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Table of Contents

Members of the coalition submitting information to the Committee .................................................... 2

Article 2 (2) – Non-discrimination ........................................................................................................... 4
  Position of Roma in Serbia .................................................................................................................. 4
  Discriminatory exclusion of Roma children from the right to parental allowance ......................... 4
  Discrimination against Roma in equal enjoyment of the right to adequate housing ..................... 5
  Collective centre for internally displaced Roma – “Salvatore” ....................................................... 5

Internally displaced persons ................................................................................................................ 5
  Residence requirement and access to social rights for internally displaced persons ..................... 5

Article 3 Equal Rights of Men and Women ............................................................................................. 6

Issues relating to the specific provisions of the Covenant ...................................................................... 7
  Article 7 - Minimal wage...................................................................................................................... 7
  Article 8.1 (c) The right of trade unions to function freely ................................................................. 9
  Article 8.1 (d) The right to strike ......................................................................................................... 9
  Article 9 - Right to Social Security ..................................................................................................... 10
    Arbitrary Pension Cuts................................................................................................................... 10
    Interruption in Receiving Social Benefits ...................................................................................... 11

  Article 11 - Right to Adequate Standard of Living, Including Adequate Housing ......................... 12
  Right to Water ....................................................................................................................................... 13

  Article 12 - Right to Highest Attainable Standard of Physical and Mental Health ......................... 14

Additional issues .................................................................................................................................... 16
  Free Legal Aid .................................................................................................................................... 16
Statement of interest

1. A coalition of civil society organizations and trade unions has listed below the opportunity to provide a joint input designed to assist the Pre-Sessional Working Group to formulate its list of issues and the Committee to review the performance of the Republic of Serbia under International Covenant on Economic, Social and Cultural Rights (hereinafter: Covenant, CESC). 

Members of the coalition submitting information to the Committee

2. A 11 - Initiative for Economic and Social Rights is a non-profit, non-partisan and non-governmental organization based in Belgrade, which promotes and protects the rights of individuals from vulnerable, marginalized and discriminated groups, with the focus on economic and social rights. A11 monitors the implementation of public policies, national and international regulations and recommendations of UN Treaty and Charter-based bodies, and also documents, reports and litigates cases of human rights violation.

3. Center for Politics of Emancipation (CPE) was established in 2011 with the overall aim to continually provide framework for the analyses and critical perspectives of the current socio-economic conditions and political situation, both in local and global contexts. Our aim is to raise social awareness about the causes of negative social, economic and political conditions which we locate in the capitalist system of social reproduction. Since 2017 CPE has been a member organization of the Clean Clothes Campaign (CCC) initiative.

4. Clean Clothes Campaign Serbia (CCC) is a global alliance dedicated to improving working conditions and empowering workers in the global garment and sportswear industries. Since 1989, CCC has worked to ensure that the fundamental rights of workers are respected. We educate and mobilise consumers, lobby companies and governments, and offer direct solidarity support to workers as they fight for their rights and demand better working conditions. Clean Clothes Campaign brings together trade unions and NGOs covering a broad spectrum of perspectives and interests, such as women’s rights, consumer advocacy and poverty reduction. Since 2017 CPE has been a member organization of the Clean Clothes Campaign (CCC) initiative.

5. The Centre LIVING UPRIGHT was founded in 2002. It developed from the counselling centre, which was opened by the French organization Handicap International in September 2000. It provides personal assistance service and peer support, mediates for people’s interests in the fields of education and employment, carries out research and co-publishes in the domain of independent living, equality in public speech, education, etc.

6. The Ecumenical Humanitarian Organization (EHO) is a non-profit citizens’ association that continued the work of the Ecumenical Humanitarian Service founded in 1993 upon the initiative of the World Council of Churches. It is a development organization, which through practical action is contributing to the building of a just society in which diversity is respected. EHO’s target groups are all vulnerable and marginalized groups whose human rights are compromised and/or those that are discriminated.

7. Federation of Independent Trade Unions of Kragujevac is derived from the labor movement of the late nineteenth century as a function of the struggle for a better material - social situation of workers and the redistribution of power between workers and employers. Among the first were fighting for their rights organized tanners and workers traditional footwear, construction, metal, sewing workers, through the establishment of trade union organizations.

8. United branch unions "Independence" is an independent and democratic organization of employees established in 1991, which strives to influence the acceleration of the European Union integration process and the creation of a European model of social market economy, through the implementation of European standards in economic, labour and social legislation. “Independence” is a representative trade union headquarter at the national level, a participant in tripartite social dialogue, and a full member of international
trade union organizations. The contribution of the trade unions is indisputable in protection of dignity of work, better living and working conditions, as well as in creating an atmosphere of social security.

9. **Institute for Urban Politics** was founded in 2010 as a collective *Ministry of Space*. It conducts research and analyses, develops policies, supports communities and runs educational programs in the field of democratic development of cities. Using its both activist and academic capacities and its inter-sectoral and interdisciplinary approach, the Institute works within the four main fields: Urban Commons; Governance and management of public spatial resources; Participatory urban planning; and Housing. Both as an organisation and through its members, the Institute participates in functioning of numerous international networks (INURA, FundAction, European Action Coalition for the Right to Housing and to the City, etc.).

10. **Nis Human Rights Committee** is a non-profit, non-partisan and non-governmental organization established in 1999, with the focus on provision of free legal aid to citizens whose human rights have been violated. Nis Human Rights Committee implements its activities within two strategic programs: strengthening the rule of law and protection against discrimination.

11. **ROZA Association for Women’s Labor Rights** is an non-profit NGO which empowers women to prevent violations of their labour rights or to speak out when their labour rights are violated. Our core activity is the Support Group, a mechanism through which women can share their stories with us and receive different types of help. We also actively participate in public discussions and events, we disseminate stories about labour rights, and use tools such as documentary performance to make this field more approachable. The activists of ROZA were brought together by the fact that all of them have been or still are precarious workers who have experienced labour rights violations, as well as by the desire to actively contribute to better working conditions for women.

12. **The Alliance of Independent Trade Unions of Vojvodina** is a part of the Union of Independent Trade Unions of Serbia, as one of the two representative trade union headquarters in the Republic of Serbia. The Alliance of Independent Trade Unions of Vojvodina brings together around 100,000 members of the independent trade unions of Serbia, i.e. their representative offices operating in the Autonomous Province Vojvodina.

13. **The MS Platform of Serbia** is an organization of MS patients, doctors and volunteers fighting together to make all approved DMTs available and provided by the National Health Service to everyone living with multiple sclerosis in Serbia. MS Platform of Serbia raise public awareness about multiple sclerosis and the importance of early and effective treatment.
Article 2 (2) – Non-discrimination

Position of Roma in Serbia

Discriminatory exclusion of Roma children from the right to parental allowance

14. The Law on Financial Support for Families with Children\(^1\) discriminates against the most marginalized Roma children. The Law introduces additional conditions for parental allowance, i.e. that all children in a family must be fully and timely vaccinated and that they must regularly attend elementary school and obligatory preschool education. Although these conditions, on the face of it, are neutral, their effects disproportionately affect vulnerable Roma children. This is clearly visible from data about school and preschool attendance and immunization coverage among Roma and non-Roma children. While 98% of non-Roma children attend preparatory preschool program,\(^2\) only 63% of Roma children attend this program.\(^3\) Completion rate in compulsory education among Roma girls is only 57%, compared to 93% among non-Roma girls and 95% among non-Roma boys.\(^4\) The European Commission 2019 Report for Serbia also states that “new provisions of the Law on Financial Support for Families with Children include the condition that the right to parental allowance depends on the children being vaccinated. However only 12.7% of Roma children have received all recommended vaccines, compared to 70.5% of non-Roma children in the country.”\(^5\) These data clearly suggest that these new conditions for parental allowance will have disparate impact upon Roma children, which further indicates breach of the Article 2(2) of the Covenant taken with Articles 9 and 11.

15. Even though the primary objective of the Law is not to reduce poverty, but rather to increase the birth rate among the population, the right to parental allowance plays an important role in the promotion of social inclusion. It is also pertinent to mention that even without an obligation to guarantee the specific right to parental allowance, if a state voluntarily introduces such support in domestic legislation, it must be done in line with the principle of non-discrimination.

16. Changes of the Law on Financial Support for Families with children have been announced, but not the change of the Article 25 para. 1-6 which discriminates against Roma children. The State adopted legislation manifestly incompatible with article 2.2. taken with article 9 and 11 and with Committee’s recommendation\(^6\) to take further measures in order to overcome the prevailing discrimination against Roma in the enjoyment of economic, social and cultural rights.

17. Suggested question: Given the great discrepancy in coverage by immunization and attendance of obligatory preschool and elementary education between Roma and non-Roma children, how does the State justify conditioning the right to parental allowance with timely immunization and regular attendance of and mandatory preschool and elementary school? Please explain how the exclusion of disproportionate percentage of Roma children from parental allowance is in line with the State’s obligation to ensure equal enjoyment of the right from the Covenant. Since Roma children who are not covered by immunization and mandatory preschool and elementary education are among the most disadvantaged groups in Serbia, please explain how denial of parental allowance will not adversely impact these vulnerable children nor increase their social exclusion.

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\(^{3}\) Ibid. P. 373.

\(^{4}\) Ibid, p. 4.


\(^{6}\) CESCR, Concluding observations on the second periodic report of Serbia, para. 12.
Discrimination against Roma in equal enjoyment of the right to adequate housing
Collective centre for internally displaced Roma – “Salvatore”

18. Positively, the State managed to close more than 300 collective centres and to find permanent housing solutions for more than 26,000 internally displaced persons. However, there was only one collective centre inhabited exclusively by Roma – Collective centre “Salvatore” in Bujanovac – and that is the only collective centre for internally displaced persons that still remains active, accommodating approximately 99 Roma. Living conditions in the collective centre “Salvatore” are not suitable to meet basic needs of its inhabitants and they continue to live without access to the minimum conditions necessary for a life of dignity.

Suggested question:

19. With reference to Articles 2(2) and 11 of the Covenant, how does the State explain the fact that it was able to close more than 300 collective centres (none of them being only Roma) and find permanent housing solutions for more than 26,000 of its inhabitants, while at the same time it was not able to close only one collective centre accommodating exclusively Roma, i.e. Collective centre “Salvatore” in Bujanovac? Given the harsh living conditions in the Collective centre “Salvatore”, how does the State explain the circumstance that this collective centre is the last on the list of priorities in the process of closure of collective centres?

Internally displaced persons
Residence requirement and access to social rights for internally displaced persons

20. Difficulties in residence registration present one of the biggest obstacles to accessing social rights for internally displaced persons (hereinafter: IDPs). The procedure for residence registration can be complex, disproportionately affecting Roma and IDPs from Kosovo, whose formal residence is still registered in places they left many years ago and where they do not intend or cannot return to. The option for persons without legal grounds for residence to have their permanent residence registered at the address of social welfare centre was one of the most significant steps for ensuring the access to economic and social rights for vulnerable population. However, problems and irregularities with registration of permanent residence are still quite frequent.

21. An access to services and social rights in Serbia requires a proof of residence. Positively, IDPs can exercise some rights in the place where they have registered temporary residence, such as the right to health insurance and some benefits in the field of social protection. However, registration of temporary residence requires a legal proof for housing. Internally displaced persons from informal settlements and informal collective centers, who live without legal proof of housing, are in a particularly disadvantaged position, as they are not even able to register temporary residence and, consequently, to exercise rights from the Covenant in the place of their factual residence.

22. Problems caused to IDPs by residence requirement could be illustrated by the example of informal collective center „Vozdovacki kruzni put“ in Belgrade. Its residents used to have contracts on use of flats in this collective

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7 Representatives of the A 11 – Initiative for Economic and Social Rights conducted a survey among residents of the collective centre at the end of January 2019.
8 The A 11 Initiative survey from January 2019 showed that there was only one bathroom for more than 90 persons. Housing units are not suitable to provide adequate protection against cold and damp and the roof is leaking. Documentary movie about collective centre Salvatore, prepared by A 11 Initiative, is available here.
9 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia and Kosovo, 26 February 2016, para. 41.
10 Possibility for registration of residence at the address of social welfare centre, for residents of informal settlements and other persons without legal proof of housing, was introduced by the Article 11 of the Law on Temporary Residence in 2011.
center, thus they were able to register temporary residence. However, after building of this informal collective center was sold, while they continued to live here their contracts were not renewed. When their temporary residence registrations expired, they lost the access to social rights and services, including health insurance and financial social assistance.\textsuperscript{12}

23. Covenant rights should not be made conditional on, or determined by, inter alia, a person’s place of residence.\textsuperscript{13} It is pertinent to mention here the findings of the Special Rapporteur on adequate housing that residence mechanism in Serbia and problems faced by the poor, Roma and internally displaced persons, not only hinder the enjoyment of a number of human rights, but also, in the Special Rapporteur’s view, reinforce social exclusion, stigma and discrimination.

24. \textbf{Suggested questions: Are internally displaced persons living in informal settlements, informal collective centres and without legal proof for housing, able to register temporary residence in the place they live in? If the answer is yes, please explain the procedure and required proofs/documentation. If the answer is no, please explain what rights and services are available to internally displaced persons in their place of factual residence where they do not have registered temporary or permanent residence.}

25. \textbf{Is the procedure for registration of residence at the address of a social welfare centre available to internally displaced persons with registered residence in Kosovo who wish to register their residence in the place they live? If the answer is yes, given the data on problems of internally displaced persons with residence requirements, would it not be beneficial to issue an instruction for competent bodies explaining the procedure for registration of residence at the address of social welfare centre for internally displaced persons?}

\textbf{Article 3 Equal Rights of Men and Women}

26. Situation of woman in Serbia made the CEDAW Committee to conclude that high levels of discriminatory gender stereotypes hinder the advancement of women’s right in the State party.\textsuperscript{14} The Committee particularly raised its concern about limited number of women entrepreneurs, high percentage of women who work in agriculture as unpaid family members and lack of access to social security benefits for unemployed women and women employed in the informal sector.\textsuperscript{15}

27. The data\textsuperscript{16} show that women are often exposed to more violations of labour rights than men. According to testimonials given by women of different age, educational background and working position, discrimination against women in the professional field begins even before they get the job, during their job interviews when employers often ask them inappropriate questions, such as those related to their marriage status and their plans to have kids. Many women were fired as soon as their employers found out that they were pregnant.\textsuperscript{17} In addition, women who get to keep their jobs after their maternal leave sometimes get demoted to a lower-paid position.

28. Women are often discriminated through their wages. Although women are more educated than men, they still often earn less while working on the same positions as men.\textsuperscript{18} Women are more present in generally lower-paying fields, such as the service industry (e.g. commerce, hospitality services…), seasonal jobs in agriculture, textile industry, etc. At the same time, in these fields employers often refuse to register the workers or find

\begin{itemize}
\item \textsuperscript{12}Information obtained by representatives of A 11 – Initiative on Economic and Social Rights during field visit to informal collective center Voždovački kružni put on 22 July 2019.
\item \textsuperscript{13}General comment No. 20.
\item \textsuperscript{14}The CEDAW Committee, \textit{Concluding observations on the fourth periodic report of Serbia}, 2019, para. 21.
\item \textsuperscript{15}Ibid, para. 39.
\item \textsuperscript{16}Data are gathered through the Support Group, a mechanism one of the contributing organization ROZA conducts on a regular basis and it implies off-site interviews with the workers, as well as providing them with further instructions on how to solve the problems they are facing. The stories were collected between 2014 and 2019 and they were told by women workers from different parts of Serbia.
\item \textsuperscript{17}Data gathered through Roza’s Support Group. Please see note 16 above. See also, for example, decision of the Constitutional Court of Serbia UŽ-8760/2014 of 9 November 2016.
\item \textsuperscript{18}Gender pay gap for Serbia is 11 \%, see at: \url{https://www.fren.org.rs/sites/default/files/projects/attachments/Policy%20briefs_GPG_ser.pdf}.
\end{itemize}
different mechanisms to pay their workers less than the minimum wage. Women are heavily exposed to mobbing, especially to sexual misconducts.\textsuperscript{19}

29. Some of the measures intended for the reduction of public debt and the budget deficit that the Government started introducing since 2012, proved to have adverse effect on women’s rights, especially multiply disadvantaged women (i.e. Roma women, women with disability, single mothers, rural women, etc).\textsuperscript{20} On the other hand, measures such as reduction of salaries in the public sector also affect women more than men, since women are the majority of all employees in the public sector.\textsuperscript{21}

30. **Suggested question:** Given the wide disparity between male and female workers both in terms of wages and fields of employment, please describe measures taken to address such disparities, particularly in terms of fair wages and equal pay for work of equal value? Please provide information on the steps taken by the State party to ensure that austerity measures and prohibition of employment in public sector do not disproportionately affect women, especially intersecting discrimination of women.

**Issues relating to the specific provisions of the Covenant**

**Article 7 - Minimal wage**

31. The most prominent problem in terms of wages is the fact that a significant number of employers treats minimal wage as standard and normal, while the minimum wage is supposed to be paid only in cases when the employing organization face financial struggles.\textsuperscript{22} The amount of minimum wage is such that it does not provide the minimum of existential needs of the employee and his or her family. The minimum wage doesn’t even cover the minimum consumer basket but between 60% and 65% of it.\textsuperscript{23}

32. Between 2014 and 2018, it was only in 2018 that the decision on the minimum labour cost was made through the Socio-economic Council. During the other years, the minimum labour cost was decided by the Government of the Republic of Serbia, i.e. the amount of minimum wage was not determined as a result social dialogue between the partners (trade unions, employers and the Government of the Republic of Serbia), in accordance to the Law on Social and Economic Council.\textsuperscript{24}

33. Moreover, as the practice shows, employers use different mechanisms to pay their employees even below the minimum wage. In these situations, employees are often in a dead-end situation, accepting violations of their right to the minimum wage in order to keep their jobs.

34. A significant number of employers refuses to sign an employment contract with an employee, avoiding thus to pay for their social and health care. This also allows employers to pay their workers below the minimum wage.

35. Workers involved in public works, financed by the Republic of Serbia and implemented through the National Employment Service, are paid 18,000 dinars (approximately 153 EUR) a month of full-time work, which is significantly lower than the minimum wage. This is explained by the fact that it is a temporary – occasional job, which does not represent an employment, thus there is no obligation for the employer or the Republic of Serbia to pay the minimum wage.\textsuperscript{25} With this form of work engagement the state affects the income of a large number of people, and when it speaks of reducing unemployment, the state also includes this form of work

\textsuperscript{19} Data gathered through Roza’s Support Group. Please see note 16 above.

\textsuperscript{20} For more information about the introduction of austerity measures in Serbia, please see the Report prepared by the Platform of the Organizations for Cooperation with UN Human Rights Mechanisms, also submitted to the Committee.

\textsuperscript{21} For more details, please see FemPlatz and A 11 Initiative, Submission to the Independent Expert on Foreign Debt and Human Rights, p. 4.

\textsuperscript{22} Article 111 of the Labor Law.

\textsuperscript{23} For example, the minimum consumer basket in January 2017 was 35,517.60 RSD (which is around 300 euros). (Ministry of Trade, Tourism and Telecommunications, Kupovna moć stanovništva – Potrošačka korpa). Minimal wage for the same month was 22,880.00 RSD (approximately 194 EUR).

\textsuperscript{24} Official Gazette of the Republic of Serbia no. 125/2004.

\textsuperscript{25} Information gathered by The Alliance of Independent Trade Unions of Kragujevac.
engagement in the reduced unemployment rate. Because of this, the fact such income amounts to less than the minimum wage must not be an excuse for claiming that it does not constitute employment.

36. In practice, salaries are paid in the amount lower than the minimum wage, in a way that an employee receives an amount equal to the minimum wage into the bank account, and then returns the certain amount in cash to the employer. Despite the gradual increase of the legal minimum wage over the past five years, there is still a significant number of employees who do not have access to this wage.

37. Workers in the service industry sector are also frequently exposed to working without being registered and receiving wage below the legal minimum. Similarly, women who have seasonal jobs, especially in the field of agriculture, received 1,200 RSD (approximately 10 EUR) for 9 hours of work, which is still below the minimum wage. A portion of workers earning less than the legal minimum net salary is also present in the garment and shoe industry.26 Wages present an existential problem for works in this sector. The insufficiency of their incomes is manifested, among other things, in inability to afford adequate heating in winter, to take at least five days of leave per year or to cope with an unexpected cost of 80 EUR, and in the constant delays in workers’ payments to cover rent and utilities.27

38. As the research has showed average wage in garment and sportswear industry is not going above 30% of a worker’s estimated minimum living wage. Regular violations of labour and human rights in the garment and sportswear industry in Serbia include the fields of pay, overtime, working hours, employment relationship, discrimination in employment, freedom of association and collective bargaining and forced labour due to combined piece rate and overtime to reach the minimum wage.28

39. Other major rights violations include: disrespectful treatment of workers, intimidation, pressure from supervisors; an atmosphere of fear is created and there is the constant threat of dismissal and relocation; restricted or banned toilet use; illegally excessive overtime, sometimes legitimised through ‘agreements’ with workers; unpaid or inadequately paid overtime (according to law, overtime premium should be 26%); polluted air and dusty workplaces, generally poor air quality at work; excessive heat in summer, often leading to workers fainting (max. temperature by law: 28°C), freezing temperatures in winter; illegally prolonged use of short-term contracts beyond two years • no full annual leave granted.29

40. All the above-mentioned irregularities are direct violations of the country’s labour and international human rights laws. However, the lack of any repercussions for companies suggests that authorities turn a blind eye to these violations.

41. The public sector is not immune to underpaying its workers either.30 The Labor Inspection does not take action against employers who violate the Labor Law regarding the working hours. This occurrence is especially expressed in trade, where it is a common practice for workers to have only two days off in one month, while the other days they work 8 or more hours.31

42. Workers are forced to sign an agreement on termination, when concluding an employment contract, without a recorded date, which employer activates at his discretion, thus avoiding the procedure of dismissing the worker and denying him the severence pay, which he is entitled to under the Labor Law.32 There is no self-initiative of the Labor Inspection, nor trust of workers in the Labor Inspection, so that applications to the Labor

26 For more information, please see: https://cleanclothes.org/livingwage/europe/country-profiles/serbia.
27 For more information, please see: https://cleanclothes.org/livingwage/europe/country-profiles/serbia/view.
28 Ibid.
29 Ibid.
30 Going through a financial crisis, the public hospital in Zrenjanin obliged the women who worked as cleaners and hygienists to sign an agreement allowing the hospital to pay them 19,000 RSD (161 Euros) per month. In 2017, when this started happening, the legal minimum was 22,880 (193.8 Euros) per month. This practice was used as an austerity measure so the hospital wouldn’t fire any workers but, at the same time, it was a discriminatory practice affecting the lowest-paid employees. Hospital workers on higher positions were not obliged to sign such agreements. Data gathered through Roza’s Support Group. Please see note 16 above.
31 Information gathered by The Alliance of Independent Trade Unions of Kragujevac.
32 Ibid.
Inspection are submitted only in an emergency situation or when the employment contract has already been terminated.\textsuperscript{33}

43. Suggested questions: Please indicate whether the national minimum wage in the State party provides workers and their families a decent living. In what way are employers discouraged to fictitiously pay their employees the minimum wage amount with the obligation to pay back a certain amount? Are the penal policy and adequate monitoring appropriate to suppress this phenomenon? Please provide information on the monitoring, investigations, and sanctions brought about in cases in which the right to just and favourable conditions of work and minimum wage have been violated.

Article 8.1 (c) The right of trade unions to function freely

44. Trade union membership is limited by fear of job loss and the undesirability of union organization and action, which is then restricted in practice by many forms of pressure and obstruction, as well as by hindering a trade union registration\textsuperscript{34}. Most often, in the practice of trade union with employer action, it happens that employer, due to his trade union status and activities as employees’ representative, cancels the chief commissioner’s employment contract, fines him or transfers him to another job under less favourable conditions.\textsuperscript{35}

45. Violation of the right to function freely is reflected in cases of the loss of representativeness of trade unions, which often criticized the employers in public, pointing to possible abuses of the position by the employer. This occurs despite the fact that union representatives enjoy special protection under the law.

46. A concrete example is the trade union “Independence RGZ” (Republic Geodetic Authority), in which a new trade union was formed during the strike, and a large number of the newly employed on the probation period became members under the pressure of the employer. The employer unlawfully made expulsion from representative unions without notice, in order to reduce the number of non-affiliated members, and to keep the trade union below the legal minimum for establishing representativeness.

Article 8.1 (d) The right to strike

47. The right to strike represents an integral part of the right of trade unions to organize and function freely, and one of the indicators of the degree of democratic society, development and social power of the trade union movement. In practice, there is a retaliation against the participants of the strike, upon completion, as it was the case with the Republic Geodetic Authority.\textsuperscript{36}

48. The Law on Strike passed in 1996 is still in force. Due to changes in the definition of the right to strike, which was brought by the adoption of the 2006 Constitution of Republic of Serbia, the reform of labour legislation, and changes in other regulations governing the strike as well, a new Law on Strike has to be adopted in order to harmonize with those regulations.

49. The Draft Law on Strike, presented by the Ministry of Labor, Employment, Veteran and Social Affairs in April 2018 activities of public interest are still defined too broad and practically transcribed from the existing law passed in 1996. Activities of general interest should only be those where the interruption of work would call into a question the safety and health of population. It is also necessary that social partners have the possibility to participate in establishing the minimum work process in these activities, and that priority is given to the procedures for the peaceful settlement of disputes.

\textsuperscript{33} Ibid

\textsuperscript{34} After public criticism of the employer and strikes, public companies unions often lose their representativeness. For more information, please see: https://insajder.net/sr/sajt/vazno/15005/.

\textsuperscript{35} For example, presidents of trade unions in State owned companies Utva and Zastava oruzje were made redundant and their contracts terminated. The president of trade union in the company Zastava oruzje was returned to work after the intervention of the domestic and international stakeholders.

\textsuperscript{36} Data gathered by The Federation of Independent Trade Unions of Kragujevac.
50. Suggested questions: What is the percentage of cases where discrimination and violation of the protection of trade union representatives have been established, and what sanctions have been applied in those cases? What is the percentage of trade unions or union branches that went on strike and how many of them did lose their representativeness afterwards? What is the composition of the members of the working group for drafting the Law on Strike, how many comments coming from the trade unions, professional public and the civil society organizations have been adopted after the public debate on this law?

Article 9 - Right to Social Security

Arbitrary Pension Cuts

51. In October 2014, Serbia adopted the Law on the Temporary Provisions for the Administration of Pension Payments which introduced progressive cuts to all pensions higher than 208 EUR. This cutback affected around 40% of pensioners. Despite the fact that these pensions are contributory benefits and that entitlement to this benefit is linked with the payment of contributions which pensioners were paying throughout their years of service, no compensation mechanism was established. Reductions of pensions were introduced ex lege, automatically. No legal remedy was provided for. Pension cuts were introduced unselectively, without considering individual circumstances of each case and impact of this reduction on enjoyment of rights from the Covenant. There was no assessment suitable to determine if reductions would impose an excessive burden on pensioners.

52. As reduction of pensions were introduced by the law, in general manner, without issuing individual decisions subjectable to judicial or administrative review, pensioners were denied the right to legal remedy. This is in contradiction with the requirement that the withdrawal, reduction or suspension of benefits should be subject to due process and obligation to provide access to effective judicial or other appropriate remedies and adequate reparation.

53. As there was no right to legal remedies in individual cases, initiatives for assessment of constitutionality of the Law were submitted to the Constitutional Court. First, in October 2015 the Constitutional Court passed a controversial ruling dismissing the initiative. Later, when circumstances changed, budget deficit reduced and dozens of new initiatives for assessment of constitutionality of the Law submitted, the Constitutional Court was avoiding to issue a decision for more than three years, i.e. as long at the Law remained into force.

54. The Law (only) apparently spared the poorest – as those pensioners with pensions below 208 EUR were excluded from pension cuts. However, due to lack of individual assessment, this does not mean that those who are the poorest and vulnerable were indeed excluded from pension cuts – a pensioners with pension below 208 EUR (who were excluded from pension cuts) could have other sources of income. while for many of those

37 Official Gazette of the Republic of Serbia, No. 116/2014. The Law was temporary only by its name, as it did not announce for how long the “temporary” pension cuts would be enforced. Even though its title suggests that the Law regulated the method of pension payments, it actually introduced progressive cuts of pensions.

38 For more details, see Jurij Bajec, Pensioners’ right in Serbia: assessing the impact of fiscal consolidation measures, European Social Policy Network, ESPN, 2016/2011.

39 See, for example, separate dissenting opinion to the decision Iuz-531/2014 by judge Dragan M. Stojanović.

40 Ibid.


42 Iuz-531/2014 of 23.9.2015. Bearing in mind importance of this issue and number of persons affected (i.e. 40% of pensioners), the Constitutional Court should have at least issued meritorious decision. However, the Constitutional Court found that initiatives were unacceptable because the reasons set forth for the challenge did not support the claim that there were grounds for initiating a procedure for assessing the constitutionality of the Law. This means that the Court did not assess the constitutionality of the stated Law, but only admissibility of allegations and reasons presented in the submitted initiatives. For critics of such approach, see for e.g. dissenting opinion to the decision Iuz-531/2014 by judge Katarina Manojlović Andrić and judge Bosa Nenadić.

43 Two judges of the Constitutional Court, in their separate opinions, emphasized that Court avoided – without a justified reason – to issue a decision on new initiatives for assessment of the constitutionality of the Law. It was only in April 2019 – more than six months after the Law ceased to exist - that the Court discussed new initiatives for the first time. More details about unacceptable length of the procedure before the Constitutional Court are available, for example, in separate concurring opinion on the decision Iuz-351/2015 by Judge Korhecz Tamás and separate dissenting opinion by Judge Milan Škulić.
affected with pension cuts, their pension amounting to 208 EUR or higher could be the only source of income and individual circumstances could make this reduction to become an extensive burden. However, such individual assessment and the right to remedy were not available, as the Law did not provide for it and the Constitutional Court concluded that it was not necessary to issue an individual decision in each case of the reduction of pension.\textsuperscript{44}

55. The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of the existing social security coverage.\textsuperscript{45} The fact that pension cuts in Serbia lasted for four years, without periodical reviews suitable to determine if reductions were (still) justified, necessary and proportionate, imposes a conclusion that these restrictions were arbitrary and unreasonable. Furthermore, there was no participation of affected group in examining this measure and its alternative.

56. In order to be considered legitimate, a measure which restricts the existing social benefits, should be re-examined in every budget year, but legislator failed to provide for such reassessment. The Constitutional Court also failed to examine if pension restrictions introduced by the Law were justified two or three years after the beginning of the implementation of the Law.\textsuperscript{46} Arbitrariness of pension cuts and shortcomings of the approach of the Constitutional Court of Serbia are easily detectable when compared with decisions of the Constitutional Court of Lithuania and its doctrine on the possibility of limitation of social rights during an economic crisis.\textsuperscript{47}

57. In the light of the fact that there was no right to legal remedy in individual cases, that the first initiative for assessment of the Law in abstracto was rejected by the Constitutional Court as inadmissible, while dozens of subsequent initiatives were ignored for as long as the Law remained in force, the examination of these measures appears to be of utmost importance. The Committee’s own role in this regard is rendered even more important by the fact that, unlike the case of other population groups such as women and children, no comprehensive international convention yet exists in relation to the rights of older persons and no binding supervisory arrangements.

58. **Suggested question:** Was there a right to individual decision and right to appeal for pensioners affected by reduction of pension? Was there a mechanism suitable to examine if reduction of pension in individual case imposed excessive burden resulting in violation of the rights guaranteed in the Covenant? Please provide an example of decision examining if reduction of pension in individual case imposed excessive burden resulting in violation of the rights guaranteed in the Covenant. Were pension cuts the result of public debate with ensured participation of affected population and relevant experts? Does the State intend, once that crisis is over, to compensate amounts of benefit that were reduced on the basis of the Law on Temporary Regulation of the Method of Pensions Payment? Please explain how the State intends to compensate losses for these pensioners.

**Interruption in Receiving Social Benefits**

59. The amount of financial social assistance in the Republic of Serbia is often insufficient to cover basic expenses, such as a rent in social housing and utility bills, as it amounts to approximately 71 EUR\textsuperscript{48}. The European

\textsuperscript{44} See, for example, separate dissenting opinion to the decision Iuz-531/2014 by judge Dragan M. Stojanović and by judge Bosa Nenadić.

\textsuperscript{45} CESCR, General Comment No. 19, The right to social security (art. 9).

\textsuperscript{46} Separated concurring opinion on the decision Iuz-351/2015 by judge Korhecz Tamás. The Court failed to determine if limitation of pensions was justified and proportionate after circumstances changed, when budget deficit was significantly reduced, and pensions were increased for certain categories of pensioners in 2016. Regarding increases of pension in 2016, please note that these increases were rather minor when compared to the reductions imposed by the Law. Jurij Bajec, *Pensioners’ right in Serbia: assessing the impact of fiscal consolidation measures*, European Social Policy Network, ESPN, 2016/2011.

\textsuperscript{47} Unlike the Serbian Constitutional Court, the Lithuanian Constitutional Court sets clear limits to the legislator’s interference with social rights, including that reductions are allowed for no longer than one budget year and that reduced pensions must be compensated. For more details, please see Tom Birmontiene, *The Challenges Faced by the Constitutional Court of Lithuania during the Global Economic Crisis*, Collection of Papers, Faculty of Law, Niš, No. 69, 2015.

\textsuperscript{48} For the nominal ammount of financial social assistance, please see the Decision of the Minister for Labor, Employment, Veteran and Social Affairs, Official Gazette of the Republic of Serbia no. 81/2018
Committee of Social Rights has determined that the amount of social assistance to which the socially vulnerable individuals in Serbia are entitled is clearly inadequate and does not exceed the poverty line.\(^{49}\) In practice, this amount is further reduced by the (fictitious) amount of “missed earnings”, i.e. by attributing the income that an individual could have achieved even though he/she actually did not make it.\(^{50}\) Special Rapporteur on the Right to the Adequate Housing also noted that social benefit entitlements in Serbia are, for the most part, inadequate\(^{51}\) and, for persons who are capable of work, they are provided for just nine months of the year.\(^{52}\) Three-month interruption in the receipt of financial social assistance pushes the beneficiaries even deeper into poverty and often puts them at risk of staying homeless due to the inability to pay for utility services and rent.

60. Serbia is currently in the procedure of amending the Law on Social Welfare. However, the State ignored the findings of the CESCR, Special Rapporteur on Housing and of CoE’s Committee of Social Rights, as the Draft Law on the Amendments to the Law on Social Welfare\(^{53}\) did not abolish either the interruption in receipt of financial social assistance, or the reduction of social benefits for amount of (fictional) missed earnings. By continuing with interruptions of social benefits and reductions of already inadequate amount of social benefits, State continues to act in contradiction with its obligation under the Article 9 and with the Committee’s recommendation to prevent any unjustified interruptions in the allocation of social security benefits.\(^{54}\) The Interruption in receiving financial social cash assistance is not only relevant to the article 9, but also to examination of the article 11 as it leaves vulnerable persons without an access to a minimum essential level of benefits.

61. Suggested questions: Please explain how the State intends to take forward the Committee’s recommendation to refrain from unjustified interruptions in the allocation of social security benefits? Please explain why reductions of financial social assistance through attributing fictional missed earning have not been abolished despite the findings of The Special Rapporteur on the Right to Adequate Housing and European Committee of Social Rights that amount of social benefits is manifestly inadequate.

**Article 11 - Right to Adequate Standard of Living, Including Adequate Housing**

62. Adequate housing is an increasing challenge in Serbia. High percentage of private ownership in the housing sector limits significantly the possibilities of the non-market-led housing solutions and the state lacks political will and sufficient resources to provide the alternative housing solutions and invest in public, affordable housing.

63. Affordable housing solutions are vaguely defined and regulated, which often prevents people from understanding their right to housing alternatives. The Law on Housing and Maintenance of Apartment Buildings\(^{55}\) from 2016 overwrote the previous Law on Social Housing from 2009, introducing the mechanism of Housing support. However, although the Law also provides basic types of housing support, as well as the main target groups, there is no further legislation that elaborates on this mechanism.

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\(^{49}\) European Committee of Social Rights, Conclusions 2017 – Serbia – Article 13 Paragraph 1 – Adequate assistance for every person in need, available at: http://hudoc.esc.coe.int/eng/?i=2017/def/SRB/13/1/EN.

\(^{50}\) Pursuant to the Article 102 of the Law on Social Protection and the Rules of Forms in the Procedure for Exercising the Right to Financial Social Assistance, 62 social welfare centres determine the missed earnings that the individual has not made, but could have made in the opinion of the social welfare centre.

\(^{51}\) Special Rapporteur on the Right to Housing. The Special Rapporteur stated that monthly benefits are inadequate and should be increased by at least 33 per cent in order to reach the threshold below which recipients are at risk of poverty.

\(^{52}\) Article 85 para. 3 of the Law on Social Welfare.


\(^{54}\) CESCR, Concluding observations on the second periodic report of Serbia, para, 24 (c).

64. Even though evictions are already mentioned in the Committee’s observations from 2014, they have only intensified over the years. In these cases, the State protects the institute of private property, rather than the right to adequate housing. According to the records of the initiative "Roof over our head" fighting the evictions, in previous two years, there have been over 150 eviction attempts, many of which were prevented only through a struggle and solidarity of this organisation’s members and supporters.

65. **Homelessness**, as the most extreme form of housing deprivation, is highly neglected in the state policies. As, is the case with the subject to housing in general, there are no comprehensive and reliable data for Serbia in this matter as well. According to the study produced by the Housing centre in 2012, following the ETHOS typology of homelessness, there was an estimate of somewhere between 800,000 and 900,000 homeless persons in Serbia at the time. On the other hand, a study based on the 2011 census, produced by the State Bureau for Statistic in 2014, states that there are 445 primary homeless persons, while the number of the secondary homeless is 17,842. The significant discrepancy between these two estimates points to the urgency of investing effort into the provision of relevant data on various housing aspects. In addition, the existing shelters have insufficient capacities and the state does not attend to the sub-standard settlements that most often represent the only housing accommodation that homeless persons can access.

66. **Suggested questions:** A) **Evictions:** Relying on the state’s response in the Third periodic report, how does the state protocol for evictions defines "adequate alternative accommodation" and aside from the right to give a full consent, in how many cases did the evicted agree to the relocation? How is the alternative accommodation determined and what level of participation from those in threat of eviction is present in that process? Are the cases of evictions fully documented and registered? Is that data available to the public (respecting the privacy of the persons involved)? B) **Affordable housing (Housing support):** Taken that every policy must be based on reliable baseline data, what instruments does the state use in order to map and monitor the complex situation of housing needs among its population (there are various groups with different levels of housing deprivation and housing needs)? What concrete housing support programs does the State implement or plans to implement in order to answer diverse housing needs? How are the mechanisms and different types of housing support, introduced by new Law on Housing, further regulated? In what way is the state investing in development of affordable housing (building public homes, supporting cooperative housing, etc.)? How is the housing support addressed in the national and city housing strategies currently being created? In what way did the state ensure that potential housing support users participate in the process of finding housing solutions? Given that the housing policies must be an inter-sectorial matter (including finances, social policies, building, etc.), how is such approach ensured in creation and implementation of housing policies?

**Right to Water**

67. When it comes to water supply, 20% of the population is not connected to water supply network. Out-of-date, disregarded and neglected infrastructure is a cause of various problems like unsuitable water quality. Today, around 75% of the urban population are connected to public sewer system, whereas this percentage drops to as little as 9% in rural areas. Overall, the total of 55% of settlements are connected to sewer system, whereas only 9.8% of municipalities have effective wastewater treatment. In Belgrade, over the last couple of years,
illegal construction has been gradually destroying the area surrounding water sources, the so-called water source sanitary zones. Therefore, the unplanned construction largely puts such function in jeopardy.

68. The greatest problem lies in the incapability of the state to secure distribution of quality drinking water to everyone. Measurements of water arsenic show that 102 cities, towns and villages in Vojvodina, numbering 653,160 citizens in total, are endangered. Drinking water poses risk to the lives of the citizens living in these cities. Bottled water puts a household of four to expense of at least 50 euros, whereas the average net monthly salary in one of the affected cities is around 293 euros. Therefore, apart from the fact that the water coming from the public water supply system is poisonous, alternative access to water, namely its purchase, is a luxury for many. However, Vojvodina is not the only critical area when it comes to drinking water quality in Serbia. As demonstrated by the research carried out by the Institute of Public Health of Serbia - Batut, out of 155 tested urban water supply systems in Serbia, only 57.4% water supply systems meet microbial or physical and chemical safety.

69. As an attempt to reduce reliance on fossil fuels, more than 100 small hydropower plants have been constructed in Serbia and 856 small hydropower plants have been earmarked. Small-scale hydropower projects threaten the future of some of Serbia's most unspoilt waterways and for sure will deprive livestock of water. And what is utterly unacceptable, the local population’s lives are completely disrupted as people do not have access to sufficient quantities of water in the channel along sections several kilometres long.

70. **Suggested question:** Please provide information on how the State party ensures that all individuals, in particular members of disadvantaged and marginalized groups, have access to adequate water. Given the data on high content of arsenic in drinking water in 102 cities in Vojvodina, please provide information on measures undertaken to address the stated problem. Please also provide information on construction of small hydropower and its impact on local populations and livestock of water.

**Article 12 - Right to Highest Attainable Standard of Physical and Mental Health**

71. New Law on Health Insurance stipulates that 65% of the cost of health service is provided to a person who fails to undergo a mandatory cancer screening if a disease which is subject of these screening is diagnosed before the next screening cycle begins. In other words – they will be forced to cover up to 35% of the total cost of the treatment. For individuals who are unable to pay the remaining 35% of the cost, the consequence may be the complete lack of health care. By imposing such an unfair and disproportionate sanction for missed screening, the Law on Health Insurance most severely affects those who are the poorest and unable to participate in the payment of treatment costs, which is fundamentally contrary to the provisions of the paragraph 12 (b) and 18 of the Committee’s General Comment No. 14 on the Right to the Highest Attainable Standard of Health (Art. 12). Stated provisions of the Law on Health Insurance will disproportionately affect women, who are beholden to all three cancers covered by the mandatory screening (breast cancer, cervical cancer and colon cancer), as compared to men, who are only beholden to only one cancer screening.

72. **Suggested questions:** Please explain what measure the State will undertake to prevent that sanctions for missed mandatory cancer screening disproportionately affect women and rural population. Please explain situation of persons who are not able to pay 35% of costs of cancer treatment. Please explain how imposing poor condition of the very water sources and, as a result, of reduced drinking water quality. Please see CPE, *Water as Commons, Contribution to the Struggle against Privatization of Water Supply*, p. 21 (Serbian only).

61 The most critical situation is in Zrenjanin, Subotica and Novi Bečej. According to avove mentioned research, water concentration of arsenic went as high as 194 µg/L. In Subotica, up to 99 µg/L of water arsenic was measured at several different locations. In Novi Bečej, 13,000 citizens use water with arsenic content as high as 273 µg/L. Although this is 27 times higher than the permitted maximum, the authorities have neither forbidden the use of drinking water nor secured alternative water supply sources.


obligation to pay 35% of costs of expensive cancer treatment will not adversely impact vulnerable groups and their enjoyment of the rights under the Covenant.

73. **Roma without documents** are still facing difficulties in access to health insurance, and lack of access to health insurance has a particularly serious impact on Roma women and their access to adequate prenatal and maternal health care. Roma women giving birth without health insurance receive high bills and are exposed to threats in order to pay for medical treatment, i.e. for giving birth in hospital without health insurance. The Law on the Realization of Health Care for Children, Pregnant Women and New Mothers, adopted back in 2013, regulates the manner of exercising the right to health care for children, women and new mothers whose health insurance documents are not certified. However, it ignores those women and children who are not able to obtain health insurance documents at all, such as undocumented Roma.

74. Situation of Roma women and children in the area of health care led the Committee on the Rights of the Child to conclusion that Roma mothers and young children are “particularly vulnerable and continue to have limited access to adequate maternal and general health care, resulting in high mortality rates (...).” The CRC Committee further recommended the State to “strengthen efforts to ensure that access to adequate health care, including prenatal care for uninsured pregnant women, is extended to families living in the most vulnerable situations, particularly those living in marginalized and remote areas”.

75. **Suggested question:** Please explain how the State intends to take forward the recommendation of the Committee on the Rights of the Child to ensure that access to adequate health care, including prenatal care for uninsured pregnant women, is extended to families living in the most vulnerable situations. Please provide information about the access of undocumented Roma children to preventive health care in legislation and in practice.

76. Of the 14 worldwide registered drugs for MS treatment, only four medicines in Serbia are prescribed and covered by compulsory health insurance funds (Betaferon, Rebif, Avonex, Copaxone). These are the first-generation drugs that are not suitable for the treatment of all, especially aggressive forms of disease, and it is estimated that only around 12% of patients are covered by the therapy at the cost of the Republic Health Insurance Fund (RHIF). This means that around 90% of MS patients in Serbia are practically untreated because these and other modern drugs registered for MS treatment are unavailable, especially when comparing their extremely high cost with overall standard of living in Serbia. The basic postulate of MS treatment is that therapy should start as soon as possible, that is, immediately after the diagnosis. Delaying therapy means accumulating damage and quickly reaching a severe neurological and functional deficit, and consequently developing some form of disability.

77. **Suggested question:** Provide information on what measures the State will undertake to ensure that all MS patients are treated as soon as possible at the cost of compulsory health insurance.

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64 For more details, please see FemPlatz and A 11 – Initiative for Economic and Social Rights, *Information for the Committee on the Elimination of Discrimination against Women, Pre-session Working group for the 72nd session on reviewing the Republic of Serbia*, p. 6-8.
66 Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Serbia*, 7 March 2017, para. 45 (b).
67 The response of the Ministry of Health of Republic of Serbia no. 9-00-00017/2019-06 from 17.07.2019. to the notice given by the member of Parliament Tatjana Macura at the sitting of the Parliament of the Republic of Serbia 27.06.2019.
68 In the response to the request for access to information of public importance, no. 07-33/19-2 from 25.03.2019, the Republic Health Insurance Fund provided the information that at the cost of the compulsory health insurance, 1083 MS patients are treated, out of a total of 9000 patients, as estimated by the MS platform of Serbia, based on the hospital records.
69 From the studies of monitoring the natural course of disease in MS patients who have not received any therapy, it is known that after twenty years of untreated disease, 50% of patients walk with stick, and that after thirty years 70% of them are in wheelchairs. For more information, please see: https://msplatforma.org.rs/therapy/?lang=en
Additional issues

Free Legal Aid

78. Experiences of submitting organizations in providing free legal aid show that adequate system of free legal aid is a necessary precondition for ensuring the equal access to social services for the Roma and other marginalized groups. The Law on Free Legal Aid⁷⁰ that will come into force on 1 October 2019 denies the possibility of CSOs to provide free legal aid⁷¹ and CSOs will only have the possibility of providing legal support, which, in many cases, is not enough for the most vulnerable citizens.

79. Law on Free Legal Aid states that local self-governments will, within 12 months from the date of the law’s entering into force, set up a legal aid service. According to experience so far, it is easily noticeable that the local self-governments do not have capacity, i.e. human resources for provision of legal aid.⁷² Having in mind the prohibition of new employment in public sector,⁷³ submitting organization express their concern about establishing of a free legal aid service, as required by the law, since this regulation makes it difficult to recruit officials to work on provision of free legal aid.

80. **Suggested questions:** What is the reason for narrowing the possibility of providing free legal aid from CSOs to only providing legal support in a situation where there are obviously not enough providers of free legal aid? Will additional funds be allocated from the budget of the Republic of Serbia to help the local governments to establish/empower the services of free legal aid in local governments where there are no funds? How will the gap between the needs of the local government for professional staff to provide free legal aid and prohibition of new employment in public sector, be overcome?

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⁷¹ Limited exceptions are prescribed in the Article. 9, para. 2 of Law on Free Legal Aid.
⁷² Even though the obligation of establishment of a free legal aid system in local self-government units (LSGU) stems from the Constitution, in June 2018, in Vojvodina, out of 45 LSGU, free legal aid was available only in 28 units. See EHO, *Report on the Implementation of Local Policies relating to the Status of Returnees under the Readmission Agreements in Vojvodina in 2018*, p. 2. Out of 174 LSGU in Serbia, 59 have one or more providers of free legal aid, while in 115 units there are no mapped providers of free legal aid. See YUCOM, *Map of providers of free legal aid*.
⁷³ Measure of prohibition of employment in public sector was introduced by the Regulation on the procedure for obtaining approval for new employment and additional work engagement public funds users, ("*Official Gazette RS*” no. 113/2013, 21/2014, 66/2014, 118/2014, 22/2015 and 59/2015).