



**REPUBLIC OF SERBIA**

Belgrade

346-431/19



Protector of Citizens

Ombudsman

---

Ref.No. 31896

Date: October 31st, 2019.

## **INPUTS OF THE PROTECTOR OF CITIZENS OF THE REPUBLIC OF SERBIA TO THE GUIDING QUESTIONS FOR THE ELEVENTH SESSION OF THE UNITED NATIONS OPEN-ENDED WORKING GROUP ON AGEING**

### **Right to Work and Access to the Labour Market**

#### **1. What are the legal provisions and policy frameworks in your country that recognize the right to work and access to the labour market by older persons?**

The Government of the Republic of Serbia adopted three significant strategies that directly or in some parts relate to the elderly: the Poverty Reduction Strategy (adopted in 2003, expired at the end of 2008), the National Aging Strategy (valid from 2006 to 2015) and the Social Protection Strategy (from 2006 to 2012). These documents are expired, but no new documents have been adopted. At the local level, local social protection development strategies have been adopted, which have identified the elderly as one of the three vulnerable groups, their problems being set as a priority to be addressed.

By improving the legislative framework and adopting the 2014–2017 Employment and Social Policy Reform Program, considerable progress has been made in employment policies, but the situation in this field is still less favorable than that of the European Union.

The National Employment Strategy 2011-2020<sup>1</sup> identifies particularly vulnerable categories in the labor market that should be the primary beneficiaries of active employment policy measures. This category includes: the Romani, persons with disabilities, rural population, persons without qualifications / education, women, young people (15-24 years of age), the elderly (50-64 years of age), as well as the long-term unemployed, single parents, beneficiaries of financial social assistance, children without parental care, victims of human trafficking and others.

The Act on Employment and Unemployment Insurance stipulates that it is more difficult to employ an unemployed person who, due to his or her health status, insufficient or inadequate education, socio-demographic characteristics, regional or professional mismatch of labor market supply and demand, or other objective circumstances, has more difficulty in finding employment.

---

<sup>1</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije.php>.

---

## 2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?

When it comes to the structure of the total population, in the Republic of Serbia, the share of the elderly is increasing more and more. The share of the elderly in the total population is 19.2%, and the average age of the population in the Republic of Serbia is very high, reaching 43 years of age in 2017. The Active Aging Index in the Republic of Serbia was estimated in 2014 to be 29.5 out of a possible 100, which is higher only compared to four EU countries<sup>2</sup>.

Poverty is one of the most common and biggest problems that the elderly face, which the Protector of Citizens points out in the regular annual reports. The Committee on Economic, Social and Cultural Rights recognized this problem and on May 23, 2013 in Geneva, in its Concluding Remarks on the Second Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, it expressed concern, among other things, about the limited effectiveness of existing strategies to address extreme poverty in state signatories, especially among refugees, returnees, internally displaced persons, persons belonging to minorities, the elderly and persons with disabilities, as well as due to the prevalence of regional differences in the exercise of all economic, social and cultural rights without discrimination (Articles 2 and 11). The Committee called on the State signatory to extend its Poverty Reduction Strategy in order to address the extreme poverty problems especially present in marginalized groups, to take all necessary corrective measures in order to address the issue of regional differences affecting the equal enjoyment of economic, social and cultural rights and to allocate sufficient resources to implement these strategies, taking into account the statement of the Committee on Poverty and The International Covenant on Economic, Social and Cultural Rights (E/ C.12/2001/10) of 2001.

The absolute poverty of pensioners is lower than the poverty of the total population, the poverty of the over-65 is lower or at the level of poverty of the total population, while the poverty of the over-75 is higher than the poverty of the total population. The pronounced material deprivation of retirees (65 +) is slightly lower in relation to the 18+ population; slightly higher in the 65+ and even higher in the 75+ group. The at-risk-of-poverty rate of retirees is significantly lower than the at-risk-of-poverty rate of the overall population. Women in the older population (65 + and 75 +), as well as in the retirement population, are at a significantly higher risk of poverty than men<sup>3</sup>.

In its regular 2010 Annual Report, the Protector of Citizens pointed out that a large number of citizens in recent years had been driven to the brink of existence because their employers had not paid for their work or paid for their pension contribution, which is why they cannot exercise their full right to retirement, and they become dependent on the welfare of a state that is not enough for a normal life, their former employers not being held responsible. The state is working to bridge the service periods achieved in some companies. However, it is not known enough on the basis of which criteria the state helps some employers to bridge their employees' years of service (because the obligation to pay contributions was on the part of the employers, not the workers) and it does not help others, or on the basis of what criteria it tolerates some employers from non-payment of mandatory contributions into a pension fund.

---

<sup>2</sup> The Third National Report on Social Inclusion of the Social Inclusion and Poverty Reduction Team, available at: [http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2019/02/Treci\\_nacionalni\\_izvestaj\\_o\\_socijalnom\\_ukljucivanju\\_i\\_smanjenju\\_siromastva\\_2014%E2%80%932017.pdf](http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2019/02/Treci_nacionalni_izvestaj_o_socijalnom_ukljucivanju_i_smanjenju_siromastva_2014%E2%80%932017.pdf)

<sup>3</sup> The Third National Report on Social Inclusion of the Social Inclusion and Poverty Reduction Team, available at: [http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2019/02/Treci\\_nacionalni\\_izvestaj\\_o\\_socijalnom\\_ukljucivanju\\_i\\_smanjenju\\_siromastva\\_2014%E2%80%932017.pdf](http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2019/02/Treci_nacionalni_izvestaj_o_socijalnom_ukljucivanju_i_smanjenju_siromastva_2014%E2%80%932017.pdf)

The current legal solutions continue to place responsibility on the employees for non-compliance of employers with regard to payments into compulsory social funds.

There is compulsory pension insurance in the Republic of Serbia and paying into a pension fund is a legal obligation of the employer. The mandatory pension fund is public rather than private, meaning that the employer makes payments to the community, not to the employee. However, the worker bears the damages if the employer violates the law. The Protector of Citizens believes that everyone should exercise their full right to a pension from a compulsory public fund, whether or not their employer complied with the law. It is the duty of state bodies, not citizens, to ensure compliance with legal obligations. Employers who do not pay compulsory pension and health insurance contributions directly violate the law and it is the duty of the competent state bodies, not workers, to detect and sanction such phenomena.

The Protector of Citizens especially points out in the regular 2016 Annual Report that the situation of the elderly is particularly difficult by passing the Law on Temporary Regulation of the Method of Payment of Pensions<sup>4</sup>, on the basis of which pensions are reduced, but also by not allowing them to use the constitutional possibility of filing a complaint in a case where there are doubts on the correctness of the newly determined amount of pension, which was repeatedly pointed out by the Protector of Citizens.<sup>5</sup>

The austerity measures, despite amendments to the law that have led to a slight increase in retirement benefits, continue to cause a lack of sufficient material resources that make it impossible for the elderly to provide themselves with the necessary medicines, food and other basic necessities of life. In addition to the measures providing funds for this group of citizens, the envisaged state benefits are insufficient to improve the quality of life.

Also, there is still a widespread situation that citizens' requests for exercising their right to retirement are not treated in a timely and efficient manner, and it happens that individuals do not live to become beneficiaries of this statutory right. For the reasons mentioned above, these individuals are forced to earn additional income, usually in low-paying jobs and often in 'shadow jobs' or 'undeclared jobs'.

A particular problem, as the Protector of Citizens points out in the regular annual reports, is that middle-aged people are considered "old" for employers after the age of 45 and are exposed to more frequent layoffs, difficulty finding employment and other forms of discrimination in the field of work.

### **3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?**

Research on the use of time from 2010 and 2015 confirmed the stereotypes that apply in our region. Regardless of whether they are employed or not, women spend twice as much time on housework compared to men, and spend half as much time in paid jobs. For working women, working at home becomes another shift. The biggest differences in time are in activities related to personal needs and leisure. Women, regardless of educational background, work more in overall jobs than men. The more educated they are, the more time they spend on paid jobs, as do men. Regardless of their education, women spend about four and a half hours on housework while men spend about two hours. Longer duration of unpaid activities in 2015 was performed by women who spent their time caring for other persons and their own minor children, while men performed unpaid activities doing maintenance of the home and household and caring for their own children. If household work was to be paid at the minimum hourly rate, for household work done by women aged 15 and over in 2010 a

---

<sup>4</sup> „The Official Gazette of RS“, no. 116/14 and 99/16.

<sup>5</sup> More on this in the section on social protection and retirement and disability insurance.

sum of € 116 per month would have to be allocated, and in 2015, € 138, which is an annual figure of €1390 and €1650, respectively. <sup>6</sup>

**4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and provision of appropriate workplace accommodation?**

The 2019 National Employment Action Plan prescribes, among other, subsidies for the employment of unemployed persons from the category of hard-to-employ persons, including those over 50 who have the status of redundant employees, the Romani, persons with disabilities, able-bodied beneficiaries of financial social assistance, the long-term unemployed and victims of domestic violence, the subsidies being directed to newly created jobs. Subsidies are granted to employers on a one-off basis, based on a public call. One of the goals in the implementation of this National Employment Action Plan is the employment of people over 50 years of age, and the indicator of success in achieving this goal is the following: Activity rate of the elderly – the proportion of active population aged 50-64 in the total working age population. Employment rate of the elderly – the number of employees aged 50-64 in the total working age population. Unemployment rate of the elderly – the number of unemployed elderly 50-64 in the active working age population. The number of older people (50-65) covered by active employment policy measures, broken down by active employment policy measures. The share of older people (50-65) included in active employment policy measures compared to the total number of unemployed included in active employment policy measures. The number of employees over 50 years old from the records of the National Employment Service<sup>7</sup>.

Despite some progress, Serbia has one of the highest inactivity rates in the EU - 28, as well as low employment rates for young people (15-24) and older employees (55-64). The largest gender gap in the labor market in terms of employment was recorded in the 55-64 age group, where the employment rate for women is 32.5% and the employment rate for men is 52.8%<sup>1</sup>. At the end of June 2018, 186,754 persons aged 50 and over were on the unemployment register, of whom 88,161 were women (47.2%). Although the number of unemployed persons in this category decreased by 8,759 persons compared to the same period in 2017, their share in the total registered unemployment, which at the end of June 2018 was 32.2%, increased by 1.9 p.p., which means that within the decrease of the total number of unemployed persons, the decrease in the number of persons in this category is taking place with a much smaller dynamics compared to the decrease in the number of unemployed persons from younger age categories. In the total number of persons aged 50 and over, 146,348 or 78.4% are unemployed long-term (71,525 women), which means that the long-term unemployment of this category of the unemployed is 9.3 percentage points higher than the total long-term unemployment. In the total unemployment, the long-term unemployed persons aged 50 and over participate with 25.3%.<sup>8</sup>

<sup>6</sup> Publication of the Statistical Office of the Republic of Serbia, 'Women and Men in Serbia', available at: <http://publikacije.stat.gov.rs/G2017/Pdf/G20176008.pdf>.

<sup>7</sup> The National Employment Action Plan is available at: [http://www.nsz.gov.rs/live/digitalAssets/11/11445\\_nacionalni\\_akcioni\\_plan\\_zapo\\_ljavanja\\_za\\_2019\\_godinu.pdf](http://www.nsz.gov.rs/live/digitalAssets/11/11445_nacionalni_akcioni_plan_zapo_ljavanja_za_2019_godinu.pdf).

<sup>8</sup> The 2019 National Employment Action Plan.

**5. What steps have been taken to ensure the availability of specialized services to assist and support older persons to identify and find employment?**

The implementation of a package of services for the hard-to-employ persons and especially vulnerable categories of unemployed persons who have priority for inclusion in the ALMP measures, as a way to provide integrated service in conditions of very modest means for active labor market programs, has been enabled and put into effect. These include: active job search training, job search clubs, job fairs, self-efficacy training and entrepreneurship development training. These include: self-employment training programs (professional practice, acquisition of practical knowledge), training (on the job market, at the request of the employer) and functional basic adult education. These are subsidies for self-employment and subsidies for employment of unemployed persons from the category of hard-to-employ workers in newly created jobs.

In 2017, measures were taken to stimulate employment and inclusion of hard-to-employ persons in the labor market, namely: young people (about 53,100, of which 27,440 were women), redundant workers (over 12,000, of which over 7,000 were women), over 50 years of age (over 27,000, of which about 12,500 were women), persons without qualifications and low-skilled workers (over 36,000, of which about 17,750 were women), the long-term unemployed (about 75,000, of whom about 41,600 were women), beneficiaries of financial social assistance (about 10,770, of which about 5,500 were women), as well as PWDs (about 8,500, of which about 3,600 were women), for whom special packages of services were put into effect.

The total number of unemployed persons who used the measures in 2017 was about 145 thousand (representing about 23% of the unemployed persons on the National Employment Service records who are able to use the measures during one year). The share of unemployed women in the measures is 54% (or about 78,300 women), which is higher than their share in the total number of unemployed on record (52%, the average in 2017). Active employment policy measures included women from particularly vulnerable categories, such as: 3,410 single mothers, about 13,200 women over 50, respectively, about 7,400 women in the category of redundant workers, nearly 30,000 women up to 30 years of age, about 6,000 beneficiaries of financial social assistance and about 2,430 Roma women<sup>9</sup>.

**8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?**

The Constitution of the Republic of Serbia guarantees the right to work and stipulates that everyone has the right to free choice of work, that everyone has equal access to all jobs, the right to be treated with dignity in their workplace, to have safe and healthy working conditions, special protection at work, limited working hours, daily and weekly leave, paid annual leave, a fair remuneration and the right to legal protection in the event of termination of employment. The Constitution of the Republic of Serbia does not refer to the elderly as a separate social group, but age is recognized as a personal feature in the article relating to the prohibition of discrimination. The Law on Prohibition of Discrimination, as a special case of discrimination, distinguishes discrimination on the basis of age. It explicitly stipulates that the elderly are entitled to decent living conditions without discrimination, and in particular the right to equal access and protection from neglect and harassment in the use of health and other public services.

The Labor Law prohibits direct and incidental discrimination against persons seeking employment, as well as employees, among other, on the basis of age in relation to the conditions of employment and the selection of candidates for a particular job; the working

<sup>9</sup> The Report on the Implementation of the 2017 National Employment Action Plan.

conditions and all rights in employment; education, training and further training; promotion at work; termination of the employment contract. The provisions of this law prohibit both direct and indirect discrimination.

Acting on the proposals of the Protector of Citizens and the Commissioner for Equality Protection for constitutional review of the provision of Article 20 of the Law on the method of determining the maximum number of employees in the public sector, due to which the employment of women employees in the public sector by law would terminate their employment earlier than men, The Constitutional Court issued a decision declaring that the provisions of the said Article were not in conformity with the Constitution<sup>10</sup>.

The elderly, although they make up a significant part of the population in the Republic of Serbia, are not sufficiently recognized in society as a particularly vulnerable population category. According to all surveys<sup>11</sup>, the elderly are among the most discriminated groups in Serbia, which happens due to stereotypes and prejudices about this group. Of particular concern is the fact that research shows that a large number of seniors recognize the discrimination against them, but consider it "normal", which is why in very few cases they decide to use some remedy to protect their rights. In support of this is the data from the 2018 Annual Report of the Protector of Citizens, according to which in the field of the rights of persons with disabilities and the elderly, in 151 cases 154 violations of rights were pointed out, most of which related to special rights in the field of rights of persons with disabilities (87 violations of rights) and the elderly (only 4 violations of rights). The low number of cases of senior citizens contacting the Protector of Citizens does not mean that their rights were not violated and that they had no problems in exercising and protecting their guaranteed rights, but that their problems in society are still not sufficiently visible and recognized, and that the elderly are not sufficiently informed about the mechanisms of protection of their rights.

The most common form of age discrimination is job unavailability for citizens over 50 years of age. There is discrimination in four areas of the labor market. The first area has already been mentioned (job loss in the process of enterprise transition and restructuring). The second is the difficulty of hiring this group of workers who are unemployed and have previous work experience of at least 15 and often significantly more years. Thirdly, there is a small supply of training programs for older workers and, finally, fourthly, business entities (companies and other such organizations) often pressure older workers to retire as soon as possible in order to create jobs for young people. There have been cases of older people being terminated one to two years before retirement, or receiving payout, only to get a job vacated as soon as possible<sup>12</sup>.

### **9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?**

The Labor Law stipulates that supervision of the implementation of this Law, other regulations on labor relations, general acts and employment contracts, which regulate the rights, obligations and responsibilities of employees, shall be performed by the labor inspection. The Labor Law also stipulates that a general act and an employment contract may provide for a procedure for the amicable settlement of disputes between the employer and the employee, which is to be settled by an arbitrator who is an expert in the subject matter of the dispute. In addition, in order to protect individual rights, it is stipulated that an employee, or

<sup>10</sup> The Ruling of the CC nr. IUz-244/2015 from October 4th, 2016.

<sup>11</sup> Research: "The position of the elderly in cities" and "Well-kept family secret - the abuse of the elderly"; more details at: <https://www.redcross.org.rs/media/1670/dobro-cuvana-porodicna-tajna-e-knjiga.pdf>.

<sup>12</sup> The Strategy for prevention and protection against discrimination available at: <https://www.srbija.gov.rs/dokument/45678/strategije.php>

a representative of a trade union of which the employee is a member if authorized by the employee, may bring a dispute before a competent court against a decision violating an employee's right or when an employee has learned of the violation.

The Law on the Prohibition of Discrimination regulates the general prohibition of discrimination, the forms and cases of discrimination, as well as procedures for protection against discrimination. This Law establishes the Commissioner for the Protection of Equality as an autonomous state body, independent in carrying out the tasks established by this law. The provisions of this law prohibit, among other things, age discrimination.

A person who considers himself or herself to have suffered discrimination may file a complaint with the Commissioner in writing or, exceptionally, orally on the record, without the obligation to pay a fee or other compensation. The complaint is accompanied by evidence of the act of discrimination suffered. The Anti-Discrimination Act stipulates that anyone who has suffered discriminatory treatment has the right to lodge a complaint to the court. The provisions of the law on civil procedure shall be applied accordingly in the proceedings. The Commissioner shall act on the complaint if the proceedings before the court in the same matter have not already been initiated or finalized.

The Constitution of the Republic of Serbia and Article 1 of the Law on the Protector of Citizens establish the Protector of Citizens as an independent state body, which protects the rights of citizens and controls the work of state administration bodies, as well as other bodies and organizations, enterprises and institutions entrusted with public authority (republican agencies and funds, ministries, educational and child-care institutions, social and health care institutions, municipal administration bodies, etc.). Pursuant to the Law on the Protector of Citizens, a complaint to the Protector of Citizens may be filed by any natural person who believes that an act, action or omission of the administrative body violated his or her rights. If the Protector of Citizens establishes that the rights of citizens have been violated by certain acts, actions or omissions of the administrative body, in the case of violation of republic laws, other regulations and general acts, the Protector is obliged to initiate proceedings to protect the rights of citizens, based on the complaint of citizens or on his or her own initiative, and in accordance with the law.