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Role of Ombudsman in human rights protection in a contemporary state

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Abstract

The paper presents an analysis of the legal status of the Protector of Citizens (Ombudsman) in the Republic of Serbia. The system analysis method was used allowing a comprehensive review of the ombudsman's role in protecting the fundamental human rights and freedoms in Serbia. As a result, being an essential element of human rights protection, the Serbian ombudsman was ranked strong; this is also evidenced by the practice of the Protector's activities. The author comes to the conclusion that the Serbian legislators used the most advanced international experiences in developing the institution of the Protector of Citizens.

Keywords: Constitutionalism, Legitimacy, Ombudsman's Immunity, Citizens.

Papel del defensor en proteger derechos humanos en el estado contemporáneo

Resumen

El documento presenta un análisis del estado legal del Protector de los Ciudadanos (Ombudsman) en la República de Serbia. El método de análisis del sistema se utilizó para permitir una revisión exhaustiva del papel del defensor del pueblo en la protección de los derechos humanos y las libertades fundamentales en Serbia. Como resultado, al ser un elemento esencial de la protección de los derechos humanos, el defensor del pueblo serbio fue clasificado como fuerte; esto también se evidencia en la práctica

de las actividades del Protector. El autor llega a la conclusión de que los legisladores serbios utilizaron las experiencias internacionales más avanzadas en el desarrollo de la institución del Protector de los ciudadanos.

Palabras clave: Constitucionalismo, Legitimidad, Inmunidad del Defensor del Pueblo, Ciudadanos.

1. INTRODUCTION

The ombudsman's institution has existed in global practices for more than two hundred years. Having emerged at the beginning of the 19th century in Sweden, the ombudsman's institution (literally translated from Swedish as a representative authorized to protect the rights of others) at the current stage is becoming an indispensable component of democratic legal systems of almost one hundred and forty countries of the world. The general principles of organization and activities of the ombudsman for human rights were developed for more than two hundred years of its global spreading within the framework of various legal systems. In accordance with these principles, the Ombudsman became a special body that oversees the activities of governing bodies, public services, and local governments, whose decisions and actions can directly violate guaranteed rights and freedoms of an individual (Jovičić, 1984; Polovchenko, 2002; 2017a; 2017b). Modern Serbia constitutes no exception to this process; the ombudsman's institution has existed in this country for more than fifteen years (Pajvančić, 2003; Khosianah, 2019). Thus, in accordance with Part 1 of Article 138 of the 2006 Constitution of the Republic of Serbia, the Protector of Citizens (Ombudsman) is an independent state institution that protects the rights of citizens and supervises the activities of governing bodies; it is also authorized to exercise legal protection of property rights

and interests of the Republic of Serbia, as well as other bodies and organizations, enterprises and institutions authorized to exercise power. Consequently, the Protector of Citizens is an institution for the supervision of public authority in the interests of protecting the rights of citizens (Pajvančić, 2014). Moreover, in accordance with Part 2 of Article 138 of the RS Constitution, the Protector of Citizens is not authorized to oversee the activities of the National Assembly, the President of the Republic, the Government, the Constitutional Court, the courts, and the Prosecutor's Office bodies. Such layout resulted in a fact that the activities of the supreme bodies of state power of Serbia are not among the objects of supervision of the Protector.

Also, noteworthy is the fact that the Law on the Protector of Citizens interprets its competence much more broadly in reference to the rights and freedoms of minorities (as well as foreign nationals) as objects of protection in Serbia. So, in accordance with Part 2 of Article 1 of the Law on the Protection of Citizens, the Protector ensures the protection and development of human and minority rights and freedoms. Further, in accordance with Part 3 of Article 1 of the Law on the Protector of Citizens, the term citizen refers not only to an individual with Serbian citizenship but also to a foreign national, as well as to Serbian or foreign legal entity. Thus, the range of human rights activities of the Serbian Protector is much wider than stated in the name of this body (Stojanović, 2009).

As mentioned above, the 2006 Constitution defined the Protector as an independent body; Part 1 of Article 2 of the Law on the Protector of Citizens specified that no one (including the Serbian National Assembly)

has the right to have a hold over Protector's activities and specific acts. At the same time, according to professor Marijana Pajvančić, the independent position of the Protector of Citizens in the constitutional system of the Republic of Serbia is guaranteed both by the order of election and dismissal (by an absolute majority of the National Assembly) and by the presence of an immunity equal to the Assembly members (Pajvančić, 2009). When exercising powers within the framework of own competence, the Protector acts in accordance with the Constitution, laws and other normative acts, as well as ratified international treaties and generally accepted norms of international law (Article 2 of the Law on the Protector of Citizens).

2. RESEARCH METHODOLOGY

A number of general scientific methods of cognition were used within the framework of the conducted research (techniques of formal and dialectical logic, the ascent from the abstract to the concrete method, etc.). The theoretical and cognitive potential of general scientific methods was applied to the subject of research with reference (but not mechanically) to the goals and objectives of legal knowledge of the institution of the Protector of Citizens. In this respect, the system analysis used as the main method of research allowed the author to comprehensively consider the institution of the Protector in the structure of the Serbian human rights advocacy. The fact is that in a modern state a citizen is often confronted by a complex governmental apparatus, and in case of unlawful excess or non-fulfillment by officials of their official powers, judicial protection of rights

and freedoms may be ineffective. Moreover, the litigation is usually quite lengthy and requires significant legal costs, including attorney fees.

Therefore, appealing to the Ombudsman as a special independent body is an effective complement to the human rights activities of the jurisdictional bodies. The use of a formal legal method for analyzing modern Serbian legislation governing the legal status of the Protector of Citizens of the Republic of Serbia allows concluding that Serbia has created a reliable legal basis for the independence of the Ombudsman as an extrajudicial organ of human rights protection. The independence of the Ombudsman is ensured both by the order of the Protector of Citizens election and termination of powers, relevant immunity and indemnity, the prohibition on certain activities that cause a conflict of interest in exercising the powers of the Protector of Citizens, and, of course, by the non-political nature of the Ombudsman's activities. In the pursuit of human rights advocacy, the Serbian Protector of Citizens acts not so much as a state body (along with jurisdictional bodies and a prosecutor's office), but as an independent and a reputed social entity and a part of the democratic state regime. Also, it clearly follows from the analysis of the powers of the Protector of Citizens (using the specific sociological method); such powers are not of a mandatory or oppressive, but of revealing, proactive, and preceptorial character.

3. RESULTS AND DISCUSSION

3.1. Foundations of legal status of protector of citizens

The most important aspect affecting the status and effectiveness of the powers of this institution is the procedure for electing and terminating of Protector's powers. In accordance with Part 3 of Article 138 of the Constitution and the Law on the Protector of Citizens of the Republic of Serbia, the Protector of Citizens is elected and dismissed from office by the National Assembly. The Protector is elected on the recommendation of the Committee on Constitutional Affairs by a majority of votes of the total number of deputies. Any deputy group of the National Assembly has the right to propose the candidacy for election to the position of the Protector of Citizens to the Committee; several deputy groups may propose a single candidate. The decision of the Committee on Constitutional Affairs to make a proposal on a candidate for the election of the Protector is taken by a simple majority of votes of the total number of members of the Committee. Before making a decision to submit a proposal on a candidate, the Committee on Constitutional Affairs may decide to hold a meeting, at which all candidates will be given the opportunity to express their positions regarding the role and procedure for exercising the functions of the Protector (Art. 5 of The Law on the Protector of Citizens). However, the election procedure deserved the candid criticism from the Serbian constitutionalists. Namely, the fact that in accordance with the Law such proposal can come from just one political institution (deputy group), that is, actually from one political party, gives weighty reasons to say that it will be difficult for the Protector to preserve the character of a politically neutral government agency. As professor Stojanović has aptly noted, the politicization of this institution would oppose the basic settings of the Serbian legislators, which in all other cases tried to reasonably ensure the status of the Protector as an independent and politically neutral government body (Stojanović, 2009).

According to Part 4 of Article 4 of the Law, the Protector of Citizens is elected for a term of five years and the same person can be elected to this position for no more than two consecutive terms. According to Ratko Marković, a five-year term and an opportunity to be re-elected are fully justified, since they reduce the dependence of the Protector on the parliamentary majority (Marković, 2006). Also, the term of appointment of the National Assembly is four years, there through the Protector can no longer be re-elected by the same composition of the National Assembly. As for the other conditions, a citizen of the Republic of Serbia must meet the following requirements to be elected to this position:

- 1.To hold a Law degree;
- 2.To have at least ten years of professional experience in legal affairs which are of significance for the performance of tasks within the competences of the Protector of Citizens;
- 3.To have distinguished professional skills and high moral integrity;
- 4.To have a remarkable experience in the field of the protection of the rights of citizens.

The Protector of Citizens (with all deputies) shall swear the following oath before taking office: I do solemnly swear to perform my duties responsibly, impartially and independently, in compliance with the law and the Constitution and to conscientiously work on the protection of human rights and freedoms. The Protector takes an oath before the

National Assembly (Art. 7 of the Law on the Protector of Citizens). The Protector takes office upon taking the oath. Conversely, if the Protector does not take office within 30 days from the moment of taking the oath without valid reasons, then this official is considered not elected, which is determined by the National Assembly on the basis of a notification from the Committee on Constitutional Affairs. In this case, the procedure for electing a new Protector (Article 8) is to be conducted without delay.

Another guarantee of the independent status of the Protector is a constitutional prohibition for individuals and bodies to carry out state and public functions if there is a conflict of interests with their other functions, activities or private interests (Article 6 of the Constitution of the Republic of Serbia). Article 9 of the Law on the Protector of Citizens specifically states that the exercise of the Protector's powers is incompatible with the exercise of other state powers or professional activities, as well as with other duties or activities that may affect Ombudsman's independence and autonomy. In addition, in accordance with the Law on the Protector of Citizens, the latter is considered as the holder of the status of an official in reference to the regulations governing the conflict of interests in the exercise of state powers; the Protector is also a subject to the provisions of the relevant law (Part 3 of the Law on the Protector of Citizens). In addition, according to Part 2 of Article 9 of the Law, the Protector cannot be a member of a political party, which undoubtedly limits the ombudsman's ability to manifest political commitment. Thus, upon assuming the position of the Protector of Citizens, a person must cease to exercise all public, professional and other functions, and respectively, the powers and duties that were previously exercised (if there is a contradiction with any provision of the law), as well as discontinue

membership in political organizations. Moreover, the 2007 amendment to the Law on the Protector of Citizens introduced a provision in accordance with which the Protector is not entitled to make statements of a political nature (Article 10). This amendment was undoubtedly aimed at ensuring complete indifference towards politics in the activities of the Protector of Citizens.

The most important guarantee of the independence of the ombudsman's activities is a special procedure and the grounds for the termination of the powers of the Protector of Citizens. Thus, according to Article 11 of the Law on the Protector of Citizens, the term of office of the Protector shall cease in the following cases: the end of the mandate; loss of re-election; death; resignation; loss of citizenship (determined based on the act of the competent state body); reaching the retirement age with the availability of conditions for the appointment of a pension meeting requirements for mandatory retirement pursuant to the law; dismissal; the onset of persistent physical or mental incapacity to exercise the inherent powers (established on the basis of the conclusion of the relevant medical institution) (Fira, 2007). The Protector of Citizens can be mandatorily dismissed from office on the basis of following grounds established by the Law:

- 1.If the Protector holds other public function or engages in a professional activity, duty or task that might influence an ombudsman's independence and autonomy, or if the Protector acts contrary to the law regulating the prevention of the conflict of interests in performing public functions;

2.If convicted of a criminal offense which makes this person unsuitable for the vested powers;

3.Or due to incompetence or negligence in discharging vested duties and responsibilities.

According to Ratko Marković, the last of the three above-mentioned grounds (incompetence or negligence in discharging vested duties) is simultaneously evaluative and not clearly established which obviously does not contribute to the stability of the position of the Protector of Citizens (Marković, 2014). As for the procedure of dismissal, The Protector of Citizens shall be dismissed from office by the National Assembly, following the proposal of the Committee or at least one-third of the total number of deputies. If the Committee initiates the motion for dismissal, it must be supported by a majority of the members of the Committee. At the same time, the Protector of Citizens has the right to address the members of the National Assembly at the session in which ombudsman dismissal is to be discussed (Article 12).

The powers of the Protector of Citizens may be suspended by the decision of the National Assembly. Thus, according to Article 13 of the Law on the Protector of Citizens, following the recommendation of the Committee, the National Assembly may reach a decision to suspend the Protector of Citizens in situations when the Protector is convicted for a criminal offense which makes this person unsuitable for vested duties, whether the particular sentence is still not enforceable. The decision to suspend the powers of the Protector of Citizens is made by a majority vote of the deputies of the National Assembly present at the meeting (if the

majority of the total number of deputies is actually present at the same meeting). Also, the National Assembly shall abolish a decision on the suspension as soon as the reasons for suspension are terminated.

In the event of the end of the office of the Protector on the grounds established in Article 11 of the Law on the Protector of Citizens and not related to dismissal from office, the National Assembly makes a decision in which it establishes the conditions for the end of office without a debate. Legal consequences of the end of office shall come into effect as of the date the decision was passed (Article 15). In this case, a Deputy designated by the Protector to replace him/her when absent or prevented from work is performing the vested duties until the election of a new Protector. The election of the new Protector of Citizens shall be made the latest within 6 months from the end of the office of the preceding Protector (Article 16). Another important guarantee of the independence of the Protector of Citizens is the personal immunity, which, in accordance with Part 3 of Article 138 of the Constitution of the Republic of Serbia, the Protector uses on a level with the deputies of the National Assembly.

Thus, the Protector of Citizens cannot be held criminally or otherwise responsible for the expressed opinion or position in the performance of vested duties. Nevertheless, for opinions that are expressed while not on duty, the Protector shall be liable on a par with other citizens, unless he/she refers to immunity or is deprived of immunity by the decision of the National Assembly. Referring to immunity, the Protector cannot be arrested or imprisoned and criminal and other procedural proceedings cannot be instituted against him/her without the consent of the National Assembly. However, the Protector may be arrested without the

consent of the National Assembly only if he/she was detained at the site of the crime, for which a penalty of imprisonment for a term of more than five years is provided. The governing body that instituted proceedings against the Protector of Citizens (who did not invoke immunity) is obliged to notify the National Assembly of the commencement of proceedings¹. Moreover, even if the Protector did not refer to immunity, the National Assembly may decide on its application and, if necessary, exercise the powers of the Protector of Citizens. If the National Assembly applies immunity to the Protector who did not invoke the right of immunity, then the case against the Protector shall be suspended (Article 38 of the Law on National Assembly). The decision to revoke the immunity of the Protector of Citizens is taken by the National Assembly by a majority of votes of the total number of deputies (Article 10 of the Law on the Protector of Citizens) as advised by the competent Assembly committee ².

The indemnity is another of undoubted guarantees of the independence of the Protector of Citizens activities. Thus, according to Article 36 of the Law on the Protector of Citizens, the Protector is entitled to a salary in the amount of the salary of the Chairman of the Constitutional Court. This means that the position of the Protector is one of the highest paid in the state. As for the financial means spent on the activities of the Protector of Citizens, they are provided as a separate entry in the expenditure side of the budget of the Republic of Serbia. The institution of the Protector is preparing a project for financing its activities for the next year and submitting it for consideration by the Government of

¹Within the framework of the criminal and other cases to which the law of immunity was applied, the procedural time limits are not valid' (part 5 of Article 103 of the RS Constitution, (part 9 of Article 38 of the Law on National Assembly).

² The procedure for making this decision is detailed in the Rules of the National Assembly

the Republic of Serbia for further inclusion in the draft budget of the Republic; the project for financing the ombudsman activities should be drafted in accordance with the methodology and criteria applied to other recipients of budget funds. The annual appropriations of the Protector's activities must be sufficient to ensure its efficient performance, and must also comply with the macroeconomic policy of the Republic of Serbia (Article 37 of the Law on the Protector of Citizens) (Vasić et al., 2015).

Along with the exercise of supervisory human rights advocacy, the Protector of Citizens can act preventively in order to implement and protect human rights and improve the work of the governing bodies. Thus, in addition to initiating and prosecuting cases of violations of the rights and freedoms of citizens, the Protector of Citizens of the Republic of Serbia has the right to act as a mediator and counselor, express an opinion or otherwise influence the improvement of the activities of government and the protection of human rights and freedoms in general. In this case, the Protector prevents a potential violation of the law, educating members of the public and informing employees of government bodies on the procedure for the enforcement of the rights and freedoms of citizens and the methods of their protection (Milanović and Hadžividanović, 2006).

3.2. Competence and standard operating procedures of the protector of citizens

The key to the status of the institution of the Protector of Citizens is the question of its competence. Since the ombudsman's institution is the structure that oversees and restricts power in the interests of protecting the

individual rights, the competence of the Protector in the Republic of Serbia, according to the fair opinion of Marković, is directly related to the implementation of two classic ombudsman's functions: 1) protection of rights and freedoms; 2) supervision over the legitimacy and expediency of the activities of the governing bodies (Marković, 2008). The Serbian ombudsman has broad powers within the designated functions. However, the most significant of this function is the supervision over observance of the rights of citizens by recording violations of laws, other regulatory and general acts caused by the actions (or omissions) of government bodies.

At the same time, particular attention should be paid to the fact that the Protector in accordance with Part 2 of Article 138 of the Constitution of the Republic of Serbia and Article 17 of the Law on the Protector of Citizens is not authorized to supervise the activities of the National Assembly, the President of the Republic, the Government, the Constitutional Court, the courts and prosecutors, which, according to professor Pajvančić, is a significant limitation of the powers of the Protector of Citizens (Pajvančić, 2004). In all fairness, it has to be added that in most other European countries, even the so-called strong ombudsmen institutions do not supervise the activities of the highest state authorities (Baglai et al., 2016). At the same time, the supervision exercised by the Protector of Citizens is not limited only to juristic one. Thus, according to Dr. Marković, the supervision by this institution should not be limited only to the overwatch for legitimacy, but also should include the expediency, efficiency, and even justice (Marković, 2014). Indeed, in addition to the correctness in the application of the legal acts, the Protector of Citizens of the Republic of Serbia monitors compliance of the authorities and employees of the governing bodies in the course of

their professional activities with the rules of conduct that characterizes effective governance, including respect for dignity, ethics, integrity, professionalism and objectiveness.

Analyzing the status of the Protector of Citizens of the Republic of Serbia from the point of view of comparative jurisprudence, noteworthy is the fact that the institution of the Protector is a mixed establishment. So, on the one hand, the Protector is the sole body that carries out human rights advocacy activities in all spheres of public life (army, police, protection of children and national minorities). On the other hand, the Protector has four deputies assisting in the exercise of ombudsman powers within the limits established by law. Concurrently, delegating the powers to deputies, the Protector pays particular attention to ensuring differentiation in the exercise of their powers, especially with regard to the protection of the rights of prisoners, gender equality, the rights of children, the rights of members of national minorities and the rights of persons with disabilities (Article 6 of the Law on the Protector of Citizens). Thus, each of the deputies conducts the human rights activities in a particular area of public practice under the guidance of the Protector of Citizens.

Thus, the Protector of Citizens has the right to supervise the activities of the governing bodies on the complaints of applicants or following own initiative in order of a special investigation. The Protector acts following own initiative when on the basis of the knowledge or information obtained from other sources (including contingency measures and anonymous tips) considers that human rights and freedoms were violated by an act, action or omission of the corporate body. Citizens, foreigners, and legal entities (regardless of state affiliation) who consider

that their rights have been violated by the act, action or omission of the governing body (Part 1 of Article 25) have the right to file a complaint to the Protector. In case of violation of the rights of the child, the complaint on behalf of the minor may be filed by the parent or other legal representatives. If the rights of a legal entity were violated, the complaint may be filed by a person authorized to represent the respective legal entity (Part 2 of Article 25).

Herewith, the Protector of Citizens advocacy is a subsidiary in the sense of human rights because as a general rule, it is carried out only when all other legal remedies have been exhausted. Thus, the Protector does not replace the existing instruments of state control over the activities of governing bodies and officials and means of protecting the rights of citizens, but is an addition to the existing mechanisms for the legal and institutional protection of civil rights (Nenadić, 2018). That is why an obligatory prerequisite for filing a complaint to the Protector is the attempt of the person, whose rights have been violated, to protect them with the help of the relevant jurisdictional procedure. At the same time, the ombudsman is obliged to notify the affected person of the need for the initial passage of the relevant jurisdictional procedure (if such is provided by law), since the Protector does not have the right to take the case for consideration until all remedies have been exhausted (Section 25 of the Law on the Protector of Citizens).

Yet, in exceptional cases stipulated by Part 5 of Article 25 of the Law on the Protector of Citizens, the Protector may initiate proceedings before exhaustion of all remedies, if this can prevent irreparable damage, or if the complaint was related to a violation of the principles of effective

governance, namely, the incorrect treatment of the complainant by the governing body, violation of the terms of the trial, or other violations of the rules of ethical behavior by administrative personnel. The Protector of Citizens, as a rule, does not consider anonymous complaints. However, in exceptional cases, if an anonymous complaint is considered as the basis for the proceedings, the Protector may initiate proceedings following own initiative (Part 7 of Art. 25).

The complaint to the Protector of Citizens is to be submitted either in written form or orally to a recording device. In practice, complaints are usually sent by letter or filed directly at the office; they are also received by phone and email. The Protector's office also provides assistance in writing a complaint. There are no fees or any other types of payments for filing a complaint and assisting in its writing.

The complaint itself must contain the name of the body, the actions of which are contested, a description of the violated right, evidence confirming the facts stated in the complaint, information about which legal means were used, as well as information about the complainant. There is also a precautionary term in relation to filing a complaint with the Protector of Citizens. So, the complaint must be filed within one year from the moment of violation, respectively, from the last action or omission of the governing body, which violated the rights of a citizen (Article 26). The Law on the Protector of Citizens pays special attention to the protection of the rights of individuals serving sentences in places of deprivation of liberty. Thus, they have the right to file a complaint in a sealed envelope; all institutions involved with the people deprived of their liberty must provide free access to such envelopes, which must be ensured by the

administration of these institutions and controlled by the Ministry of Justice (Article 27).

It will be observed that in addition to the institution of the Protector of Citizens, ombudsmen also operate in autonomous entities and local government units of the Republic of Serbia; such ombudsmen are not in a hierarchical relationship with the Protector and carryout human rights advocacy, overseeing the activities of the governing bodies of the autonomous province or local self-government. Therefore, constructive relationships aimed at consolidating the human rights protection have been established between the Protector of Citizens of the Republic of Serbia, the regional ombudsmen, and civil rights defenders/ombudsmen of local government units (Nenadić, 2018). For example, if the Protector receives a complaint concerning violations of civil rights by an action or omission of the governing body not related to violation of laws or republican secondary legislation, but in violation of the regulations of the autonomous region or local self-government bodies, the Protector immediately transfers such a complaint to the regional ombudsman or civil rights defender of local self-government.

The reverse is true when the ombudsman of an autonomous region or local government receives a complaint related to the violation of legislation or republican regulations; the ombudsman immediately hands over such complaints to the Protector of Citizens. However, if the complainant indicates violations of both the Law and republican by laws at the same time, as well as normative acts of the autonomous region and local government units, the institution which actually received such complaint (Protector of Citizens, regional ombudsman or civil rights

defender/ombudsman of the local government) initiates the procedure and takes the necessary actions within its competence. The copy of such complaint is to be sent to other competent authorities (Protector of Citizens, regional ombudsman or civil rights defender/ombudsman of the local government) to act in pursuance of their powers (Article 35 of the Law on the Protector of Citizens). And so, in accordance with the Law on the Protector of Citizens, the latter is obliged to take into consideration any complaint, except in cases where:

1.The subject of the complaint does not fall within the competence of the Protector;

2.The complaint failed to meet the filing deadline;

3.The complaint was filed prior to the use of all available legal remedies, and there are no grounds for applying the provisions relating to irreparable damage or violations of good governance principle;

4.The complaint is anonymous;

5.The complaint does not contain the data necessary for the proceedings, and the applicant did not eliminate the deficiencies during the designated time provided for or did not turn to the Protector's advocate service for professional assistance in the correction of such deficiencies. Hence, the grounds for refusal to accept a plea for consideration by the Protector of Citizens are compiled into the exhaustive list. In all the above cases, the

Protector rejects the complaint and notifies the applicant with a mandatory indication of the reasons for rejection (Article 28). The Protector of Citizens issues a notification on the commencement and termination of the proceedings to the applicant and the governing body whose actions (or omissions) have been appealed. The Protector has the right in some reasonable cases not to disclose the applicant's personality to the governing body. At the same time, the governing body, whose actions were appealed, is obliged to respond to all the requirements of the Protector, as well as to provide all the requested information and documents within the time limits set, which cannot be less than 15 or more than 60 days (Article 29).

In addition, the authorities are obliged to cooperate with the Protector of Citizens, providing access to the premises and presenting all the data they have that are important for the ongoing investigation (respectively performing also the preventive activities), regardless of the degree of the data confidentiality with the obvious exception of cases that contravene the law. The Protector also has the right to interrogate any employee of the governing body when it has great importance for the resolution of the case under investigation. For that matter, the Protector is obliged to maintain the confidentiality of information received both during and after the termination of the exercise of vested powers. Furthermore, the Protector has the right of free access to authorities and other places of detention of persons deprived of their liberty, as well as the right to communicate with such persons outside of anyone's presence (Article 22 of the Law on the Protector of Citizens).

After all the necessary facts and circumstances have been established, the Protector notifies the applicant either that the complaint was found invalid, or whether the violations in the activities of the governing body were confirmed. The relevant body is also notified of the violations detected, with the mandatory indication of the recommendations and deadlines for the correction. According to the general rule established in the Law on the Protector of Citizens, the governing body is obliged to inform the Protector within 60 days from receipt of recommendations on whether this governing body has taken received recommendations under advisement and whether the violations (if any) in this body's activities has been eliminated, or about the reasons why this body did not take action in accordance with the recommendations of the Protector. At the same time, in exceptional cases containing the risk that due to the absence of the elimination of violations in the activities of the governing body, the applicant's right may be significantly violated, the Protector in the recommendation issued to the relevant authority may determine a shorter correction period, which still should last for at least 15 days (Article 31).

If the governing body, whose actions were appealed, will independently eliminate the violations, then the Protector has the right to dispatch a notice to the applicant giving the right to decide from 15 days whether the applicant is satisfied with the actions taken by the relevant body. If the applicant agrees with the corrective actions taken by the governing body, or if the applicant does not respond to the notice of the Protector during the term set, then the proceedings are to be terminated (Article 30). If the governing body fails to fulfill given recommendations at the time specified by the Protector, the latter is entitled to notify the public, the National Assembly and the Government of the Republic of

Serbia. Besides, to promptly solve issues in the field of human rights advocacy, the Protector of Citizens has the right to directly contact the President of the Republic, the Chairman and members of the Government, the Chairman of the National Assembly, the Chairman of the Constitutional Court and officials of the governing bodies; all of the mentioned officials are required to receive the Protector of Citizens upon Protector's request within 15 days.

Moreover, the most stimulating from the point of view of satisfying the human rights advocacy requirements is the Protector's right to issue formal recommendations for the dismissal of the official responsible for violating civil rights, as well as bringing an employee of the governing body responsible for violating civil rights to disciplinary responsibility, especially if the subsequent actions of an official or employee of the governing body expressed a refusal to cooperate with the Protector or when it was revealed during ascertainment of facts that the unlawful actions of an official or employee of the governing body, which violated the rights of a citizen, caused significant material or other damage to the latter. In addition, if the Protector believes that the actions of an official or employee of the governing body contained *Corpus delicti*, the Protector is entitled to request the competent authority to bring the responsible officials to criminal, administrative, or other liability (Article 20 of the Law on Protector of Citizens).

Along with the exercise of supervisory human rights advocacy, the Protector may also exercise preventive actions to improve human rights protection and the activities of the administration. In order to prevent unlawful activities, the Protector has the right to provide services through

mediation, consultation, and expression of opinion on matters within its competence (Rakićvodinečić et al., 2012). Moreover, the Law on the Protector of Citizens specifically states that all these preventive measures are taken in order to improve the work of the governing bodies and development of the protection of human rights and freedoms (Article 24). Despite the fact that the main activity of the Protector of Citizens is human rights-based oversight of the activities of government bodies, the Protector also has significant prerogatives in the field of lawmaking. In particular, the Protector has the right to initiate legislation within its competence, which, in the fair opinion of professor Stojanović, is not very common, but still can be found in the ombudsman's area of expertise in comparative jurisprudence (Stojanović, 2009). Thus, the Protector of Citizens has the right to make proposals on amending and supplementing laws and other normative acts to the National Assembly and to the Government (if the Protector believes that the reason for the violation of civil rights was the imperfection of the regulatory framework).

In addition, the Protector's institution has the right to initiate the adoption of new laws and other regulatory acts, if the Protector believes that their adoption will contribute to the implementation and protection of the rights of citizens. The Government of the Republic of Serbia and, respectively, the relevant committee of the National Assembly are obliged to consider the proposals submitted by the Protector (Article 18 of the Law on the Protector of Citizens). Also, within the framework of the right to legislative initiative, the Protector may express own opinion to the Government and the National Assembly on draft laws and other regulatory acts in the process of their drafting and adopting if they touch upon issues that are important for the protection of civil rights. Furthermore, the

Protector has the right to initiate proceedings in the Constitutional Court for the control of the constitutionality of laws and other normative acts (Article 19).

According to Part 4 of Article 138 of the Constitution of the Republic of Serbia, the Protector of Citizens reports to the National Assembly. However, this is not about the form of responsibility, but rather about the human rights oversight powers of the Protector. Moreover, according to Marković, this authority is one of the most effective in the range of tools and tactics of the Protector of Citizens (Marković, 2014). Under this authority, the Protector of Citizens submits an annual report to the National Assembly, which should include data on Protector's activities over the past year, materials on revealed deficiencies in the activities of governing bodies, as well as suggestions for improving the situation of citizens in their relationship with governing bodies. The report must be submitted no later than March 15 of each successive year and published in the Official Gazette of the Republic of Serbia and on the website of the Protector of Citizens, as well as disseminated by the media. In addition, during the year, the Protector is entitled to submit special reports to the National Assembly if this becomes necessary (Part 1 of Article 34 of the Law on the Protector of Citizens).

Article 58 of the Law on the National Assembly stipulates that the Parliament of the Republic of Serbia considers reports submitted by state bodies, organizations and officials in accordance with the Law, and the order of relations between the National Assembly and state bodies submitting reports is administered by the National Assembly Regulations. Thus, it is stated in Articles 237 and 238 of the National Assembly

Regulations that the Speaker of the National Assembly presents all reports submitted in accordance with the law to the Parliament of the Republic of Serbia by governing bodies, organizations and officials to the deputies and the relevant committee³. The named Committee is obliged to review it within 30 days from the day it was sent to the Parliament and then to submit a report to the National Assembly, accompanied by a draft opinion containing recommended measures that the Committee believes are necessary to resolve the problems outlined in the report of the Protector of Citizens. The draft conclusion proposed by the Committee is to be considered by the National Assembly at the nearest regular meeting. At the end of such consideration, the National Assembly shall make an opinion by a majority vote of the deputies present at the meeting if more than half of the total number of deputies is present.

4. CONCLUSION

Thus, the analysis of the powers of the Protector of Citizens in the Republic of Serbia suggests that from the point of view of comparative law, it belongs to the category of so-called strong ombudsmen, i.e. ombudsmen with broad human rights advocacy powers in the field of supervision of the activities of governing bodies. At the same time, this does not mean that the Protector of Citizens has the authority to repeal or invalidate regulatory acts of governing bodies - the Protector's powers are rather focused on criticizing shortcomings in the activities of governing bodies and issuing guidelines and recommendations on such shortcomings

³ Such authority is the Committee on Justice, Public Administration and Local Government of the National Assembly.

elimination. Nevertheless, the Protector of Citizens has the right to initiate dismissal, bringing to disciplinary, and in certain circumstances, criminal responsibility of officials in case of human rights violation. Within the framework of preventive activities, the Protector of Citizens of the Republic of Serbia has the right to intermedate, counsel, express an opinion or otherwise influence the improvement of the activity of governing bodies and the protection of individual rights and freedoms.

In addition, the Protector of Citizens has the right to influence lawmaking, having, in particular, the right of legislative initiative. Finally, the most important directions of the work of the Protector of Citizens are appealing to the highest state authorities, informing the public about the results of human rights activities through the media, issuing regular and extraordinary reports to the National Assembly on the revealed flaws in the activities of the governing bodies and on the correction methods. Reports to the National Assembly, as a rule, receive a wide response from the people's deputies and the general public; no governing body or single official would like to be mentioned in those reports. Thus, as rightly been noted by Marković, the strength of this institution is not so much in the formal powers established by legal acts, but in the respected credibility of this body, which is largely derived from the authority of the person exercising the powers of the Protector of Citizens (Marković, 2014). Assessing the significance of the human rights advocacy activities of the institution of the Protector of Citizens in Serbia during its existence at the republican level in numbers, the statistics for ten years (from 2007 to 2017) indicate the following:

1. The total number of contacts with citizens: 116045.

2. The total number of complaints: 37901.
3. The number of written complaints: 37152.
4. The number of the Protector's own initiatives: 749.
5. The number of completed cases: 35185.
6. The number of pending cases: 2716.
7. The number of commenced proceedings: 10389.
8. Cases where authorities rectified the flaws in the course of the proceedings: 3528.
9. The total number of recommendations issued: 3974.
10. The number of implemented recommendations: 2568.
11. The number of outstanding recommendations: 806.
12. The number of pending recommendations: 600.
13. The number of legislative and other initiatives: 229.
14. Adopted legislative and other initiatives: 54.

15. Unapproved legislative and other initiatives: 145.

16. Legislative and other pending initiatives: 30.

17. Positions and opinions: 141 (www.ombudsman.rs).

Certainly, the above-presented figures can be interpreted differently; however, these figures under all circumstances eloquently demonstrate the significant role played by the Protector of Citizens in a broad field of human rights advocacy activities in the Republic of Serbia.

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