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INDEPENDENCE AND AUTONOMY OF THE WORK OF OMBUDSMANS AS GUARANTEE OF THEIR INTEGRITY

Summary

Although we are in the 21st century, recognizing and defining human rights, as well as their protection, are still ongoing processes. Debate whether it is better to be liberal or traditional state is also alive, since traditional approach automatically implies a weaker recognition of human rights, often unequal relations between men and women, valuing people according to their property status or origin, which is all unthinkable in a liberal democratic society that rests on completely different premises. But even there the question remains - how many human rights are enough and whether there is a "sufficient amount" of human rights at all, enough to establish peace in society and meet everyone's needs and dreams.

That is why the institution of protector of citizens' rights(or else- Ombudsman) is important. Since its establishment in the early 19th century in Sweden, the institution of Ombudsman-Protector of the citizens' rights has gone through different stages of development in different countries. It exists for more than two centuries, but there are still a lot of prejudices about the way ombudsman works and what exactly works ,what are the limits of its acting, and also, what true power this institution has.

In this paper the author will deal with two crucial principles of ombudsman's work- independence and autonomy, since it seems that those principles are the hardest to explain and also to achieve in practise. The significance of this is greater having in mind that Republic of Serbia is one of the few countries in the world that has ombudsmans at all three levels of government - republican, provincial and local, where there is no and should never be a hierarchical connection between these institutions. Every ombudsman work on specific territorial level, controlling the work of executive bodies and other state institutions on that specific territorial level.

Key words: ombudsman, independence, autonomy, integrity.

1. INTRODUCTORY REMARKS

Man is a social being. He has always aspired to life in the community, where he will be able to receive adequate protection in the event of danger, help and support in achieving his aspirations, and a true understanding of his inner being. The assertion known since ancient times that only rare animals can live alone because they are so strong and capable that they are enough for themselves, or gods because they are so supernaturally powerful that they do not need anyone else, is still present in the consciousness of modern man. In dire times, when great crises and wars claim countless victims, when the economies of states collapse and some states even cease to exist permanently, the need for the protection of the individual is more and more pronounced.

A state does not exist without a territory, the population that lives in that territory, and government as a way of subjugating people to a system. That subjugation, depriving people of their complete freedom, simultaneously gave them, paradoxically, comfort and much-desired protection. Quid pro quo, or ceasing to exist. Because of its basic mission - keeping people in submission (Vukadinović, Avramović, 2014) and managing people in a way that suits the state, the government is mostly seen as a factor in the separation of people, who once formed a single tribe. The separation here means making two sides- those who rule and became the voice of the state itself, and those who were ruled over. This separation became so great that over time it crystallized the need for a mediator - a person or persons who will bring these warring parties to the same table, draw their attention to the fact that only through joint work and efforts can they live in peace and well-being, and that both sides make mistakes equally.

Since the early 19th century, when idea of Ombudsman , as King's trustee in Sweden was born, that role of mediator, with capability and knowledge to bring the disputing parties, authorities on one side and citizens on the other side to the negotiating table and point out to them their failures as well as ways to improve mutual relations and regarding the protection of citizens' rights, belonged to the Ombudsman. At first taken as the one on the side of government, slowly it evolved to being more on the side of citizens, when they felt deprived, threatened or wanted to get some encouragement. That is why the Ombudsman is somewhere called as people's advocate, although he is not representing really the citizens. The Ombudsman is appointed there to defend and preserves the principles on which modern democratic society rests, namely the integrity of work, the purposefulness of work and the efficiency of the work of state bodies and to be a reminder to everyone that those principles should be adhered to unconditionally. Some say that the Ombudsman is there to *" help protect ordinary people from the government... any other acitivity such as enhancing the quality of government, is subordinate to its primary task—to be the Defender of the People".*(Oosting,1998).

The main activity of ombudsman is identifying problems in functioning of system on the state, regional or local level of authority- on which territorial level they are

constituted and to help citizens who had or would have difficulties in exercising one's rights or fulfilling one's obligations due to inadequate, bad or illegal work of those competent authorities. The ombudsman's work does not end with a mere finding of bad work by administrative bodies at a certain territorial level of government organization, but continues with the assurance of bodies or institutions that their work should look different, be legal and meaningful¹.

It should be borne in mind that there are also people who work in state bodies and institutions, who make mistakes due to ignorance, lack of desire to progress in their work, but also due to personal convictions. Those personal beliefs, as patterns of behavior most likely inherited from the family but also taken over from the environment, are often the basis of discrimination, or any other exclusion or impossibility for someone to realize his right. In such situations, the ombudsman, as a lawyer but also as a good expert on interpersonal relations, must draw attention to the wrongness of such a belief and correct the same for all future actions of that person who will act within the framework of a state body, in the name and at the expense of the state. If this correction does not occur, citizens will consider that the state is actually discriminating, restricting and punishing them for no reason, and they will not see that it is actually just the uncorrected act of an individual who drowned in the crowd similar actions. The ombudsman uses its powers and more often personal authority² to control the work of executive bodies when, through their potentially illegal or inefficient work, have jeopardized the realization of someone's right or have completely violated the same right

The Republic of Serbia is one of the few countries in the world that has ombudsmen at all three levels of government - republican, provincial and local, where there is no and should never be a hierarchical connection between these institutions. Every ombudsman work on specific territorial level, controlling the work of executive bodies and other state institutions on that specific territorial level. Rarely their jurisdiction in intertwining; in that cases they act synchronized, especially when conducting activities regarding National Mechanism of Prevention of Torture and other Violence in closed institutions such as prisons, hospitals, nursing homes etc (case of intertwining jurisdictions of republican and provincial Ombudsman), or when investigating peer violence in schools (case of intertwining jurisdictions of provincial and local ombudsmen).

There are two offices – in Kragujevac and Niš, which, based on an agreement on inter-municipal cooperation, have expanded their territorial jurisdiction to several municipalities in their immediate vicinity. About 20 municipalities have offices of local ombudsman on the territory of only one municipality.

¹It is usual that Ombudsman in this case gives an Opinion or Recommendation on further actions, which are not obligatory, but have crucial impact on actions of the competent authority. This important notion will be also further discussed in the paper.

²² That personal authority comes out, mostly, from the Ombudsman's previous work engagement, and also from independence and autonomy of Ombudsman's work on this position.

2. HOW INDEPENDANCE AND AUTONOMY OF WORK OF THE OMBUDSMAN IS GAINED

"Central responsibility of every ombudsman—to foster good governance in the interests of the general public. Good governance means a government that unconditionally respects the rules of the national and international legal order, especially in the realm of human rights, and that strives to fulfil its responsibilities properly in the service of the general public, free from corruption."(Oosting,1998) In order to perform his³ job adequately and with quality, the ombudsman must have independence and autonomy in his work, ie. his work should not be subject to any pressure or political influence of any kind. This is followed by the trust that citizens gain in relation to the ombudsman and his work. ***This means that citizens must feel free to turn to the ombudsman, without fear or other negative emotions, with full confidence that the ombudsman will listen to them, pledge that the threat or violation of their rights will be stopped and that the perpetrator, regardless of which state body it is, will be adequately punished for it.*** The essence is indeed in preserving the principles of good administration and the transparency of the administration's work (Ђорић, Кнежевић, 2025,86). Without that, modern democratic society loses its relevance and weight, mistrust in the state and institutions prevails, and potentially a significant link with the state is lost as well.

Independence of the ombudsman is highly valued by the Venice Commission in its numerous acts and recommendations, given to national legislatures around the Europe. That led to establishing *Principles on the Protection and Promotion of the Ombudsman Institution* ("*The Venice Principles*"), adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019).⁴ The role of ombudsmans in promotion and protection of human rights is also recognized in *Resolution A/RES/75/186 on "The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law"*, adopted by the United Nations General Assembly in 2020⁵. international recognition of the importance of role of the ombudsmans is the first guarantee of protecting ombudsmans , to act in accordance with their powers, free from any fear of pressure of a political or other nature.

Independence and autonomy of the ombudsman, as theorists and ombudsmans themselves see it, has several aspects. The first aspect is certainly the independence of the

³ Although we are addressing to ombudsman as he/his/him, we are also acknowledging women around the world who held this position. This masculine abbreviation is used to simplify writing and to avoid constant repetition of he/she in the paper.

⁴ More about it: [https://www.coe.int/en/web/venice-commission/-/CDL-AD\(2019\)005-e](https://www.coe.int/en/web/venice-commission/-/CDL-AD(2019)005-e), 12.04.2025. On ground of these principles, the Venice Commission developed numerous recommendations for improving the position of the ombudsman, primarily to ensure his independence and autonomy in his work, that can be seen on : https://www.venice.coe.int/WebForms/pages/?p=02_Ombudsmen&lang=EN, 12.04.2025.

⁵ Availalbe on: <https://docs.un.org/en/A/RES/75/186>, 12.04.2025.

institution's work, which is ensured through various mechanisms of protection of the institution from political and other influences. The second important aspect is the independence of the person performing the function of ombudsman, which most often results from the flawless personal and professional integrity and expertise of that person.

The first aspect is ensured by *solid national, possibly constitutional grounding*, and also on regional or local level, where ombudsmans exist on those territorial levels. As stated before, in Republic of Serbia there are ombudsmans on all three territorial levels- republic(national), provincial(regional) and local levels(the level of municipalities).⁶

The Republic Ombudsman has the largest scope of work: it supervises the work of national executive bodies and other republic institutions throughout the territory of the Republic of Serbia (except The National Assembly, the republic Government, the President of the state and judicial bodies, such as prosecutors and courts), as well as other bodies on different territorial levels when they are acting upon the national laws. Republic Ombudsman is also responsible for implementing two important national mechanisms - for the prevention of torture, in accordance with the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the mechanism for monitoring the implementation of the Convention on the Rights of Persons with Disabilities, in accordance with the Law on the Ratification of the Convention on the Rights of Persons with Disabilities (Art. 2 of The Law on Protector if Citizens). Republic Ombudsman also performs the duties of a national rapporteur in the field of human trafficking, and is particularly concerned with the protection, promotion and advancement of children's rights(also Art. 2 of abovementioned law), and has a lot of various situations where must cooperate with other state authorities (such as courts, prosecutors' offices) or other independent institutions (commissioners for the protection of personal data, for the fight against corruption or for the respect of equality).

The Provincial Ombudsman has a more precisely defined jurisdiction than the Republican Ombudsman. Article 3 of the Provincial Assembly Decision on the Provincial Ombudsman provides that the Ombudsman shall protect the rights of citizens and supervise the work of provincial administrative bodies, public enterprises and institutions that exercise administrative and public powers and whose founder is the Autonomous Province of

⁶ Sources: Law on the Protector of Citizens, "Official Gazette of the Republic of Serbia", No. 105 of November 8, 2021, Provincial Assembly Decision on the Provincial Protector of Citizens - Ombudsman, "Official Gazette of the Republic of Serbia", No. 37/2014, Law on Local Self-Government, "Official Gazette of the Republic of Serbia", No. 129 of December 29, 2007, 83 of August 5, 2014 - other law, 101 of December 16, 2016 - other law, 47 of June 20, 2018, 111 of November 25, 2021 - other law. The other country that has ombudsmans on all the territorial level is- China, who are working through the network of offices of National Public Complaints and Proposals Administration(which is Chinese Ombudsman's office), and works directly under the State Council of China(Chinese Government). More about it, on official website: <https://www.gjxfj.gov.cn/gjxfj/index.htm>, 12.04.2025.

Vojvodine. The same article clearly states in paragraphs 2 and 3 that the Provincial Ombudsman shall protect the rights of citizens, especially from violations committed by illegal, inexpedient and ineffective actions of public authorities, whether provincial administrative bodies when implementing provincial regulations, or city and municipal administrative bodies when performing tasks entrusted to them by the AP Vojvodina. So, the protection of citizens' rights and the control of the work of administrative bodies are brought into a direct connection, i.e. the rights of citizens are protected through the control of the work of administrative bodies, which is better defined than in the case of defining jurisdiction of Republican Ombudsman.

Jurisdiction of the Provincial Ombudsman is extended with Art.17 of the same Decision, which states the possibility for the Ombudsman *"to continuously supervise and monitor the implementation of international treaties, standards and regulations in the field of human rights and, based on the collected information, and also may propose measures to improve the situation in the field of protection and promotion of human rights"*. This extensions means that the Provincial Ombudsman may control the work of other bodies and institutions although on local level, if the principles of human rights are threatened in some way. Regarding the territorial level of his jurisdiction, the Provincial Ombudsman proportionally has more to do than it is initially given to him .

Finally, **local ombudsmans** protect the rights of citizens and control the work of city and municipal administrations and public services founded by the municipality .The establishment of local ombudsmans is regulated in Article 97 of the Law on Local Self-Government.⁷ It is constituted as an option that local self-government may use, but does not have to- that is why the most of the local self/government do not have this institution (only 27 out of 170 local self-governments in republic of Serbia).⁸

So, we can conclude that legal framework as the first condition for the establishment of the ombudsman institution and its jurisdiction is pretty solid, covering all kinds of issues important for work of ombudsman, especially on republican and provincial level.

But inside the legal framework is possible "catch" that may enhance or minimize ombudsman's independence-it is the way of electing this independent official. ***On all three territorial levels, ombudsmans in Republic of Serbia are elected through parliament on***

⁷ Official Gazette of the Republic of Serbia, 129/2007-41, 83/2014-22 (other law), 101/2016-9 (other law), 47/2018-3, 111/2021-3 (other law).

⁸ It is important to emphasize that local ombudsmans, especially in smaller communities, are extremely important - even more recognizable to ordinary citizens, and more respected due to the element of belonging to the locality in which they perform their work. They are neighborhoods, and easily gain confidence of citizens, so generally increase the visibility and importance of the ombudsman in general. The need for their existence has in recent years articulated a unanimous call for the republican legislator to pass a special law on local ombudsmans or just to amend a provision in existing national frame, thus making them a mandatory part of the control and advisory apparatus in every municipality in the Republic of Serbia.

that territorial level. Their independency is guaranteed through this way of selection, because parliaments are constituted from people's representatives, so, indirectly ombudsmans are elected from the people, for the people to help them cope with all challenges that they may go through while exercising their rights. ***On republican and local levels , for the person of ombudsman must vote at least the absolute majority of deputies in the parliament; for the provincial ombudsman must vote more deputies- at least two-thirds of deputies.***

Bearing in mind that deputies in parliaments are representatives of the people, and that they most often belong to certain political parties or groups, such majorities were established to ensure the widest possible acceptance of the personality of the ombudsman. Especially in the case of the election of the provincial ombudsman, achieving a two-thirds majority, with possible dispersion votes that belong to different political parties and groups, may seem quite difficult. Therefore, election in this case is quite objectivized and ***requires the achievement of wider social (and political) acceptance of the personality for this function.*** Depending on the aspect from which this situation is viewed, it can be both good and bad for achieving the independence and autonomy of the ombudsman's work.

In some countries the ombudsmans are appointed by governments⁹ or by presidents of the countries. For example in Russia, the Ombudsman for Children is appointed directly by the president of the country¹⁰, which, in a way, regarding ways of electing those state bodies and officials, ***means indirectly inclusion of the people (citizens) in the election of ombudsmans.*** Specific way of election Ombudsman is in Taiwan: the President nominates 29 people of the so called Control Yuan, and all must be confirmed by Legislative Yuan. ***So the highest executive body, elected directly by the people and also representatives of the people gathered in the parliament are the guarantors of citizens' involvement in the selection of this control body.***¹¹

"In any case, the ombudsman's independence should also mean that he is at liberty to address the general public and to make his presence felt in society without his actions being subject to approval of any kind"(Oosting,1998). On the ground of this statement, we find very important mechanism in our national legal framework that guarantees the independence of ombudsman's work. ***All ombudsmans submit an annual report on their***

⁹ The government derives from the support of the parliamentary majority, so also indirectly ombudsmans may be regarded as the people's choice.

¹⁰ The last Presidential Commissioner for Children's Rights was appointed in 2021 : *Путин назначил Марию Львову-Белову уполномоченным по правам ребенка*, available on : <https://tass.ru/obschestvo/12781201>, 01.03.2025.

¹¹Constitution of the Republic of China (Taiwan) , Chapter IX is about the forming of Control Yuan and its jurisdictions, more on : <https://law.moj.gov.tw/ENG/LawClass/LawParaDeatil.aspx?pcode=A0000001&bp=9.>, 01.05.2024. The official website of Control Yuan : <https://www.cy.gov.tw/en/>, 01.05.2024.

*work to the parliament that elected them.*¹² The mechanism we are talking about is *that the report is only considered, so there is no vote on the report.* During the monitoring process, *deputies can ask the ombudsman questions and comment on the report, to which the ombudsman is not obliged to answer, neither at the session where the report is discussed nor later.*

Also it is important to mention that *ombudsmans have possibility to recommend the dismissal of the official who ignored their recommendation to eliminate the unevenness of the work or to improve the efficiency and expediency of the work.*¹³ It is about establishing a kind of "checks and balances" system; the ombudsman can express his recommendation or opinion on the improvement of the work of the administrative body, whose work he controlled, which is not binding. But again, if the ombudsman judges that the non-compliance with that recommendation resulted in a further violation of some human right, he may, at his discretion, recommend the dismissal of that official or manager of an institution who did not accept his recommendation or opinion. It is clear that the basis for accepting the ombudsman's recommendation or opinion is the authority and integrity of the institution itself and then of the person holding that position; and the simultaneous threat of punishment that the ombudsman can implement, which embarrasses the "disobedient" official of the public authority more than if some other punishment were applied to him. This is also one important guarantee of the independence and autonomy of the work of ombudsman.

Also, the last but not the least guarantee of ombudsman's independence and autonomy of work is *the authorization to initiate an examination or control procedure against an authority or institution not only on the basis of citizen's counter-complaints, but also on its own initiative.*¹⁴ This means that on the basis of articles in the media, personal statements and other sources of information, without exclusively formally submitting a complaint, they can initiate the process of checking someone's work. At the same time, on their own initiative, they can initiate investigations into certain social phenomena concerning the culture of human rights and the application of human rights in general, which can result in a further proposal for the adoption of a new or renaming of an existing regulation at the territorial level where the ombudsman himself is. The reason for initiating the procedure is always a suspicion of a violation in the work of a competent authority in executive branch , that threatens the realization of a human right or in any other way undermines the

¹² Art.39 of The Law on Protector of Citizens; Art. 21 Decision on The Provincial Protector of Citizens-Ombudsman. In both acts it is mentioned that Ombudsman may participate in the discussion regading his annual report, but he is not obligated.

¹³ Art.23 of The Law on Protector of Citizens; Art.20 Decision on The Provincial Protector of Citizens-Ombudsman. Similar provision can be found in decision on constituting offices of local ombudsmans, on the level of the municipality.

¹⁴ Art. 27. The Law on Protector of Citizens; Art. 31 Decision on The Provincial Protector of Citizens-Ombudsman. The amount of procedures initiated on this matter can vary on social and other circumstances.

confidence of citizens in the strength and objectivity of the work of the competent authorities.

3. CONCLUDING REMARKS

Thru this short overview we proved that there are, in our national legal system, certain guarantees of independence and autonomy of work of ombudsman. How much are those guarantees exercised in practice can be seen throughout the ombudsmen's annual reports. As it is known to public, none of ombudsmen didn't recommend dismissal of official who did not act according to the recommendation or opinion of the ombudsman. This could be understood in two ways/ that there is no need to resort to this strongest sanction that ombudsmen have because the authority and integrity of the institution was sufficient to comply with all recommendations and opinions. On the other hand, the suspicion can always arise that due to covert influence from some side, no ombudsman initiated such a procedure.

As for other guarantees of the ombudsman's independence and autonomy of action, their implementation can be monitored through annual reports that are quite detailed.¹⁵

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¹⁵ Annual reports of republican Protector of Citizens: <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>, 12.04.2025; Annual reports of Provincial Protector of Citizens-Ombudsman: <https://www.ombudsmanapv.org/riv/index.php/dokumenti/godisnji-izvestaj.html>, 12.04.2025.

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НЕЗАВИСНОСТ И АУТОНОМИЈА РАДА ОМБУДСМАНА КАО ГАРАНЦИЈА ЊИХОВОГ ИНТЕГРИТЕТА

Апстракт

Иако смо у 21. веку, препознавање и дефинисање људских права, као и њихова заштита, и даље су текући процеси. Расправа о томе да ли је боље бити либерална или традиционална држава је такође жива, јер традиционални приступ аутоматски подразумева слабије препознавање људских права, често неравноправне односе између мушкараца и жена, вредновање људи према њиховом имовном стању или пореклу, што је све незамисливо у либералном демократском друштву које почива на потпуно другачијим премисама. Али чак и ту остаје питање - колико је људских права довољно и да ли уопште постоји „довољна количина“ људских права, довољна да се успостави мир у друштву и задовоље потребе и снови свих.

Зато је институција заштитника права грађана (или омбудсмана) важна.

Од свог оснивања почетком 19. века у Шведској, институција омбудсмана-заштитника права грађана прошла је кроз различите фазе развоја у различитим земљама. Постоји више од два века, али и даље постоје многе предрасуде о начину рада омбудсмана и како тачно функционише, које су границе његовог деловања и, такође, какву истинску моћ ова институција има.

У овом раду аутор ће се бавити са два кључна принципа рада омбудсмана - независношћу и аутономијом, јер се чини да је те принципе најтеже објаснити, а и остварити у пракси. Значај овога је већи имајући у виду да је Република Србија једна од ретких земаља у свету која има омбудсмане на сва три нивоа власти - републичком, покрајинском и локалном, где не постоји и никада не би требало да постоји хијерархијска веза између ових институција. Сваки омбудсман ради на одређеном територијалном нивоу, контролишући рад извршних органа и других државних институција на том одређеном територијалном нивоу.

Кључне речи: омбудсман, независност, аутономија, интегритет.

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