



**REPUBLIC OF SERBIA**

346 – 234 / 21  
Belgrade



**Protector of Citizens  
Ombudsman**

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Ev.No. 3756 Date: 14. February 2022.

**CONTRIBUTIONS OF THE PROTECTOR OF CITIZENS (SERBIAN NHRI) FOR THE  
TWELFTH SESSION OF THE GENERAL ASSEMBLY OPEN-ENDED WORKING GROUP FOR  
THE PURPOSE OF STRENGTHENING THE PROTECTION OF THE HUMAN RIGHTS OF  
OLDER PERSONS**

**Focus area 1: Contribution of older persons to sustainable development**

**National Legal and Policy Framework**

**What are the legal provisions, policy frameworks in your country that recognize older persons' right to participate in and contribute to sustainable development? This could include, but is not limited to:**

- a) ensuring that relevant human rights (in particular the right to freedom of opinion and expression, the right of access to information, and the rights to freedom of peaceful assembly and of association) are protected and implemented;**
- b) protecting and enhancing civic space and collaboration with civil society that represents the voices of older persons in sustainable development;**

The Constitution of the Republic of Serbia<sup>1</sup> stipulates that human and minority rights guaranteed by the Constitution are directly applicable. The Constitution guarantees, and as such, directly applies, human and minority rights guaranteed by generally accepted rules of international law, ratified by international treaties and laws. The law may prescribe the manner of exercising these rights only if it is explicitly provided by the Constitution or if it is necessary for the exercise of a particular right due to its nature, and the law must not in any case affect the essence of the guaranteed right. Provisions on human and minority rights are interpreted in favor of promoting the values of a democratic society, in accordance with applicable international standards of human and minority rights, as well as the practices of international institutions that monitor their implementation.

The Constitution prohibits any kind of discrimination, direct or indirect, on any grounds, and particularly on the basis of race, sex, nationality, social origin, birth, religion, political or other opinion, property status, culture, language, age and mental or physical disability.

The Constitution stipulates that human dignity is inviolable and that everyone is obliged to respect and protect it, as well as that everyone has the right to free development of their personality, if that does not violate the rights of others guaranteed by the Constitution.

The highest legal act guarantees freedom of opinion and expression, as well as the freedom to seek, receive and impart information and ideas through speech, writing, images or in any other way. Freedom of expression may be restricted by law, if it is necessary to protect the rights and reputations of others, to preserve the authority and impartiality of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.

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<sup>1</sup> "The Official Gazette of RS", no. 98/06.

According to the Constitution, peaceful assembly of citizens is free. Indoor gatherings are not subject to approval or registration. Speeches, demonstrations and other gatherings of citizens in the open are reported to the state body, in accordance with the law. Freedom of assembly may be restricted by law only if it is necessary for the protection of public health, morals, the rights of others or the security of the Republic of Serbia.

The Constitution guarantees the freedom of political, trade union and any other association and the right to remain outside any association. Associations are established without prior approval, with entry in the register kept by the state body, in accordance with the law. Secret and paramilitary associations are banned. The Constitutional Court may prohibit only an association whose activities are aimed at violently destroying the constitutional order, violating guaranteed human or minority rights or inciting racial, national or religious hatred.

The Ministry of Human and Minority Rights and Social Dialogue, which has taken over the responsibilities of the Office for Cooperation with Civil Society, supports the dialogue between government institutions and civil society organizations and the involvement of civil society in decision-making, as well as exchanges in constructive dialogue. Other ministries, when organizing and holding round tables, conferences and other relevant gatherings, and especially in the preparation of strategic documents and regulations, also include civil society organizations and the interested public in the working groups for their drafting. Citizens' associations are active and implement numerous projects and programs. Changes in electoral laws have introduced quotas for the underrepresented sex, which has led to an increase in women's participation in the legislature. A small number of older people, especially older women, and people with disabilities, participate in political and public life.

## Remedies and redress

### What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to participate in and contribute to sustainable development?

The Constitution guarantees equal protection of rights before courts and other state bodies, holders of public authority and bodies of the autonomous province and local self-government units.

#### Focus area 2: Economic security

##### National legal and policy framework

### What are the legal provisions and policy frameworks in your country that guarantees the minimum essential level of the enjoyment of economic, social and cultural rights, in particular the right to an adequate standard of living?

The Government of the Republic of Serbia has adopted the **Strategy for Prevention and Protection against Discrimination for the period from 2013 to 2018**, and along with it the **Action Plan for the implementation of the Strategy for Prevention and Protection against Discrimination for the period from 2014 to 2018**<sup>2</sup> has been adopted. Older people are also recognized as one of the vulnerable social groups often exposed to discrimination and other forms of violation of their rights. The new Strategy for Prevention and Protection against Discrimination for the period from 2022 to 2030<sup>3</sup>, despite the recommendations of the Protector of Citizens in its regular annual reports and the opinion issued with recommendations<sup>4</sup> in 2020, was adopted only on January 20, 2022.

The Government of the Republic of Serbia has adopted three important strategies that, directly or in some parts, relate to the elderly: **the Poverty Reduction Strategy**<sup>5</sup> (in 2003 which expired at the end

<sup>2</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php>.

<sup>3</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php>.

<sup>4</sup> Available at: <https://ombudsman.rs/attachments/article/6882/Misljenje.doc>

<sup>5</sup> Available at: chrome-

extension://efaidnbmnnnibpcajpcgiclfefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.srbija.gov.rs%2Fextfile%2Fsr%2F211704%2Fstrategija-za-smanje-siromastva-u-srbiji\_cyr.pdf.

of 2008), the **National Aging Strategy<sup>6</sup> (valid from 2006 to 2015)** and the **Social Protection Strategy (valid from 2006 to 2012)**. These documents have expired, but only the **Strategy for Deinstitutionalization and Development of Community Social Welfare Services** for the period 2022-2026<sup>7</sup> has been adopted. At the local level, local strategies for the development of social protection were adopted, which recognized the elderly as one of the three vulnerable groups which have priority in solving their problems.

The evaluation of the National Aging Strategy 2006-2015 showed that the strategic framework of development related to population aging should continue to be maintained within the set goals that are in line with the goals defined in this area by the EU until 2022.

By improving the legislative framework and adopting the Employment and Social Policy Reform Program in the period 2014-2017, significant progress was made in employment policies, but the situation in this field remains less favorable than in the European Union.

**The National Employment Strategy for the period 2011-2020<sup>8</sup>** identifies particularly sensitive categories in the labor market that should be the primary beneficiaries of active employment policy measures. This category includes: Roma, PWDs, 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 social security assistance, children without parental care, victims of human trafficking and others.

**In the Employment Strategy of the Republic of Serbia for the period from 2021 to 2026<sup>9</sup>**, hard-to-employ persons, in accordance with the Law on Employment and Insurance in Case of Unemployment, are defined as unemployed persons who due to their health, insufficient or inadequate education, sociodemographic characteristics, regional or professional mismatch of supply and demand in the labor market, or due to other objective circumstances find it more difficult to get a job. Particularly at risk are those who face multiple factors of vulnerability / difficulty of employability at the same time.

As one of the measures of active employment policy **the Action Plan for the period from 2021 to 2023 for the implementation of the Employment Strategy in the Republic of Serbia for the period from 2021 to 2026<sup>10</sup>** prescribes giving subsidies for the employment of unemployed persons from the category of hard-to-employ persons, which includes a one-time financial incentive to private sector employers, for the employment of unemployed persons, as follows: 1. young people up to 30 years of age - without completed secondary education, young people in orphanages, foster families and under guardian care; 2. people older than 50; 3. Roma; 4. persons with disabilities; 5. able-bodied persons beneficiaries of financial social assistance; 6. the unemployed who have been on the unemployment register for more than 12 months; 7. victims of domestic violence.

**The Law on Social Protection<sup>11</sup>** defines social protection as an organized social activity of public interest whose goal is to provide assistance and empowerment for an independent and productive life among individuals and families, as well as to prevent and eliminate the consequences of social exclusion. This law represents the legal basis for the implementation of measures for the activation of beneficiaries of financial social assistance and cooperation between the centers for social work and the National Employment Service.

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<sup>6</sup> Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.minrzs.gov.rs%2Fsites%2Fdefault%2Ffiles%2F2018-11%2FNacionalna%2520strategija%2520o%2520starenju\_1.pdf&clen=404195&chunk=true

<sup>7</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php>

<sup>8</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije.php>

<sup>9</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php>

<sup>10</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php>

<sup>11</sup> "The Official Gazette of RS", number 24/11

**The Labor Law**<sup>12</sup> prohibits direct and indirect discrimination against jobseekers, as well as employees, based on gender, birth, native language, race, skin color, **age**, pregnancy, health i.e. disability, nationality, religion, marital status, family obligations, sexual orientation, political or other beliefs, social origin, property status, membership in political organizations, trade unions or any other personal characteristic. The law guarantees equal pay for the same work or work of the same value earned at the employer, but does not provide special protection for the elderly.

**The Law on Employment and Insurance in Case of Unemployment**<sup>13</sup> defines employment activities, which relate to informing about employment opportunities and conditions, mediation in employment in the country and abroad, professional orientation and career planning counseling, implementation of active employment policy measures, issuing work permits to a foreigner or a stateless person, in accordance with the law. Holders of employment are the National Employment Service and employment agencies. The Law on Employment and Insurance in Case of Unemployment stipulates that it is harder to employ an unemployed person who finds employment with more difficulty due to health condition, insufficient or inadequate education, socio-demographic characteristics, regional or professional mismatch of labor market supply and demand, or other objective circumstances.

**The Law on Adult Education**<sup>14</sup> regulates adult education as part of a unique education system that provides adults with lifelong acquisition of competencies and qualifications necessary for personal and professional development, work and employment, as well as socially responsible behavior, which is realized as formal education, non-formal education and informal learning.

#### **How is poverty defined in the national policy framework?**

The Republic of Serbia is characterized by the process of demographic aging of the population, which is manifested by the continuously growing number of old people and their high share in the total population, while the number of young people is declining and their share in the total population is low. According to data for 2019, the number of persons aged 65 and over is 1.44 million - an increase of 189,000 compared to 2011, and their share in the total population is 20.7%, which is also an increase, by 3.4 percentage points (pp) (17.2% in 2011). The increase in the number of old people, among other things, is influenced by the extension of life expectancy, which for the total population is 1.5 years - from 74.2 years in 2011 to 75.7 years in 2019. The average age of the population of the Republic of Serbia is as high as 43.3 years, which puts the Republic of Serbia in the group of Europe's oldest countries. At the same time, the number of inhabitants younger than 15, which amounts to about 992,600 in 2019, decreased by 50,000 people in the mentioned period, while the share of this group in the total population is only 14.3%.

One of the most common and biggest problems faced by the elderly is poverty, which the Protector of Citizens points out in his regular annual reports, and this problem was also recognized by the Committee on Economic, Social and Cultural Rights, which on May 23, 2013 in Geneva, in its Concluding Observations on the Second Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, expressed concern, among other, about the limited effectiveness of existing strategies to address extreme poverty in the state party, especially among refugees, returnees and internally displaced persons, members of minorities, the elderly and persons with disabilities, as well as about 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 party to expand its Poverty Reduction Strategy in order to address the extreme poverty particularly faced by members of marginalized groups, and to take all necessary corrective measures to address regional disparities affecting the equal enjoyment of economic, social and cultural rights and to allocate sufficient resources to the implementation of these strategies, taking into account the

<sup>12</sup> "The Official Gazette of RS", no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - decision of the CC, 113/2017 and 95/2018 - authentic interpretation

<sup>13</sup> "The Official Gazette of RS", no. 36/09, 88/10, 38/15, 113/17 - as amended and 113/17

<sup>14</sup> "The Official Gazette of RS", no. 55/13, 88/17 - as amended, 27/18 - as amended and 6/20 - as amended

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Declaration of the Committee on Poverty and the International Covenant on Economic, Social and Cultural Rights (E / C.12 / 2001/10) from 2001.

The Republic of Serbia, like most EU countries, is facing the problem of population aging. Older people of working age (aged 50-64) are a vulnerable group in the labor market, numbering about 1.4 million people in 2019. In the period 2015-2019, there was a decrease in this age group by 128,000 people.

The relative position of older people of working age in the labor market has improved. Activity and employment rates were increasing without exception from year to year, reaching the highest values in 2019 when they amounted to 61.1% (an increase of 8.7 pp compared to 2015) and 56.9% (an increase of 10.7 pp compared to 2015), respectively. On the other hand, the unemployment rate decreased by 5 percentage points and it was 6.9% in 2019. The improvement of the relative position of the elderly was primarily influenced by institutional changes. The first change is related to the severance pay, which, according to the amendments to the Labor Law from 2014, is paid only for the length of service with the last employer. Prior to these changes, the calculation of severance pay for the entire length of service discouraged employers from hiring older people, i.e. employers saw the payment of severance pay as a potential danger (in terms of high costs due to possible dismissal) when hiring people with long qualifying years of service. The second institutional change refers to the increase of the retirement age, which directly affected the increase of activities and employment of older people of working age. Finally, the increase in activity was influenced by the introduction of penalties for early retirement. Changes in technology and the production process have made it relatively harder for older people than others to adapt to new labor market needs. The biggest problem of these persons is outdated knowledge and skills. In an extremely unfavorable situation were those persons who were employed in the same company for a long period of time, and whose work was no longer needed to perform a certain job due to technological, economic or organizational changes. Insufficient adaptability and discouragement due to the inability to find adequate employment can contribute to these people slipping into inactivity relatively easily<sup>15</sup>.

The situation on the labor market in the Republic of Serbia, measured by the basic indicators from the Labor Force Survey, indicates a significant recovery of the labor market - the unemployment rate decreased and the employment rate increased, the number of employees increased, followed by a decrease in the number of the unemployed and the inactive. Despite this progress, conditions are still unfavorable in relation to the countries of the European Union, which can be seen in the difference of key labor market indicators of the working age population, as well as in the difference when viewing the gender gap in employment, as well as employment rate by age groups. Significant reduction in inactivity of the working age population (15-64) still does not change the status that the labor market in Serbia has one of the highest inactivity rates in the EU-28, as well as lower employment rates of young people (15-24) and older employees (55-64). The gender gap is noticeable in all these categories in favor of men<sup>16</sup>.

The absolute poverty of pensioners is lower than the poverty of the total population, the poverty of those over 65 is lower or at the level of poverty of the total population, while the poverty of those over 75 is higher than the poverty of the total population. The marked material deprivation of pensioners (65+) is slightly lower in relation to the 18+ population, and slightly higher in those over 65 and even higher in people over 75. The at-risk-of-poverty rate of pensioners is significantly lower than the at-risk-of-poverty rate of the total population. Women belonging to the older spectrum of

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<sup>15</sup> The Employment Strategy in the Republic of Serbia for the period from 2021 to 2026

<sup>16</sup> The Third National Report on Social Inclusion of the Team for Social Inclusion and Poverty Reduction, available at:

[хттп://социјалноукључивање.гов.рс/вп-контент/уploadс/2019/02/Тречи\\_национални\\_известај\\_о\\_социјалном\\_укључивању\\_и\\_смањењу\\_сиромаштва\\_2014%E2%80%932017.пдф](http://социјалноукључивање.гов.рс/вп-контент/уploadс/2019/02/Тречи_национални_известај_о_социјалном_укључивању_и_смањењу_сиромаштва_2014%E2%80%932017.пдф)

the population (65+ and 75+), as well as to the retired population, are at a significantly higher risk of poverty than men<sup>17</sup>.

The program, which is aimed at the poor, namely, financial social assistance, is designed in accordance with international practice, but it is still characterized by low coverage and low amount of assistance that is insufficient to meet basic needs<sup>18</sup>.

For elderly people who have never worked or have not worked for the minimum number of years required to exercise the right to a pension, there is no special program for providing a minimum income in old age<sup>19</sup>.

In his regular annual report for as far back as 2010, the Protector of Citizens points out that a large number of citizens were pushed below the brink of subsistence in their later years because their employers did not pay them for their work or pay for their retirement plan for years, which is the reason why they cannot exercise their full right to a pension and they become dependent on social assistance from a state that is insufficient for life costs, for which their former employers do not answer. The state is working on accepting the length of service in certain companies even though the contributions were not paid. However, it is not sufficiently known on the basis of which criteria the state helps some employers to resolve the length of service of their workers (because the obligation to pay contributions was on the side of employers, not workers), and does not help others, nor on what criteria some employers are tolerated for their non-payment of contributions into the pension fund. Current legal solutions continue to put blame on employees for damages from non-compliance with the law in terms of payment into mandatory social and pension funds. In the Republic of Serbia, there is a mandatory pension insurance, and payment into the pension fund is a legal obligation of the employer. The mandatory pension fund is public and not private, which means that the employer makes payments to the community, not the worker. However, the employee bears the damage if the employer breaks the law. The Protector of Citizens believes that everyone should exercise their full right to a pension from the obligatory public fund, regardless of whether his employer respected the law or not. It is the duty of state bodies, not citizens, to ensure compliance with legal obligations. Employers who do not pay contributions for mandatory pension and health insurance most directly violate the law and it is the obligation of the competent state bodies, not workers, to detect and sanction such phenomena.

The Protector of Citizens especially pointed out in his regular annual report for 2016 that the position of the elderly is especially made difficult by the adoption of the Law on Temporary Regulation of Pensions<sup>20</sup>, based on which pensions were reduced, but also by not being enabled to use the constitutional right to appeal in case there are doubts about the correctness of the newly determined amount of pension, which the Protector of Citizens has repeatedly pointed out.<sup>21</sup>

Austerity measures, despite changes in the law<sup>22</sup> that have resulted in a slight increase in pensioners' incomes, continue to cause a lack of sufficient material resources for many pension beneficiaries. In

<sup>17</sup> The Third National Report on Social Inclusion of the Team for Social Inclusion and Poverty Reduction, available at: [хттп://социјалноукључивање.гов.рс/вп-онтент/ушлоадс/2019/02/Треци\\_национални\\_известај\\_о\\_социјалном\\_укључивању\\_и\\_смањењу\\_сиромаштва\\_2014%E2%80%932017.пдф](http://социјалноукључивање.гов.рс/вп-онтент/ушлоадс/2019/02/Треци_национални_известај_о_социјалном_укључивању_и_смањењу_сиромаштва_2014%E2%80%932017.пдф)

<sup>18</sup> The Third National Report on the Social Inclusion of the Team for Social Inclusion and Poverty Reduction, available at: [хттп://социјалноукључивање.гов.рс/вп-онтент/ушлоадс/2019/02/Треци\\_национални\\_известај\\_о\\_социјалном\\_укључивању\\_и\\_смањењу\\_сиромаштва\\_2014%E2%80%932017.пдф](http://социјалноукључивање.гов.рс/вп-онтент/ушлоадс/2019/02/Треци_национални_известај_о_социјалном_укључивању_и_смањењу_сиромаштва_2014%E2%80%932017.пдф)

<sup>19</sup> The Third National Report on the Social Inclusion of the Team for Social Inclusion and Poverty Reduction, available at: [хттп://социјалноукључивање.гов.рс/вп-онтент/ушлоадс/2019/02/Треци\\_национални\\_известај\\_о\\_социјалном\\_укључивању\\_и\\_смањењу\\_сиромаштва\\_2014%E2%80%932017.пдф](http://социјалноукључивање.гов.рс/вп-онтент/ушлоадс/2019/02/Треци_национални_известај_о_социјалном_укључивању_и_смањењу_сиромаштва_2014%E2%80%932017.пдф)

<sup>20</sup> "The Official Gazette of RS", no. 116/14 and 99/16.

<sup>21</sup> More on that in the part of this report dedicated to social protection and pension fund and disability insurance.

<sup>22</sup> Budget System Law, "The Official Gazette of RS", no. 54/09, 73/10, 101/10, 101/11, 93/2012, 62/13, 63/13 - corr., 108/13, 142/14, 68/15 - as amended, 103/15, 99/16 and 113/17.

addition to the measures that provide funds for this group of citizens, the planned state benefits are insufficient to improve the quality of life.

Also, is still extremely widespread that citizens' requests for exercising the right to a pension are not acted upon in a timely and efficient manner, and it happens that individuals do not live to become beneficiaries of this legally prescribed right. Due to the above reasons, these people are forced to earn additional income, usually on lower paid jobs and often by doing undeclared work.

A special problem, as the Protector of Citizens points out in his regular annual report, is that middle-aged people are regarded as "old" for employers after 45 years of age and are exposed to more frequent layoffs, difficult employment and other forms of discrimination in the field of work.

What data, statistics and research are available regarding older persons living in poverty?

In 2020, the at-risk-of-poverty rate was 21.7%, and compared to 2019, it is lower by 1.5 percentage points. The risk rate of poverty or social exclusion was 29.8%, and compared to 2019 it is lower by 1.9 percentage points.

The at-risk-of-poverty rate represents the percentage of persons whose disposable equivalent income is lower than the at-risk-of-poverty threshold, which in 2020 amounted to 22,000 dinars on average per month for a one-member household. The at-risk-of-poverty rate does not show how many people are actually poor, but the percentage of people with equivalent disposable income below the at-risk-of-poverty threshold.

The at-risk-of-poverty or social exclusion rate shows the percentage of people at risk of poverty, or who are severely financially deprived, or living in households with very low-intensity work.

Observed by age, persons under the age of 18 were most at risk of poverty - 24.2%, as well as persons aged 18 to 24 - 23.6%. Persons aged 25 to 54 had the lowest at-risk-of-poverty rate - 19.6%. The at-risk-of-poverty rate for retirees is 19.4%.<sup>23</sup>

### **Progressive realization and the use of maximum available resources**

**What steps have been taken to address economic insecurity and poverty in older age and to ensure the right to an adequate standard of living for older persons?**

**What is the impact of macroeconomic policies on economic insecurity and poverty among older persons and vice versa? What policy options are available and/or implemented in order to expand fiscal space and maximize available resources to ensure economic security and the right to an adequate standard of living for older persons?**

At the end of 2014, a new three-year fiscal consolidation program was launched, which, in addition to budget savings, also stipulates comprehensive structural reforms. After the implemented fiscal consolidation measures, the general government deficit was reduced from 6.6% in 2014 to 1.3% of GDP at the end of 2016, and in 2017 it ended with a surplus of 1.2% of GDP. The effects of fiscal consolidation measures affected the real reduction of pensions and salaries in the public sector in 2017 compared to 2014. The decline in public sector wages, coupled with the growth of private sector wages, has reduced the gap between the public sector wages and those outside of it, from 14.9% in November 2014 to 3% in 2017. In the observed period, among others, the share in the country's GDP of expenditures for social protection, health, education and general public services decreased according to the functional classification of expenditures (expenditures for social protection were reduced by as much as two percentage points). The share of social transfers in GDP also decreased (from 17.8% of GDP in 2014 to 16.1% of GDP in 2017), as well as the real level of expenditures for social assistance and other transfers to the population, which in the entire observed period (2014-2017) decreased by 2.7% in real terms. This real decrease cannot be explained by the increase in the living standard of the population and the reduction of poverty, but is a consequence of the real

<sup>23</sup> Data from the Public Bureau of Statistics: <https://www.stat.gov.rs/sr-latn/vesti/20211015-siromastvo-i-socijalna-nejednakost-2020/?s=0102>

reduction of pensions and benefits for the unemployed, as well as reduced expenditures for social protection<sup>24</sup>.

### **Equality and non-discrimination**

**What measures are being taken to eliminate ageism and discrimination based on age that prevent older persons to access economic and other productive resources, including financial services, land, adequate housing and the right to inheritance?**

The Law on Prohibition of Discrimination<sup>25</sup> stipulates that employers are obliged to take appropriate measures if necessary in a particular case in order to ensure access, reasonably adapted workplace, participation, professional development and advancement in the work of employees who are in an unequal position in relation to other employees, in particular persons with disabilities, persons belonging to national minorities, women, men, persons of different sexual orientation, gender identity, the elderly and others, unless these measures would impose a disproportionate burden on the employer. The burden is not considered disproportionate if it is reduced by appropriate public and employment policy measures.

The Law on Prohibition of Discrimination also stipulates that when preparing a new regulation or public policy important for exercising the rights of socio-economically endangered persons or groups of persons, the public authority shall make an impact assessment of regulations or policies assessing their compliance with the principle of equality. The impact assessment shall include in particular: a comprehensive description of the situation in the area subject to regulation with special reference to socio-economically vulnerable persons and groups of persons; assessment of the necessity and proportionality of the intended amendments to the regulations from the aspect of respecting the principles of equality and rights of socio-economically endangered persons and groups of persons; risk assessment for the rights, obligations and law-based interests of disadvantaged employees in relation to other employees, especially persons with disabilities, persons belonging to national minorities, women, men, persons of different sexual orientation, gender identity, the elderly and others.

This Law prescribes as severe forms of discrimination: instigation and incitement to inequality, hatred and intolerance based on nationality, race or religion, language, political affiliation, sex, gender identity, sexual orientation, disability and age; spreading discrimination or carrying out discriminatory acts by public authorities and in proceedings before public authorities.

The Law prescribes, among other things, discrimination in the field of work and discrimination on the grounds of age as special cases of discrimination. Discrimination in the field of work is prohibited, i.e. violation of equal opportunities for employment or enjoyment under equal conditions of all rights in the field of work, such as the right to work, to free choice of employment, to promotion, to vocational training and professional rehabilitation, to equal pay for work of equal value, to fair and satisfactory working conditions, to rest, to education and to joining a trade union, as well as to protection against unemployment.

The Law on Housing and Building Maintenance came into force in 2017 and integrates three previously valid laws (the Law on Housing, the Law on Building Maintenance and the Law on Social Housing). The law introduced the term housing support, which is defined as "any form of housing assistance to a person who, for social, economic and other reasons, cannot solve the housing need on their own under market conditions for themselves and their family household." This law clearly prescribes who has the right to receive housing support. For the first time, the law defines the

<sup>24</sup> The Third National Report on Social Inclusion of the Team for Social Inclusion and Poverty Reduction in the Republic of Serbia, available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=http%3A%2F%2Fsocijalnoukljucivanje.gov.rs%2Fwp-content%2Fuploads%2F2019%2F02%2FTreci\\_nacionalni\\_izvestaj\\_o\\_socijalnom\\_ukljucivanju\\_i\\_smanjenju\\_siromastva\\_2014%25E2%2580%25932017.pdf&clen=5154478&chunk=true](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=http%3A%2F%2Fsocijalnoukljucivanje.gov.rs%2Fwp-content%2Fuploads%2F2019%2F02%2FTreci_nacionalni_izvestaj_o_socijalnom_ukljucivanju_i_smanjenju_siromastva_2014%25E2%2580%25932017.pdf&clen=5154478&chunk=true)

<sup>25</sup> "The Official Gazette of RS", no. 22/2009 and 52/2021

procedures for eviction and relocation of persons from a facility built contrary to the law governing spatial planning and construction of facilities, which is located on land owned by another natural or legal person. Procedures include the obligation of the competent authorities to provide adequate accommodation and other forms of support to persons affected by eviction. In addition to the law, the Rulebook on the content and manner of keeping records of eviction and resettlement procedures was drafted in order to monitor and record the eviction and resettlement procedure. When it comes to institutional frameworks, the Republic Housing Agency has been abolished, and its competencies have been transferred to the Ministry in charge of housing affairs and the Housing Council, and at the local level it is planned to form non-profit housing organizations whose licenses would be regulated by the Rulebook on the conditions and documentation needed to issue and revoke licenses for non-profit housing organizations and the manner of keeping the register and the contents of the said register. However, this process was not accompanied by the implementation of measures for education and capacity building of employees in housing agencies and other factors in the field of social housing and work with beneficiaries. In the field of social housing, strategic goals are given in the previously adopted National Social Housing Strategy and in the Action Plan for its implementation, and among other strategic documents, the goals and measures in the field of housing are given in the Strategy for Social Inclusion of Roma for the period 2016-2025 and the Action Plan for its implementation for the period 2017-2018, as well as in the National Strategy for Resolving the Issues of Refugees and Internally Displaced Persons.

Measures and programs in the field of housing and social housing continue to target two groups of households. On the one hand, it is a system of long-term support to middle- and higher-income households in providing owned apartments under favorable conditions, and on the other hand, activities are aimed at members of vulnerable social groups, most often refugees, displaced persons and Roma men and women, for whom permanent housing solutions are provided mainly from donor funds and through individual projects.

## **Remedies and redress**

**What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their economic security and enjoyment of the right to an adequate standard of living?**

The Constitution stipulates that everyone has the right to judicial protection if a human or minority right guaranteed by the Constitution has been violated or denied, as well as the right to eliminate the consequences of the violation of the right. Equal protection of rights before courts and other state bodies, holders of public authority and bodies of the autonomous province and local self-government units is guaranteed. Everyone has the right to appeal or to seek redress against any decision which may be made in respect of their right, obligation or interest.

The Republic of Serbia has ratified 8 of the 9 basic international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Generally accepted rules of international law and ratified international agreements are an integral part of the legal order of the Republic of Serbia and are directly applicable if they are in accordance with the Constitution. Citizens have the right to turn to international institutions to protect their freedoms and rights guaranteed by the Constitution.

### **Right to work and access to the labor market**

**How is the right to work and access to the labor market for older persons defined in the national legislation in your country? If such a definition is not available, how should it be defined considering relevant existing national, regional and international legal frameworks?**

The right to work and access the labor market for the elderly is not specifically defined or regulated by national legislation.

There is no agreement on the definition of an older worker, namely, depending on the author, older workers are defined as persons in the range of 45 to 60 years of age. Older workers represent an

increasingly numerous segment of the working age population and at the same time a segment which is growing in number the fastest compared to other age groups. In developed countries, about 20% of the working age population are workers over 60 years of age.

**The right to work is guaranteed by the Constitution of the Republic of Serbia<sup>26</sup>**, which guarantees the right to work, in accordance with the law. Everyone is guaranteed the right to freely choose their work. All jobs are available to all, under equal conditions, and everyone has the right to respect for the dignity of the person at work, to safe and healthy working conditions, special protection at work, limited working hours, daily and weekly rest, paid annual leave, fair remuneration for work and the right to legal protection in case of termination of employment. Women, youth and the disabled are provided with special protection at work and special working conditions, in accordance with the law. **The Constitution does not guarantee special protection and special working conditions for the elderly**, but age is recognized as a personal characteristic in the article on the prohibition of discrimination.

**The Labour Law<sup>27</sup>** prohibits direct and indirect discrimination against persons looking for employment, as well as employees, based on gender, birth, language, race, skin color, **age**, pregnancy, health condition or disability, nationality, religion, marital status, family obligations, sexual orientation, political or other beliefs, social origin, property status, membership in political organizations, trade unions or any other personal characteristic. The law guarantees equal pay for the same work or work of the same value that they earn from the employer, but does not provide special protection for the elderly.

**The Law on Employment and Unemployment Insurance<sup>28</sup>** defines employment activities, which relate to informing about employment opportunities and conditions, mediation in employment in the country and abroad, professional orientation and career planning counseling, implementation of active employment policy measures, issuing work permits for foreigners and stateless persons, in accordance with the law. The carriers of the employment activities are the National Employment Service and employment agencies. Hard-to-employ persons, in accordance with the Law on Employment and Unemployment Insurance, are unemployed persons who, due to their health condition, insufficient or inadequate education, socio-demographic characteristics, regional or professional mismatch of supply and demand in the labor market, or other objective circumstances, find it difficult to get a job. Particularly at risk are the persons who face multiple factors of vulnerability/difficulty of finding employment at the same time.

**The Law on the Prohibition of Discrimination<sup>29</sup>** contains a general provision that stipulates that it is prohibited to discriminate against persons on the basis of age. This Law stipulates that employers are obliged to take appropriate measures, if necessary in a particular case, in order to ensure access, reasonably adapted workplace, participation, professional development and advancement in the work of employees who are in an unequal position in relation to other employees, and in particular persons with disabilities, persons belonging to national minorities, women, men, persons of different sexual orientations, gender identities, older persons and the others, unless these measures would impose a disproportionate burden on the employer. The burden is not considered disproportionate if it is reduced by appropriate public policy measures in the area of work and employment. The law also stipulates that when preparing a new regulation or public policy relevant to the exercise of the rights of socio-economically vulnerable individuals or groups of individuals, the public authority shall assess the impact of these regulations or policies in which it will assess their compliance with the principle of equality. The impact assessment shall include in particular: a comprehensive description of the situation in the area subject to regulation with special reference to socio-economically vulnerable individuals or groups of individuals; assessment of the necessity and

<sup>26</sup> "Official Gazette of RS", no. 98/2006

<sup>27</sup> "Official Gazette of RS", no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – decision of the CC, 113/2017 и 95/2018 – authentic interpretation

<sup>28</sup> "Official Gazette of RS", no. 36/09, 88/10, 38/15, 113/17 – as amended, and 113/17

<sup>29</sup> "Official Gazette of RS", no. 22/2009 and 52/2021

proportionality of the intended amendments to the regulations from the aspect of respect for the principles of equality and rights of socio-economically endangered individuals or groups of individuals; risk assessment of the rights, obligations and law-based interests of employees in an unequal position in relation to other employees, especially persons with disabilities, persons belonging to national minorities, women, men, persons of different sexual orientation, gender identity, older persons and the others.

This Law prescribes as severe forms of discrimination: encouraging and fostering inequality, hatred and intolerance based on nationality, race or religion, language, political affiliation, gender, gender identity, sexual orientation and disability and age; promoting discrimination or discriminating by public authorities and in proceedings before public authorities;

As special cases of discrimination, the Law prescribes, among other things, discrimination in the field of work and discrimination on the grounds of age. Discrimination in the field of work is prohibited, i.e., the violation of equal opportunities for employment or enjoyment under equal conditions of all rights in the field of work, such as the right to work, free choice of employment, promotion in the service, vocational training and professional rehabilitation, to equal pay for work of equal value, to fair and satisfactory working conditions, to rest, to education and to join a trade union, as well as to protection against unemployment.

**The Law on Adult Education**<sup>30</sup> regulates adult education as part of a unique education system that provides adults with lifelong acquisition of competencies and qualifications necessary for personal and professional development, work and employment, as well as for socially responsible behavior, which is realized as formal education, non-formal education and informal learning.

**The National Employment Strategy for the period 2011-2020**<sup>31</sup> emphasizes that “encouraging the employment of older people (50-64 years of age) aims to increase the opportunities for people belonging to this category, as particularly vulnerable groups in the labor market of the Republic of Serbia, to find a job again”. The same document also emphasizes the need to include the elderly in adequate measures of active employment policy, the formation of an appropriate system of adult education and the acquisition of new qualifications that are in short supply in the labor market and the like.

**In the Employment Strategy of the Republic of Serbia for the period from 2021 to 2026**<sup>32</sup> *hard-to-employ* persons, in accordance with the Law on Employment and Unemployment Insurance, are defined as unemployed persons who due to their health condition, insufficient or inadequate education, sociodemographic characteristics, regional or professional mismatch of supply and demand in the labor market, or due to other objective circumstances, find it more difficult to get a job. Particularly at risk are those persons who face multiple factors of vulnerability/difficulty of finding employment at the same time.

**The Action Plan for the period from 2021 to 2023 for the implementation of the Employment Strategy in the Republic of Serbia for the period from 2021 to 2026**<sup>33</sup> prescribes, as one of the measures of active employment policy, the provision of subsidies for employment of unemployed persons from the category of hard-to-employ persons, which includes a one-time financial incentive to private sector employers, to be used to employ the unemployed persons, namely: 1. young people up to 30 years of age – without completed secondary education, young people accommodated in social welfare homes, foster families and with guardians; 2. older than 50 years of age; 3. the Roma; 4. persons with disabilities; 5. able-bodied beneficiaries of financial social assistance; 6. the unemployed who have been on the unemployment records for more than 12 months; 7. victims of domestic violence.

<sup>30</sup> "Official Gazette of RS", no. 55/13, 88/17 – др. закон, 27/18 – др. закон и 6/20 – др. закон

<sup>31</sup> "Official Gazette of RS", number 37/11

<sup>32</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi.php>

<sup>33</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi.php>

**The National Strategy on Aging**, whose validity expired in 2015, sets out the following principles: lifelong development of the individual; ensuring economic and social security and quality of life in old age; enabling full integration and participation of older people in the community; elimination of all forms of social neglect due to declining functional abilities in old age and disability; respect for diversity and consequently different needs among the population of older persons; promoting intergenerational and intragenerational transfer, solidarity and dialogue; establishing partnerships at all levels: the Government, non-governmental sector, private sector and among the elderly themselves; achieving equal opportunities for all; **As one of the strategic directions, the adjustment of the labor market to the social and economic consequences of aging of the population and the encouragement of lifelong learning is indicated.**

**The Strategy for the Development of Digital Skills in the Republic of Serbia for the period from 2020 to 2024** pointed out the need to pay special attention to taking measures in order to create more inclusive and equitable opportunities for groups that have had less opportunities to use digital technologies and develop basic digital skills due to their age. This strategy also states that a certain number of senior citizens do not have basic digital skills, which is why as many senior citizens as possible should be trained in basic digital skills.

### Scope of the right

**What are the key normative elements of the right to work and access to the labor market for older persons? Please provide references to existing standards on elements such as:**

a) **Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to employment.**

The Government of the Republic of Serbia has adopted the **Strategy for Prevention and Protection against Discrimination for the period from 2013 to 2018**, along with which the **Action Plan for the implementation of the Strategy for Prevention and Protection against Discrimination for the period from 2014 to 2018**<sup>34</sup> has been adopted. Older people are also recognized as one of the vulnerable social groups often exposed to discrimination and other forms of violation of their rights. The new Strategy for the Prevention and Protection against Discrimination for the period from 2022 to 2030<sup>35</sup>, despite the recommendations of the Protector of Citizens in its regular annual reports and the sent Opinion with recommendations<sup>36</sup> in 2020, was adopted only on 20 January 2022.

The adoption of the Law on Amendments to the Law on Prohibition of Discrimination<sup>37</sup> strengthened and regulated in more detail the protection against discrimination of the elderly in terms of employment conditions, performing work, education and professional training, as well as in terms of termination of employment.

In his Opinion, during the drafting of the Law on Amendments to the Law on Prohibition of Discrimination, the Protector of Citizens praised the prescribing of the obligation of employers to, if necessary, take appropriate measures in order to ensure access, participation, professional development and career advancement of employees who are in an unequal position in relation to other employees, and especially persons with disabilities, members of national minorities, women, persons of different sexual orientation and gender identity, older persons and the others. The Protector of Citizens pointed out in the mentioned Opinion that the Law should prescribe the obligation of reasonable accommodation, i.e., that the refusal of reasonable accommodation represents a basis for discrimination, in accordance with Article 2 of the United Nations Convention on the Rights of Persons with Disabilities, but this suggestion was not accepted.

<sup>34</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php>

<sup>35</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php>

<sup>36</sup> Available at: <https://ombudsman.rs/attachments/article/6882/Misljenje.doc>

<sup>37</sup> "Official Gazette of RS" no. 22/2009 and 52/2021

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## State obligations

**What are the measures that should be undertaken by the State to respect, protect and fulfil the right to work and access to the labor market for older persons, regarding the normative elements as provided above?**

The state should first take measures related to research and data collection, promotional activities with the aim of providing better access to employment of the elderly and increasing the employability of the elderly, provide incentives to employers in order to motivate them to employ the older persons, change the regulatory framework in the field of labor relations and the pension system, develop strategic documents and action plans, involve senior citizen representatives in issues relevant to the exercise of labor rights and access to the labor market, monitor the implementation of enacted regulations, and implement preventive measures, supervision and penal policy in case of violation of prescribed rights.

Also, it is necessary to implement measures dedicated to additional work training of the elderly, to acquire the necessary knowledge and skills, including knowledge of digital technologies, in order to be included in the new work processes.

## Special considerations

**What special measures and specific considerations should be considered in developing the normative content of the right of older persons to work and access to labour market, such as protection and regularization of older workers in informal sector, equal remuneration for work of equal value particularly for older women as well as recognition of unpaid work often carried out by older women?**

Measures and issues that the state should consider when drafting the normative content of the right of older persons to work and access the labor market are primarily defining the concept of an older person, researching and data collecting, recognizing the potential of older persons, considering issues related to special protection at work, to overtime work, night work, adapting the job positions to meet the needs of the older workforce, banning work on certain jobs, shortened and flexible working hours. Also, in order to encourage employers, tax and other benefits for the employment of the older persons should be prescribed.

When it comes to unpaid housework performed by older women, research on the use of time from 2010 and 2015 confirmed the stereotypes that apply in our area. Regardless of whether they are employed or not, women, compared to men, work twice as much at home, and spend half less time on paid jobs. For working women, working at home becomes their second shift. The biggest differences in time are with activities related to personal needs and free time. Women, regardless of their level of education, work more in total than men. The more educated they are, the more time they spend on paid jobs, just like men. Regardless of their education, women spend about four and a half hours doing household work, and men only about two hours. In 2015, women achieved a longer duration of unpaid activities in performing the activities of care for other persons and the care of their own minor children, while men mostly spent time maintaining the apartment and household and taking care of their own children. If household work were to be paid at the minimum hourly rate, € 116 per month should have been set aside for household work performed by women aged 15 and over in 2010, and € 138 in 2015, which makes for an annual total of 1390 €, or 1650 €. <sup>38</sup>

Therefore, we believe that the fact that the new Law on Gender Equality<sup>39</sup> mentions the collection and processing of statistical data on unpaid housework, as well as its evaluation, is very important. At the suggestion of the Protector of Citizens, this Law contains a provision stipulating that an unemployed person who is not insured on any other basis, acquires the right to health insurance on

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<sup>38</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>39</sup> "Official Gazette of RS", no. 52/2021

the basis of unpaid work (in the house – running a household, taking care of child upbringing, caring for other family members, as well as work on the farm, etc.).

The National Strategy for Gender Equality for the period 2021-2030<sup>40</sup> has been adopted, but, despite the suggestions contained in the Opinions of the Protector of Citizens on the Baseline and the Proposal of this document<sup>41</sup>, it was not supplemented by the following indicator: *"The number of women who have exercised the right to health insurance on the basis of unpaid work at home, if they are not health-insured on other grounds."*

**How should the responsibilities of non-State parties such as private sector be defined in the context of the right to work and access the labour market for older persons?**

Responsibility of the private sector in the context of the right to work and access the labor market can be defined by prescribing certain obligations for the non-governmental bodies and the private sector, in order to be able to exercise the right to work and access the labor market of older persons and implement penal policies if these obligations are not complied with.

**Implementation**

**What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to work and access to the labor market for older persons?**

The challenges that the state is facing relate to providing funds for the promotion of awareness of the value and benefits of providing better access to employment for older persons and increasing the employability of older persons, providing funds for the implementation of trainings, retrainings and for acquiring knowledge and skills of older persons, especially bearing in mind the digitalization of society, which are all prerequisites for starting work on changing the normative framework.

**Access to justice**

**What is the definition of the right of older persons to access justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?**

The right to access to justice for the elderly is not specifically defined. The Constitution of the Republic of Serbia prescribes the equality of all before the Constitution and the law. The RS Constitution guarantees everyone: the right to judicial protection for the violation or denial of a human or minority right guaranteed by the Constitution, as well as the right to remedy the consequences of the violation<sup>42</sup>; the right to a fair trial<sup>43</sup>; the right to equal protection of rights and

<sup>40</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi.php>

<sup>41</sup> Available at: <https://ombudsman.rs/attachments/article/7208/Мишљење%20Заштитника%20грађана.docx>

Available at:

<https://ombudsman.rs/attachments/article/7296/Мишљење%20о%20Предлогу%20Националне%20стратегије%20за%20родну%20равноправност%202021-2030.docx>

<sup>42</sup> Art. 22 Paragraph 1 of the Constitution of the RS

<sup>43</sup> Art. 32 of the Constitution of the RS prescribes:

“Everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgement on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them.

Everyone shall be guaranteed the right to free assistance of an interpreter if the person does not speak or understand the language officially used in the court and the right to free assistance of an interpreter if the person is blind, deaf, or dumb. The press and public may be excluded from all or part of the court procedure only in the interest of protecting national security, public order and morals in a democratic society, interests of juveniles or the protection of private life of the parties, in accordance with the law. “

to a legal remedy<sup>44</sup>; the right to legal aid under conditions determined by law<sup>45</sup>. In the stated guarantees, the elderly are not specifically singled out as a category. However, through the general prohibition of discrimination, the Constitution, among other things, singles out age as one of the special possible grounds for discrimination. Thus, Art. 21 of the RS Constitution, which refers to the prohibition of discrimination, prescribes that everyone is equal before the Constitution and the law (para. 1). Everyone has the right to equal legal protection, without discrimination (para. 2). Any discrimination, direct or indirect, based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability, shall be prohibited (para. 3). Special measures that the Republic of Serbia may introduce in order to achieve full equality of individuals or groups of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination (para. 4).

The Law on the Prohibition of Discrimination<sup>46</sup>, in Art. 4, paras 1 and 2, prescribes that all persons shall be equal and shall enjoy equal status and equal legal protection, regardless of personal characteristics. Everyone shall be obliged to respect the principle of equality, that is to say, the prohibition of discrimination. Art. 3, para. 1 of that Law prescribes that everyone shall have the right to get efficient protection from all forms of discrimination by the authorized courts and other public administration organs of the Republic of Serbia. The Law, in Art. 15, paras. 1 and 2, stipulates that everyone shall have the right to equal access to and equal protection of his/her rights before courts of law and public administration organs. Discriminatory treatment by the authorised official or the official in charge in a public authority in the procedure of protection of the rights of persons before courts and public authorities is prohibited. Article 23 of the said Law prescribes the prohibition of discrimination against individuals on the grounds of age.

**What are the key normative elements of the right of older persons to access justice on an equal basis with others? Please provide references to existing standards on such elements as below, as well as any additional elements:**

**(a) The guarantee of older persons' legal capacity (legal standing and legal agency) on an equal basis with others and not denied on the basis of age;**

Full legal capacity is acquired by coming of age and entering into marriage before coming of age, with the permission of the court. Guarantees are the same for all adults, that is, persons with a legal capacity, regardless of age – denials are not based on age. In our legal system, deprivation of legal capacity is regulated by the Family Law<sup>47</sup> (material and legal conditions for deprivation of legal capacity and placement under guardianship) and the Law on Out-of-Court Procedure<sup>48</sup> (procedural provisions on the procedure of deprivation of legal capacity). According to Article 146 of the Family Law, an adult who is incapable of normal reasoning due to an illness or an impairment in psycho-physical development and is therefore unable to take care of himself/herself and protect his/her own rights and interests, may be completely deprived of legal capacity (complete deprivation of legal capacity). Pursuant to the provisions of Art. 147 of the Family Law an adult who, due to an illness or an impairment in psycho-physical development, with his/her own actions, directly endangers his/her own rights and interests or the rights and interests of other individuals, may be partially deprived of legal capacity. An adult deprived of legal capacity may regain his/her legal capacity when the reasons for which he/she was completely or partially deprived of legal capacity cease to

<sup>44</sup> Art. 36 of the Constitution of the RS prescribes:

"Equal protection of rights before courts and other state bodies, entities exercising public powers and bodies of the autonomous province or local self-government shall be guaranteed.

Everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests."

<sup>45</sup> Art. 67 of the Constitution of the RS

<sup>46</sup> "Official Gazette of RS", no. 22/2009 and 52/2021

<sup>47</sup> "Official Gazette of RS", no. 18/2005, 72/2011 – as amended and 6/2015

<sup>48</sup> "Official Gazette of the SRS", no. 25/82 and 48/88 and "Official Gazette of RS", no. 46/95 – as amended, 18/2005 – as amended, 85/2012, 45/2013 – as amended, 55/2014, 6/2015 and 106/2015 – as amended

exist. The decision on the deprivation of legal capacity and the decision on the return of legal capacity is made by the court in out-of-court proceedings. The court initiates the procedure for deprivation of legal capacity ex officio, at the proposal of the guardianship authority, spouse, extramarital partner, child or parent of the person to be deprived of legal capacity, as well as at the proposal of grandparents, brothers, sisters, and grandchildren, if they live with that person in a family community. **A proposal to initiate proceedings may also be submitted by the person who should be deprived of legal capacity, if he/she can understand the meaning and legal consequences of his/her proposal.** Regarding the status in the procedure, the Law on Out-of-Court Procedure envisages the participation in the procedure of the person against whom the procedure is conducted. In that sense, Art. 35, para. 2 of the Law prescribes that, in addition to the guardianship authority, **the person against whom the procedure is conducted, his guardian, i.e., temporary representative and proposer, are summoned to the hearing.** Article 36, para. 1 prescribes that **the court will personally hear the person against whom the procedure is conducted,** and if that person is in a health institution, he/she will be heard in that institution, where the hearing will be held. However, in accordance with the provisions of para. 3 of that same article, the court may refuse to hear the person against whom the proceedings are being conducted, only if this could be detrimental to his/her health or if the hearing is not possible at all due to the mental or physical condition of that person. **A person deprived of legal capacity has the right to appeal against the decision on deprivation of legal capacity,** regardless of the state of his/her mental health, within eight days from the day when the decision was delivered to him/her (Art. 40a). The person shall be represented by a guardian.

The Law on Free Legal Aid<sup>49</sup>, in Art. 4, para. 3, item 3, prescribes the possibility of providing free legal aid to a person against whom the procedure of partial or complete deprivation or restoration of legal capacity is being conducted, under the conditions prescribed by law. Free legal aid consists of providing legal advice, drafting submissions, representation and defense.

The Action Plan for the Implementation of the Strategy for the Improvement of the Position of Persons with Disabilities in the Republic of Serbia for the period from 2020 to 2024, in the period from 2021 to 2022<sup>50</sup>, prescribes an activity dedicated to harmonizing regulations on legal capacity and guardianship with the UN Convention on the Rights of Persons with Disabilities.

In his comments on the Baseline for Drafting the Law on Amendments to the Family Law from 2021, the Protector of Citizens, among other things, pointed out in accordance with the repeated recommendations that this document, which abolishes the possibility of deprivation of legal capacity and introduces the institute of supported decision-making, is a very important step towards improving the exercise and protection of the rights of persons with disabilities<sup>51</sup>. The Deputy Protector of Citizens for the Rights of the Child and Gender Equality is a member of the Working Group for the preparation of the mentioned Draft.

**(b) Elimination of the influence of ageist stereotypes at any stage of judicial or non-judicial proceedings, including the award of damages or compensation;**

Law on the Prohibition of Discrimination<sup>52</sup>, in Art. 15, paras. 1 and 2, prescribes that everyone has the right to equal access and equal protection of their rights before courts and public authorities. Discriminatory treatment by the authorised official or the official in charge in a public authority in the procedure of protection of the rights of persons before courts and public authorities is prohibited.

<sup>49</sup> "Official Gazette of RS", no. 87/2018

<sup>50</sup> Available at: <https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php>

<sup>51</sup> Complete deprivation of legal capacity is still a legal practice in the Republic of Serbia, contrary to the provisions of the United Nations Convention on the Rights of Persons with Disabilities and the Concluding Observations of the Committee on the Rights of Persons with Disabilities<sup>51</sup>. Also, despite the Committee's recommendations, the concept of supported decision-making has not yet been introduced into the legal system of the Republic of Serbia

<sup>52</sup> "Official Gazette of RS", no. 22/2009 and 52/2021

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Article 23 of the said Law prescribes the prohibition of discrimination against individuals on the grounds of age.

**(c) Access to timely legal proceedings, especially in situations of immediacy;**

Based on the complaints that citizens send to the Protector of Citizens, it can be concluded that they often do not know the regulations and procedures for the protection or exercise of rights or they are unclear to them. It is concluded that the financial moment in some cases is the reason why they do not initiate appropriate proceedings (they emphasize inability to pay the costs of the proceedings, especially high fees and attorney services), as well as distrust in the judiciary.

In connection with ongoing proceedings, citizens often turn to the Protector of Citizens with complaints about the work of judicial bodies, dissatisfied with the length of proceedings. In that segment, the dissatisfaction of senior citizens is especially expressed, who emphasize their age and impaired health, and in that sense, a doubt whether they will exercise or protect their rights at all in the procedure they initiated. Citizens are generally aware of the right to complain about the work of the court when they consider that the procedure is being delayed<sup>53</sup>. The efficiency of the complaint itself is often questioned, bearing in mind that some citizens indicate that their complaints were assessed as well-founded, but that despite that, the procedure was not accelerated. In addition, in 2015, the Law on the Protection of the Right to Trial within a Reasonable Time<sup>54</sup> was passed, which regulates the protection of the right to a trial within a reasonable time. This Law envisages, as legal remedies that protect the right to trial within a reasonable time, primarily an objection, aimed at expediting the procedure, as well as an appeal and a request for just satisfaction. Based on the received complaints, it seems that citizens are not sufficiently familiar with the protection mechanisms prescribed by this law.

**(d) Accessibility of courtrooms, legal tribunals and other justice-related facilities to all older persons;**

So far, the Protector of Citizens has not been addressed by citizens complaining about physical barriers, i.e., inaccessibility of all elderly persons to courtrooms, courts and other facilities related to the judiciary. However, it may be important to mention that during the state of emergency, which was declared in 2020 due to the epidemic caused by the coronavirus, the Decree on measures during the state of emergency prohibited, that is, restricted citizens over the age of 65 from moving, and in that sense, also restricted their access to judicial authorities. Also, in that period, the Ministry of Justice drafted and sent recommendations for the work of judicial authorities (courts and public prosecutor's offices) and recommendations for the work of members of the judicial profession (public bailiffs and notaries), with which citizens were not sufficiently familiar.

**(e) Access to legal services, including legal assistance, legal aid, counselling and hotlines, on an equal basis with others ;**

As already stated in the Constitution of the Republic of Serbia, everyone is guaranteed the right to legal aid. Article 67 of the Constitution stipulates that **everyone** is guaranteed the right to legal aid under the conditions determined by law (para. 1). Legal aid is provided by the bar, as an independent and autonomous service, and legal aid services, which are established in local self-government units, in accordance with the law (para. 2). The law determines when legal aid is free (para. 3).

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<sup>53</sup> Art. 8 of the Law on Organization of Courts ("Official Gazette of RS", no. 116/2008, 104/2009, 101/2010, 31/2011 - as amended, 78/2011 - as amended, 101/2011, 101/2013, 106/2015, 40/2015 - as amended, 13/2016, 108/2016, 113/2017, 65/2018 - decision of the CC, 87/2018 and 88/2018 - decision of the CC)

<sup>54</sup> "Official Gazette of RS", no. 40/2015

The Law on Free Legal Aid<sup>55</sup> regulates free legal aid for citizens as its users and the ways of its realization and provision. The aim of this law is **to provide every person with effective and equal access to justice**. The law prescribes the conditions for providing free legal aid. The law singles out **older persons** as a special category when it comes to providing legal assistance in connection with accommodation in a social welfare institution without one's own consent. Art. 4, para. 3, item 11 of the Law on Free Legal Aid prescribes that a citizen of the Republic of Serbia, a stateless person, a foreign citizen with permanent residence in the Republic of Serbia and other persons entitled to free legal aid under another law or a ratified international agreement, can be provided free legal assistance also in the case of **adults and older persons who have been placed in a social welfare institution without their own consent**.

According to the legal provisions, free legal aid consists of providing legal advice, drafting submissions, representation and defense. Free legal aid is provided by the bar and legal aid services in local self-government units. Associations can provide free legal aid only on the basis of the provisions of the law governing the right to asylum and the prohibition of discrimination. The law also provides for free legal support, which consists of providing general legal information, filling out forms, compiling a notary public document and mediating in resolving disputes. Free legal support is provided by the notaries, intermediaries and law faculties.

**Regarding court proceedings, it is important to note that the Court Rules of Procedure<sup>56</sup> regulate the provision of legal aid to citizens.** Thus, Art. 101 of the Court Rules of Procedure stipulates that legal aid to citizens is provided by courts, in accordance with the law and these Rules of Procedure (para. 1). Paragraph 2 stipulates that every court is obliged, in places specially designated and visibly marked in the court building (info desk), to provide general legal information to citizens, regardless of their financial situation (on the legal status of a person, on the possibilities of achieving a peaceful settlement of disputes, information related to the court proceedings themselves and certain stages of the proceedings, on the jurisdiction of the court, certain rules of procedure, costs of the proceedings, manner and place of enforcement of the decisions, the possibility of exercising the right to primary and secondary free legal aid, information on the register of providers of free legal aid, the register of mediators for resolving disputes, as well as on the right to mandatory defense). Pursuant to paragraphs 3 and 4 of the mentioned Article, legal aid may be provided by judicial assistants and other court staff, in court in accordance with the tasks they perform. Certain information may be published by printing, by publishing or delivering a written text in the court building or in the media (website or other appropriate means).

Article 102 of the Court Rules of Procedure stipulates that in civil proceedings, **the court may submit** a written notice containing: instruction on the right to exemption from payment of the procedure costs, the right to free legal aid and free representation, the right to a free interpreter, mediation, etc (para. 1). The notice referred to in paragraph 1 of this Article may be submitted with the invitation for the preparatory or first hearing before the main hearing, in person or through a proxy, as well as in the preliminary examination procedure of the lawsuit, if the court deems it necessary, in accordance with relevant procedural law provisions (para. 2). In criminal proceedings, the court delivers a written notice to the suspect or defendant, before the first hearing, informing him of his rights during the hearing (the right to defense, defense counsel or appointment of a mandatory defense counsel, right to use a language they understand in the procedure, a translator and an interpreter, right to a confidential conversation before the hearing), in accordance with the relevant provisions of the procedural law (para. 3).

<sup>55</sup> "Official Gazette of RS", no. 87/2018

<sup>56</sup> "Official Gazette of RS", no. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 - corr., 39/2016, 56/2016, 77/2016, 16/2018, 78/2018, 43/2019 and 93/2019

Despite the mentioned normative framework, the Protector of Citizens is often approached by citizens, including the elderly, seeking legal assistance in connection with proceedings they are conducting or intend to conduct before the courts and other competent bodies, to exercise and protect their rights, or to clarify certain regulations and letters received from various bodies and institutions. This may indicate that citizens are not sufficiently informed on how they can exercise their right to legal aid and who the providers of legal aid are. This may also indicate a question of the functionality of the prescribed mechanisms. When it comes to the advocacy, in some complaints to the Protector of Citizens, citizens express distrust in the work of lawyers and believe that there is a connection between judges and lawyers. They express special distrust in the legal aid services in local self-government units.

**(f) Access to alternative, non-judicial pathways to justice, including, but not limited to, one-stop community justice centres, paralegal support, ombuds procedures or specialist commissioners**

**Mechanisms for alternative dispute resolution have been established through the normative framework.**

**The Law on Civil Procedure**<sup>57</sup> envisages an active role of the court in referring the parties to out-of-court settlement of disputes. Thus, Article 11 stipulates that the court will refer the parties to mediation or to an information hearing for mediation, in accordance with the law, i.e., it will indicate to the parties the possibility of out-of-court settlement of the dispute through mediation or in another agreed manner. **The law prescribes the possibility that** a person who intends to file a lawsuit against the Republic of Serbia may submit a proposal for peaceful settlement of the dispute to the State Attorney's Office before filing a lawsuit, unless a special regulation provides a deadline for filing a lawsuit<sup>58</sup>.

**The Law on Mediation in Dispute Resolution**<sup>59</sup> regulates the concept, principles, procedure and legal effect of mediation in dispute resolution. Pursuant to the provisions of that law, the parties may initiate mediation proceedings before or after the court proceedings have been initiated. The parties may also initiate mediation proceedings during the legal remedies proceedings or during enforcement proceedings.

**The Law on Court Fees**<sup>60</sup>, among other things, provides for the exemption of parties from the payment of fees if the civil proceedings are completed by the day of the conclusion of the first hearing before the main hearing through mediation.

**The Law on Enforcement and Security**<sup>61</sup>, in Article 137, stipulates that the public bailiff is obliged to mediate between the parties for the purpose of amicable satisfaction of the enforcement creditor.

**Judicial Development Strategy for the period 2020-2025** envisages further development of the system of alternative dispute resolution.

The Protector of Citizens is an independent government body that protects the rights of citizens and controls the work of state administration bodies, bodies authorized for legal protection of property rights and interests of the Republic of Serbia, as well as other organizations and bodies, companies and institutions which have been delegated public authority. The Protector of Citizens takes care of protection and promotion of human and minority rights and freedoms.

<sup>57</sup> "Official Gazette of RS", no. 72/2011, 49/2013 – decision of the CC, 74/2013 – decision of the CC, 55/2014, 87/2018 and 18/2020)

<sup>58</sup> Art. 193 of the Civil Procedure Law

<sup>59</sup> "Official Gazette of RS", no. 55/2014

<sup>60</sup> "Official Gazette of RS", no. 28/94, 53/95, 16/97, 34/2001 – as amended, 9/2002, 29/2004, 61/2005, 116/2008 – as amended, 31/2009, 101/2011, 93/2012, 93/2014, 106/2015 and 95/2018

<sup>61</sup> "Official Gazette of RS", no. 106/2015, 106/2016 – authentic interpretation, 113/2017 – authentic interpretation, 54/2019 and 9/2020 – authentic interpretation

**The Law on the Protector of Citizens**<sup>62</sup>, adopted on 3 November 2021, prescribes new competencies of the Protector of Citizens, i.e., stipulates that the Protector of Citizens, in addition to performing the work of the national mechanism for torture prevention, pursuant to the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>63</sup>, also performs the work of a national independent mechanism for monitoring the implementation of the Convention on the Rights of Persons with Disabilities, pursuant to the Law on Ratification of the Convention on the Rights of Persons with Disabilities<sup>64</sup> and the work of the National Rapporteur in the field of trafficking in human beings, in accordance with the Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings<sup>65</sup>. The same article also stipulates that the Protector of Citizens has the position of a special body that protects and promotes the rights of the child. The new Law on the Protector of Citizens stipulates that a complaint to the Protector of Citizens may be submitted by any natural or legal person, domestic or foreign, who considers that his or her human or minority rights and freedoms have been violated by an act, action or failure to act of an administrative body. A complaint on behalf of a natural person, with his consent, may be filed by an association dealing with the protection of human rights. Complaints about the violation of a child's right can be filed by his or her parent or guardian, as well as by an association that deals with the protection of children's rights, with the consent of the child's parent or guardian or with consent of a child older than ten. A child may file a complaint independently if he/she has reached the age of ten and is provided with professional assistance by experts in the service of the Protector of Citizens in compiling the complaint, even if he/she has not requested it. If the right of a legal entity has been violated, a complaint may be filed by a person authorized to represent the legal entity.

Despite the legal regulations aimed at instructing citizens and parties in the procedure on alternative ways of resolving disputes, the impression is that this type of dispute resolution is not sufficiently represented. From the complaints received by the Protector of Citizens, it can be concluded that citizens are not sufficiently acquainted with the mentioned possibilities. Since the Protector of Citizens does not have the authority to control the work of courts and public bailiffs, we do not have specific data on the application of these provisions. From the aspect of complaints that citizens send to the Protector of Citizens, it can be stated that a large number of pension beneficiaries (older persons) turn to the Protector of Citizens in connection with enforcement proceedings in which they have the status of enforcement debtors and in which the enforcement is carried out by suspending the pension they receive. Citizens point out that after the monthly suspensions they do not have enough money to live on, they often do not dispute their obligations and are just looking for an opportunity to reach an agreement on settling those obligations. They do not know that it is the legal duty of the public bailiff to mediate between the parties in order to reach an amicable satisfaction of the enforcement creditor (Article 137 of the Law on Enforcement and Security). The Protector of Citizens refers the complainants to this possibility, however, there is the question of application of the mentioned provision in practice.

**(k) Access to prompt remedies and redress when older persons' right to access justice is denied.**

The Constitution of the RS guarantees everyone the right to judicial protection when any of their human or minority rights guaranteed by the Constitution have been violated or denied, as well as the right to eliminate the consequences of the violation<sup>66</sup>. Regarding the denial of the right to access to justice due to violation of the right to trial within a reasonable time, it has already been mentioned that the Law on Protection of the Right to Trial within a Reasonable Time envisages, as legal remedies

<sup>62</sup> "Official Gazette of RS", no. 105/2021

<sup>63</sup> "Official Gazette of Serbia and Montenegro - International Agreements", number 16/05 and 2/06 and "Official Gazette of RS - International Agreements", number 7/11

<sup>64</sup> "Official Gazette of RS - International Agreements", number 42/09

<sup>65</sup> "Official Gazette of RS - International Agreements", number 19/09

<sup>66</sup> Art. 22. para.1 of the Constitution of the RS

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protecting the right to a trial within a reasonable time, an objection to expedite the proceedings, as well as an appeal and a request for just satisfaction. The types of just satisfaction are: 1) the right to payment of monetary compensation for non-pecuniary damage caused to a party by violation of the right to trial within a reasonable time; 2) the right to publish a written statement of the State Attorney's Office establishing that the party's right to trial within a reasonable time has been violated; 3) the right to publish a judgment establishing that the party's right to trial within a reasonable time has been violated. A party may submit a settlement proposal to the State Attorney's Office within six months from the day when it acquired the right to a just satisfaction. A party may file a lawsuit against the Republic of Serbia for monetary compensation within one year from the day when it acquired the right to a just satisfaction. The lawsuit is not allowed while the attempt to settle with the State Attorney's Office is in progress, nor if the party and the State Attorney's Office have concluded a settlement. Monetary compensation is recognized in the amount of 300 euros to 3,000 euros in dinars on the day of payment according to the middle exchange rate of the National Bank of Serbia for each case. The party may file a lawsuit against the Republic of Serbia for compensation of property damage caused by the violation of the right to trial within a reasonable time, within one year from the day when it acquired the right to a just satisfaction.

### **State obligations**

**What mechanisms or measures are necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including State obligations to respect, promote, protect, and fulfill the right?**

It is necessary to first collect data on the problems faced by the older persons in relation to access to justice, then data on the application or effects of the application of the existing normative framework, as well as data on difficulties and problems that law enforcement authorities may face in practice. After analyzing the collected data and applicable regulations, it should be assessed where the shortcomings and problems are, and appropriate actions and measures should be taken accordingly. In relation to the current regulations, through a multidisciplinary approach, activities should be undertaken in order to better inform citizens and familiarize them with the rights and opportunities available to them (especially alternative ways of dispute resolution, legal aid providers and the manner of exercising the right to legal aid and support), in which all relevant factors must be included. Measures should be taken for the purpose of education and special training of entities that implement regulations.

### **Special considerations**

What special considerations or specific issues should be included in the right of older persons to access justice, including procedural and age-appropriate accommodations as well as responsibilities of non-State actors?

The following should be considered, in relation to the older persons: the issue of the effectiveness of the system of free legal aid and legal support, the possibility of providing professional assistance in front of competent authorities in order to clarify and better understand the procedures, requirements imposed on older persons in proceedings and decisions; possibilities to simplify procedures in order to facilitate access to justice, reduce the costs of proceedings (court fees, fees).