is evidenced by the experts' estimate of 21 abortions per 100 births in the adolescent population<sup>511</sup> and the fact that, in 2017, one out of 20 girls aged 15-19 had already had an abortion<sup>512</sup>.

According to the findings of the Ombudsman's Special Report on Roma Women's Reproductive Health with Recommendations of 2017<sup>513</sup>, Roma women, including Roma children and adolescents, are exposed to poverty, social exclusion and discrimination. The situation of young Roma women is characterised by exclusion from education, early school leaving, marriage at an early age, multiple short-spaced pregnancies, lack of information, and financial and other dependency on older family members and partners. Information relevant to prevention and reproductive health care, including information about safe contraception methods, is not available to them; they still do not have enough information about their rights in the area of health care and health insurance and mechanisms for the protection of these rights, nor do they use such mechanisms. Preventive activities concerning Roma women's reproductive health and their education in the area of reproductive health are not implemented systematically, but rather predominantly under civil society organisations' projects.

Although the Strategy for Social Inclusion of the Roma in the Republic of Serbia 2016-2025 foresees that health mediators should be mainstreamed in the health care system, i.e. that the Ministry of Health should introduce health mediator jobs in the job classification<sup>514</sup>, the Ministry does not recognise the need, take action or plan to regulate the status of health mediators in the health care system in a sustainable and durable manner and ensure that the number of mediators matches the needs of Roma citizens.<sup>515</sup> The Ministry's position is that "at this time, it is not possible to include health mediator jobs in the job classification: firstly, owing to the financial situation of our health care system, secondly, owing to the existing regulations, and thirdly, owing to our mediators' education attainment level." Health mediators do not have a sufficient number of training courses<sup>516</sup>.

Especially concerning is the phenomenon of arranged and forced child marriage, which is combated with insufficient efficiency. No comprehensive measures to prevent and eliminate

<sup>510</sup> Available at: [http://www.srbija.gov.rs/vesti/dokumenti\\_sekcija.php?id=45678](http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678).

<sup>511</sup> Procena kvaliteta dostupnih usluga na polju planiranja porodice u Republici Srbiji, 2013, Asocijacija za seksualno i reproduktivno zdravlje Srbije (SRH Srbija), available at:

<http://safersexresurs.org/userfiles/files/Procena%20kvaliteta%20planiranje%20porodice%20Srbija.pdf>

<sup>512</sup> Data of the Dr Vukan Čupić Institute for Mother and Child Health Care, available at: <https://zena.blic.rs/zdravlje/sokantni-podaci-svaka-cetvrta-devojica-u-srbiji-u-seksualne-odnose-stupa-pre-16/n9k304h>.

<sup>513</sup> Available at:

<https://www.rodnaravnopravnost.rs/attachments/article/276/Poseban%20izvestaj%20ZG%20Rep%20zdravlje%20Romkinja%201.pdf>.

<sup>514</sup> "Specific Objective 4: Improve the health of the Roma population, improve access to health care services and facilitate full exercise of the right to health in the health care system of the Republic of Serbia. Operational Objective 4: Improving access to quality health care without discrimination. Measures: Legally defining and regulating a suitable education programme for the position of a health mediator through formal education, occupational nomenclature and through hiring health mediators in health centres, as well as the program for their continuous professional development; if there are several candidates who are equally competent, the candidate of Roma ethnicity should be given preference when employing staff in the health care system. Outcomes by 2025: The position of the health mediator listed in the job classification document and the number of mediators increased." Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine, p. 59-68, available at:

[http://www.minrzs.gov.rs/lat/dokumenti\\_medjunarodnasaradnj](http://www.minrzs.gov.rs/lat/dokumenti_medjunarodnasaradnj).

<sup>515</sup> Poseban izveštaj Zaštitnika građana o reproduktivnom zdravlju Romkinja sa preporukama, available at:

<https://www.rodnaravnopravnost.rs/attachments/article/276/Poseban%20izvestaj%20ZG%20Rep%20zdravlje%20Romkinja%201.pdf>.

<sup>516</sup> *Ibid.*

this harmful phenomenon have been taken. Research shows that this harmful practice is still widespread, especially in the Roma community, as a result of different factors, such as the patriarchal model of community functioning, economic factors, the perception of education as a generally desirable, but substantively unnecessary resource, poverty, marginalisation by the majority environment, as well as closed circle of social norms and lack of education within the communities, etc.<sup>517</sup>

In the submission to the Human Rights Committee concerning the consideration of the Third Periodic Reports of the State Party on the Implementation of the International Covenant on Civil and Political Rights<sup>518</sup>, the Ombudsman noted that a national-level strategic approach to combating these harmful practices was still missing, as was the planning of system-wide preventive measures to eliminate arranged, early and forced child marriage, despite the fact that this problem had long since been identified by professionals, especially in the Roma community. For more information on this matter, see the section “Protection of Children against Violence”.

The at-risk-of-poverty rate is on the increase in Serbia: in 2012, it stood at 24.6%, and in 2017 – at 25.5%<sup>519</sup>, with children being the most affected group. Among the children clients of centres for social work, the majority are financially disadvantaged children receiving different forms of financial assistance (57.5% in 2014<sup>520</sup>, 62% in 2015<sup>521</sup> and 54.8% in 2016)<sup>522</sup>.

According to expert findings<sup>523</sup>, financial social assistance is designed as a social protection instrument activated after all other support mechanisms are exhausted and is a guaranteed-minimum-income-type social benefit. The financial social assistance scheme is a minimum-income-type scheme characteristic of transition countries, notable for low assistance amounts and an income ceiling set at such a level as to include an insufficient number of poor people. Assistance amounts are not tied to a national living standard threshold, and weights assigned to children are lower than in other countries.

Serbia's child allowance scheme targets poor children only, up to the fourth-born. Although the child allowance is a measure to prevent child poverty, it is not based on any living standard indicator or consumer basket. In 2017, it amounted to only RSD 2,760.95, barely allowing poor children to buy bread and milk for half a month; hence, this financial assistance measure does not correspond to the needs of a poor child<sup>524</sup>. The coverage of the poor by financial social assistance remains low in Serbia, while the coverage by child allowance is higher. According to expert assessments, it is especially absurd that families receiving financial social assistance are required to collect the documentation again in order to apply for the child allowance. The coverage by the birth grant, which is a demography-related birth promotion measure, is fairly

<sup>517</sup> See: Dečiji brakovi u romskoj populaciji u Srbiji, Etnografsko istraživanje, Beograd, UNICEF, 2017, p. 7-8.

<sup>518</sup> Available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNHS%2fSRB%2f26508&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNHS%2fSRB%2f26508&Lang=en)

<sup>519</sup> Data of the Statistical Office of the Republic of Serbia, available at: <http://www.stat.gov.rs/>.

<sup>520</sup> Deca u sistemu socijalne zaštite, 2014, Republički zavod za socijalnu zaštitu, available at:

<http://www.zavodsz.gov.rs/PDF/izvestaj2015/DECA%20U%20SISTEMU%20SOCIJALNE%20ZASTITE.pdf>.

<sup>521</sup> Deca u sistemu socijalne zaštite, 2015, Republički zavod za socijalnu zaštitu, available at:

<http://www.zavodsz.gov.rs/PDF/izvestaj2016/deca%20u%20sistemu%20socijalne%20zastite%202015.pdf>.

<sup>522</sup> Deca u sistemu socijalne zaštite, 2016, Republički zavod za socijalnu zaštitu, available at:

<http://www.zavodsz.gov.rs/PDF/izvestaj2017/PS%20Deca%20u%20sistemu%20socijalne%20zastite%202016.pdf>

<sup>523</sup> Analiza implementacije domaćeg zakonodavstva, međunarodnih dokumenata i opšteprihvaćenih standarda međunarodnog prava u ostvarivanju prava deteta na odgovarajući životni standard, Centar za istraživanje u politici Argument, 2017, available at: <https://www.ombudsman.rs/index.php/prava-deteta/171-2008-04-17-12-52-15/4540-2016-01-15-08-19-55>.

<sup>524</sup> In 2017, the average price of milk stood at RSD 120 per litre, and the price of “Sava” type bread – at RSD 46. Available at: <https://www.espreso.rs/vesti/ekonomija/124005/paprena-potrosacka-korpa-cene-namirnica-pre-10-godina-i-sada-foto>.

high and is awarded for the first-, second-, third- and fourth-born children. Maternity and childcare leave may be used by approximately half of all mothers, but the coverage of formally or informally employed mothers stands at about 95%. Birth grant amounts are high, and the leave benefit amounts and the length of maternity and childcare leave are at an adequate level. Compared to the EU average, Serbia is characterised by lower expenditures on the child allowance and higher expenditures on the birth grant and maternity and childcare leave benefits. The outcomes are the above-average poverty level of families with children and children, and low fertility<sup>525</sup>.

Concerning the economic and social status of children, the Ombudsman submitted a report at the request of the Office of the UN High Commissioner for Human Rights, for the purpose of the Global Review of the UN 2030 Agenda for Sustainable Development. For more information on this matter, see the section "General Measures". Since 2014, the Ombudsman has warned that austerity measures have led to a reduction in the already insufficient support measures and benefits for families with children<sup>526</sup> and community-based services for the inclusion of children with disabilities.

Austerity measures have compromised children's right to an appropriate standard of living, as well as the quality and provision of child services. Already in 2015, the Ombudsman found the negative consequences of the hiring freeze, stressing that it had suspended the implementation of the regulations governing standards and norms in institutions providing child services, causing the staff size in health care, social protection and education to fall below the necessary level and the quality of their work to decline.<sup>527</sup> Thus, at the beginning of 2017, the total number of professional staff at centres for social work was further reduced by about 7.5%, and the number of case managers – by 10% relative to the preceding year.<sup>528</sup> This was also highlighted by the National Institute for Social Protection, which stated that the social protection staff size was on the decrease, that employees aged 50-59 prevailed in the age profile of all open-ended employees, that the inflow of young staff had decreased as a result of the austerity measures implemented, and that "if this trend is sustained in the long term, it will lead to impaired efficiency and quality of professional work"<sup>529</sup>.

According to expert findings<sup>530</sup>, the providers of social care services for persons with disabilities do not entirely serve the purpose of exercise of clients' rights to independent living and full inclusion into the local community. This entails full respect for the individual autonomy of social care service clients by all entities, whether public authorities, individuals or private institutions, or civil society organisations. In practice, organisations of persons with disabilities often provide the highest-quality services to their members, but local governments make insufficient efforts to facilitate and encourage their work through appropriate subsidies and regular funding provision.

In 2016, it was found that, in the health care system, "250 paediatricians are missing in primary health care centres" and that "in five years, the gap will amount to 380, and in 10 years –

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<sup>525</sup> *Ibid.*

<sup>526</sup> Annual reports available at <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>

<sup>527</sup> The Annual Report is available at <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/5191-2016-pdf>

<sup>528</sup> Izveštaj o radu centara za socijalni rad za 2016. godinu, available at:

[http://www.zavodsz.gov.rs/PDF/izvestaj2017/CSR%202016\\_final.pdf](http://www.zavodsz.gov.rs/PDF/izvestaj2017/CSR%202016_final.pdf).

<sup>529</sup> Izveštaj o radu centara za socijalni rad za 2015. godinu, available at:

<http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>.

<sup>530</sup> Tatić, D. Usporedna analiza položaja organizacija civilnog društva i državnih subjekata u pružanju usluga socijalne zaštite u zakonodavstvu i praksi, available at: <https://www.ombudsman.rs/index.php/prava-deteta/171-2008-04-17-12-52-15/4540-2016-01-15-08-19-55>.

650 paediatricians".<sup>531</sup> Despite these findings, the public sector hiring freeze was extended<sup>532</sup> until 31 December 2018. In 2017, the recruitment of a number of health care professionals was approved, but the health care staff size remained inadequate. The number of medical doctors and doctors of dental medicine working in health care institutions encompassed by the Network Plan thus continued to decline in 2017, and the number of people per doctor increased relative to the preceding year. Compared to 2011, the number of general practitioners on staff was lower by over one thousand in 2017, and the number of doctors of dental medicine – by 605<sup>533</sup>.

The austerity measures and the legal public sector hiring freeze considerably hinder, and in some cases preclude the establishment of new social care services and compromise the provision of the existing ones. The establishment of new services, with the existing restrictions in public sector hiring and austerity measures affecting both national and local budgets, is rendered considerably more difficult, if not impossible.

The Ministry of Labour, Employment, Veteran and Social Affairs has not fulfilled the Ombudsman's recommendations to remedy the irregularities in the organisation of professional work in centres for social work, some of which are a result of the insufficient staff number<sup>534</sup> and inadequate organisation, leading, in some cases, to persons without appropriate competencies being assigned to professional tasks.<sup>535</sup> The data of the National Institute for Social Protection show that this problem has not been solved.<sup>536</sup>

*Children must not be victims of the guardianship authority's unresolved problems<sup>537</sup>*  
*During an extended period of time, the Despotovac and Jagodina Centres for Social Work failed to take measures within their mandate to enforce the final judgment awarding the sole custody of children to their mother.<sup>538</sup> In this case, the competent guardianship authorities noted that they did not have professionals with appropriate competencies on staff to perform the guardianship authority tasks in the judicial decisions enforcement process, in accordance with the Law on Enforcement and Security<sup>539</sup>. In response to the Ombudsman's enquiry, the competent Ministry of Labour, Employment, Veteran and Social Affairs stated that this situation was "a result of the implementation of the Budget System Law and the public sector hiring freeze"<sup>540</sup>, but did not fulfil the recommendations to take measures within its mandate to provide*

<sup>531</sup> Decree on the National Early Childhood Development Programme, Official Gazette of RS No 22/16.

<sup>532</sup> Art. 5, para. 1 of the Law Amending the Budget System Law, Official Gazette of RS No 113/17; Art. 35, para. 1 of the Law on the Modality of Determining the Maximum Number of Public Sector Employees, Official Gazette of RS Nos 68/15 and 81/16 – amended by Constitutional Court decision.

<sup>533</sup> Statistički godišnjak Republike Srbije 2018, Republički zavod za statistiku, Beograd 2018, p. 91 and 98, available at: <http://publikacije.stat.gov.rs/G2018/Pdf/G20182051.pdf#page=92>.

<sup>534</sup> Thus, owing to the shortage of professionals on staff at the Žitište Centre for Social Work, an employee with inadequate competencies (lawyer) has been assigned to supervision tasks; as a result, the employee has not performed these professional tasks, which is a violation of Art. 58 of the Rulebook on the Work Organisation, Norms and Standards of Centres for Social Work, Official Gazette of RS Nos 59/08, 37/10, 39/11, 1/12.

<sup>535</sup> Available at: <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4974-d-c-n-gu-bi-i-zr-v-n-r-sh-nih-pr-bl-unu-r-ins-i-uci-rg-n-z-s-r-ljs-v> and <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4833-2016-07-28-08-59-32>.

<sup>536</sup> Some centres for social work continue to report having lawyers in case manager jobs, which is a violation of the Rulebook.

Izveštaj o radu centara za socijalni rad za 2016. godinu, available at: [http://www.zavodsz.gov.rs/PDF/izvestaj2017/CSR%202016\\_final.pdf](http://www.zavodsz.gov.rs/PDF/izvestaj2017/CSR%202016_final.pdf)

<sup>537</sup> Available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85&limitstart=14&limit=7](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85&limitstart=14&limit=7).

<sup>538</sup> Available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4974-d-c-n-gu-bi-i-zr-v-n-r-sh-nih-pr-bl-unu-r-ins-i-uci-rg-n-z-s-r-ljs-v>.

<sup>539</sup> Official Gazette of RS No 106/15.

<sup>540</sup> Instrument of the Ministry of Labour, Employment, Veteran and Social Affairs No 570-01-00162/2016-14 dated 12 December 2016.

*centres for social work with the necessary human resources for the purpose of exercising the guardianship authority powers in proceedings for the protection of child rights, in conformity with the legislation.*

Rights violations, including child rights violations, are relatively frequent in the area of social protection. Thus, out of all complaints in the area of child rights received by the Ombudsman in 2017, over 10% pointed to the lack of support to children and families in the exercise of the right to an appropriate standard of living, while about 7% of the complaints concerned violations of the child right to health care. In the same year, over half of the complaints filed in the area of gender equality concerned violations of the right to special protection of maternity, especially with respect to the entitlement to pregnancy, maternity, childcare and special childcare leave benefits.

Pregnant women and new mothers face numerous problems in exercising the entitlement to leave benefits. At this time, these benefits are several months in arrears, during which period pregnant women/new mothers are without any income. Especially difficult is the situation of pregnant women and new mothers whose employers ceased to exist without providing these women with the relevant documentation that they are legally required to provide in order that the women could exercise their rights before public authorities. In such situations, the absence of engagement and cooperation among the Labour Inspectorate, Tax Administration, National Employment Service and local government units is noticeable.

*The Rulebook of the Ministry of Defence is not in conformity with the law governing pregnancy, maternity, childcare and special childcare leave benefit amounts for professional soldiers.*

*In making decisions about employees' maternity, childcare and special childcare leave benefit amounts, the Ministry of Defence applies the Rulebook on the Salaries of Professional Members of Serbian Armed Forces, which – with no legal grounds – regulates the pregnancy, maternity, childcare and special childcare leave benefit amounts in a manner different from that specified in the law.*

*The Ombudsman has recommended that the Ministry amend the Rulebook on the Salaries of Professional Members of Serbian Armed Forces and bring it in line with the legislation governing the labour-related rights of pregnant women, new mothers and parents – professional members of Serbian Armed Forces during pregnancy, maternity, childcare and special childcare leave<sup>541</sup>.*

*The entitlement to one-off assistance recognised following the conclusion of the oversight procedure*

*The Ombudsman received a complaint from a family maintaining that, as financial social assistance recipients, they were not able to obtain the money needed to apply for new identity cards and health insurance cards. After the Ombudsman initiated the oversight procedure at the Centre for Social Work, the*

<sup>541</sup> Available at

[https://www.rodnaravnopravnost.rs/index.php?option=com\\_content&view=article&id=294:%D0%BC%D0%B8%D0%BD%D0%B8%D1%81%D1%82%D0%B0%D1%80%D1%81%D1%82%D0%B2%D0%BE-%D0%BE%D0%B4%D0%B1%D1%80%D0%B0%D0%BD%D0%B5-%D0%B4%D0%B0-%D0%B8%D0%B7%D0%BC%D0%B5%D0%BD%D0%B8-%D0%BF%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA-%D0%BE-%D0%BF%D0%BB%D0%B0%D1%82%D0%B0%D0%BC%D0%B0-%D0%BF%D1%80%D0%BE%D1%84%D0%B5%D1%81%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%B8%D1%85-%D0%BF%D1%80%D0%B8%D0%BF%D0%B0%D0%B4%D0%BD%D0%B8%D0%BA%D0%B0-%D0%B2%D0%BE%D1%98%D1%81%D0%BA%D0%B5-%D1%81%D1%80%D0%B1%D0%B8%D1%98%D0%B5&catid=21:2012-12-13-11-09-16&Itemid=26](https://www.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=294:%D0%BC%D0%B8%D0%BD%D0%B8%D1%81%D1%82%D0%B0%D1%80%D1%81%D1%82%D0%B2%D0%BE-%D0%BE%D0%B4%D0%B1%D1%80%D0%B0%D0%BD%D0%B5-%D0%B4%D0%B0-%D0%B8%D0%B7%D0%BC%D0%B5%D0%BD%D0%B8-%D0%BF%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA-%D0%BE-%D0%BF%D0%BB%D0%B0%D1%82%D0%B0%D0%BC%D0%B0-%D0%BF%D1%80%D0%BE%D1%84%D0%B5%D1%81%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%B8%D1%85-%D0%BF%D1%80%D0%B8%D0%BF%D0%B0%D0%B4%D0%BD%D0%B8%D0%BA%D0%B0-%D0%B2%D0%BE%D1%98%D1%81%D0%BA%D0%B5-%D1%81%D1%80%D0%B1%D0%B8%D1%98%D0%B5&catid=21:2012-12-13-11-09-16&Itemid=26)

*omission was remedied, the entitlement was granted to the citizens, who subsequently applied for new identity cards and health insurance cards.*

Through its oversight and prevention activities, the Ombudsman receives information that social protection staff do not have access to appropriate training considered necessary for strengthening the professional capacities of social protection institutions and professionals. The number of training courses is often limited by financial constraints and resources available to the institutions, and training attendance is hindered by the workload, which – owing to understaffing – does not allow professionals to be away from work. The Ombudsman has already found<sup>542</sup> that the process of training planning and delivery, training impact monitoring and application of the knowledge gained requires improvement in order to maximise the professional capacities of social protection staff.

In practice, the competent authorities' omissions in the area of exercise of social protection rights are relatively frequent.

Although the child poverty incidence is on the increase, no adequate measures to reduce the economic cost of parenthood are provided to families with children, and parenthood support measures (counselling units, parenting schools, day care services for children of working parents, such as kindergartens and other specialised services when the child and/or parents need special support, etc.) are insufficient and their availability uneven, especially for families in smaller and rural communities; moreover, even where these services are provided, irregularities to the detriment of children and parents are not addressed.

*Preschool institution to reduce the price for children who do not eat meals in the kindergarten owing to coeliac disease*

*The Čika Jova Zmaj Preschool Institution of Belgrade failed to reduce the parents' co-payment for preschool attendance for a child who, owing to coeliac disease, did not use the meals service at the preschool institution. The Ombudsman also found that the Belgrade City Secretariat for Education and Child Protection failed to take measures within its mandate to ensure a price reduction for children with coeliac disease who did not use the meals service at the kindergarten.<sup>543</sup> Belgrade City authorities stated that they would not fulfil the Ombudsman's recommendations to reduce the damage caused by irregular work.*

*Smederevo City Administration to remedy the unlawful calculation of the kindergarten price*

*For almost five years, the Smederevo City Administration failed to provide funds from the local government budget for the realisation of preschool education activities, the Ombudsman ascertained. Further, the City Administration set the clients' co-payment for children's attendance of the Naša radost Preschool Institution of Smederevo in an unlawful manner.<sup>544</sup>*

<sup>542</sup> Poseban izveštaj Zaštitnika građana o obukama za sticanje i unapređenje znanja i kompetencija za prevenciju, suzbijanje i zaštitu žena od nasilja u porodici i partnerskim odnosima, available at <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebni-izvestaji/4613-2016-02-26-10-48-42>.

<sup>543</sup> Available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85&limitstart=7&limit=7](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85&limitstart=7&limit=7).

<sup>544</sup> Available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85&limitstart=14&limit=7](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85&limitstart=14&limit=7).

*A higher kindergarten price unlawfully charged to parents in Lučani*

*The Ombudsman found that the Lučani Municipal Administration failed to provide funding from the local government budget for the realisation of preschool education activities and set the clients' co-payment for children's attendance of the Naša radost Preschool Institution of Lučani, of which it is the founder, in an unlawful manner.<sup>545</sup>*

*Parents in Niš paid a higher kindergarten price than stipulated by the law*

*From October 2010 onwards, instead of the legally stipulated share of 80%, the Niš City authorities funded a lower proportion of the costs of the Pčelica Preschool Institution; hence, the parents' co-payment for children's attendance of this preschool institution exceeded 20%, the Ombudsman found.<sup>546</sup>*

## 6.5. Recommendations

1. **Legislation should be amended or enacted to exclude any possibility of entry into marriage before attaining the age of majority.**
2. **Legislation should be amended or enacted to ensure new entitlements and support measures for parents of children with severe diseases and with disabilities in need of uninterrupted care and assistance, in accordance with the Ombudsman's proposals and recommendations.**
3. **The Law on Financial Support to Families with Children should be amended to ensure that the entitlement to the special childcare leave benefit is not precluded by the child being a care allowance recipient.**
4. **Legislation should be amended or enacted to introduce services and measures to safeguard and improve children's standard of living through introducing additional forms of financial assistance and setting the child allowance amount that can cover the child's basic needs.**
5. **Legislation should be amended or enacted to ensure the full protection of the entitlement to the pregnancy, maternity, childcare and special childcare leave benefits.**

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<sup>545</sup> Available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85&limitstart=14&limit=7](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85&limitstart=14&limit=7).

<sup>546</sup> Available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85&limitstart=28&limit=7](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85&limitstart=28&limit=7).

6. The Law on the Foundations of the Education System should be amended to ensure that children's preschool attendance costs are entirely or predominantly borne by local government units, autonomous province or the Republic, to make this education level available to all children.
7. The Ministry of Health, in cooperation with other authorities, should ensure the number of health care professionals of different specialties and health care associates that would correspond to children's needs.
8. The Ministry of Health, in cooperation with other authorities, should ensure adequate accommodation, human, financial and other capacities for the treatment, including in-patient treatment, of children and youth with mental health problems.
9. The Ministry of Health, in cooperation with other authorities, should ensure that primary health care institutions in all local government units have developmental and adolescents' counselling units with a view to efficient preventive health care for children.
10. The Ministry of Health, in cooperation with other authorities, should ensure the accessibility of health care to children and families in rural and remote areas.
11. The Ministry of Health, Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Culture and the Media, Ministry of the Interior, Ministry of Justice, in cooperation with other authorities, should take joint measures to ensure consistent compliance with the obligation of vaccinating children, raising population coverage by mandatory vaccination, protection of children against the risks that have already materialised owing to the reduced population coverage by mandatory vaccination, and special protection of young children who are not vaccinated as they are still below the vaccination age or cannot be vaccinated for health reasons.
12. The Ministry of Health should take measures to inform citizens regularly, continuously and completely, including through health campaigns, about the risks to life and health due to diseases preventable by mandatory vaccination, risks of population morbidity due to reduced immunisation coverage, reasons why child vaccination is mandatory, parents' rights and duties, citizens' rights and duties with respect to public health matters and other facts relevant to the development of citizens' convictions and attitudes to mandatory vaccination of children.
13. The Ministry of Health should ensure durable engagement of health mediators in the Republic of Serbia's health care system.
14. The Ministry of Health should intensify oversight of health care institutions' work to verify whether and to what extent they comply with the General and Special Protocols on the protection of children against abuse and neglect, the General and Special Protocols on the actions and cooperation of institutions, authorities and organisations

in situations of domestic and intimate partner violence against women, and work standards in case of knowledge or suspicion of violence against, abuse or neglect of children, or domestic violence.

15. The Ministry of Health should provide mandatory training for health care professionals and associates on the status of the Roma, especially women and girls.
16. The Ministry of Health, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development and local government and autonomous province authorities should establish and develop counselling services for young Roma men and women on reproductive and sexual health, delivered in a manner adapted to the specific features of this youth population.
17. The Ministry of Labour, Employment, Veteran and Social Affairs and local government and autonomous province authorities should include the position of coordinator for Roma issues in their job classifications and provide an employee to fill this position.

## **6.6. Recommendations of Children and Youth<sup>547</sup>:**

1. It is essential that every child receive health care of the highest quality possible, irrespective of whether he/she has a health insurance card or some other document.
2. It is necessary to facilitate greater availability of health care services, especially to Roma children and children living in rural and remote settlements, by forming mobile units to make periodic visits to these remote settlements and places, enabling children to undergo preventive examinations and obtain information and advice.
3. Preventive programmes should involve trained young people to convey their knowledge to their peers, since children are more likely to listen to their peers than to persons older than themselves.
4. Preventive actions on child and youth health should be promoted in all the media.
5. Health care institutions should have available counselling units for younger children and for youth.

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<sup>547</sup> The Ombudsman's Young Advisors Panel, in cooperation with the Equality Commissioner's Youth Panel, Children's Council of the Network of Organizations for Children of Serbia (MODS) and Open Club from Niš, has formulated recommendations to the competent state authorities and institutions, available at: [https://www.pravadeteta.com/attachments/394\\_Liflet%20-%20priprema%20343x240mm.pdf](https://www.pravadeteta.com/attachments/394_Liflet%20-%20priprema%20343x240mm.pdf).

6. **Youth counselling units should be promoted so that children know where to go for protection against violence, use of psychoactive substances, sexual and reproductive health care, suicide prevention etc<sup>548</sup>.**
7. **The Internet and social networks should be used to disseminate information and organise counselling services for young people who have different problems.**
8. **Involve trained young people in youth counselling units, since young people are more likely to confide in their peers than in people older than themselves.**
9. **Improve doctors' communication and adapt their approach to children and youth to build trust and encourage children and youth to be open with doctors.**
10. **Doctors' approach to examinations of children and youth should be comprehensive: doctors should take an interest in the way of life and living conditions of children and youth, their habits, family relations, sexual relations, use of psychoactive substances and mental health, rather than just physical health and measurement of weight and height.**
11. **Efforts should be made to raise parents' awareness that they and their habits have an impact on children's health.**

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<sup>548</sup> A similar recommendation was given by the children and youth involved in the European Network of Young Advisors, available at: <http://enoc.eu/wp-content/uploads/2014/12/ENYA-2018-recommendations-on-MHI.pdf>.



## 7. EDUCATION

### 7.1. Introductory Remarks

The right to education is among the earliest-guaranteed human rights. It belongs to everyone, but its beneficiaries are primarily children. Although it is classified as a cultural right, the right to education also has the characteristics of an economic or social right, as well as a civil and political right, since its realisation is a prerequisite for the enjoyment of other rights. In that respect, this right empowers individuals, especially members of deprived and marginalised groups, to lift themselves out of poverty and fully participate in social life.

### 7.2. International Standards

The right to education was guaranteed already by the *Universal Declaration of Human Rights* of 1948<sup>549</sup>, which provides that education should be directed to the full development of the human personality and to the strengthening of respect for human rights, and promote understanding, tolerance and friendship among all nations, racial or religious groups.

*The Convention against Discrimination in Education* of 1960<sup>550</sup> prohibits discrimination in education based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth. The prohibition applies to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.<sup>551</sup>

The right to education is also guaranteed by the *International Covenant on Economic, Social and Cultural Rights* of 1966<sup>552</sup>, which provides that primary education must be compulsory and free; secondary education should be made generally available and accessible to all through the progressive introduction of free education; while higher education should be equally accessible to all, on the basis of capacity. The goal of education is the development of the human personality and dignity, as well as stronger respect for human rights, enabling all persons to participate effectively in a free society, and promoting understanding, tolerance and friendship among all nations.

The right to education was first guaranteed as a right that belongs to the child by the *Convention on the Rights of the Child* of 1989<sup>553</sup>. Article 28 of the Convention stipulates the duty of the state to take a range of measures to make education available without any discrimination. It lays down the duty of states parties to make primary education compulsory and available free to all; encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate

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<sup>549</sup> Resolution A/RES/217, 10 October 1948, available at:

[https://www.pravadeteta.com/attachments/287\\_UNIVERZALNA%20DEKLARACIJA%20O%20LIJUDSKIM%20PRAVIMA.pdf](https://www.pravadeteta.com/attachments/287_UNIVERZALNA%20DEKLARACIJA%20O%20LIJUDSKIM%20PRAVIMA.pdf).

<sup>550</sup> Available at:

[https://www.pravadeteta.com/attachments/290\\_KONVENCIJA%20PROTIV%20DISKRIMINACIJE%20U%20OBRAZOVANJU.pdf](https://www.pravadeteta.com/attachments/290_KONVENCIJA%20PROTIV%20DISKRIMINACIJE%20U%20OBRAZOVANJU.pdf)

<sup>551</sup> Art. 1 of the Convention against Discrimination in Education.

<sup>552</sup> Official Journal of SFRY No 7/71.

<sup>553</sup> Official Journal of SFRY – International Treaties No 15/90 and Official Journal of FRY – International Treaties Nos 4/96 and 2/97.

measures such as the introduction of free education and offering financial assistance in case of need; make higher education accessible to all on the basis of capacity by every appropriate means; and take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29 of the Convention sets the aims of education, which stem from the inherent dignity of the child. The education of the child should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for the child's parents, his/her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he/she originates, and for civilisations different from his/her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups.

In the *General Comment No 1: The Aims of Education*<sup>554</sup>, the Committee on the Rights of the Child points to the need for education to be child-centred, child-friendly and empowering. Education should be designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his/her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In this context, education goes far beyond formal schooling and embraces the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.<sup>555</sup>

The education process must respect the inherent dignity of the child and enable the child to express his/her views freely and to participate in school life, promote non-violence, be child-friendly and consistent with the dignity of the child.<sup>556</sup>

With respect to the right of access to education, the Committee stresses the right of the child to a specific quality of education, aimed at the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs. Thus, the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his/her present and future needs and take full account of the child's evolving capacities. Teaching methods should be tailored to the different needs of different children. Education should also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he/she can expect to be confronted with in life.<sup>557</sup>

The Committee stresses that high-quality education requires a certain quality of the learning environment, of teaching and learning materials and aids, and of learning itself and learning outputs.

The General Comment No 1 especially stresses the need to protect the child from all form of discrimination, which "offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities."<sup>558</sup> The problem of discrimination against children with disabilities and children living with HIV is also highlighted. According to the Committee, discrimination can be countered by designing education which

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<sup>554</sup> CRC/GC/2001/1, 17 April 2001, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en)

<sup>555</sup> General Comment No 1, para. 2.

<sup>556</sup> *Ibid.*, para. 8.

<sup>557</sup> *Ibid.*, para. 9.

<sup>558</sup> *Ibid.*, para. 19.

challenges all aspects of discrimination and prejudice and promotes an understanding and appreciation of differences and other values proclaimed by the CRC.<sup>559</sup>

The Committee emphasises the importance of effective oversight mechanisms in the education system<sup>560</sup> and expressly states that constraints in terms of the human and financial resources available to the state cannot provide a justification for failure to take the required measures to ensure the fulfilment of the education aims set by the CRC<sup>561</sup>.

The *General Comment No 9: The rights of children with disabilities*<sup>562</sup> notes that children with disabilities are still experiencing serious difficulties in the enjoyment of the rights guaranteed by the CRC and that discrimination against children on the basis of disability is especially present in the area of education (para. 6). It is the duty of the state to ensure that every child with disabilities has effective access to and benefit from education, training and preparation for employment.<sup>563</sup>

In the Committee's assessment, inclusive education is the most important goal of educating children with disabilities. According to the Committee, inclusion does not mean simply integrating children with disabilities into the regular system regardless of their challenges and needs, but rather adequate cooperation among special educators and regular educators, adaptation of school curricula to the needs of children with disabilities and physical and communication accessibility of schools.<sup>564</sup>

The General Comment No 9 stresses the particular importance of early childhood education for children with disabilities, as it contributes to the development of their full potential. Both primary and secondary education must be adapted to the evolving capacities of the child<sup>565</sup>.

The Committee is of the view that it is essential to provide adequate resources to ensure that children with disabilities are included into mainstream education programmes to the highest extent possible, which entails funding the necessary curricula, teaching aids, training for teaching staff, renovating schools to render them physically accessible to children with disabilities, and funding transportation for children with disabilities<sup>566</sup>.

An important duty of states parties is to ensure the collection of data on the situation of children with disabilities, to serve as the basis for the adequate planning of measures and funds required for their implementation. Accurate statistics require the existence of a definition of disability, which should be elaborated by states parties in order that all children with disabilities could benefit from the special programmes developed for them.<sup>567</sup>

Standards for the education of persons with disabilities are also contained in the *Convention on the Rights of Persons with Disabilities*<sup>568</sup>, which requires states to ensure equal access to education, prevent all forms of discrimination and provide an inclusive education system at all levels in order that persons with disabilities could develop their personality, their mental and physical abilities, talents and creativity to their fullest potential, as well as to provide the support required, within the general education system, to facilitate their effective education<sup>569</sup>. It is also necessary to provide

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<sup>559</sup> *Ibid.*, para. 11.

<sup>560</sup> *Ibid.*, para. 22 and 25.

<sup>561</sup> *Ibid.*, para. 28.

<sup>562</sup> CRC/C/GC/9, 27 February 2007, available at:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f9&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f9&Lang=en)

<sup>563</sup> General Comment No 9, para. 11 and 16.

<sup>564</sup> *Ibid.*, para. 65 and 67.

<sup>565</sup> *Ibid.*, para. 65.

<sup>566</sup> *Ibid.*, para. 20.

<sup>567</sup> *Ibid.*, para. 19.

<sup>568</sup> Official Gazette of RS – International Treaties No 42/09.

<sup>569</sup> Art. 24 of the Convention on the Rights of Persons with Disabilities.

education in appropriate languages and modes and means of communication, as well as services adapted to the needs and capacities of persons with disabilities. To the same end, training programmes should be provided to all those involved in the provision of support at all education levels<sup>570</sup>.

International standards in the area of children's education are also contained in the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>571</sup>, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*<sup>572</sup> and in non-binding international documents.

In the UN document titled *A World Fit for Children*<sup>573</sup>, which sets ten principles and goals for building a society aligned with children's needs and interests, special emphasis is placed on children's education. A vision for children's education is set by the UN *Sustainable Development Goals* of 2015<sup>574</sup>. Sustainable Development Goal 4 envisages ensuring inclusive and equitable quality education and promoting lifelong learning opportunities for all by 2030; its targets foresee ensuring that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes; that they have access to quality early childhood development, care and pre-primary education so that they are ready for primary education; that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development (targets 4.1 and 4.2). By 2030, education facilities that are child-, disability- and gender-sensitive should be built and upgraded, and safe, non-violent, inclusive and effective learning environments provided for all (target 4a).

At the European level, the international treaties adopted under the auspices of the Council of Europe are relevant to children's education: *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECnHR)*<sup>575</sup>, *Protocol No 1 to the European Convention*<sup>576</sup>, guaranteeing the right to education, and *Protocol No 12 to the European Convention*<sup>577</sup>, prohibiting discrimination, *European Social Charter*<sup>578</sup>, *European Charter for Regional or Minority Languages*<sup>579</sup> etc.

Especially important is the case law of the European Court of Human Rights, which, in handling applications maintaining discrimination in education, has taken the stance that the overrepresentation or segregation of Roma children in special schools or special classes in mainstream schools may be justified only if there are: adequate mechanisms for child selection and referral to special schools or classes, as well as adequate monitoring of student progress in overcoming learning difficulties, with a view to their integration in mainstream schools and classes as early as possible, as well as application of special measures to address learning

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<sup>570</sup> See Art. 24 and 26 of the Convention of the Rights of Persons with Disabilities.

<sup>571</sup> Official Journal of SFRY No 11/81.

<sup>572</sup> Official Journal of SFRY – International Treaties No 9/91.

<sup>573</sup> Available at: [https://www.unicef.org/bangladesh/wffc-en\\_main.pdf](https://www.unicef.org/bangladesh/wffc-en_main.pdf).

<sup>574</sup> Available at: <http://www.ciljeviodrzivograzvoja.net/un-ciljevi-odrzivog-razvoja/>.

<sup>575</sup> Official Journal of SMN – International Treaties Nos 9/03, 5/05 and 7/05 and Official Gazette of RS – International Treaties No 12/10, available at [https://www.echr.coe.int/Documents/Convention\\_SRP.pdf](https://www.echr.coe.int/Documents/Convention_SRP.pdf).

<sup>576</sup> Official Journal of SMN – International Treaties Nos 9/03, 5/05 and 7/05 and Official Gazette of RS – International Treaties No 12/10, available at [https://www.echr.coe.int/Documents/Convention\\_SRP.pdf](https://www.echr.coe.int/Documents/Convention_SRP.pdf).

<sup>577</sup> Official Journal of SMN – International Treaties Nos 9/03, 5/05 and 7/05 and Official Gazette of RS – International Treaties No 12/10, available at [https://www.echr.coe.int/Documents/Convention\\_SRP.pdf](https://www.echr.coe.int/Documents/Convention_SRP.pdf).

<sup>578</sup> Official Gazette of RS – International Treaties, No 42/09.

<sup>579</sup> Official Journal of SMN – International Treaties No 18/05.

difficulties. Where these mechanisms are missing, the segregation of Roma children cannot be justified.<sup>580</sup> As regards inclusive education of children with disabilities, in earlier case law, the Court held that, wherever possible, students with disabilities should be educated together with their peers, but that such policy could not be applied to all children with disabilities.<sup>581</sup> However, the Court has gradually changed its case law and taken the stance that discrimination in education does also occur by failure to undertake reasonable measures to enable access to education for persons with disabilities.<sup>582</sup>

### 7.3. International Bodies' Recommendations Addressed to the Republic of Serbia

In its Concluding Observations on the Combined Second and Third Periodic Reports of Serbia<sup>583</sup>, the Committee notes as positive efforts made by the state to improve the education system, but stresses that the rates of non-attendance and school dropout are still high; that efforts to achieve inclusive education are hindered by regional disparities in available funding and resources for schools, insufficient training for teachers and education assistants and continuing resistance from school staff and parents. It also notes that the enrolment of children with disabilities is low at all levels of education, and "special classrooms" exist within mainstream schools. In the Committee's judgment, one of the problems is access to education for children from vulnerable groups, including children with disabilities, migrant and asylum-seeking children, children from rural areas, deprived children and Roma children. The Committee is of the view that the participation of Roma children, particularly girls, in preschool, primary, secondary and vocational education remains low, with many Roma children continuing to face segregation in the school system; there are high levels of truancy among Roma children; and educational support measures for children are precarious owing to insufficient funding for the interdepartmental committees tasked with assessing individual cases, and the number of education assistants in schools is limited. With regard to facilities and equipment, it is stressed that preschool institutions are inadequate, with overcrowding in urban areas and inadequate facilities in rural areas.

Referring to the *General Comment No 1: The Aims of Education*, as well as the *Sustainable Development Goals* (Goal 4, targets 4.1 and 4.2), the Committee has addressed multiple recommendations to the state:

- to develop, monitor and evaluate programmes to reduce dropout rates; to strengthen efforts to promote inclusive education for all children, particularly the most vulnerable, and ensure that adequate human, financial and technical support are available to implement inclusive education;

- to guarantee all children with disabilities the right to inclusive education in mainstream schools, independent of parental consent; to train and assign specialised teachers and professionals in integrated classes providing individual support and due attention to children with learning difficulties; and to address the shortage of speech therapists and qualified professionals for children with mental and psychosocial disabilities;

<sup>580</sup> See: *D. H. and others v. the Czech Republic*, application No 57325/00, judgment dated 13 November 2007; *Horváth and Kiss v Hungary*, application No 11146/11, judgment dated 29 January 2013.

<sup>581</sup> *Graham v. the United Kingdom*, application No 1987/88, decision dated 5 February 1990. *Klerks v. the Netherlands*, application No 29046/95, decision dated 21 October 1998.

<sup>582</sup> *Çam v. Turkey*, application No 51500/08, judgment dated 23 February 2016.

<sup>583</sup> CRC/C/SRB/CO/2-3, 3 March 2017. Available at:

[http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komiteta\\_za\\_prava\\_deteta\\_srb.doc](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_deteta_srb.doc)

- to further strengthen efforts to improve access to quality education in rural areas and in small towns, including access to preschool, secondary and higher education, particularly for vulnerable groups;
- to facilitate the participation and inclusion of Roma children in education at all levels, and to raise awareness among teachers and staff at psychological and pedagogical counselling centres about the culture of Roma people;
- to establish legislative provisions to regulate the system for providing additional support to pupils in the education process, and to ensure that enough professionals are available to address the individual needs of pupils; and
- to ensure equal access for all children, particularly from vulnerable groups, to early education programmes regardless of their parents' employment status, and to provide the funding necessary to ensure that preschool and school facilities are adequate, with appropriate training provided for teachers and education assistants.

## 7.4. Children's Education in the Republic of Serbia

### 7.4.1. Legislative Overview

The domestic legislation in the area of education is aligned with the international standards in this area, since it prohibits all discrimination in the area of education and lays down a favourable regulatory framework for inclusive education development. Its enactment is geared towards the achievement of the goals set in the *Strategy for Education Development in Serbia until 2020*.<sup>584</sup> With regard to children's education, the measures are aimed at developing inclusive education, providing the prerequisites for higher participation in preschool education, increasing the primary enrolment rate and decreasing the drop-out rate, especially for children from socio-culturally deprived backgrounds, and ensuring equal opportunities in access to education.

The right to education is guaranteed by the Constitution of the Republic of Serbia as a human right that belongs to everyone. The Constitution provides that basic education is compulsory and free-of-charge, while upper-secondary education is free-of-charge, but not compulsory.<sup>585</sup>

*The Family Law*<sup>586</sup> provides that the child has the right to education in accordance with his/her capacities, wishes and preferences, and the child who has attained the age of 15 and is capable of making judgments may decide which upper-secondary school he/she will attend<sup>587</sup>. Parents have the duty to provide basic education to the child, and are required to attend to the child's further education in accordance with their capacities.<sup>588</sup>

The principles of a unified system of basic and upper-secondary education are laid down by the new *Law on the Foundations of the Education System* of 2017<sup>589</sup>, which has substantially improved the legal framework for education. The Law recognises everyone's right to education; children with disabilities have the right to an education that acknowledges their educational

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<sup>584</sup> Official Gazette of RS No 107/12.

<sup>585</sup> Art. 71 of the Constitution of the Republic of Serbia.

<sup>586</sup> Official Gazette of RS Nos 18/05, 72/11 and 6/15.

<sup>587</sup> Family Law, Art. 63.

<sup>588</sup> *Ibid.*, Art. 71.

<sup>589</sup> Official Gazette of RS Nos 88/17 and 27/18.

needs, with additional individual or group support in teaching and learning or in a separate educational group or school, while exceptionally gifted children have the right to an education that acknowledges their specific educational needs, in separate classes or schools.<sup>590</sup>

The basic principles of education include education equity and availability based on social justice and the equal opportunities principle; child- and student-centredness of education; respect for human and child rights and for human dignity in education institutions which foster openness, cooperation, tolerance, awareness of worldwide cultural and civilisation ties, commitment to the fundamental moral values, values of justice, truth, solidarity, freedom, honesty and accountability, and in which the full respect for the rights of the child is ensured.<sup>591</sup>

In the fulfilment of these principles, special attention is given to the possibility for children, students and adults with disabilities and from vulnerable groups, irrespective of their own financial capacities, to have access to all levels of education, and persons placed in social care institutions, children, students and adults with health problems have the right to education while in institutions and during hospital and home treatment.<sup>592</sup> Further, the focus is on reducing the dropout rate, especially for persons from socially vulnerable groups and underdeveloped areas, persons with disabilities and other persons with specific learning difficulties, and on support for their reintegration into the system, in accordance with the principles of inclusive and intercultural education, as expressly stipulated in Article 7, para. 2, point 5 of the Law.

More so than any previous law, this Law recognises the different reasons why children and students may need additional support – not only disabilities, but also social deprivation, learning difficulties, risk of dropping out<sup>593</sup>, social vulnerability, living in underdeveloped areas, specific learning difficulties. The Law introduces the personal attendant service<sup>594</sup> and cash grants to gifted students, disbursed by the state<sup>595</sup>.

Improvements are also noticeable in more detailed provisions on individual education plans<sup>596</sup>, the possibility for education institutions to obtain the status of assistive technology resource centres<sup>597</sup> and better regulation of intersectoral committees<sup>598</sup>.

Article 4 of the revised *Law on Preschool Education*<sup>599</sup> stipulates the five fundamental principles of preschool education: access; democracy; openness; authenticity, which entails a holistic approach to the child, appreciation of specific developmental features of the preschool age, diversity and distinctness; and development orientation.

The Law regulates the formation of educational groups for children of different ages and developmental groups for children in hospital treatment and with disabilities.<sup>600</sup> Article 34 of the Law provides for special support measures for children from vulnerable groups, i.e. children who require additional support in education owing to social deprivation, disabilities and other reasons. The preschool institution is required to ensure that physical and communication barriers

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<sup>590</sup> Law on the Foundations of the Education System, Art. 3.

<sup>591</sup> *Ibid.*, Art. 7.

<sup>592</sup> *Ibid.*, Art. 7, para. 2, point 4.

<sup>593</sup> *Ibid.*, Art. 76.

<sup>594</sup> *Ibid.*, Art. 136.

<sup>595</sup> *Ibid.*, Art. 187.

<sup>596</sup> *Ibid.*, Art. 76.

<sup>597</sup> *Ibid.*, Art. 54.

<sup>598</sup> *Ibid.*, Art. 77.

<sup>599</sup> Official Gazette of RS Nos 18/10 and 101/17.

<sup>600</sup> Law on Preschool Education, Art. 30.

are removed, i.e. to make accommodations and, if necessary, to ensure the development, adoption and implementation of an individual education plan (IEP1)<sup>601</sup>.

The institution may identify the need for additional education, health care or social support to children, and the initiative for the assessment of the child's needs for additional support by the intersectoral committee may be launched by the child's parent or other legal representative, or by the institution, with the parent's/representative's consent. It is expressly provided that additional support for the child is delivered in an educational group, with an individualisation plan or an individual education plan, and in a developmental group, on the basis of an individual education plan.<sup>602</sup> An educational group may include up to two children with disabilities, in which case the number of children in the educational group is reduced.<sup>603</sup> A child with disabilities may be enrolled in a developmental group only on the basis of the intersectoral committee's opinion and subject to the parent's or other legal representative's consent, with the proviso that his/her development during preschool programme attendance is monitored and he/she may be transferred to an educational group on the basis of a proposal by the inclusive education team.<sup>604</sup> The Law regulates the role of teaching assistants and specifies that they provide assistance and additional support to a group of children in a preschool institution, in accordance with their needs, cooperates with preschool teachers and specialist staff, parents, institutions, organisations, associations and the local government.<sup>605</sup>

Basic education is governed by the *Law on Basic Education*, which was revised in 2017<sup>606</sup>. The Law provides that basic education is compulsory<sup>607</sup>, and its goals are, *inter alia*, to ensure students' well-being and support their holistic development, to ensure a stimulating and safe environment for students' holistic development, to develop non-violent behaviour and establish zero tolerance to violence, to comprehensively include students in the education system, to foster full intellectual, emotional, social, moral and physical development of every student, in accordance with his/her age, development needs and interests, to develop competencies for understanding and respecting child and human rights, civil liberties and capacities to live in a democratic and just society, to develop and respect racial, ethnic, cultural, linguistic, religious, gender, sex and age equality and tolerance and to appreciate diversity, etc.<sup>608</sup>

It is provided that the core task of the school is to enable high-quality education for every child and student, under equal terms, irrespective of the school's location or of the location of education delivery, and that all school employees should promote equality among all students and actively counter all types of discrimination and violence.<sup>609</sup> An important step forward is the legal definition of the term "student with disabilities"; under the Law, this group includes children with intellectual impairments, children with sensory impairments, children with motor impairments, children with learning difficulties, children with speech/language impairments, children with behavioural problems, children with emotional difficulties, children with developmental disabilities manifested simultaneously in multiple areas, as a result of which children face numerous barriers in meeting their basic needs and are in need of most complex

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<sup>601</sup> *Ibid.*, Art. 43, para. 1.

<sup>602</sup> *Ibid.*, Art. 34, para. 2.

<sup>603</sup> *Ibid.*, Art. 34, para. 4.

<sup>604</sup> *Ibid.*, Art. 34, para. 5.

<sup>605</sup> *Ibid.*, Art. 4.

<sup>606</sup> Official Gazette of RS Nos 55/2013, 101/17 and 27/18.

<sup>607</sup> Law on Basic Education, Art. 5.

<sup>608</sup> *Ibid.*, Art. 21.

<sup>609</sup> *Ibid.*, Art. 9.

support, or children with other impairments that call for support<sup>610</sup>. It is provided that, as a rule, these students pursue basic education in schools, together with other students, when this is in their best interest, and that they have the right to individual education plans. Exceptionally gifted students have the right to individual education plans, which facilitate their development and progress in line with their capacities and interests.<sup>611</sup>

Upper secondary education is governed by the revised *Law on Upper Secondary Education*<sup>612</sup>. The Law provides that upper secondary education is delivered in gymnasiums, vocational, art and combination schools, as well as schools for students with disabilities, which train students in suitable occupations and in which they enrol on the basis of the opinion of the intersectoral committee for assessment of additional education, health care and social support to students, subject to parents' consent<sup>613</sup>.

The amendments to the Law of 2017 govern additional education support for students who need such support owing to disabilities, specific learning difficulties, social deprivation, risk of early school leaving and other reasons. Beside the removal of physical and communication barriers, the possibility of adopting individual education plans is foreseen. The stipulated goal of additional support is to achieve students' optimum inclusion in mainstream education, to foster their independence within the peer community, progression through the education system and preparation for the world of work, and professional support may be provided by persons competent in the area of inclusive education and schools whose activities have become examples of good practices in inclusive education delivery.<sup>614</sup>

*The Law amending the Law on Upper Secondary Education* of 2017 enables the enrolment of individuals or groups in upper secondary schools under more favourable terms with a view to achieving full equality in the pursuit of education, with the proviso that the enrolment criteria and procedures are to be prescribed by the Minister.<sup>615</sup> The Law has strengthened students' role in different aspects of school life, as well as the development of active and responsible behaviour, both towards themselves and towards society. Beside student parliaments, the formation of student clubs and volunteering is enabled. Student cooperatives may also be formed in schools. Schools are required to help students and parents to explore the options for further studying and employment, i.e. the identification, choice, and usage of copious information on professions, career, further studies and education, and objective distinction and formation of one's own attitude regarding those. Dual education is defined in Article 26a as a delivery model in the vocational upper secondary education system in which knowledge, skills, capacities and attitudes are acquired, enhanced and built through school-based theoretical instruction and practical exercises and work-based learning at an employer, in accordance with the qualification standard and curriculum.

The new *Law on Dual Education*<sup>616</sup> introduces dual education into the education system as a new education model. Under Article 2 of the Law, dual education is an instruction delivery model in the vocational upper secondary education system in which knowledge, skills, capacities and attitudes are acquired, enhanced or built through school-based theoretical instruction and

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<sup>610</sup>*Ibid.*, Art. 10.

<sup>611</sup> *Ibid.*, Art. 11.

<sup>612</sup> Official Gazette of RS Nos 55/13, 101/17 and 27/18.

<sup>613</sup> Law on Upper Secondary Education, Art. 4.

<sup>614</sup> *Ibid.*, Art. 12.

<sup>615</sup> *Ibid.*, Art. 11.

<sup>616</sup> Official Gazette of RS No 101/17.

practical exercises and work-based learning at an employer, in accordance with the qualification standard and curriculum.

The new *Law on Textbooks*<sup>617</sup> governs the preparation, approval, selection, publication, withdrawal and monitoring of textbooks and textbook sets, manuals and additional teaching aids for basic and upper secondary schools. The Law provides for the use of textbooks in national minorities' languages and scripts<sup>618</sup>, as well as adapted textbooks – these are approved textbooks adapted to the education needs of students with disabilities, where the form of adaptation is determined by the inclusive education team of the student's school, and the adaptation modality is prescribed by the Minister.<sup>619</sup> The Law specifies standards for textbooks and other teaching aids and expressly provides that textbooks should, through their content and form, ensure the implementation of the principles of equal opportunities and appreciation of diversity, and must not discriminate against groups and individuals or put them in an unequal position or encourage such behaviour.<sup>620</sup>

The forms of financial and other support to upper secondary school students are governed by the *Law on Students' Living Standard*<sup>621</sup>, which recognises the principle of inclusive education in the definition of students' living standard as an organised activity in the area of education whereby additional conditions are provided for higher accessibility, efficiency and quality of students' education with a view to providing the material, cultural, social, health and other prerequisites for the promotion of education, social inclusion and comprehensive development of students' personalities<sup>622</sup>. Upper secondary school students have the right to accommodation, meals and educational work; student loans; student scholarships; scholarships for exceptionally gifted students; rest and recovery; cultural, art, sport and recreational activities; and information provision.<sup>623</sup> Student scholarships and loans may be also awarded by local governments.

Numerous bylaws have been adopted in the area of inclusive education delivery and provision of additional support in education. The *Rulebook on Additional Educational, Social and Health Care Support to Children and Students*<sup>624</sup> governs the modality of intersectoral committees' work. Instructions for the development of individual education plans are contained in the *Rulebook on Detailed Conditions for Determining the Right to Individual Education Plans, Their Implementation and Evaluation* (Rulebook on IEPs)<sup>625</sup>. Also relevant is the *Rulebook on the Teaching Assistant Training Programme*<sup>626</sup>, as well as numerous professional guidance notes of the competent ministry.

After a several years' delay, the *Rulebook on the Detailed Criteria for Recognising Acts of Discrimination Committed by Staff, Children, Students or Third Parties in an Educational Institution* was adopted in 2017.<sup>627</sup> It specifies in detail what is considered discrimination in the education process and, in particular what constitutes prohibited and discriminatory activities in the achievement of education standards and outcomes, in the exercise of the right to education in an institution, and

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<sup>617</sup> Official Gazette of RS No 27/18.

<sup>618</sup> Law on Textbooks, Art. 5.

<sup>619</sup> *Ibid.*, Art. 6.

<sup>620</sup> *Ibid.*, Art. 13.

<sup>621</sup> Official Gazette of RS Nos 18/10, 55/13, 55/13 and 27/18.

<sup>622</sup> Law on Students' Living Standard, Art. 2.

<sup>623</sup> *Ibid.*, Art. 3.

<sup>624</sup> Official Gazette of RS No 63/10.

<sup>625</sup> Official Gazette of RS No 76/10.

<sup>626</sup> Official Gazette of RS – Education Gazette No 11/10.

<sup>627</sup> Official Gazette of RS No 22/16.

in the delivery of the education process. The Rulebook specifically addresses segregation as an especially severe form of discrimination in the delivery of the education process.<sup>628</sup>

The *Rulebook Amending the Rulebook on Continuous Professional Development of School and Preschool Teachers and Specialist Staff*<sup>629</sup>, which partly remedied the weaknesses in this area, was adopted in 2017.

The *Rulebook on Upper Secondary School Enrolment*<sup>630</sup> governs the enrolment of Roma students in upper secondary schools under affirmative action. Students of Roma ethnicity enrol in schools under more favourable terms with the aim of achieving full equality in the pursuit of education, on the basis of the criteria and according to the procedures stipulated by this Rulebook.<sup>631</sup>

The Ombudsman found that the bylaws on education for students in home or hospital treatment were missing and recommended that they be adopted.

*Improve education for students with disabilities by adopting bylaws*

*The absence of bylaws governing in more detail the conditions and modality of instruction delivery for students in home and hospital treatment and home-based and remote instruction precludes the development and implementation of new forms of assistance and support for sick students or students with disabilities. The impossibility of home-based instruction is an insurmountable obstacle for some students' pursuit of education, since their health status and unavailability of other services prevents them from fully utilising the existing education resources.*

*The adoption of these regulations would improve the situation of students with disabilities and sick students, remove some barriers to the full inclusion of all children in the education process irrespective of their health status, capacities and abilities, and contribute to the achievement of the overall aim of education – the full intellectual, emotional, social, moral and physical development of every child, student and adult, in accordance with his/her age, development needs and interests.*<sup>632</sup>

The Ombudsman's recommendation was fulfilled by the adoption of the *Rulebook on the Instruction Delivery Modality for Students in Extended Home and Hospital Treatment* in 2018.<sup>633</sup> The Rulebook provides that instruction for students who are unable to attend classes for over three weeks is organised at home or in the health care institution, as appropriate, for the duration of the treatment, and schools may organise educational work for these students on a continuous or as-needed basis<sup>634</sup>. The instruction is delivered by the school in which the student is enrolled, subject to the consent of the Ministry, or a hospital-based school, if the student is unable to attend classes at school until the end of the school year or for over one year owing to health problems or a chronic disease.<sup>635</sup>

<sup>628</sup> Art. 20 of the Rulebook on the Detailed Criteria for Recognising Acts of Discrimination Committed by Staff, Children, Students or Third Parties in an Educational Institution.

<sup>629</sup> Official Gazette of RS No 80/16.

<sup>630</sup> Official Gazette of RS Nos 38/17, 51/17 and 81/17.

<sup>631</sup> Art. 75 Rulebook on Upper Secondary School Enrolment.

<sup>632</sup> Available at: [https://www.pravdeteta.com/index.php?option=com\\_content&view=article&id=730:2015-11-30-09-17-30&catid=41:2012-04-09-12-59-57&Itemid=86](https://www.pravdeteta.com/index.php?option=com_content&view=article&id=730:2015-11-30-09-17-30&catid=41:2012-04-09-12-59-57&Itemid=86).

<sup>633</sup> Official Gazette of RS No 66/18.

<sup>634</sup> Rulebook on the Instruction Delivery Modality for Students in Extended Home and Hospital Treatment, Art. 3.

<sup>635</sup> *Ibid.*, Art. 7.

The Ombudsman provided comments and proposals in the process of enactment of several education laws. In its comments on the Draft Law on the Foundations of the Education System<sup>636</sup>, addressed to the competent ministry, the Ombudsman acknowledged that the law contained important improvements in the area of education and stressed that especially important provisions included the introduction of education outcomes as an inseparable part of the education process, the provision that pre-enrolment health checks would be provided at the expense of health insurance, the introduction of qualifications and qualification standards as the modality of formal recognition of the acquired competencies, the revision and more precise formulation of the provisions concerning the education of children with disabilities.

In the Ombudsman's opinion, it was necessary to amend Article 44 of the Law by expressly prohibiting discrimination on the grounds of sexual orientation and gender identity; the Ombudsman recalled that several of this institution's annual reports highlighted the absence of an explicit prohibition of discrimination on these grounds and the reasons why it was necessary: deep prejudice against and stereotypes about persons of different sexual orientation and gender identity; exposure of these persons to discrimination and violence, leading to young LGBTI persons dropping out of school; widespread intolerance of LGBTI persons among young people, indicating the need to put additional efforts at all levels and in all forms of education to fight discrimination against LGBTI students and to provide education about tolerance, non-discrimination and non-violent society.

The Ombudsman recommended that appropriate legislation be enacted to ensure that education institutions have the data on students' health status of actual or potential relevance for the child's education, irrespective of whether he/she needed additional support according to the intersectoral committee's assessment. Another recommendation was that schools should also be able to collect the necessary information from health care institutions and from guardianship authorities, especially in situations where such information would or could have impact on the education process and the fulfilment of its goals, outcomes and achievement standards.

In the process of education law reform, the Ombudsman's proposals to improve the Law on the Foundations of the Education System<sup>637</sup> where it concerns the general principles, aims, competencies and outcomes of education and bring it in line with the Convention on the Rights of the Child and the proposal to safeguard the participation of student parliaments were taken into account. In accordance with the Ombudsman's proposals, the Law provides for the personal attendant service<sup>638</sup>, cash grants to especially gifted students<sup>639</sup>, the school's duty to notify the guardianship authority if the parent denies consent to the individual education plan (IEP) unreasonably and to the detriment of the child<sup>640</sup>, and contains the provision that the decision on the deferral of enrolment in the first grade by one year is made on the basis of the intersectoral committee's opinion<sup>641</sup> and should be accompanied by the provision of additional support measures and services.

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<sup>636</sup> Available at: [https://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=749:2016-02-23-13-00-34&catid=41:2012-04-09-12-59-57&Itemid=86](https://www.pravadeteta.com/index.php?option=com_content&view=article&id=749:2016-02-23-13-00-34&catid=41:2012-04-09-12-59-57&Itemid=86).

<sup>637</sup> Official Gazette of RS No 88/17.

<sup>638</sup> Law on the Foundations of the Education System, Art. 136.

<sup>639</sup> *Ibid.*, Art. 187.

<sup>640</sup> *Ibid.*, Art. 76.

<sup>641</sup> *Ibid.*, Art. 20.

### 7.4.2. Legislative Weaknesses

Although the new legal provisions in the area of education have considerably improved the legal framework, certain provisions still need to be amended.

Despite the fact that inclusive education development is the Republic of Serbia's strategic choice and that the legal framework provides for free basic and upper secondary education for all children with disabilities, as well as unhindered enrolment in mainstream schools, the education of children with disabilities is still delivered in two parallel systems – mainstream and special. Enrolment in a special school is possible on the basis of the intersectoral committee's opinion and with the parents' consent, if the nature and severity of the child's disability are such that satisfactory results cannot be achieved through the attendance of a mainstream school, even with additional support. Regardless of the fact that the intersectoral committee's opinion is not binding and that the choice of school is left to the child's parents, the very existence of two parallel education systems for children with disabilities is not consistent with international standards.

The Law on Basic Education of 2013 abolished special classes for students with disabilities in basic schools; however, the amendments to this Law of 2017 allow the formation of special classes for students with disabilities, which is a form of segregation.

The provisions of the Law on the Foundations of the Education System authorising schools to represent the interests of the child<sup>642</sup> and to transfer the child to another school without the parents' consent<sup>643</sup> are contrary to the provisions of the Family Law governing parental rights. The Law has lowered the attained level of the right to preschool education by specifying that local government units provide funds for preschool education activities amounting to up to 80% of the cost per child, thus allowing these costs to be passed on to parents.<sup>644</sup>

The *Law on Upper Secondary Education* and the *Law on Dual Education* do not entirely fulfil the principles of inclusive education, since they stipulate health capacity as a requirement for the pursuit of specific qualification profiles; in addition, in the Law on Dual Education, loss of health capacity is stipulated as grounds for discontinuing the pursuit of the qualification profile in which the student is enrolled.

Under the *Law on Dual Education*<sup>645</sup>, part of the education process is exempt from the education authorities' mandate and oversight, and students pursuing this education modality are in a materially less favourable position compared to other upper secondary school students, since equal scope of rights or equal mechanisms for the protection of their rights are not ensured to them. The Law excludes the application of many provisions of the Law on the Foundations of the Education System, Law on Upper Secondary Education and bylaws, primarily in the areas of additional support to students and protection against violence, abuse, neglect and discrimination, which is contrary to the stipulated obligations of inclusion and provision of additional support to students for education purposes, as well as the obligation of protection against discrimination. Furthermore, the Law considerably facilitates students' exclusion from education and dropping out, as it provides that (further) pursuit of a given qualification profile is not possible without proof of health capacity for that profile.<sup>646</sup> The manner in which the dual education modality has been introduced does not prioritise student' needs and rights, but rather market and employers'

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<sup>642</sup> *Ibid.*, Art. 85, para. 5.

<sup>643</sup> *Ibid.*, Art. 86.

<sup>644</sup> *Ibid.*, Art. 189, para. 1, point 1.

<sup>645</sup> Official Gazette of RS No 101/17.

<sup>646</sup> Law on Dual Education, Art. 24.

needs; moreover, the education process itself is, to a great extent, left to employers and exempted from the state's oversight and corrective mechanisms.

The provision of the Law on Upper Secondary Education that “students who need additional education support owing to disabilities, specific learning difficulties, social deprivation, risk of early school leaving and other reasons should fulfil the health conditions that correspond to the occupational requirements”<sup>647</sup> is raised to the level of a requirement, not only for enrolment, but also for the entire course of a child’s education. Without proof of health capacity for the qualification profile concerned, it is not possible to enter into a work-based learning contract<sup>648</sup>, and “permanent loss of health capacity to pursue the occupation in which he/she is being trained” constitutes grounds for work-based learning contract termination (and thereby also for discontinuing the pursuit of the qualification profile)<sup>649</sup>. This provision narrows down the upper secondary education options for children with health problems and with disabilities – which, essentially, goes against inclusion and the social inclusion principles. The provision of this Law that dual education principles include right to choice, access and equal opportunities<sup>650</sup> and the provision that, in the preparation of city/municipal enrolment plans, “it is necessary to provide the prerequisites for the inclusion of students with disabilities and students from vulnerable groups”<sup>651</sup> have not remedied or mitigated the severe lack of inclusiveness in this education concept, which is not based on students’ needs and their right to high-quality and inclusive education, but rather on market and employers’ needs.<sup>652</sup>

As the former one, the new *Law on Textbooks* also provides for adapted textbooks as a teaching aid for students with disabilities and allows the adaptation of not only format, but also contents, thus creating the space for “special” contents for children with disabilities, different from the contents of the corresponding “non-adapted” textbooks.<sup>653</sup>

With regard to inclusive education delivery, the key weaknesses in the legal provisions on this area are as follows:

The exercise of the right to additional support to children and students is hindered by the fact that different forms of support are funded under different state systems and by different levels of government, which makes the coordination of support difficult.<sup>654</sup> The provisions of the Law on the Foundations of the Education System still regulate intersectoral committees’ operation and teaching assistance services to an insufficient extent; with regard to gifted children, support in the form of expanding and deepening the contents of education work is provided for, but adaptation of the work modalities and learning methods is not. The establishment and operation of intersectoral committees (ISCs) are not regulated precisely and to an adequate extent. The existing legislation does not regulate ISC members’ selection criteria, accountability for professional, regular and lawful work, consequences of unprofessional, unlawful or irregular work, grounds and procedure for the dismissal of permanent ISC members,

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<sup>647</sup> Art. 12 of the Law on Upper Secondary Education.

<sup>648</sup> Art. 22 of the Law on Dual Education.

<sup>649</sup> *Ibid.*, Art. Art. 24 and 25 of the Law on Dual Education.

<sup>650</sup> *Ibid.*, Art. 3 of the Law on Dual Education.

<sup>651</sup> *Ibid.*, Art. 7 of the Law on Dual Education.

<sup>652</sup> Poseban izveštaj Zaštitnika građana: Inkluzivno obrazovanje – usluge dodatne podrške deci i učenicima u obrazovanju, available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>.

<sup>653</sup> Art. 4 of the Law on Textbooks.

<sup>654</sup> Situaciona analiza: Položaj dece sa smetnjama u razvoju i invaliditetom u Republici Srbiji, Beograd, Nacionalna organizacija osoba sa invaliditetom Srbije, 2017, p. 35.

or oversight of ISC operation and professional work. The existing legislation also lacks provisions that would ensure the timeliness, efficiency, lawfulness, professionalism and continuity of intersectoral committees' operation and procedures for the assessment of children's needs; provisions on who and how monitors the effects of the additional support measures proposed by committees; provisions governing the framework for the consistent funding of ISC operation and other provisions relevant to the operation of these bodies. For these reasons, ISC establishment, operation and funding differs widely across local government units, which affects the modality and scope of additional support services for children and students.<sup>655</sup>

ISC opinions are not considered binding at this time. Although, in most cases, ISC opinions are complied with entirely or for the most part, there are cases where the services recommended by the ISC are not provided. This problem has been especially prominent in the recruitment of teaching assistants and personal attendants and the use of assistive technologies.

The funding of additional support measures for children and students has been uneven and, when it comes to some support measures, it depended on local government decisions, and in the City of Belgrade also on metropolitan municipalities' decisions. The funding of ISC operation is not consistent, although all ISCs perform tasks of the same type. In some local government units, ISC members are not remunerated for their work; in many local government units, coordinators are not remunerated; remuneration for ISC members and the criteria and modalities of setting remuneration amounts differ materially in different local government units.<sup>656</sup>

The existing legal framework does not regulate teaching assistance. There are no provision defining teaching assistance and regulating the procedure, modality and forms of teaching assistance provision; teaching assistant selection modality; teaching assistant engagement criteria; criteria for assessing the necessary number of teaching assistants in an education institution; teaching assistance clients; job descriptions and performance standards; relationship of teaching assistants to school and preschool teachers, specialist staff and education institutions' teams; modality of monitoring, guidance and evaluation of teaching assistants' work; teaching assistants' responsibilities and duties and supervision of their work; and other provisions relevant to the regulation of these services; teaching assistants' labour status is not regulated precisely or in a manner that would ensure service durability, sustainability and quality; their job and tasks are not regulated clearly, which leads to variations in the volume of work and types of tasks performed in different education institutions.<sup>657</sup>

The existing legal framework does not regulate personal attendant services to a sufficient extent. There are no provision on the procedure, modality and forms of personal attendant service provision; personal attendant selection modality and engagement criteria; job description and performance standards; relationship of personal attendants to teaching assistants, school and preschool teachers, specialist staff and education institutions' teams; modality of monitoring, guidance and evaluation of personal attendants' work; personal attendants' responsibilities and duties and supervision of their work; remuneration amount (leading to wide disparities in remuneration among local governments); and other provisions relevant to the regulation of these services; the existing regulations do not allow children's family members to be their personal attendants, which, in practice, may and does lead to some children being left without the service

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<sup>655</sup> Poseban izveštaj Zaštitnika građana: Inkluzivno obrazovanje – usluge dodatne podrške deci i učenicima u obrazovanju, available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>.

<sup>656</sup> *Ibid.*

<sup>657</sup> *Ibid.*

since it is not established; no training is provided; adequate numbers of personal attendants are not provided or a personal attendant is not able to fulfil the child's needs.<sup>658</sup> The modality of support provision to education institutions by institutions which have become good practice examples and by schools for students with disabilities is insufficiently regulated. The legislation does not specify the manner of support provision by these institutions, or the labour status of school and preschool teachers and specialist staff involved in service provision. As a result, a number of schools are not able to handle the requests for additional support, while in other schools support provision is based on voluntary work of their staff, without remuneration.<sup>659</sup>

### 7.4.3. Practical Challenges and Difficulties

Although progress has been made in the area of education in recent years, the situation is still not satisfactory.

The preschool education coverage of children with disabilities is low, as is the coverage of children from the general population, but adequate data disaggregated for disability are not available.<sup>660</sup> About 0.9% of basic school students were in segregated education, as were 0.8% of upper secondary school students. Basic schools for students with disabilities were predominantly attended by children with intellectual impairments, who accounted for 68% of the students, and children with multiple disabilities (20.1%). Students with visual or hearing impairments accounted for 11.4% of the students, and those with physical disabilities – for only 0.2%. In upper secondary schools for students with disabilities, the structure of children with respect to disabilities was similar: 58.3% of the students were children with intellectual impairments, 16.4% – children with multiple disabilities, 20.8% – children with visual or hearing impairments, and 4.5% – children with physical impairments. IEPs were developed for 62% of the children in special education, of whom 50% followed IEP2, and 12% – IEP1. In mainstream education, 8,882 children and students followed IEPs in school year 2014/2015: 5,237 children followed IEP1, of whom 38% were girls, and 3,645 children followed IEP2, of whom 40% were girls.<sup>661</sup>

Roma children face numerous difficulties in exercising the right to education. The participation of Roma children aged up to 5.5 in preschool education programmes is far lower. In the general population, the preschool education coverage of children aged 3-5.5 stands at about 50%, while in the Roma population it is only 6%. The general population coverage by the compulsory preparatory preschool programme is almost full (about 98%), in contrast with the Roma community, where the coverage stands at only 63%. Moreover, an even lower proportion of Roma children living in poverty attends the preparatory preschool programme (46%). The basic education coverage of Roma children is below that of the children from the general population. Only 80% of the children from Roma settlements attending the first grade of basic school attended the preparatory preschool programme as well (in the general population, the coverage is 98%), and only 69% of Roma children start the first grade of basic education on time (97% in the general population); 64% of Roma children complete basic school (93% in the general population), and only 22% of Roma children attend secondary school (89% in the general population). A particular problem is the fact that girls drop out of school and start families between the ages of 15 and 19. As many as 43% of Roma girls quit school at this age in order to

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<sup>658</sup> *Ibid.*

<sup>659</sup> *Ibid.*

<sup>660</sup> Situaciona analiza: Položaj dece sa smetnjama u razvoju i invaliditetom u Republici Srbiji, Beograd, Nacionalna organizacija osoba sa invaliditetom Srbije, 2017, p. 40.

<sup>661</sup> *Ibid.*

marry. The corresponding proportion stands at 4% for girls from the general population in the same age group.<sup>662</sup>

A significant number of Roma children are enrolled in “special schools” without justification, which constitutes a form of discrimination and is an indication of serious human rights violations, as well as of the lack of mainstream primary schools’ readiness and/or capacities to meet the education needs of Roma children. Although certain progress has been made recently, Roma children are still overrepresented in “special schools” (Roma children account for about 30% of the children in “special schools”, while their share in the total population is about 3-4%). Moreover, the practice of transferring Roma children from mainstream to “special” schools still persists, while the converse is very rarely the case. There are still “special schools” in which 70% of the students are Roma.<sup>663</sup> Class and school segregation is not frequent, but is on the increase. In some cases, the increased inclusion of the Roma in education leads to the formation of segregated preschool groups or school classes, as well as segregated schools in the vicinity of Roma settlements.<sup>664</sup>

Numerous weaknesses in the education process were also identified by the Ombudsman, especially with regard to the implementation of inclusive education principles.

*Education in a mainstream school not enabled for children with disabilities together with other children*

*Over the course of several years, the Ministry of Education, Science and Technological Development and the Belgrade City Secretariat for Education and Child Protection failed to provide an accessible and adapted school facility for students with disabilities attending the Ljubomir Aćimović Basic School in Obrenovac; by being transferred to the facility of Jefimija Basic School, these students were placed in an unequal position since they were the only group of students (62 in number) that attended classes in two shifts, while the instruction for the remaining 900 students was organised in the first shift only, which additionally excluded them from the peer community, in contravention of the inclusive education principles. The competent authorities did not accept the Ombudsman’s recommendations to put students with disabilities in an equal position with other students during their schooling.<sup>665</sup>*

Although the legislation has introduced various and numerous measures to support children with disabilities to ensure their inclusion in the mainstream education system under equal terms, support systems still do not function in a manner that would facilitate the inclusion of children with disabilities in the education system and their participation in the education process on an equal basis with other children. Additional support services are insufficiently developed within education institutions, and service establishment and development is left to the capacities of the institutions themselves, which are hampered by insufficient human and material resources.<sup>666</sup>

The support to children and students in education institutions is chiefly focused on direct and individual forms of support, and to a far lesser extent on the forms of support aimed at

<sup>662</sup> See: Istraživanje višestrukih pokazatelja položaja žena i dece u Srbiji 2014. i Istraživanje višestrukih pokazatelja položaja žena i dece u romskim naseljima u Srbiji 2014, Republički zavod za statistiku i UNICEF, 2014; Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine, str. 24.

<sup>663</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine, p. 27.

<sup>664</sup> *Ibid.*

<sup>665</sup> Available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4409-2015-11-12-11-27-15>.

<sup>666</sup> Poseban izveštaj Zaštitnika građana: Inkluzivno obrazovanje – usluge dodatne podrške deci i učenicima u obrazovanju, available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>.

strengthening the capacities of families, institutions in the mainstream education system and their staff to deliver, in different ways, adequate and high-quality education to students in need of additional support. The contemporary concept of education entails the focus on the services whereby support systems are organised in such a manner as to ensure that mainstream schools meet all students' needs for high quality education. In the medium term, strengthening all schools to meet the needs of all students, including children with disabilities, children with learning difficulties and children from deprived backgrounds, children with linguistic barriers etc. is the only adequate approach.<sup>667</sup>

*Student with disabilities not allowed to enrol in an upper secondary school in conformity with the law and in line with her capacities*

*The Ombudsman found a violation of the rights of a student who took the school-leaving examination under the individual education plan with modified educational standards, and was not allowed to enrol in the desired secondary school qualification profile. The Ombudsman recommended that the Ministry of Education, Science and Technological Development provide for the student's transfer, if transfer is in her best interest, recalling the CRC and stressing that the right of the child to high-quality education entails education aimed at the development of the child's personality and the development of talents and mental and physical capacities to the fullest potential. No segment of education may be inaccessible to children, and the only question to be addressed by the education system – together with the child and parents – is whether a given form, type or modality of education ensure the mental and physical development of a given child in line with his/her capacities and preferences.<sup>668</sup>*

The number of specialist staff in education institutions is far from sufficient to establish and develop additional support services for children and students within the institutions. The class sizes are too large for the delivery of an education process based on individualised approach and appreciation of children and students' needs, or for the design, planning and delivery of additional support services for children and students who need them in order to develop their capacities to the fullest potential. School and preschool teachers and specialist staff are insufficiently trained in inclusive education and the manner and models of additional support provision to children and students.<sup>669</sup> Intersectoral committees have not been established in all local government units, nor are all the established ISCs operational. Resources for ISC operation are not fully provided; hence, ISCs are faced with lack of space, equipment and means for field visits and observation of children in their educational or family settings; in some local government units, ISC members are not remunerated, and in most local government units, ISC coordinators and intermittent members are not remunerated for the work done. For these and other reasons (high caseload, unregulated labour status of persons participating in ISC operation, absence of supervision of ISC operation etc.), the ISCs in many local government units do not comply with the stipulated time limits, which leads to unjustified delays in the provision of the necessary additional support services.<sup>670</sup>

<sup>667</sup> See: Analiza interesornih komisija i dodatne podrške u 10 opština i gradova, Centar za socijalnu politiku, Beograd, 2015, <http://socijalnoukljucivanje.gov.rs/rs/analiza-interresornih-komisija-i-dodatne-podrske-u-10-opstina-i-gradova/>.

<sup>668</sup> Available at: <https://www.pravdeteta.com/attachments/article/840/odgovor%20MPN.pdf>.

<sup>669</sup> Poseban izveštaj Zaštitnika građana: Inkluzivno obrazovanje – usluge dodatne podrške deci i učenicima u obrazovanju, available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>

<sup>670</sup> Ibid.

The project-based funding of additional support services is not conducive to their sustainability and continuity. Services established under projects and with project funding have mainly not survived beyond the conclusion of the projects concerned and have been discontinued. Where there are local budget allocations for additional support services, they usually cannot be identified precisely, since they are stated under different budget lines (social protection, education etc.), although some municipalities have earmarked allocations for additional support services in education (some or all of the services). In some local government units, the availability of schools for students with disabilities is the reason for not establishing additional support services in mainstream schools.<sup>671</sup>

Additional support services for children living in poverty are underdeveloped. The most common form is financial support, and very few additional support measures are geared towards the higher inclusion of children in curricular and extracurricular activities, peer group and community.<sup>672</sup> However, even access to financial support can be hindered or precluded for the student who need it, owing to the unsynchronised operation of different authorities.<sup>673</sup>

*Students from vulnerable groups hindered from applying for student scholarships following an Open Call*

*The Ministry of Education, Science and Technological Development made an omission by not aligning the applications deadline in the Open Call for the award of student scholarships for school year 2015/2016 with the time limit for intersectoral committees to issue their opinions, given that the ISC opinion is the document specified in the Open Call as proof of belonging to a vulnerable group, and by failing to provide for another way to document facts in cases where an intersectoral committee has not been established, is not operational or its opinions are considerably delayed. These omissions preclude or substantially hinder students who are to document their membership in vulnerable groups by enclosing ISC opinions from applying for and exercising the right to scholarships.<sup>674</sup>*

Most local government units provide services proposed by ISCs; however, there are also those that provide none or some of the services. The personal attendant service is among those that are most commonly missing despite the child's identified need; as a result, the Ombudsman

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<sup>671</sup> *Ibid.*

<sup>672</sup> *Ibid.*

<sup>673</sup> Ombudsman's Recommendations available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=756:2016-06-01-12-51-11&catid=40:2012-04-09-12-59-47&Itemid=85](https://www.pravadeteta.com/index.php?option=com_content&view=article&id=756:2016-06-01-12-51-11&catid=40:2012-04-09-12-59-47&Itemid=85).

<sup>674</sup> Available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=756:2016-06-01-12-51-11&catid=40:2012-04-09-12-59-47&Itemid=85](https://www.pravadeteta.com/index.php?option=com_content&view=article&id=756:2016-06-01-12-51-11&catid=40:2012-04-09-12-59-47&Itemid=85).

has repeatedly addressed recommendations to municipalities and cities.<sup>675</sup> Where the service is established, a sufficient number of trained personal attendants is not provided.<sup>676</sup>

*City of Leskovac establishes the personal attendant service*

*The City of Leskovac has fulfilled the Ombudsman's recommendations and established the personal attendant service, thus ensuring the provision of this service to the children who need it.<sup>677</sup>*

The situation is similar with regard to teaching assistants, whose services are provided by the national level. The number of teaching assistants is inadequate with respect to the number of children, students and education institutions and has stood at the same level for years, while institutions' and students' needs for this service are observed.<sup>678</sup>

Children from vulnerable groups still have inadequate access to preschool education. The passage of the new Law on the Foundations of the Education system will not lead to improved access, since the costs of preschool education are passed on to families, while local government units are authorised to decide whether to contribute to the coverage of the cost of preschool attendance and what proportion of the cost to cover.<sup>679</sup> With regard to children with disabilities, the enrolment of children in developmental groups and even refusal to enrol children with disabilities in mainstream groups still persist.

*Boško Buha Preschool Institution rejects the enrolment application of a child with disabilities*

*The Boško Buha Preschool Institution of Belgrade made an omission to the detriment of the child M.S. by rejecting the application for enrolment of a child with disabilities in the mainstream education process, in contravention of the applicable legislation in the area of education, thus violating the child's right to high-quality education, guaranteed by the Convention on the Rights of the Child, Constitution of the Republic of Serbia and domestic legislation.<sup>680</sup>*

<sup>675</sup> Recommendations have been addressed to the cities of Belgrade and Leskovac and the municipalities of Čuprija, Vladičin Han and Prijepolje; available at: [http://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=747:2016-01-26-15-42-17&catid=40&Itemid=85](http://www.pravadeteta.com/index.php?option=com_content&view=article&id=747:2016-01-26-15-42-17&catid=40&Itemid=85).

<http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5284-gr-ds-upr-v-b-gr-d-d-b-zb-di-licn-g-pr-i-c-z-svu-d-cu-i-uslugu-p-r-bn>, <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5150-gr-d-l-s-v-c-d-b-zb-di-uslugu-licn-g-pr-i-c-d-ci-p-r-bn>;

<http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5137-psh-in-vl-dicin-h-n-d-b-zb-di-uslugu-licn-g-pr-i-c>;

<http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5156-psh-in-pri-p-lj-ni-gucil-uslugu-licn-g-pr-i-c-d-u-p-c-bil-n-ph-dn>  
<sup>676</sup> Poseban izveštaj Zaštitnika građana: Inkluzivno obrazovanje – usluge dodatne podrške deci i učenicima u obrazovanju, available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>.

<sup>677</sup> Available at: [https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85).

<sup>678</sup> Poseban izveštaj Zaštitnika građana: Inkluzivno obrazovanje – usluge dodatne podrške deci i učenicima u obrazovanju, available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>.

<sup>679</sup> Art. 189, para. 1, point 1 of the Law on the Foundations of the Education System.

<sup>680</sup> Available at:

[https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85&limitstart=35&limit=7](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85&limitstart=35&limit=7).

Additional support services for gifted children are underdeveloped. Support is mainly provided to them in the form of financial benefits, either direct (scholarships, awards, cash benefits) or in the form of funding for specific costs (equipment procurement, costs of participation in competitions and events etc.). Services within institutions and communities geared towards organised, structured and continuous additional work and application of new working methods with gifted students with a view to developing their potentials (additional training, new techniques and methods, innovative approaches, continuous work with experts etc.) are provided to a far lesser extent.<sup>681</sup>

Children living in remote areas are not provided with the full range of support services to facilitate their full inclusion in curricular, extracurricular, community and peer group activities. In most cases, the only form of support is a cash benefit to cover transportation costs, which is often not enough to provide adequate transportation to and from school in a manner that will enable their full inclusion in the community. The benefits often do not reflect the real costs of transport for children; instead, they correspond to the public transport fare, even in cases where public transport is not available. Children do not have access to services to facilitate their full inclusion in the community, combined with appropriate transportation arrangements that take into account these children's schedule and other needs.<sup>682</sup>

Roma children are not provided with adequate support services in education, as a result of which the number of children from this ethnic group who are included in mainstream education is substantially lower compared to children from the general population; in addition, Roma children are unjustifiably overrepresented in schools and classes for students with disabilities. At the national and local levels, financial support services are the most common, while services geared towards strengthening children's educational potentials, additional learning support and encouragement to children and parents to support children's education (especially preschool and upper secondary) are underdeveloped.<sup>683</sup>

The accessibility of education institutions' facilities is rudimentary. In most local governments, not all institutions or all facilities are accessible. Where accessibility has been ensured, it has been done in the most basic ways and through modifications and adaptations of the building exterior, while the building interior, as a rule, remains inaccessible to children with disabilities. The inaccessibility of the building interior is often "addressed" by arranging the classes in a specific part of the school (the ground floor), whereby children, students and adults adapt to the space, instead of the space being adapted to their needs. Almost one third of the local governments have not ensured the accessibility of basic schools in their territories, and almost half have not provided accessible preschools and upper secondary schools.<sup>684</sup>

The legislation stipulating austerity measures and economic recovery measures, in particular the legislation introducing the public sector hiring freeze, has significantly hindered the establishment and development of additional support services for children. The linear restriction on public sector hiring, which does not take into account children's needs and local government resources, has precluded or hindered service development at the local and national levels, resulting in the unavailability of services to children who need them. In 2016, the Ministry of Education, Science and Technological Development adopted new rulebooks on the criteria and

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<sup>681</sup> Poseban izveštaj Zaštitnika građana: Inkluzivno obrazovanje – usluge dodatne podrške deci i učenicima u obrazovanju, available at: <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>.

<sup>682</sup> *Ibid.*

<sup>683</sup> *Ibid.*

<sup>684</sup> *Ibid.*

standards for funding basic and upper secondary education institutions<sup>685</sup>, which foresee a reduction of the already insufficient number of specialist staff employed in schools.

*Rulebook amendments necessary to ensure an appropriate number of specialist staff*

*The Ministry of Education would improve and complete the realisation of students' right to education and the implementation of inclusive education principles if it amended the bylaws so as to enable and ensure:*

*the necessary degree of flexibility in determining the number of specialist staff (psychologists, pedagogists, social workers and special educators) relative to the number of students or classes in a school, in order to meet students' specifically and actually identified needs rather than respect a preset mathematical proportion of the number of students to the number of specialist staff employed;*

*consistency of specialist staff background (psychologists, social workers, special educators) with the actual and specifically identified needs of each school.<sup>686</sup>*

An additional hindrance to education institutions' work in the education process is the fact that the bank accounts of a number of schools in Serbia are frozen, which precludes the unimpeded provision of education services by schools.

*The Ombudsman finds that the Ministry of Education, Science and Technological Development fails to take the necessary measures to unfreeze schools' bank accounts*

*The Ministry of Education, Science and Technological Development made omissions by failing to take timely measures to unfreeze schools' bank accounts which were frozen in the procedure for enforcing final and enforceable court judgments. As a result, the regular and smooth conduct of education activities and the realisation of students' right to education were compromised. Having found these omissions, the Ombudsman recommended that the Ministry of Education, Science and Technological Development, in cooperation with other authorities if necessary, take immediate measures to unfreeze schools' bank accounts and to prepare amendments to legislation in order to clearly and precisely regulate the responsibility of the Republic of Serbia and local government units for the provision of funds for payments under final and enforceable court decisions. The reason for freezing schools' bank accounts in Serbia was partly removed by the passage of the new Law on the Foundations of the Education System.<sup>687</sup>*

The staff size in the Education Inspectorate and regional school administrations is not sufficient for the high-quality performance of inspection and pedagogical supervision tasks; education inspectors do not act in a timely and effective manner in all cases and insufficiently use

<sup>685</sup> See: Rulebook on the Criteria and Standards for Funding Institutions Performing Basic Education Activity and Rulebook Amending the Rulebook on the Criteria and Standards for Funding Institutions Performing Upper Secondary Education Activity, Official Gazette of RS No 73/16.

<sup>686</sup> Available at: [https://www.pravadeteta.com/index.php?option=com\\_content&view=article&id=194:a-11859593&catid=41:2012-04-09-12-59-57&Itemid=86](https://www.pravadeteta.com/index.php?option=com_content&view=article&id=194:a-11859593&catid=41:2012-04-09-12-59-57&Itemid=86).

<sup>687</sup> Ombudsman's Recommendations are available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4340-2015-09-27-17-18-34>.

their oversight powers in respect of authorities to which inspection affairs are delegated, although positive developments are observed in that area.

*Education Inspectorate fails to conduct a full inspection despite knowledge of omissions in a preschool institution*

*The Belgrade City Secretariat for Education and Child Protection made omissions in its work: after being informed that the children enrolled in the Dr Sima Milošević Preschool Institution attended groups whose size exceeded the stipulated level and stayed in facilities non-compliant with the stipulated standards, the Education Inspectorate failed to conduct a full inspection, ascertain all material facts, or order and take adequate measures in respect of the Preschool Institution's director. The Belgrade City Secretariat for Education and Child Protection failed to take measures, in cooperation with the Preschool Institution, to ensure that children stay in adequate facilities and attend groups whose size is in accordance with the stipulated maximum size.<sup>688</sup>*

The prevalence of violence against children in schools, both by peers and by adults, in particular staff members, hampers the achievement of education aims. Different forms of violence, especially emotional violence, are present in students' everyday lives, while the rare reports are mainly met with no response. For more information on this matter, see the section "Protection of Children against Violence".

## 7.5. Recommendations

1. **The Law on the Modality of Determining the Maximum Number of Public Sector Employees, Budget System Law and other laws and implementing bylaws should be amended to ensure the unhindered establishment of services for children in all areas, including additional support services for children in education.**
2. **The Ministry of Education, Science and Technological Development should ensure an appropriate and necessary number of specialist staff in accordance with student needs, especially with a view to implementing inclusion, additional support in education, and protection of children and students against violence, abuse and neglect.**
3. **Legislation should be amended or enacted to regulate the establishment, operation and funding of intersectoral committees, teaching assistant and personal attendant services.**
4. **Legislation should be amended or enacted to ensure that the number of specialist staff and the number of children or students in preschool education groups or school classes is appropriate to the needs of children, students and institutions, and adequate for individualised approach to the child and student and for the provision of additional educational support to every child and student who need it.**

<sup>688</sup> Available at: [https://www.pravadeteta.com/index.php?option=com\\_content&view=category&layout=blog&id=40&Itemid=85&limitstart=28&limit=7](https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=85&limitstart=28&limit=7).

5. Legislation should be amended or enacted to regulate new services for children living in poverty, Roma children, children in street situations, children with emotional and behavioural difficulties, children with disabilities, children with developmental difficulties, children victims of violence and other children in especially vulnerable situations.
6. Legislation should be amended to remove the child's health capacity as a requirement for enrolment in and pursuit of a qualification profile and as grounds for discontinuing the pursuit of the qualification profile in which the child is enrolled, and to establish additional support services in upper secondary education and dual education to enable every child to enrol in any desired qualification profile.
7. Education laws should be amended to ensure that students pursuing dual education have the same scope of rights and mechanisms for the protection of their rights as students of other upper secondary schools, especially in the areas of additional support to students in education and protection against violence, abuse and neglect.
8. Education laws should be amended to ensure that dual education, as part of the education process, is not exempted from the jurisdiction of the competent state authorities and to provide for the scrutiny of the entire dual education process by education oversight and inspection mechanisms.
9. The Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health and local government and autonomous province authorities should provide adequate financial, human and other resources so as to ensure that every child whose need for additional support in education has been identified receives such services.
10. Local government authorities should form intersectoral committees, provide funds and prerequisites for their functioning and allocate adequate funds for the provision of the recommended support services.
11. The Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs and Ministry of Health should provide comprehensive and continuous training for education, social protection and health care professionals about inclusive education and ways and models of providing additional support to children and students, as well as about good practices.
12. The Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health and local government and autonomous province authorities should ensure that additional support services are funded in such a manner as to provide for their permanence,

sustainability, durability and continuity and the development of new services geared towards children's educational and social inclusion.

13. The Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health and local government and autonomous province authorities should establish and develop specific services for Roma children, geared towards promoting their inclusion in education, dropout prevention, change in patterns for Roma girls, promotion of enrolment in preschool institutions at early ages, promotion of Roma children's entry into upper secondary education, children's participation in curricular, extracurricular, sport, cultural, recreational and other activities in the community and peer group.
14. The Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health and local government and autonomous province authorities should take measures to further reduce the enrolment of children in schools and classes for students with disabilities and measures to increase the inclusion of children with disabilities in mainstream education institutions.
15. The Ministry of Education, Science and Technological Development should take measures to prevent the unjustified enrolment of Roma children in schools and classes for students with disabilities and measures to increase the inclusion of Roma children from these schools in mainstream education institutions.
16. The Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health and local government and autonomous province authorities, in cooperation with other authorities, should ensure a long-term solution for the problem of inaccessibility and inadequate accessibility of education institutions to children with disabilities.

## 7.6. Recommendations of Children and Youth<sup>689</sup>:

1. Education quality should be improved by making the teaching and textbook contents more interesting and contemporary.
2. New learning methods and techniques and new technologies should be used in teaching.
3. Textbooks should be designed in a more interesting and creative way, so as to capture children's attention.

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<sup>689</sup> The Ombudsman's Young Advisors Panel, in cooperation with the Equality Commissioner's Youth Panel, Children's Council of the Network of Organizations for Children of Serbia (MODS) and Open Club from Niš, has formulated recommendations to the competent state authorities and institutions, available at: [https://www.pravdeteta.com/attachments/394\\_Liflet%20-%20priprema%20343x240mm.pdf](https://www.pravdeteta.com/attachments/394_Liflet%20-%20priprema%20343x240mm.pdf).

4. Kindergartens should be available to children in smaller communities as well, and where this is not possible, kindergartens should be opened at schools and transportation provided to children.
5. Civic education should be a compulsory rather than elective subject; the contents of civic education should be improved and child rights introduced as a compulsory part of its syllabus.
6. Civic education teachers should receive additional education.
7. Sex education should be introduced in basic education<sup>690</sup>.
8. Non-violent communications skills, tolerance, solidarity and appreciation of diversity should be developed in schools, among children and teachers.
9. Schools should inform their students whom they can approach for advice and assistance with different problems and ensure that this information is constantly available to all children and all generations of students.
10. The protection of Roma children against discrimination should be improved in mainstream schools, so that Roma children would not avoid mainstream and enrol in special schools owing to the discrimination experienced in mainstream schools.
11. Poor children should be particularly protected against discrimination in schools. Solidarity should be developed among children, and the understanding that poverty may affect school performance and fulfilment of school obligations should be developed among teachers.
12. The delivery of additional and remedial teaching and school clubs should be regular and compulsory, since students would not incur extra costs for extracurricular activities such as sport, drama or English classes and the bond between students and teachers would be strengthened.
13. The delivery of additional and remedial teaching should be checked by asking students whether the teachers have actually held those classes, since classes are often entered in the class register without being held.
14. Schools should collaborate with student parliaments and non-governmental organisations to a greater extent and propose more ideas for student activities.

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<sup>690</sup> A similar recommendation was given by the children and youth involved in the European Network of Young Advisors. Available at: <http://enoc.eu/wp-content/uploads/2014/12/ENYA-recommendations-on-CRSE-SR.pdf> and <http://enoc.eu/wp-content/uploads/2017/10/ENYA-recommendations-on-CRSE.pdf>.

15. Children with disabilities should go to mainstream schools rather than to separate, special schools, since they should be included in their peer community just as any other child.
16. Mainstream schools should be made accessible for children with disabilities, these children should be provided with the necessary support, assistance and teaching and learning aids, and teachers and children should be trained in recognising and preventing discrimination.
17. Children should be explained how to accept their peers with disabilities.

## 8. SPECIAL PROTECTION MEASURES (Children in Street Situations, Children on the Move<sup>691</sup>, Roma Children)

### 8.1. Introductory Remarks

Special protection measures for children, classified as a separate cluster by the Committee on the Rights of the Child, are special measures intended for improving, exercising and protecting the rights of certain particularly vulnerable groups of children – children in exceptional life situations exposed to a higher risk of rights violations compared to other children. This covers children in street situations, children on the move, children members of national minorities, children victims of all forms of exploitation, including sexual exploitation, children victims of abduction, sale and trafficking in human beings, children in conflict with the law, and children in other exceptional situations. This section focuses on special measures for the protection of children in street situations, migrant, and Roma children. International standards and relevant regulations, along with key challenges in applying special protection measures are indicated for each of these groups of children.

### 8.2. International Standards

Children in street situations are among the most sensitive and most vulnerable groups of children. In the past, the terms used to describe this group of children have included “street children”, “children on the street”, “children of the street”, “runaway children”, “throwaway children”, “children living and/or working on the street”, “homeless children” and “street-connected children”. In its General Comment No 21 (2017), the Committee on the Rights of the Child defined the term “children in street situations”, encompassing<sup>692</sup> children who depend on the streets to live and/or work, whether alone, with peers or family; and a wider population of children who have formed strong connections with public spaces and for whom the street plays a vital role in their everyday lives and identities.<sup>693</sup> Children in street situations are not a homogenous group, but differ by many personal characteristics, such as sex, age, nationality, sexual orientation, gender identity, etc. Therefore, their experiences, risks and needs differ.<sup>694</sup>

Children in street situations have all the rights guaranteed by international human rights treaties. All the rights contained in the CRC and Optional Protocols thereto, interrelated and inseparable, also belong to children in street situations just as they do to all other children. In the *General Comment No 21*, the Committee on the Rights of the Child has identified implications of

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<sup>691</sup> The term children on the move covers all children migrating from their countries of origin to the territory of a European country, with the aim of survival, reaching safety, achieving better living conditions, education, economic opportunities, protection from exploitation and abuse, reuniting families or a combination of these factors. They can travel with their families or alone, or with other persons that are not members of their family. They are potential asylum seekers, trafficking victims, and possible do not have documents. The status of children on the move differs during different stages of their journey and they may encounter various sensitive situations (this definition of the term “children on the move” was adopted at the European level and is used by Council of Europe and European Union organisations, including the European Network of Ombudspersons for Children.

<sup>692</sup> CRC/C/GC/21, 21 June 2017, Available at: <http://www.ljudskaprava.gov.rs/sr/node/143>.

<sup>693</sup> General Comment No 21, para. 4.

<sup>694</sup> *Ibid*, para. 6.

the CRC provisions regarding children in street situations that have a particular significance for them.

Of particular importance for an approach based on the rights of the child is the prohibition of discrimination on the grounds of social origin, wealth, birth or other status,<sup>695</sup> since on the one hand, discrimination is one of the main reasons why children find themselves in street situations, while on the other, the connection of children to the street often represents grounds for discrimination, leading to lifelong detrimental consequences. The General Comment No 21 lists various forms of systemic discrimination and emphasises the obligation of states parties to protect children in street situations against all forms of discrimination and to work on improving their status by undertaking special measures.<sup>696</sup>

Regarding the right of the child to respect for its best interest,<sup>697</sup> the Committee noted that the best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation, and that authorities and decision makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness.<sup>698</sup>

Regarding the right to life, survival and development,<sup>699</sup> the *General Comment No 21* presents various aspects of exercising and protecting these rights. The view of the Committee is that the need to protect the most vulnerable persons, such as children in street situations, requires an interpretation of the right to life that encompasses the minimum conditions for a life with dignity,<sup>700</sup> while regarding development, states are expected to interpret "development" as a holistic concept, embracing the child's mental, spiritual, moral, psychological and social development.<sup>701</sup>

Stating that children in street situations face particular barriers in being heard, the Committee encourages states to make proactive efforts to overcome those barriers.<sup>702</sup>

In the domain of civil rights and freedoms, particular note was made of the specifics of exercising the rights of children in street situations to freedom of association and freedom of peaceful assembly.<sup>703</sup> Since children in street situations, compared to other children, have a unique relationship with public areas, states should ensure that access to spaces where they could associate and peacefully assemble is not withheld in a discriminatory manner. The Committee also emphasises the importance of respecting the choice of children in street situations to gather in public spaces, without endangering public peace and order, to exercise their right to survival and development, to rest, participation in play, and to leisure.<sup>704</sup>

Noting the fact that the lack of proof of identity has a negative impact on the protection of rights of children in street situations in the areas of education, health and other social services, justice, inheritance and family reunification, in the *General Comment No 21* the Committee has noted the duty of states to ensure, as a minimum, that free, accessible, simple and expeditious

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<sup>695</sup> Art. 2 of the CRC

<sup>696</sup> Paragraph 27 of General Comment No 21.

<sup>697</sup> Art. 3, para. 1 of the CRC.

<sup>698</sup> Paragraph 27 of General Comment No 21.

<sup>699</sup> Art. 6 of the CRC.

<sup>700</sup> General Comment No 21, para. 29.

<sup>701</sup> *Ibid*, para. 31.

<sup>702</sup> *Ibid*, para. 33.

<sup>703</sup> Art. 15 of the CRC.

<sup>704</sup> General Comment No 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts.

birth registration is available to all children at all ages, and that children in street situations should be proactively supported in obtaining legal identity documents.<sup>705</sup>

The *General Comment No 21* elaborates in detail the specifics regarding the right to special protection and assistance for children in street situations without a family environment. The Committee notes that in such cases the state is the *de facto* guardian and, in accordance with Article 20 of the CRC, is required provide alternative care for the child, with various types of care permitted: practical and moral support to children on the streets, through a trustworthy adult street worker or peer support, without requiring or coercing children to renounce their street connections and/or move into alternative accommodation; drop-in and community/social centres; night shelters; day-care centres; temporary residential care in group homes; foster care; family reunification; and independent living or long-term care options including, but not limited to, adoption.<sup>706</sup>

Regarding the right of the child to an adequate living standard,<sup>707</sup> it emphasises the duty of states parties to ensure the right of every child to a standard of living adequate for the child's physical, mental, spiritual, and moral development, to prevent them ending up in street situations and to fulfil the rights of children already in street situations. Accordingly, states are expected to take appropriate measures to assist parents and others responsible for the child to implement this right and are required, where needed, to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. These provisions, as the Committee notes, "leave no leeway for the discretion of States".<sup>708</sup> In this regard, states should take measures to address the structural causes of poverty and income inequalities to reduce pressure on and strengthen precarious families, as a means of offering better protection for children and reducing the likelihood of children ending up in street situations.<sup>709</sup>

The *General Comment No 21* contains a set of measures that the states parties must undertake to provide special protection for children with disabilities in street situations, as well as for children with physical and mental health issues.<sup>710</sup>

In the domain of education, it emphasises the need to ensure accessible, free, safe, relevant and quality education, crucial to preventing children from ending up in street situations and exercising the rights of children already in street situations.<sup>711</sup>

Appropriate attention is given to the issue of violence against children in street situations that is, according to the Committee, a fundamental cause and a consequence of children ending up in street situations. It emphasises the duty of prevention and protection of children in street situations against violence, sexual abuse, sexual exploitation, human trafficking and other forms of exploitation, and their protection against economic exploitation and the worst forms of child labour.<sup>712</sup>

The *General Comment No 21* states the specifics of applying the CRC provisions on juvenile justice.<sup>713</sup> Noting that children in street situations are more likely to be targeted, criminalised and end up in the juvenile or adult justice system and less likely to benefit from deferment, alternatives to detention or restorative practices, the Committee emphasises the duty of states to

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<sup>705</sup> General Comment No 21, para. 41.

<sup>706</sup> *Ibid*, para. 44

<sup>707</sup> Art. 27 of the CRC.

<sup>708</sup> General Comment No 21, para. 49.

<sup>709</sup> *Ibid*, para. 51.

<sup>710</sup> *Ibid*, para. 52 and 53.

<sup>711</sup> *Ibid*, para. 54 -56.

<sup>712</sup> *Ibid*, para. 57 -59.

<sup>713</sup> Art. 37 and 49 of the CRC.

support community policing, with an emphasis on protection rather than punishment of children in street situations, and to adopt a multicultural police service.<sup>714</sup>

The *General Comment No 21* emphasises the key obligations of states parties regarding the provision of assistance, support and protection to children in street situations.

States are primarily expected to create plans and programmes intended for children in street situations using a *child rights approach*, whereby the child is respected as a rights holder and decisions are often made with the child. According to the Committee on the Rights of the Child, the welfare and repressive approaches fail to take into account the child as a rights holder and result in the forcible removal of children from the streets, which further violates their rights. Therefore, to apply the Convention, it is essential to use a child rights approach.<sup>715</sup>

Compliance with the obligations established under the CRC regarding children in street situations involves adopting holistic and long-term strategies and allocating the required funds, where children as “experts on their own lives” would have to participate in developing and implementing strategies. A first step is for states to collect information about such children in their country to decide how best to uphold their rights. In this, states should take a cross-sectoral approach to understand how policy in one area, for example, finance, affects policy in another, for example, education, which in turn affects children in street situations. States should also encourage cross-sectoral and inter-state cooperation.<sup>716</sup>

Legislative activities should encompass the improvement of laws and policies in accordance with the recommendations contained in the *General Comment No 21*, involving the removal of provisions that directly or indirectly discriminate on the grounds of the street situation of children or their parents or family, and any provisions allowing or supporting the round-up or arbitrary removal of children and their families from the streets or public spaces. Furthermore it is necessary to abolish offences that criminalise and disproportionately affect children in street situations, such as begging, breach of curfews, loitering, vagrancy and running away from home, and offences that criminalise children for being a victim of commercial sexual exploitation, and so-called moral offences, such as sex outside of marriage. States are expected to adopt legislation that specifically addresses children in street situations, implemented with relevant policies, procedures, guidelines, oversight and enforcement mechanisms, with the full involvement of all key stakeholders, including children in street situations.<sup>717</sup>

It also notes the obligation of states parties to help parents or caregivers to secure the living conditions necessary for the child’s optimal development. On the other hand, states should also support the civil society in providing personalised, specialist services for children in street situations through funding, accreditation and regulation, and ensure the business sector meets its responsibilities regarding children’s rights.

Strategies and plans intended for exercising the rights of children in street situations should be aimed at eliminating multiple causes, from structural inequalities to domestic violence.<sup>718</sup> National child protection systems need to reach children in street situations and should fully incorporate the specific services they need. The systems need to provide a continuum of care across all relevant contexts, including prevention, early intervention, street outreach,

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<sup>714</sup> General Comment No 21, para. 60.

<sup>715</sup> *Ibid*, para. 5.

<sup>716</sup> *Ibid*, para. 13.

<sup>717</sup> *Ibid*, para. 14.

<sup>718</sup> *Ibid*, para. 15.

helplines, drop-in centres, day-care centres, temporary residential care, family reunification, foster care, independent living or other short- or long-term care options.<sup>719</sup>

It particularly emphasises the obligation of developing the capacities of those in contact with the child, requiring good quality initial and in-service basic training on child rights, child protection, and the local context of children in street situations for all professionals who may come into direct or indirect contact with children in street situations, in such areas as policymaking, law enforcement, justice, education, health care, social work and psychology. This training may draw on the expertise of non-state actors and should be integrated into the curricula of relevant training institutions. Additional in-depth training on a child rights approach, psychosocial support and child empowerment is required for professionals working with children in street situations as a dedicated part of their mandate, for example, street-based social workers and specialised child protection units of the police service.<sup>720</sup>

Regarding service provision, the *General Comment No 21* emphasises the obligation of undertaking action to secure the ability of children in street situations to gain access to basic services such as health and education, and to justice, culture, sport and information. States should ensure their child protection systems provide for specialised services on the street, involving trained social workers with good knowledge of local street connections and who can help children reconnect with family, local community services and wider society. Civil society activities may be useful in developing and delivering innovative and personalised service provision.<sup>721</sup> On the other hand, local specialised initiatives, small and flexible, with adequate budgets, often led by civil society organisations with local expertise, are very important. These interventions should be coordinated by local governments and supported by the state, through the national child protection system.<sup>722</sup>

It also notes the need to establish clear mechanisms for monitoring and accountability, with the involvement of children in street situations.<sup>723</sup> One important obligation of states parties is to provide children in street situations who are victims of human rights violations with effective legal and other remedies, including legal representation. This includes access to judicial and non-judicial redress mechanisms at the local and national levels, including independent human rights institutions. In case of rights violations, children should be provided with full reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition of rights violations.<sup>724</sup>

It emphasises the importance of collecting data and research, to be implemented in partnership with academia, civil society and the private sector. Collecting data on children in street situations should be integrated into national data collection on children, ensuring that national data do not rely solely on household surveys, but also cover children living outside household settings. Children in street situations should participate in setting the aims and agendas of research and in gathering information, analysing and disseminating research to inform policymaking, and in designing specialised interventions.<sup>725</sup>

Regarding *children on the move*, their protection is subject to general international standards in the domain of protection of the rights of refugees and migrants contained in the

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<sup>719</sup> *Ibid*, para. 17.

<sup>720</sup> *Ibid*, para. 18.

<sup>721</sup> *Ibid*, para. 19.

<sup>722</sup> *Ibid*, para. 20.

<sup>723</sup> *Ibid*, para. 21.

<sup>724</sup> *Ibid*, para. 22.

<sup>725</sup> *Ibid*, para. 23.

*Convention Relating to the Status of Refugees*<sup>726</sup> and the *Additional Protocol Relating to the Status of Refugees*.<sup>727</sup> The *Convention Relating to the Status of Refugees* does not guarantee special rights to children, but only proclaims, under Article 22, the right to education under the same rules that apply to citizens of the host country, and if possible with additional facilities. The standards relevant to the protection of the rights of migrants, including children, are those established under various subsystems of international public law, such as international human rights law, international humanitarian law and international criminal law. The only international convention explicitly related to migrants is the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, adopted under the auspices of the United Nations and still not ratified by Serbia. Other conventions relate to migrants under certain sections or in certain areas of life, with all human rights conventions establishing rules for all persons found within a territory under the jurisdiction of a state, including refugees and migrants; thus, these sources of law are relevant both regarding guaranteed rights the states must obey, as well as protection mechanisms available to refugees and migrants, including children.

Also relevant for children on the move are four conventions adopted under the auspices of the Council of Europe, specifically supporting the rights of child migrants under various contexts: *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR),<sup>728</sup> *Revised European Social Charter*,<sup>729</sup> and the *European Convention on the Legal Status of Migrant Workers*<sup>730</sup> and the *European Convention on Nationality*,<sup>731</sup> not ratified by Serbia. Of particular importance in the ECnHR are the provisions of Article 3 (protection from inhuman and degrading treatment), Article 5 (deprivation of liberty), Article 8 (right to respect for private and family life), independently or in connection with Article 14 (non-discrimination), because they provide a basis for the rights of children on the move and their families to reunification of families, access to justice and permanent residence in the host country.

International standards specifically related to children on the move are contained under Article 22 of the CRC and the general comments of the Committee on the Rights of the Child, with the particular importance of the General Comment No 6: Treatment of Unaccompanied or Separated Children outside Their Country of Origin,<sup>732</sup> General Comment No 12: Right of the Child to be Heard<sup>733</sup> and General Comment No 14: Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration.<sup>734</sup>

Article 22 of the CRC prescribes the obligation of states parties to take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with the applicable international or domestic law and procedures, whether unaccompanied or accompanied by his or her parents or by any other person, to receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the CRC and in other international human rights or humanitarian instruments. To protect these children and help them find their parents or other family members, including obtaining information required for reuniting children with parents, states may establish cooperation with

<sup>726</sup> Official Journal of FPRY - International Treaties and Other Agreements No 7/60.

<sup>727</sup> Official Journal of SFRY - International Treaties and Other Agreements No 15/67.

<sup>728</sup> The Republic of Serbia has ratified this convention

<sup>729</sup> Official Gazette of RS - International Treaties No 42/09.

<sup>730</sup> Available at: <https://rm.coe.int/1680077323>. The Republic of Serbia has not ratified this convention

<sup>731</sup> Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166>. The Republic of Serbia has not ratified this convention

<sup>732</sup> CRC/GC/2005/6, 1 September 2005

<sup>733</sup> CRC/C/GC/12, 20 July 2009

<sup>734</sup> CRC/C/GC/14, 29 May 2013

the UN and other competent intergovernmental or non-governmental organisations, and in cases where parents or other family members cannot be found, they must provide the child with the same protection as for any other child permanently or temporarily deprived of a family environment for any reason.

The *General Comment No 6* defines an “unaccompanied child” as “separated from both parents and other relatives and not being cared for by an adult who, by law or custom, is responsible for doing so”<sup>735</sup>, while a “separated child” is defined as a child “separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives”.<sup>736</sup> The General Comment emphasises that it relates to children that have crossed state borders, but is also applicable to internally displaced children. For these reasons the Committee issues a call on states to apply measures of protection, caring and treatment for unaccompanied children or children separated from their families and displaced within the borders of their state or the state of customary residence, and/or temporary residence.<sup>737</sup> Based on the duty of states parties to the Convention to apply this international treaty to every child under their jurisdiction, including children seeking asylum, child refugees and migrants, the Committee on the Rights of the Child emphasises the duty of states to take into consideration the particular vulnerability of unaccompanied children and to make finding available resources for such children one of their priorities.<sup>738</sup>

In addition to the four general principles (principle of non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child), the Committee notes two additional principles with regard to unaccompanied and separated children: *the principle of non-refoulement*<sup>739</sup> and *principle of confidentiality*. These must be respected under any circumstance, including any stay in health care institutions and social care institutions.<sup>740</sup> Furthermore, responding to the general and specific needs for protection of unaccompanied children, the Committee developed a number of standards regarding the treatment of these children, from initial assessments, through the procedure for deciding on asylum, to reunification with the family and finding durable solutions.

Among other issues, unaccompanied children and children separated from their families must be appointed a guardian and legal adviser, and/or representative, immediately upon the identification of the child.<sup>741</sup> Regarding guardianship, the Committee emphasises that it should last until the child comes of age or permanently abandons the territory and/or jurisdiction of the state, and the guardian must be enabled to participate in all proceedings for making plans and decisions regarding the child, including hearings regarding emigrant status or on appeals to a decision rejecting the application for such status. It particularly notes the need for the guardian and legal adviser to have special knowledge in the field of the rights and interests of the child, to be able to care for the best interest of the child and to meet his/her legal, social, health care, psychological, material and educational needs. It is expressly stated that a child migrant involved in the asylum procedure or administrative or court proceedings, should have a legal representative in addition to a guardian.<sup>742</sup> The child must participate in the procedure of

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<sup>735</sup> General Comment No 6, para. 7.

<sup>736</sup> *Ibid*, para. 8.

<sup>737</sup> *Ibid*, para. 12.

<sup>738</sup> *Ibid*, para. 16.

<sup>739</sup> *Ibid*, para. 26.

<sup>740</sup> *Ibid*, para. 29.

<sup>741</sup> *Ibid*, para. 33.

<sup>742</sup> *Ibid*, para. 36.

appointing a guardian and legal representative, and his/her opinion must be taken into consideration.<sup>743</sup>

The UNHCR has adopted special *Guidelines on Protection and Care of Refugee Children*,<sup>744</sup> providing instructions for a systematic and universal access to reviewing all the important aspects of the status of these children. It emphasises three factors in the process of creating a system of protection and care for children on the move. These are information, dialogue, as a method of learning about problems faced by this vulnerable group, and participation in decision making at the relevant age and when their view is dominant in formulating their best interest. A separate UNHCR document *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*<sup>745</sup> provides guidelines for dealing with this particularly vulnerable category of children with specific needs.

The European Network of Ombudspersons for Children (ENOC) also worked on the issues of unaccompanied migrant children. The representatives of the Ombudsman have directly participated in the creation of this network. The ENOC network has adopted the statement “Children on the Move: Children First” as early as 2013.<sup>746</sup> The Statement, *inter alia*, notes that migration policies regarding “children on the move” must encompass a number of measures exceeding the measures of border control and combating illegal migration. It is necessary for states to establish durable solutions that respect human rights and the rights of the child, based on holistic, personalised and flexible measures harmonised with the best interests of the child as the main principle of the entire process. Furthermore, it is noted that persons working with “children on the move” (members of the police, judiciary, investigators, interpreters, social workers, customs officers, etc.) must be appropriately trained in the field of child rights and trained to appropriately respond to signs of fear or suffering.

The document *Safeguarding and Protecting the Rights of Children on the Move: the Challenge of Social Inclusion*, adopted at the meeting of the European Network of Ombudspersons for Children (ENOC) in Athens in 2017<sup>747</sup>, with the direct participation of representatives of the Ombudsman, has established recommendations for the treatment of children, including unaccompanied children, until the point of arrival in the receiving country. We note several key recommendations regarding the drafting of age- and gender-sensitive standard operating procedures and reception protocols.<sup>748</sup>

Primarily, it explicitly states that the detention of children based on their immigration status represents a violation of the rights of the child and its best interests.<sup>749</sup> The duration of the stay of children, including unaccompanied children, in centres for reception and identification should be limited to the time required for the initial registration and assessment of their cases. Children must be provided with access to an asylum application. Professionals must be specially trained, and training must encompass topics related to the risks the children are exposed to, such

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<sup>743</sup> *Ibid.*, para. 37.

<sup>744</sup> UNHCR - Refugee Children: Guidelines on Protection and Care, Geneva, 1994, available at: <http://www.refworld.org/docid/3ae6b3470.html>.

<sup>745</sup> Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997, available at: <http://www.unhcr.org/publications/legal/3d4f91cf4/guidelines-policies-procedures-dealing-unaccompanied-children-seeking-asylum.html>.

<sup>746</sup> Children on the Move: Children First, available at: [http://www.ombudsman.pravadeteta.com/attachments/394\\_ENOC%20statement%20children%20on%20the%20move%202013.pdf](http://www.ombudsman.pravadeteta.com/attachments/394_ENOC%20statement%20children%20on%20the%20move%202013.pdf).

<sup>747</sup> Safeguarding and protecting the rights of children on the move: the challenge of social inclusion, Background report, ENOC, 2017, available at: <http://enoc.eu/wp-content/uploads/2017/12/BACKGROUND-REPORT-FINAL.pdf>.

<sup>748</sup> *Ibid.*

<sup>749</sup> *Ibid.*

as exploitation and human trafficking, as well as training in interviewing and communication with children. It is recommended that persons for the protection of children should be present at border crossings, with the authority to refer children to specialised experts for further assessment. It is also necessary to provide information to children during the initial encounter so that children are informed about their rights in the receiving country, in a language they can understand, and adapted to their age, and to express their opinion and file complaints in cases of violation of rights. Reception centres should assess all children, through interviews run by trained multidisciplinary teams of professionals, with the help of interpreters, regarding their needs, possible victimisation, the needs of children with disabilities and specific needs or other circumstances that may increase the vulnerability of the child. Children should be given an opportunity, if it is in their best interest, to talk without the presence of parents or caregivers. It is necessary to develop procedures for identification, referral of and assistance to children victims or those at risk of violence, including exploitation and human trafficking, and children leaving reception centres. Particular attention should be given to mechanisms and guidelines for identification and for resolving underage and forced marriages.

Regarding the assessment of the age of the child, it should only be implemented if there is suspicion regarding the age of the child, in a timely manner, and with the support of a legal expert or guardian. The child must be provided with a qualified and trained guardian able to safeguard the best interests of children at all times. Social-educational assessment and care must be individualised, including the assessment of the needs and best interests of the child, and it is necessary to take the opinion of the child into consideration when choosing the type of accommodation. It particularly emphasises the need to provide all children on the move with access to quality services. A social support network should be established to make the children feel safe and allow them to gain self-confidence and develop resilience. It is necessary to promote the participation of children in play, social and cultural activities, and sports. Data on the child should follow the child and be available to social services at new locations, with appropriate protection of personal data.

A set of recommendations relates to the living conditions in child accommodation facilities, including access to services necessary for children. The sizes of the facilities where children live should be limited, to provide communication and cooperation among children and other residents, while ensuring the safety and welfare of children. Accommodation capacities for families with children must be child-friendly and be intended exclusively for families. To ensure safety, unaccompanied children should be placed away from adults.

One recommendation relates to the asylum decision-making procedure. This procedure must have priority and must be completed in the envisaged timeframe. To establish whether a child meets the conditions to be granted asylum, it is necessary to conduct a thorough assessment, and the law must guarantee the right to family reunification, which must be implemented in the envisaged timeframe, to avoid uncertainty and stress, with support for the family and child, including the provision of clear and timely information on the process. Special provisions should also be adopted for the renewal of travel documents for children involved in the integration process in the host country for an extended period of time.

It is necessary to ensure the registration of all children, regardless of the legal status of the child or parents. For long-term and safe accommodation, it is necessary to consider the needs of the child, to identify the best interests of the child and provide the child with the opportunity to express his/her views. Child protection policies and procedures must be established in all accommodation facilities, and children and their families must be provided with regular support. In case of changing the place of residence, it is necessary to take the best interests of the child into

consideration, with appropriate support for adjusting to the new environment. The child must participate in all decision making, in accordance with his/her evolving capacities.

It is particularly important to provide children with timely access to health care services, in accordance with their needs, including care and treatment of chronic diseases, care for children with disabilities, sexual and reproductive health care, psychological counselling and treatment and the prevention of self-harm and suicide, with the engagement of interpreters and cultural mediators. Child vaccination should be organised in accordance with national programmes and standards, and periodic doctor's visits should be organised in camps, accommodation centres and shelters where children live.

All children, whether in transit or at their destination, have the right of access to formal and non-formal education, without discrimination and/or segregation. Within one month of arrival, children should be provided the opportunity to take language classes and to enrol in school. Children unfamiliar with the language of the host community should be given the opportunity to attend preparatory language classes, to attend school in mixed classes, together with children from the local community, with additional educational support and support in social integration. Children should also be helped to maintain their cultural values and the development of their native tongue.

The ENOC document emphasises the need to establish monitoring mechanisms, involving the identification of relevant indicators and collection of data to be used to plan coherent and durable measures. It also notes the additional needs of unaccompanied and separated children, requiring the prompt identification of such children and their efficient monitoring and support. Child protection bodies should be in constant communication and cooperation with institutions involved in the collection of data and monitoring of the status of children on the move, and the data thus collected should also be available to independent institutions working in the field of child rights.

A set of recommendations relates to the appeals mechanism that should be available to children, without complex procedural demands, ensuring targeted visits to child accommodation facilities and investigation based on official duties.

With regards to the exercise and protection of the rights of Roma children, international standards on human rights are in force, contained in international treaties, with the particular importance of the *International Convention on the Elimination of All Forms of Racial Discrimination*,<sup>750</sup> providing a basis for creating special measures and developing inclusive practices<sup>751</sup>, exercising human rights without any kind of racial, national or ethnic discrimination<sup>752</sup> and the consistent fight against all forms of discrimination<sup>753</sup>. The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*<sup>754</sup> is also important, envisaging the obligation of states to prevent all forms of torture in the territory under their jurisdiction. The case law of international judicial institutions supports the undivided opinion that states are responsible for protecting the rights of every person under their jurisdiction and may be called liable for the actions of private persons, if states support or tolerate them, or otherwise fail to prevent acts of torture, inhuman or degrading treatment.

The ECnHR and the Revised European Social Charter are of importance at the regional level, with the Preamble already noting that children and young persons have the right to special

<sup>750</sup> Official Journal of SFRY No 31/67.

<sup>751</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Art. 3.

<sup>752</sup> *Ibid*, Art. 5.

<sup>753</sup> *Ibid*, Art. 7.

<sup>754</sup> Official Journal of SFRY - International Treaties No 9/91.

protection against the physical and moral hazards to which they are exposed, and to appropriate social, legal and economic protection.<sup>755</sup> The right of children and young persons to social, legal and economic protection is further elaborated under Article 17, prescribing that with a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the parties undertake, either directly or in cooperation with public and private organisations, to take all appropriate and necessary measures designed to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose. Furthermore, the parties have the obligation to protect children and young persons against neglect, violence or exploitation, to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support, free primary and secondary education as well as to encourage regular attendance at schools.<sup>756</sup> The provisions of the CRC related to Roma children, as members of a national minority, are contained under Article 30. It prescribes that in those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous must not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language. However, many other provisions of the CRC are also relevant, related to the obligation of states parties to protect the child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,<sup>757</sup> to protect the child from all forms of sexual exploitation and sexual abuse,<sup>758</sup> to prevent the abduction, sale of or trafficking in children for any purpose or in any form,<sup>759</sup> etc.

### 8.3. International Bodies' Recommendations Addressed to the Republic of Serbia

In the Concluding Observations regarding the Second and Third Periodic Report on the Implementation of the CRC,<sup>760</sup> the Committee on the Rights of the Child notes as positive the efforts made by the state party to address the plight of children living in street situations, but it is concerned that they are not legally recognised as victims but rather, after turning 14 years of age, treated as offenders. The Committee is concerned that the capacities of the competent authorities and institutions are also insufficient<sup>761</sup>. The Committee recommends that the state assess the number of children living and/or working on the streets, and update studies on the root causes of their situations, implement, and monitor and evaluate the implementation of, the recommendations outlined in the Ombudsman's report *Prevention of Exploitation of Children in South-East Europe: Child Begging in the Republic of Serbia*, with the active involvement of children

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<sup>755</sup> Points 7 and 17 of the Preamble.

<sup>756</sup> Art. 17 of the Revised European Social Charter.

<sup>757</sup> CRC, Art. 32.

<sup>758</sup> *Ibid.*, Art. 34.

<sup>759</sup> *Ibid.*, Art. 35.

<sup>760</sup> CRC/C/SRB/CO/2-3, 3 March 2017 Available at:

[http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komiteta\\_za\\_prava\\_deteta\\_srb.doc](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_deteta_srb.doc)

<sup>761</sup> Concluding Observations, para. 59.

in street situations. It also recommends to the state to ensure that support, particularly reintegration with family or placement in alternative care, is provided with full respect for the child's best interests and giving due weight to their views in accordance with their age and maturity.<sup>762</sup>

Regarding the rights of child migrants, the Committee notes the results achieved in improving reception facilities for children and adapting the child protection system to suit the needs of asylum-seeking and refugee children. The Committee, however, notes that there are no special rules in relation to the special treatment of refugee and asylum-seeking children, along with the absence of a proper identification procedure and an insufficient number of interpreters at the border, increasing the risk that unaccompanied children will not be identified as such when entering the country. Furthermore, the Committee emphasises the problem that there is no separate asylum procedure for unaccompanied children, resulting in delays in the appointment of legal representatives, inadequate interpretation services, the appointment of up to three different guardians, who are often not properly trained to act as custodians, the identification of *ad hoc* accommodation for unaccompanied girls while boys are initially placed in centres for foreign unaccompanied minors. Likewise, it notes the problem related to long-term placement of unaccompanied asylum-seeking children under the age of 16 in asylum centres that do not have adequate facilities or trained staff to care effectively for the children<sup>763</sup>.

The Committee also expresses concern due to the fact that limited space in asylum centres has forced many asylum-seeking and refugee children, including unaccompanied and separated children, to sleep on the streets without adequate shelter and in unsafe and unsanitary conditions, while others are afraid to go to the centres for fear of being deported, leaving them vulnerable to smuggling rings reportedly operating in Serbia. The Committee also notes the fact that some unaccompanied and separated children have been returned, pursuant to the readmission process, without an assessment of their best interests and without being informed, in a language they can understand, of their right to seek asylum. According to the Committee, a number of children of undetermined citizenship are currently at risk of becoming stateless<sup>764</sup>.

Referring to the *General Comment No 6*<sup>765</sup> on treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the state party establish fair and efficient asylum procedures that are to be carried out in a child-sensitive manner, in both procedural and substantive aspects, and that can be used to systematically identify and refer unaccompanied or separated children for appropriate protection and support, and consider amending relevant national legislation, including the Law on Asylum, in this regard. Furthermore, the state is recommended to ensure the full inclusion of asylum-seeking and refugee children who are unaccompanied or separated in the existing child protection system. It is also recommended that the state provide the children with accommodation in foster families or other accommodation facilities adequate for their age, gender and needs in line with best interest assessments conducted on an individual basis and establish specialised services for children with emotional, psychiatric and behavioural problems<sup>766</sup>.

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<sup>762</sup> *Ibid*, para. 60.

<sup>763</sup> *Ibid*, para. 55 a and b

<sup>764</sup> *Ibid*, para. 55 c and d

<sup>765</sup> CRC/GC/2005/6, 01 September 2005, available at

[https://www.pravadeteta.com/attachments/288\\_Opsti%20komentar%20%20-%20Postupanje%20sa%20decom%20bez%20pratnje%20i%20razdvojenom%20decom%20van%20zemlje%20porekla.doc](https://www.pravadeteta.com/attachments/288_Opsti%20komentar%20%20-%20Postupanje%20sa%20decom%20bez%20pratnje%20i%20razdvojenom%20decom%20van%20zemlje%20porekla.doc)

<sup>766</sup> Concluding Observations, para. 56a and b.

One of the recommendations relates to informing children. The state is expected to ensure that all asylum-seeking children are systematically provided with information on their rights and obligations, asylum procedures and available services to prevent them from resorting to sleeping rough for fear of deportation, and take the steps necessary to protect unaccompanied children from smuggling rings<sup>767</sup>.

It particularly emphasises the duty of the state to ensure full respect for the principle of non-refoulement and facilitate access to the asylum system for children in need of international protection in line with Articles 6, 22 and 37 of the Convention<sup>768</sup>. It is recommended for the state to guarantee the right to acquire Serbian citizenship to all children currently residing in the state who would otherwise be stateless, regardless of their own, or their parents' legal status.<sup>769</sup>

In the section of the Concluding Observations of the Committee dedicated to child members of national minorities, the Committee expresses deep concern that stigmatisation of and discrimination against Roma people, including children, is still widespread, resulting in violence and hate speech against them, and that they face difficulties in gaining access to social protection services and social integration programmes. The state is urged to conduct campaigns, at all levels and in all provinces, aimed at addressing the negative attitudes towards the Roma in society at large and take effective measures to prevent violence and hate speech against the Roma<sup>770</sup>. It also emphasises the obligation of the state to assess the particular situation of Roma children and take measures to facilitate their access to social protection measures and social integration programmes, including by improving the cultural sensitivity of services provided and readjusting the scope of social programmes.<sup>771</sup>

The recommendations of the Committee in the field of combating and protecting children from human trafficking and sexual exploitation are also important from the aspect of the rights of children in street situations, children migrants and Roma children. In this field, the Committee notes positive steps, but also indicates that, according to the Committee, as a result of the limited resources, the identification of victims remains a challenge, particularly among asylum-seeking and refugee children<sup>772</sup>. The Committee particularly notes the problem of a lack of a system for providing specialised care, support and accommodation for child victims of trafficking. The Committee recommends that the State party establish adequate and coordinated mechanisms to identify and protect child victims of trafficking, including systematic and timely information-sharing among relevant officials, and strengthen the capacity of police officers, border guards, labour inspectors and social workers to identify child victims of trafficking, and to ensure that child victims of trafficking are provided with specialised care, support and appropriate accommodation<sup>773</sup>.

The Committee on Economic, Social and Cultural Rights, in its Concluding Observations on the Second Periodic Report of Serbia on the implementation of the International Covenant on Economic, Social and Cultural Rights<sup>774</sup> states that many children, in particular Roma children, below the minimum age for employment of 15 years work in the streets and in the informal economy, and are exposed to exploitation and trafficking in persons. It was recommended to the

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<sup>767</sup>*Ibid*, para. 56 c.

<sup>768</sup> *Ibid*, para. 56 d.

<sup>769</sup> *Ibid*, para. 55 e.

<sup>770</sup> *Ibid*, para. 57.

<sup>771</sup> *Ibid*, para. 58.

<sup>772</sup> *Ibid*, para. 61.

<sup>773</sup> *Ibid*, para. 62.

<sup>774</sup> E/C.12/SRB/CO/2, adopted at the 55th session of the Committee (2014)

state to strengthen the monitoring of child labour, in particular by enhancing the Labour Inspectorate, in order to detect and prevent the worst forms of child labour, in particular by street children. The State party should also improve protection and reintegration programmes that focus on family empowerment and elimination of various forms of abuse and economic exploitation of children, including positive parenting programmes for marginalised communities, and compile information thereon, including statistics.<sup>775</sup>

## 8.4. Special Protection Measures in the Republic of Serbia

### 8.4.1. Legislative Overview

The legal basis for undertaking special protection measures for children is contained in the *Constitution of the Republic of Serbia*, establishing that special measures which the Republic of Serbia may introduce to achieve full equality of individuals or groups of individuals in a substantially unequal position compared to other citizens are not deemed discrimination.<sup>776</sup> A similar provision is contained in the Anti-Discrimination Law.<sup>777</sup>

The legal framework for undertaking special measures for the protection of children in street situations and Roma children are provided by legislation regulating the provision of health care and social protection, the field of education, and numerous other regulations on the protection of safety, combating human trafficking, exploitation, including sexual exploitation, etc. These regulations, presented in the relevant parts of this report, are mainly harmonised with international standards and set a favourable legislative framework for the creation of programmes for support to and protection of children in street situations. Special measures for the protection of children in street situations are contained in several strategic documents establishing public policy in certain areas, such as strategies in the field of health care, education, combating human trafficking, etc.

Key regulations on the special protection of migrant children are contained in the *Constitution of the Republic of Serbia*, prescribing that [...] a foreign national may be expelled only pursuant to a decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him/her and only when there is no threat of persecution based on his/her race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by the Constitution.<sup>778</sup> In addition to the relevant provisions of the Constitution and ratified specialised universal and regional conventions, the legal framework of the Republic of Serbia is complemented by laws aimed at defining and managing regular migration and combating irregular migration.

Through actions based on an opinion by the Ombudsman<sup>779</sup>, improvements were made to the *draft Law on Border Control*, introducing amended provisions prescribing that the authenticated consent of both parents, as a precondition for a minor crossing the state border when travelling alone or accompanied by another person that is neither his/her parent nor legal guardian, is necessary only if the parents have shared custody. Thus the issue of minors crossing

<sup>775</sup> Available at: <http://www.ljudskaprava.gov.rs/sr/node/142>.

<sup>776</sup> Art. 21, para. 4 of the Constitution of the Republic of Serbia

<sup>777</sup> Art. 14 of the Anti-Discrimination Law

<sup>778</sup> Art. 39, para. 3 of the Constitution of the Republic of Serbia.

<sup>779</sup> Opinion available at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/5554-o-2>.

the state border is harmonised with the provisions of the Family Law<sup>780</sup> and the Law on Travel Documents<sup>781</sup>.

A new *Law on Asylum and Temporary Protection* has been passed,<sup>782</sup> coming into force as of 22 September 2018. This law, prescribing the conditions and procedure for granting international protection, has been harmonised with contemporary international standards in the field of migration.

The law prescribes that a foreign national may be approved temporary residence based on family reunification, and if he/she has exercised the right to residence on these grounds in Serbia continuously for four years, he/she may be approved independent residence.<sup>783</sup> The law also prescribes easier conditions for approving independent residence for certain categories of persons granted residence based on family reunification: victims of domestic violence or those in other *particularly difficult circumstances*, regardless of the length of their continuous stay in Serbia on the grounds of family reunification. Independent residence is approved for a term of one year, and extended for the same period.<sup>784</sup> Independent residence is also approved under the same conditions for foreign nationals in “particularly difficult” circumstances, as defined by the law, but interpretable broadly, keeping in mind the best interests of the child. The protection of the best interest of the child on the move is also provided by the provisions prescribing that temporary residence is to be approved for foreign nationals who are *victims of a serious crime*, if their presence is required for the criminal proceedings or if they participate in the investigation as a witness or victim, for those *presumed to be victims of human trafficking*, for *victims of human trafficking*, if the competent body believes the residence is necessary for their protection, recovery or ensuring their safety, or that their presence is necessary for cooperation in the criminal proceedings, *an abandoned minor foreigner* who is the *victim of organised crime or was left without parental care or accompaniment* for other reasons, and persons for whose residence in Serbia there are *serious and justified personal reasons of a humanitarian nature*, national interest or assumed international obligations.<sup>785</sup>

The right to refuge, or refugee status, is granted to an applicant who is outside his/her country of origin or habitual residence, and who has a well-founded fear of being persecuted for reasons of race, sex, language, religion, nationality, membership in a specific social group or political opinion, and who is unable or, owing to such fear, unwilling to avail himself/herself of the protection of that country.<sup>786</sup> The law includes, as acts of persecution, physical and psychological violence, including sexual and gender-based violence, as well as acts that are “acts of a gender-specific or child-specific nature”.<sup>787</sup>

Subsidiary protection is granted to seekers not meeting the conditions for the approval of the right to refuge, yet with justified reasons indicating that by returning to their country of origin or country of habitual residence they will be faced with a real risk of suffering *serious harm*. The law prescribes that “serious harm” is to be considered *threat of death by penalty or execution, torture, inhuman or degrading treatment or punishment*, as well as serious and *individual threat to life* by reason of indiscriminate violence in situations of international or internal armed conflict.<sup>788</sup> It

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<sup>780</sup> Art. 78 of the Family Law

<sup>781</sup> Official Gazette of RS No 90/07, 116/08, 104/09, 76/10 and 62/14.

<sup>782</sup> Official Gazette of RS No 24/18.

<sup>783</sup> Law on Asylum and Temporary Protection, Art. 59, para. 1

<sup>784</sup> *Ibid.*, Art. 59, para. 3

<sup>785</sup> *Ibid.*, Art. 61.

<sup>786</sup> *Ibid.*, Art. 24.

<sup>787</sup> *Ibid.*, Art. 28, para. 2, points 1 and 6.

<sup>788</sup> *Ibid.*, Art. 25.

prescribes that, when deciding on an asylum application, the competent bodies are required to assess the *status and personal circumstances* of the asylum seeker, including their *sex and age*, so that these could be used to assess whether the procedures and actions they were or would be exposed to represent persecution or serious harm.<sup>789</sup>

The law expressly prescribes the principle of gender equality and sensitivity, as a special principle for the procedure of granting asylum, providing for the adaptation of procedures to boys and girls. The principle has been made specific through instructions for interpreting the provisions of the law in a gender-sensitive manner, to make it possible for the asylum seeker to submit an asylum application and be interviewed by a person of the same sex, or to be interviewed with the assistance of a translator or interpreter of the same sex, except if this is impossible or carries disproportionate difficulties. It prescribes that searches, physical examinations and other actions in the procedure involving physical contact with the asylum seeker shall be conducted by a person of the same sex, and that if a female is requesting asylum, accompanied by a man, they submit their applications and provide a statement separately from the persons accompanying them.<sup>790</sup> During registration, a police officer must search the foreign national and his/her belongings with full respect of his/her physical and psychological integrity and human dignity.<sup>791</sup>

One of the basic principles of the *Law on Asylum and Temporary Protection* is non-refoulement. The law explicitly prescribes that no person may be refouled to a territory where his/her life or liberty would be threatened for reasons of race, sex, language, religion, nationality, membership in a particular social group, or political opinions.<sup>792</sup> The law prescribes that during the asylum decision-making procedure, the applicant's family members must be interviewed separately, except when a joint interview is necessary, in the opinion of the interviewing officer, to ascertain essential facts underlying the asylum application.<sup>793</sup> It is also prescribed that in the course of the asylum procedure, one should take into account the specific circumstances of the persons requiring special procedural or reception guarantees, such as minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with minor children, victims of trafficking, severely ill persons, persons with mental disorders, and persons who were subjected to torture, rape, or other serious forms of psychological, physical or sexual violence, such as women who were victims of female genital mutilation.<sup>794</sup>

Of particular importance from the aspect of protecting the rights of the child is the provision prescribing that an asylum seeker must be provided with appropriate assistance if, considering his/her personal circumstance, he/she is unable to exercise his/her rights and obligations. It also prescribes that these personal circumstances must be kept in mind throughout the procedure, and that asylum-seekers in a specific psycho-physical situation, including women victims of gender-based violence that require special support, may be provided accommodation in a social care institution, with another accommodation service provider or in another family.<sup>795</sup> An asylum-seeker has the right to health care, with priority in access to health care given to victims of torture, rape or other serious forms of psychological, physical or sexual violence<sup>796</sup>.

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<sup>789</sup> *Ibid*, Art. 32.

<sup>790</sup> *Ibid*, Art. 16.

<sup>791</sup> *Ibid*, Art. 35, para. 7

<sup>792</sup> *Ibid*, Art. 6.

<sup>793</sup> *Ibid*, Art. 37, para. 5

<sup>794</sup> *Ibid*, Art. 17.

<sup>795</sup> *Ibid*, Art. 52, para. 3

<sup>796</sup> *Ibid*, Art. 54, para. 3.

The *Law on Foreigners* was adopted in 2018,<sup>797</sup> regulating the conditions for the entry, movement, stay and return of foreigners, and the competences and duties of public authorities regarding the entry, movement and stay of foreigners in the territory of the Republic of Serbia and their return from the Republic of Serbia. The law regulates in detail the procedures for return, forced removal, safety checks, stay at the immigration detention centre, etc. It defines precisely the term “unaccompanied minor”.<sup>798</sup> One significant novelty is the explicit provision granting the possibility of appeal and judicial review of decisions made under procedures regulated by the law.<sup>799</sup> Furthermore, it contains a number of guarantees for vulnerable categories, particularly unaccompanied children, victims of human trafficking and women victims of violence.<sup>800</sup> It envisages the option of granting independent residence to victims of domestic violence that have been granted temporary residence based on family reunification with a person granted protection under the Law on Asylum and Temporary Protection. It also envisages the possibility of granting temporary residence to a foreign minor who is abandoned, a victim of organised crime, or was left without parental care or accompaniment for other reasons.<sup>801</sup> It prescribes that the process of return must take into consideration the situation of vulnerable persons, and their family and health status.<sup>802</sup> However, victims of gender-based violence are recognised as a particularly vulnerable category of persons; thus, it is prescribed that when deciding on temporary residence, the personal situation and safety of victims of gender-based violence is to be taken into consideration, even if no criminal or other procedure is under way. Furthermore, it regulates the conditions of residence for victims of human trafficking in an appropriate manner, along with the rights stemming from the residence permit.

The following bylaws have been adopted with the aim of supporting the integration of persons to whom international protection is granted, including children: *Decree on measures for prioritising the accommodation of persons granted the right to refuge or subsidiary protection and conditions of use of residential space for temporary accommodation* (2015)<sup>803</sup> and *Decree on the modality of inclusion into the social, cultural and economic life of persons granted the right to refuge* (2016)<sup>804</sup>, amended in 2018 into the *Decree on the modality of inclusion into the social, cultural and economic life of persons granted the right of asylum*<sup>805</sup>. They provide for the implementation of legislation guaranteeing assistance in the integration of persons granted international protection. The accommodation standards for asylum centres have been established by the *Rulebook on the conditions of accommodation and ensuring basic living conditions in asylum centres* (2008)<sup>806</sup>. Furthermore, *Standard operating procedures for the protection of refugee and migrant children* were adopted in 2016.<sup>807</sup>

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<sup>797</sup> Official Gazette of RS No 24/18.

<sup>798</sup> According to Art. 3, para. 1, point 16 of the Law on Foreigners, an unaccompanied minor means a foreigner who is under the age of eighteen and who at the moment of entry or after entry into the Republic of Serbia has lost the accompaniment of parent or guardian or responsible adult.

<sup>799</sup> For example, articles 15 and 72 of the Law on Foreigners.

<sup>800</sup> Law on Foreigners, articles 61 and 62.

<sup>801</sup> *Ibid.*, Art. 61.

<sup>802</sup> *Ibid.*, Art. 75.

<sup>803</sup> Official Gazette of RS No 63/15 and 56/18.

<sup>804</sup> Official Gazette of RS No 101/16.

<sup>805</sup> Official Gazette of RS No 56/18.

<sup>806</sup> Official Gazette of RS No 31/08.

<sup>807</sup> Available at: <https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-08/SOP-za-zastitu-dece-izbeglica-i-migranata.pdf>.

*The National Strategy for Prevention and Suppression of Trafficking in Human Beings, especially Women and Children, and Protection of Victims 2014-2020*,<sup>808</sup> recognises migrant children and children on the move and those unaccompanied by parents or guardians as a group at special risk of human trafficking and exploitation for pornography and prostitution. Two of the goals of this National Strategy are of particular importance for children: *improved prevention and reduced impact of the causes of human trafficking in accordance with the schedule of new challenges, risks and threats*<sup>809</sup> and *children are protected from human trafficking and exploitation for pornography and prostitution and their consequences, through special participative programmes implemented in their best interest*.<sup>810</sup>

Regarding measures for the protection of Roma children, there is no special legislation related specifically to them. Regarding strategic documents, Roma children are in focus of measures and activities established by the *Strategy for the Social Inclusion of the Roma in the Republic of Serbia 2016-2025*.<sup>811</sup> The Strategy sets forth as its first special objective the full inclusion of children and youth from the Roma community in quality preschool, basic and upper secondary education, greater coverage of Roma men and women in the student population and provision of support to the education of youth and adults who have not attended school or have dropped out, along with the introduction of effective and efficient mechanisms to combat discrimination and create conditions in which the Roma population can exercise all minority rights in the education system. Other objectives are also of importance for children, because they are aimed at improving the overall socio-economic status and social integration of Roma.

#### 8.4.2. Legislative Weaknesses

Legislation of relevance for undertaking special protection measures is mainly harmonised with international standards, but there are also regulations not in line with standards in the domain of the rights of the child. *The Law on Public Peace and Order* from 2016, just as the former *Law on Public Peace and Order*, criminalises child begging, child prostitution and other forms of child exploitation and the worst forms of child labour. This law prescribes penalties for begging and prostitution, defining them as offences against public peace and order. Since there are no special provisions that would exclude liability of children, children older than 14 years of age are liable for these violations. The provision of this law whereby ceding premises for minors to engage in prostitution is punishable as a misdemeanour indicates that children engaging in prostitution do not have the status of victim, nor do the persons enabling them to engage in prostitution have the status of criminal offenders, despite the clear case of sexual exploitation of children. Therefore, the legal provisions are not in line with the CRC, the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, or the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the ILO Worst Forms of Child Labour Convention and other international documents relevant for the rights of the child. The elimination of these weaknesses requires relevant legislative interventions for ensuring the decriminalisation of children exposed to the worst forms of child labour, economic exploitation and living and

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<sup>808</sup> Official Gazette of RS No 77/17.

<sup>809</sup> Item 8.2 of the National Strategy for Prevention and Suppression of Trafficking in Human Beings, especially Women and Children, and Protection of Victims 2014-2020 (Nacionalna strategija za prevenciju i suzbijanje trgovine ljudima, posebno ženama i decom, i zaštitu žrtava 2014-2020)

<sup>810</sup> Item 8.5 of the National Strategy for Prevention and Suppression of Trafficking in Human Beings, especially Women and Children, and Protection of Victims 2014-2020

<sup>811</sup> Official Gazette of RS No 26/16.

working in the street, and ensuring the status of victim, as well as full family, criminal and other protection and services for recovery and reintegration into the community.

The Family Law still allows marriage with a minor older than 16 years of age, upon approval by court in non-contentious proceedings. This is against CRC standards and the views of the Committee on the Rights of the Child, which has issued a recommendation to the state to eliminate this provision from the legal system.<sup>812</sup> On the other hand, the criminal offence of cohabitation with a juvenile provides criminal protection only to children older than 14 years of age, since “juvenile” covers children older than 14 years of age. Having in mind that this criminal offence is not an offence against sexual liberty, it is not possible to apply a special law that ensures better criminal protection of children victims of sexual abuse. This envisages a lower degree of protection of children against early, forced child marriages and sexual abuse and exploitation. There are no systematic measures planned or undertaken for the prevention and elimination of early, arranged and forced child marriages and underage pregnancies in the Roma community, although the time of marriage for Roma women is between 13 and 27 years of age,<sup>813</sup> and the birth rate among adolescent Roma girls aged 15-19 is seven times that of the general population<sup>814</sup>. The measures being undertaken are inadequate, these forms of parental neglect and exploitation are being inadequately assessed and designated, the liability of adults is minimised, and the participation of children in these activities is attributed to the individual choice of the children themselves. The Ombudsman has already noted these and similar weaknesses<sup>815</sup> in its report on the lack of improvements in the protection of children from these harmful practices in May 2017, following a request by the Special Rapporteur of the UN High Commissioner for Human Rights.

### 8.4.3. Practical Challenges and Difficulties

A certain degree of progress has been achieved during recent years in the field of undertaking special protection measures regarding children in street situations, migrant children and Roma children. The situation, however, is not satisfactory, and further measures and activities must be undertaken to improve the status of these, most vulnerable groups of children.

#### 8.4.3.1. Children in Street Situations

Regarding children in street situations who are exposed to the highest risks of violation of rights, even though their exact number is unknown, it is clear that a large number of children are in a street situation. Children living and working in the street are not provided with services and measures that would ensure their development in the family, inclusion into education and the community, health care and social care services and full protection from violence, abuse and neglect.

<sup>812</sup> Concluding Observations of the UN Committee on the Rights of the Child on the combined Second and Third Periodic Report by the Republic of Serbia, available at <http://www.ljudskaprava.gov.rs/sr/node/143>.

<sup>813</sup> Poseban izveštaj Zaštitnika građana o reproduktivnom zdravlju Romkinja, available at: <http://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5536-p-s-b-n-izv-sh-z-sh-i-ni-gr-d-n-r-pr-du-ivn-zdr-vlju-r-inj-s-pr-p-ru>.

<sup>814</sup> Istraživanje višestrukih pokazatelja položaja žena i dece, Srbija, MICS 2014, UNICEF u Srbiji, available at: [https://www.unicef.org/ceecis/MICS\\_5\\_-\\_Key\\_Findings.pdf](https://www.unicef.org/ceecis/MICS_5_-_Key_Findings.pdf).

<sup>815</sup> Poseban izveštaj Zaštitnika građana: Prevencija i zaštita dece od seksualnog zlostavljanja i seksualnog iskorišćavanja, available at: [http://www.pravadeteta.com/attachments/394\\_publicacija%20Lanzarot%20pdf.pdf](http://www.pravadeteta.com/attachments/394_publicacija%20Lanzarot%20pdf.pdf).

Ombudsman's Recommendation available at: <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/1663-2011-12-19-08-47-00>.

In its earlier reports, the Ombudsman noted the problems faced by these children.

The Ombudsman's report "Child Begging in Serbia"<sup>816</sup> notes that the term "child begging" is not distinguished from adult begging and that state bodies and institutions working with children identify and view the phenomenon of child begging in various ways. It is not always seen as a form of child abuse and neglect, and children are not provided with the opportunity of appropriate participation in proceedings. No records are kept on children living and working in the street, the degree and causes of this phenomenon are not known, and neither are the violations of the rights of these children. The research shows that half of the children involved in begging are aged between 10 and 14, and that as many as 45% of these children are from 1 to 10 years old; 2/3 are boys. According to the interviewed children, poverty is the main reason for starting to work in the street. The key challenges in eliminating and protecting children in street situations from various forms of exploitation and other violations of rights are reflected in the lack of adequate programmes for assistance and support, the lack of adequate programmes for the accommodation and recovery of children, the reintegration of children, and the insufficiently developed cross-sectoral cooperation of ministries competent for the family and social protection affairs, the judiciary, the interior, health care and education. On the other hand, professionals do not have sufficient knowledge on the specific nature, difficult situation and status of children in street situations.<sup>817</sup>

The competent bodies failed to act upon the recommendations of the Ombudsman for improving the status of children living and working in the street from 2011. No strategy or action plan has been drafted, nor were systemic actions established by those competent for the prevention, elimination and suppression of this phenomenon. The already insufficient, rare and sporadic services intended for children on the street have been eliminated, and the City of Belgrade failed to re-establish the services of the drop-in centre for children on the street,<sup>818</sup> despite this being a service that has provided positive results in the integration of children living and working in the street.<sup>819</sup>

Regarding the International Day of Children Living and Working in the Street, marked on 12 April, the Ombudsman assessed that children in street situations are the most vulnerable, and legally invisible part of our society, with their rights at risk on multiple grounds – starting from safety, to the right to education and health care. Children involved in living and working in the street are frequently sexually exploited or exploited for labour, are victims of violence and discrimination, they most frequently live in extreme poverty, in informal settlements, often without access to running water or electricity, and in many cases without personal ID or access to institutions.<sup>820</sup>

#### 8.4.3.2. *Children on the Move*

There is a large number of children on the move in the territory of the Republic of Serbia, with a relatively large number of them not accompanied by parents. The Ombudsman has been continuously monitoring the status and protection of children on the move, comprising 40% of

<sup>816</sup> Available at: [https://ombudsman.rs/attachments/1597\\_brosura\\_Final%20ddd.pdf](https://ombudsman.rs/attachments/1597_brosura_Final%20ddd.pdf).

<sup>817</sup> Available at: [https://ombudsman.rs/attachments/1597\\_brosura\\_Final%20ddd.pdf](https://ombudsman.rs/attachments/1597_brosura_Final%20ddd.pdf).

<sup>818</sup> Decision on the rights and services of social protection, Official Journal of the City of Belgrade No 55/11, 8/12, 8/12, 42/12, 65/12, 31/13, 57/13 and 37/14.

<sup>819</sup> Redovni godišnji izveštaj Zaštitnika građana za 2016. godinu, available at:

<https://www.ombudsman.rs/attachments/article/5191/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202016.%20godinu.pdf>.

<sup>820</sup> Available at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05?start=66>.

the total number of the migrant and refugee population (in December 2017 there were 5000 persons staying in Serbia). More than 500 children on the move started attending school, and as of this year they are being enrolled in preschool education as well. The Ministry of Health has provided comprehensive health checks for them. Unaccompanied children and families with children are being cared for separately from adults in reception centres, shelters and asylum centres that have the necessary conditions. Psychological support; overcoming trauma and stress; protection in case of violence, abuse, neglect, smuggling, exploitation; legal assistance and guardian protection are not provided. The recommendations of the Ombudsman to the Asylum Centres in Koviljača and Belgrade, the Reception Centres in Bosilegrad, Divljana, Pirot and Dimitrovgrad, and Kikinda, relate to insufficient capacities and resources for the protection of their rights.<sup>821</sup>

*Acting on the recommendations of the National Prevention Mechanism, the Commissariat for Refugees and Migration has notified the Ombudsman that special attention is given in regards to food for migrants in reception centres in accordance with needs, particularly for children, and that its quality is checked by national bodies. It is further stated that the reception centres have improved the practice of registering and distributing clothing, hygienic products and other items from donations to migrants. The Commissariat also stated that, with the decrease in the number of migrants per centre, the hygiene of common spaces has improved significantly. The NPM visited eight reception centres in Serbia in April and May 2018 - Preševo, Bosilegrad, Bujanovac, Vranje, Principovac, Adaševci, Divljana and Pirot, to monitor actions based on the recommendations issued in 2016 and 2017 for the improvement of the status of migrants and assessed that there were improvements in the conditions for the accommodation of persons with disabilities, psychological aid services, access to specialised health care services, and information on their rights and obligations in relevant languages. It was stated on this occasion that there remains a lack of professionals for working in the field of protection of the rights of the child under the competence of the centres for social work.<sup>822</sup>*

Education of children on the move is one of the key aspects of child migration, and simultaneously one of the mechanisms that significantly contributes to decreasing the harm to the proper development and well-being of children exposed to the traumatic experiences of leaving their environment, and frequently of separation from their family. The Ombudsman has prepared a draft document for the European Network of Ombudspersons for Children “Education for Children on the Move”. Starting from a number of concerning facts, such as the data that 37% of those leaving Syria due to the war have been outside the educational system since then, that certain European countries do not provide education for all children on the move, and that children are often included in the educational process with significant delays, the Ombudsman has formulated a number of recommendations that were, along with the document “Education for Children on the Move”, unanimously adopted by the European Network of Ombudspersons for Children at its General Assembly on 21 September 2018. Some of the recommendations concern including children on the move in the educational process at the earliest possible age and in the shortest possible timeframe, ensuring the inclusion of children in education in mainstream education institutions with appropriate additional support,

<sup>821</sup> Redovni godišnji izveštaj Zaštitnika građana za 2017. godinu, available at:

<https://ombudsman.rs/attachments/article/5671/Godisnji%20izvestaj%20za%202017.%20godinu.pdf>

<sup>822</sup> Available at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/5840-p-s-up-nj-p-pr-p-ru-u-prihv-ni-c-n-ri-u-srbi-i>

implementation of comprehensive assessments of the needs of the child and the development of individual education plans that will respect the child's abilities, status and needs<sup>823</sup>. This document was also submitted to the Ministry of Education, Science and Technological Development.

#### 8.4.3.3. Roma Children

Roma children are one of the most vulnerable groups of children. Certain segments of this report have already indicated the situation in exercising the rights of Roma children to education, health care, etc. This section indicates, in particular, numerous factors that have an additional detrimental effect on the status of Roma children.

The early development of Roma children is hampered by numerous factors, including poor living conditions, living in poverty and with parents with a low educational level and without employment, and life in segregated settlements removed from important social resources (health care, education, culture, sports).<sup>824</sup> According to data collected during the 2011 Census, the highest percentage group among the homeless, covered by the Census for the first time, are children up to 14 years of age. Nearly half of the total number of the homeless were registered in the Belgrade region.<sup>825</sup>

Data on the status of the Roma are incomplete and insufficient, but, nevertheless, indicate deprivation in various areas, as well as poverty. Employment and employability among members of the Roma national minority are very low. According to data collected during the Population Census of 2011 and processed in the study "Roma in Serbia"<sup>826</sup>, 59.0% of the work-capable population of Roma nationality are unemployed (the national average was 22.4%)<sup>827</sup>. Data from an analysis produced by the UNDP, World Bank and the European Commission are even more alarming: the unemployment rate among the Roma is as high as 74%<sup>828</sup>. Among the employed members of the Roma national minority, 77.5% are male, and only 22.5% female. Nearly three-quarters (70%) of the employed Roma (based on a definition of employment given by the International Labour Organization) are in fact informally employed<sup>829</sup>. More than one quarter (27.6%) of the total number of Roma households receive their income under social protection<sup>830</sup>.

In accordance with the Opinion of the Ombudsman regarding the draft Law on Employees in Public Services, the Law on Employees in public Services prescribes affirmative measures when selecting candidates so that the proclaimed principle of equal availability of jobs would be realised in full. This Law prescribes that if several candidates have met the criteria prescribed for selection with an equal best score, priority in hiring will be given to a candidate belonging to a group of persons in an unequal position, such as victims of domestic and intimate

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<sup>823</sup> Views of the European Network of Ombudspersons for Children "Education for Children on the Move", available at: <http://enoc.eu/wp-content/uploads/2018/09/ENOC-2018-Statement-on-Children-on-the-Move-Education-FV-Serbian-cyr.pdf> and <http://enoc.eu/wp-content/uploads/2014/12/ENOC-2018-Statement-on-Children-on-the-Move-Education-FV.pdf>.

<sup>824</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine, Official Gazette of RS No 26/16.

<sup>825</sup> *Ibid.*

<sup>826</sup> Radovanović, Knežević, 78.

<sup>827</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine.

<sup>828</sup> Integracija Roma povratnika kroz bolje uslove obrazovanja i zapošljavanja, Tanja Jakobi i Dejan Marković, Centar za istraživanje javnih politika, Beograd, 2017, available at: <https://www.publicpolicy.rs/documents/50152cdca31c11378bfcd34fd71f19f1e536357f.pdf>.

<sup>829</sup> *Ibid.*

<sup>830</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine.

partner violence, persons with disabilities, members of the Roma national minority, and that the law regulating the work of the public service, and/or the collective agreement can identify other groups of persons in an unequal position<sup>831</sup>. However, the number of members of the Roma national minority working in public services remains low. Thus a survey by the Ombudsman has shown that only 25 Roma men and 13 Roma women are employed across 143 local self-government unit, in non-executive jobs<sup>832</sup>.

The consequences of social and educational exclusion affect the competitiveness of the Roma in the labour market. The illiteracy rate in the total Roma population older than 9 years of age stands at 15.1%, seven and a half times more than the national average of 2%. Data indicating the acquired degree of professional qualifications is cause for concern: 34.2% of the Roma have not completed basic school, one third have basic education only; the share of the Roma with upper secondary education is 11.5%, and with higher only 0.7%<sup>833</sup>.

About 70% of the Roma in the Republic of Serbia live in Roma settlements, including 583 substandard settlements<sup>834</sup> present in nearly three quarters of local government units in the Republic of Serbia<sup>835</sup>. Roma settlements are spatial urban and non-urban (rural and suburban) units predominantly inhabited by members of the Roma national minority<sup>836</sup>. This type of residential and spatial organisation is conducive to ghettoisation and segregation of the Roma and reinforcement of their social exclusion. Regarding the erection of a concrete wall around the Roma settlement "Marko Orlović" in Kruševac, the Ombudsman has assessed it necessary to review the procedures and method of decision-making in these and similar situations, since the existing ones do not guarantee that decision making will consider the need to prevent the ghettoisation of the Roma population<sup>837</sup>.

In 38% of Roma settlements, the residents have no access to water supply, in 32% of settlements they do not have the option of using electricity, and in three quarters of these settlements (74%) they have no access to a sewage grid. Waste removal is not organised in 40% of settlements<sup>838</sup>. A large number of buildings in these settlements (40%) are made of materials inadequate for construction, ensuring neither durability, nor safety and security<sup>839</sup>. A total of 73%

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<sup>831</sup> Art. 58 of the Law on Employees in Public Services, Official Gazette of RS No 113/17.

<sup>832</sup> Poseban izveštaj Zaštitnika građana: Zastupljenost žena na mestima odlučivanja i pozicija i aktivnosti lokalnih mehanizama za rodnu ravnopravnost u jedinicama lokalne samouprave u Srbiji, available at <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5901-p-s-b-n-izv-sh-z-sh-i-ni-gr-d-n-z-s-uplj-n-s-z-n-n-s-i-dluciv-nj-i-p-zici-i-ivn-s-i-l-lnih-h-niz-z-r-dnu-r-vn-pr-vn-s-u-dinic-l-l-n-s-upr-v-u-srbi-i>.

<sup>833</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine.

<sup>834</sup> According to the UN definition, substandard settlements are identified by the following criteria: inadequate access to potable water; inadequate access to sanitary and other infrastructure (sewers or septic tanks, public transport and traffic roads, water supply system, and other utilities); poor quality of housing units (housing units built using inadequate building techniques and/or poor construction materials; housing units that are decrepit due to poor maintenance, and similar houses potentially hazardous to the security of its inhabitants); overpopulation in terms of average density of population per unit area of the settlement, or in terms of a large number of persons per one household; and uncertainty of the legal status of houses on plots (including unresolved property ownership rights over land and utilities in the settlement). Osnovne karakteristike podstandardnih romskih naselja u Srbiji i predlog budućih razvojnih inicijativa za unapređenje uslova života romske zajednice, Lj. Živković, A. Đorđević, Misija OEBS u Srbiji, 2015, available at <https://www.osce.org/sr/serbia/159746?download=true>.

<sup>835</sup> Osnovne karakteristike podstandardnih romskih naselja u Srbiji i predlog budućih razvojnih inicijativa za unapređenje uslova života romske zajednice, *op. cit.*

<sup>836</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine.

<sup>837</sup> Poseban izveštaj Zaštitnika građana sa preporukama, available at: <http://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5230-p-s-b-n-izvsh-u-v-zi-s-p-diz-nj-b-ns-g-zid-r-s-g-n-s-lj-r-rl-vic-u-rush-vcu>.

<sup>838</sup> Osnovne karakteristike podstandardnih romskih naselja u Srbiji i predlog budućih razvojnih inicijativa za unapređenje uslova života romske zajednice, *op. cit.*

<sup>839</sup> *Ibid.*

of the Roma have less than 10 m<sup>2</sup> per household member, while nearly 54% of Roma households do not have a bathroom in the house.<sup>840</sup>

Although the Ombudsman has notified the competent bodies multiple times to undertake measures and care for the internally displaced Roma from the territory of AP Kosovo and Metohija living in informal settlements with no infrastructure since 1999, they remain in a particularly unfavourable status<sup>841</sup>.

These data show that a large number of Roma children live under conditions of extreme poverty (parents without employment, family reliant on social assistance as the only source of income) without significant chances of improving their status without social support (securing and improving opportunities for the employment and self-employment of parents, along with their education, literacy and vocational training for achieving competitiveness in the market and employment with or without the application of affirmative measures). Quite frequently, children live with their families under conditions below the basic standards: no access to water, electricity, without rooms and services for maintaining basic hygiene (sewage, bathroom, waste removal) in overcrowded and often unsafe buildings.

In such circumstances, infant mortality among the Roma population is 13 per thousand live births, while the probability of a child dying before the age of five is around 14 per thousand live births<sup>842</sup>. The coverage of Roma children by immunisation is approximate to that of children in the general population only for immunisation with the BCG vaccine upon birth (94.3% for Roma children, 98% for general population children). However, vaccination coverage declines drastically thereafter; thus, the number of children aged 12 to 23 months that have received the prescribed and recommended doses of vaccines and re-vaccinations ranges from 61% to 64.5%.

The fact that Roma children are predominant among children living and working in the street is solely the consequence of their extreme poverty and complete social exclusion and unavailability of all social resources, and of the fact that the state has not provided Roma children with equal conditions or accessibility of state institutions for exercising and protecting the rights of the child.

The phenomenon of child marriages is alarmingly widespread. The time of marriage for Roma women is between 13 and 27 years of age,<sup>843</sup> while the birth rate for Roma adolescents aged 15-19 is seven times higher than in the general population.<sup>844</sup> Despite this, no systemic measures are being planned or undertaken for the prevention and elimination of early, arranged and forced child marriages and underage pregnancies in the Roma community. For more information on this matter, see the section "Protection against Violence".

Despite improvements in education, Roma children are not fully covered by the educational process. Only 6% of children of Roma nationality aged up to 5.5 years are covered by preschool education programmes, Roma children are either not fully covered by the mandatory

<sup>840</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine.

<sup>841</sup> Godišnji izveštaj Zaštitnika građana za 2017. godinu, p. 12, available at <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/5671-2017>

<sup>842</sup> Multiple Indicator Cluster Survey on the status of women and children in Serbia / Multiple Indicator Cluster Survey on the status of women and children in Roma settlements in Serbia, MICS (1996, 2000, 2005, 2010 and 2014), Main Findings, Belgrade and Serbia: Statistical Office of the Republic of Serbia and UNICEF, 2014, [http://webzrs.stat.gov.rs/WebSite/userFiles/file/MICS/MICS%20GLAVNI%20NALAZI\\_srp.pdf](http://webzrs.stat.gov.rs/WebSite/userFiles/file/MICS/MICS%20GLAVNI%20NALAZI_srp.pdf).

<sup>843</sup> Poseban izveštaj Zaštitnika građana o reproduktivnom zdravlju Romkinja, available at: <http://www.ombudsman.rs/index.php/izvestaji/posebni-izvestaji/5536-p-s-b-n-izv-sh-z-sh-i-ni-gr-d-n-r-pr-du-ivn-zdr-vlju-r-inj-s-pr-p-ru>

<sup>844</sup> Istraživanje višestrukih pokazatelja položaja žena i dece, Srbija, MICS 2014, UNICEF u Srbiji, available at: [https://www.unicef.org/ceecis/MICS\\_5\\_-\\_Key\\_Findings.pdf](https://www.unicef.org/ceecis/MICS_5_-_Key_Findings.pdf).

preparatory preschool programme (63%), or attend it irregularly or for a shorter duration. Furthermore, children from the Roma community living in conditions of poverty have an even lower rate of attending the preparatory preschool programme (46%).<sup>845</sup> The coverage by mandatory basic education is around 85%, while due to the insufficient preparation for starting school, around 30% of Roma children enrol in first grade with delays. Only 64% of Roma children complete basic education, while only 22% of children of Roma origin attend upper secondary school (for the general population the percentage is 89%). Drop out is more frequent among girls, with as many as 43% of Roma girls dropping out for marriage (the percentage for girls of the same age in the general population is 4%)<sup>846</sup>. Roma students are also overrepresented in schools for students with disabilities and special classes in mainstream schools.<sup>847</sup> Despite progress in the introduction and implementation of the inclusive education principles, specific support services for Roma children are insufficiently established and developed, especially for children coming from extreme poverty and deep marginalisation. For more information on this matter, see the section “Education”.

The coverage of young persons of Roma nationality by higher education is extremely low – only 2% of the young Roma enrol in a higher education institution<sup>848</sup>. This indicates that the introduced affirmative actions for enrolment in higher education institutions for the Roma have failed to produce significant progress in the university education of the Roma population. One of the reasons for the low number of Roma students is the lack of appropriate additional support measures during upper secondary education, as well as during preparations and enrolment in faculties<sup>849</sup>. The lack of highly educated experts in the Roma community is a limitation when implementing many incentive measures for improving education for children and youth from the Roma community. On the other hand, the low level of inclusion in upper secondary and higher education cannot lead to the creation of an appropriate number of educated Roma human resources. This vicious circle thus demands more rapid and effective support measures, from the earliest age and with inclusion in preschool education, and particularly during transition to upper secondary and subsequently to higher education.

Media reporting on members of the Roma national minority is characterised by content about their social status, along with expressed prejudice and stereotypes regarding hygiene, education, and the general way of life of the Roma community, noticeable even when the media coverage is generally positive<sup>850</sup>. This does not contribute to the elimination of a strong source of discriminatory relationship and ethnic distancing towards the Roma population. Regarding the racist graffiti in the centre of Kragujevac, the Ombudsman has issued a statement that such graffiti must be viewed as an impermissible and highly dangerous act that requires a timely reaction and the undertaking of preventive measures to avoid the possibility of these incidents escalating further<sup>851</sup>. This view of the Roma national community reflects strongly on the status of children. Intolerance can be noted towards peers from the Roma national minority, “children of Roma origin from special classes report on discrimination based on nationality... Some Roma children

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<sup>845</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine.

<sup>846</sup> *Ibid.*

<sup>847</sup> Poseban izveštaj Zaštitnika građana: Inkluzivno obrazovanje – usluge dodatne podrške deci i učenicima u obrazovanju, available at: <https://ombudsman.rs/index.php/izvestaji/posebni-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>

<sup>848</sup> *Ibid.*

<sup>849</sup> *Ibid.*

<sup>850</sup> Godišnji izveštaj Zaštitnika građana za 2017. godinu, p. 7, available at

<https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>.

<sup>851</sup> *Ibid.*, page 53.

want to transfer to a special class, to get away from the teasing and to better fit into the peer group of the class...<sup>852</sup>. Low teacher expectations can also be noted in schools regarding Roma students, with frequent reports about the problem of long-term absences.<sup>853</sup>

Prejudice and stereotyping also spread into the employment process, representing one reason why only 50 Roma (28 women) have been employed through subsidies for the employment of unemployed persons from the difficult-to-employ category, comprising only 2.8% of the total number of subsidised employment<sup>854</sup>. The United Nations Committee on the elimination of racial discrimination has concluded that, regardless of the efforts of the Republic of Serbia to improve their status, Roma remain exposed to discrimination, prejudice and stereotypes, particularly in the field of employment, while the Human Rights Committee expressed concern about the unsatisfactory representation of minorities in public administration and local self-government bodies<sup>855</sup>. A survey by the Ombudsman has shown that there were no improvements in this area. Among 137 local government units, only one Roma man and no Roma women can be found in appointed posts, while among all council members in these local self-government units there are only 10 men and only two women of Roma nationality<sup>856</sup>.

The mechanisms established by the state that have shown good results in empowering the Roma community have not, however, been developed enough. Despite indisputable results in improved health care for Roma children and inclusion in the educational process, health mediators are still not part of the health care system. The number of teaching assistants, whose role in providing additional support in education is assessed as extremely important, has remained unchanged and insufficient for years. The situation is similar with Roma coordinators (Coordinators for Roma Issues), whose number remains insufficient, and their status within local government bodies is insufficiently defined<sup>857</sup>.

## 8.5. Recommendations

1. **Amendments to the Law on Public Peace and Order should ensure that children involved in child begging, child prostitution and other forms of child exploitation and the worst forms of child labour are decriminalised and receive the status of victim, while persons responsible for providing and ensuring the conditions for child exploitation and child labour are assigned the status of criminal or other offenders.**
2. **The Law on Public Peace and Order should be amended to be harmonised with the Convention on the Rights of the Child, Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse and the International Labour Organization Convention on the Worst Forms of Child Labour.**

<sup>852</sup> *Obrazovanje u školama i odeljenjima za obrazovanje dece sa smetnjama u razvoju u Srbiji u inkluzivnom obrazovnom okruženju*, grupa autora, Beograd, 2015, <http://defektolozisrbije.org/wp-content/uploads/2016/05/UNICEF.pdf>.

<sup>853</sup> *Obrazovanje u školama i odeljenjima za obrazovanje dece sa smetnjama u razvoju u Srbiji u inkluzivnom obrazovnom okruženju*, grupa autora, Beograd, 2015, <http://defektolozisrbije.org/wp-content/uploads/2016/05/UNICEF.pdf>.

<sup>854</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine.

<sup>855</sup> *Ibid.*

<sup>856</sup> Poseban izveštaj Zaštitnika građana: Zastupljenost žena na mestima odlučivanja i pozicija i aktivnosti lokalnih mehanizama za rodnu ravnopravnost u jedinicama lokalne samouprave u Srbiji, available at <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5901-p-s-b-n-izv-sh-z-sh-i-ni-gr-d-n-z-s-uplj-n-s-z-n-n-s-i-dluciv-nj-i-p-zici-i-ivn-s-i-l-lnih-h-niz-z-r-dnu-r-vn-pr-vn-s-u-dinic-l-l-n-s-upr-v-u-srbi-i>.

<sup>857</sup> Strategija za socijalno uključivanje Roma i Romkinja u Republici Srbiji za period od 2016. do 2025. godine.

3. Amendments to the Family Law should eliminate all possibilities of marriage with persons under 18 years of age.
4. Amendments to the Criminal Code should extend criminal protection against the criminal offence of cohabitation with a juvenile to include children younger than 14 years of age and thus ensure an adequate degree of protection of children against early and forced child marriages and their sexual abuse and exploitation.
5. The Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Justice, Ministry of Health, Ministry of the Interior and Ministry of Education, Science and Technological Development should undertake comprehensive measures for the prevention and elimination of children's life and work in the street, and measures to improve the status of children in street situations and ensure all necessary services for exercising the right to healthy living conditions, adequate accommodation, water, hygiene, nutrition, education, health care and protection from violence, abuse, neglect and exploitation, and reintegration into the community, in accordance with the recommendations of the Ombudsman and recommendations of the UN Committee on the Rights of the Child.
6. The Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Justice, Ministry of Health, Ministry of the Interior and Ministry of Education, Science and Technological Development should undertake comprehensive measures to prevent and eliminate early, arranged and forced child marriages, and to establish a system for monitoring all cases that involve child marriages among ethnic groups, particularly Roma girls, and to ensure access for these children to all available services for exercising their rights, with full respect for the best interest of the child and due attention to the views of the child in accordance with their age and maturity.
7. The Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Justice, Ministry of Health, Ministry of the Interior and Ministry of Education, Science and Technological Development, High Judicial Council and State Prosecutorial Council should establish appropriate and coordinated mechanisms for the identification, registration and protection of child victims, including systematic and timely sharing of information among competent officers, to ensure that child victims of abuse, exploitation and human trafficking receive specialised care, support and appropriate accommodation and shelter, along with services and measures for rehabilitation and protection of child victims from secondary traumatising and victimisation and their reintegration into the community, in accordance with the recommendations of the Ombudsman and the recommendations of the UN Committee on the Rights of the Child, as well as ratified international instruments (Convention on the Rights of the Child and protocols to the Convention, and the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse).
8. The Ministry of Health should undertake measures so that the most vulnerable families, including Roma families and those living in marginalised, remote and rural areas would be provided with improved early childhood development services and reproductive and sexual health care of youth, and ensure access to appropriate health

care, neonatal services and timely immunisation against infectious diseases, and use efficient field services and educational campaigns to expand prevention and strengthen the health care of women and children in these families.

9. The Ministry of Labour, Employment, Veteran and Social Affairs and autonomous province and local government authorities should provide Roma families with access to social protection measures, particularly social housing and integration programmes, and undertake measures to improve living conditions in substandard Roma settlements, including the provision of adequate housing, water, hygiene, healthy nutrition, etc.
10. The Ministry of Labour, Employment, Veteran and Social Affairs and the National Employment Service should undertake strategic measures aimed at increasing employment and employability among members of the Roma national minority.
11. The Ministry of Education, Science and Technological Development and the National Higher Education Council, in cooperation with higher education institutions, should undertake strategic measures to increase the coverage of members of the Roma national minority by higher education.
12. The Ministry of Education, Science and Technological Development, Ministry of Labour, Employment, Veteran and Social Affairs and autonomous province and local government authorities should improve the access of Roma children, particularly girls, to quality education at all levels (preschool, basic, upper secondary and vocational/higher education), develop programmes for reducing drop-out rates and implement monitoring and evaluation of such programmes, undertake measures to stop the segregation of Roma children in the school system and provide appropriate human capacities and resources (particularly teaching assistants) for providing additional support to Roma students in accordance with regulations on inclusive education.
13. The Ministry of Labour, Employment, Veteran and Social Affairs and the Commissariat for Refugees and Migration should undertake measures that will ensure appropriate human, financial and technical support for an efficient procedure of guardianship for unaccompanied minor foreigners, and for all-day care for unaccompanied children and all children on the move and separated children, in the existing child protection system and ensure access of these children to specialised services, in accordance with their age, gender and needs, and in accordance with the opinion and views of the child and the assessment of best interests conducted on an individual basis.

## **8.6. Recommendations of Children and Youth<sup>858</sup> :**

1. The realisation of the rights of children living and working in the street requires that the competent state authorities ensure the issuing of personal ID to children living and

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<sup>858</sup> The Ombudsman's Young Advisors Panel, in cooperation with the Equality Commissioner's Youth Panel, Children's Council of the Network of Organisations for Children of Serbia (MODS) and Open Club from Niš, has formulated recommendations to the

working in the street and children without parental care under free-of-charge and simplified procedures and with greater assistance and support by competent authorities, since these children cannot obtain personal documents without the help of adults, which has not always been the case to date.

2. Roma children should be protected against discrimination in mainstream schools, so that they would not avoid mainstream and enrol in special schools due to the discrimination experienced in mainstream schools.