



THE REPUBLIC OF SERBIA
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Ombudsman

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The Role of the Serbian Ombudsman as NHRI in Development Human Rights through Legal Initiatives

According to the provision of the Law on Protector of Citizens, The Ombudsman in Serbia has the power, not only to amend existing laws, but to propose to the Government or the Parliament new laws in order to advance and better and fully protect human rights in certain areas. This possibility has been used in only one case, so far.

Child's rights are the area in which advancements are needed. The legal position of a child in the national law is not comprehensively assured, even less coordinated. Many laws, by-laws, regulations, general acts, strategic documents, etc. have different provisions concerning children. As a result, there are overlaps, different formulations for the same issue, loopholes, lacunae left for free interpretation of the law and even lack of comprehensive legal definition of the child. Different sectors (police, jurisdiction, social protection, health, education, etc.) act independently in accordance with "their" (sector) laws, cooperating poorly and without an integrated approach to the rights of the child. In practice, this results in unnecessary delays and/or unresolved cases.

Apart from the said, the Serbian Ombudsman's decision to start work on the Law on the Rights of a Child is grounded on the Concluding Observations of the Committee on the Rights of the Child, where this body expressed its concern about "the lack of a comprehensive Children's Act". The Committee therefore recommended that "the State party shall...consider adopting a comprehensive Children's Act".

The same concern has been expressed by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Serbia (13-17 October 2008): "Serbia still lacks a comprehensive Children's Act for the protection and promotion of children's rights...", so he has also recommended "formulating and adopting a comprehensive Children's Act, following consultation with non-governmental and international partners".

Recognizing that a comprehensive children's act such as a Law on the Rights of the Child, with a holistic approach, is a way to: a) include representatives of all Government departments participating in implementation and protection of the rights of the child and b) harmonize

legislative framework relevant to the rights of the child, the Serbian Ombudsman has initiated the drafting of the Law on the Rights of the Child (hereinafter: the Draft Law). In September 2009 the Ombudsman established a Working group, composed of national experts chaired by professor Nevena Vuckovic Sahovic, a former member of the UN Committee on the Rights of the Child (2003 - 2009).

The Working Group set the structure of the Draft Law, with an idea for it to be an organic law. The Draft Law sets principles and general provisions particularly relevant to the rights of the child. The Draft Law elaborates each and every child's right and sets forth principles of protection of the child and of implementation of the child's rights in different settings and circumstances (family, school, health and social institutions, public places, court and administrative proceedings, etc).

The Draft Law partially follows the structure of the CRC. It has general provisions (including principles); parts/chapters on: civil and political rights, rights of the child in family environment and alternative care; child's right to health and health protection; economic, social and cultural rights; child's right to education; special protection measures; mandate of public authorities in protection and implementation of the rights of the child.

The Working group has completed the work on the first Draft. In the course of 2011 number of consultative meetings and public debates will be organized, gathering different national and international experts, regional and international partners, public bodies, NGOs, representatives of children and general public – all who are expected to significantly contribute to the best quality of this Draft Law. This process will also help all stakeholders to feel the ownership in the drafting process as well as provide an excellent opportunity for a dialogue and necessary legal reform in this area.

Undertaking this drafting process, the Serbian Ombudsman made a kind of precedent, as in Serbian political practice it is the Government that proposes new laws or amendments of the existing. The Serbian Government, experts and the public in general recognise the Ombudsman as an important stakeholder in legal reform in Serbia, which gives hope that drafting and proposing a child rights act such as the Law on the Rights of the Child, will eventually be embraced by parliamentary majority.

In 2010, the Government has already included the drafting of the laws of the child as a part of the Action plan for the Implementation of the National Strategy for Prevention and Protection of Children from Violence, for a period 2010 - 2012. Moreover, the Parliamentary Working group for the rights of a child, which is the permanent parliamentary body, supports the work of Serbian Ombudsman in preparation of comprehensive Child Act, from the very beginning.

Serbian Ombudsman will be ready to submit the Draft to the Parliament, in late 2011.