

**5 YEARS:**  
**ANALYSIS OF THE WORK  
OF THE PROTECTOR  
OF CITIZENS OF THE  
REPUBLIC OF SERBIA  
2015–2019**





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## **STAND UP FOR HUMAN RIGHTS**

#STANDUP4HUMANRIGHTS

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Prof. Vesna Petrović PhD, Katarina Golubović  
PhD, Milan Filipović, Vladica Ilić, Teodora  
Tomić and Tara Petrović, with support of  
the United Nations Human Rights Team.*

*The opinions and views expressed in this  
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# I. SUBJECT AND AIM

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**S**tatus-A National Human Rights Institutions (NHRI) have special rights to participate in international human rights mechanisms (IHRM), which to a large extent serve as basis for a country's human rights situation assessment. Therefore, it is of utmost importance to review the status of these institutions on realistic grounds, assessing not only the legal framework governing NHRI status and competences, but also their implementation in practice.

The Analysis of the Work of the Protector of Citizens (Ombudsman) of the Republic of Serbia, with special focus on the implementation of the Paris Principles, was conducted with the aim to assess this institution's capacities to ensure the implementation of international human rights standards.

The Ombudsman of the Republic of Serbia was awarded Status A in 2010 and was reconfirmed in 2015. This status will be reviewed again by the Sub-Committee on Accreditation in 2020.

The aim of this analysis sets the timeframe of the research to the Ombudsman's work from 2015 onward, for each year, inclusive of September 2019. The analysis will be looking at the fulfilment of the Paris Principles<sup>1</sup> and General Observations produced by the GANHRI Sub-Committee on Accreditation (SCA) and adopted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (hereinafter: "General Observations"), with latest amendments

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1 United Nations, General Assembly, Principles relating to the Status of National Institutions (The Paris Principles), Resolution A/RES/48/134.



in February 2018<sup>2</sup>, serving as an instrument for the interpretation of Paris Principles.

Such an analysis was set taking into consideration that according to the Rules of Procedure for the GANHRI Sub-Committee on Accreditation<sup>3</sup>, this authority is in charge of developing General Observations to assess whether a NHRI is compliant with the Paris Principles.

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- 2 Global alliance of National human rights institutions, General Observations of the Sub-Committee on Accreditation, February 2018, available at: [https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN\\_GeneralObservations\\_Revisions\\_adopted\\_21.02.2018\\_vf.pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf) (accessed on 6 August 2019).
  - 3 *Global alliance of National human rights institutions, Rules of procedure for the GANHRI Sub-committee on accreditation*, March 2017, available at: [https://www.asiapacificforum.net/media/resource\\_file/GANHRI\\_SCA\\_Rules\\_Of\\_Procedure\\_2017.pdf](https://www.asiapacificforum.net/media/resource_file/GANHRI_SCA_Rules_Of_Procedure_2017.pdf) (accessed on 6 August 2019).



## II. METHODS

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Considering the adopted research methodology, data used to analyse the work of the Ombudsman were collected from the following sources: review of websites and publicly available documents, organisation of interviews, focus groups, requests to access information of public importance and analysis of media articles.

### 1. Interviews

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The selection of participants included particularly those with experience of working with the institution, representatives of institutions cooperating with the Ombudsman, as well as representatives of institutions relevant for the Ombudsperson's election procedure, implementation and amendments to the legislative framework and actions of the National Preventive Mechanism (NPM).

Interviews were organised with Deputy Ombudspersons, who had, during the previous five years, until the expiration of their mandates in December 2018, worked in their areas of expertise: rights of persons deprived of liberty and NPM management, rights of national minorities, rights of the child and gender equality and rights of persons with disabilities. The interviews, *inter alia*, have provided us with data on the scope and quality of the institution's cooperation with the international human rights system, international and domestic civil society organisations

and other international and national human rights bodies. We have also obtained data on advocacy for the ratification of international treaties, harmonisation of national regulations and execution of ECHR judgements. The Deputies have also provided us with the information on the obstacles faced by them in their work and suggestions on the possible ways to overcome them, through legislative changes. Special focus was on the functioning of the NPM.

Representatives of other independent authorities were also interviewed for their views and opinions on the institution of the Ombudsman, and on cooperation established with the Ombudsman. A representative of the Ministry of Public Administration and Local Self-Government was also interviewed, as authorised proposer of the law regulating the position of the Ombudsman. We have obtained data on the course of the process to adopt amendments to the Law on Protector of Citizens and on the timeframe provided for their adoption. We spoke with a representative of the United Nations about the cooperation of the institution and this organisation. We also interviewed a representative of the Office for Human and Minority Rights, regarding the role of the Ombudsman in the reporting by the Republic of Serbia and regarding the implementation of ratified international human rights treaties. Wishing to include in the analysis the views and opinions of the current and former Ombudsperson, we attempted to organise interviews with Zoran Pašalić and Saša Janković. After two responses from the Office of the current Ombudsperson that Mr. Pašalić cannot respond to our polite requests to talk to him because of his many planned engagements, we also gave up on interviewing Mr. Janković. Namely, we felt that because of different and sometimes strongly opposing views of the two Ombudspersons, interviewing only Saša Janković might create the wrong impression of the authors' being inclined to one side or biased.

## 2. Focus Groups

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The selection of focus group participants was made among representative civil society organisations (CSOs) working in the area under the Ombudsman's scope of work, i.e. in the area of child's rights, rights of refugees, IDPs and asylum seekers, rights of LGBTI persons, rights of persons with disabilities (PWDs), gender equality, rights of national minorities and rights of persons deprived of liberty. The selection of participants was carefully done to include CSOs with experience in cooperation with the Ombudsman. Focus groups also included media representatives, considering that Ombudsman's reports often refer to the effects of unprofessional reporting on the position of vulnerable social groups, and they are also important for the evaluation of the presence of the institution in the media and adequate media relations and public communications.

Organised focus groups have provided us with the information on forms, scope and quality of cooperation between CSOs and the Ombudsman, and about the obstacles encountered. We have received information on important topics related to human rights, on which the Ombudsman reacted adequately and timely, as well as on those to which, according to the participants, it unjustifiably failed to react. The participants had the opportunity to provide their opinions on the visibility of the Ombudsman in the public, on the existence of adequate resources to fulfil its competences and on possible amendments to the legislative framework to remove identified obstacles identified in the work of this institution.

## 3. Requests for access to information of public importance

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Information were obtained through requests for access to information of public importance submitted to the Ombudsman, State Audit Institution, Commissioner for Information of Public Importance and Personal Data Protection, Ministry of Public



Administration and Local Self-Government and the National Assembly of the Republic of Serbia.

## 4. Analysis of media articles

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The analysis of media content, mentioning the Ombudsman between 1 January 2015 and 30 September 2019, used the Ebart Media Archives news database. This analysis covered articles published in dailies Danas, Informer, Kurir, Politika, Večernje novosti, Blic and Alo, mentioning the words: Protector of Citizens, Ombudsman, Saša Janković and Zoran Pašalić.

Analysed articles included interviews with the Ombudsperson, press releases or other information published by the Ombudsman (most often on their website or press conferences) and articles commenting on the work of the institution or holders of the function of Ombudsperson.

Considering that it was also necessary to establish whether and to what extent the Ombudsman appeared in the media in the situations when its reaction was expected, with regards to its competences to protect and promote human and minority freedoms and rights, data on the number of articles on the following topics (keywords) were also collected: constitutional reform, constitutional amendments, control of the courts, control of the media, police, abuse, torture (*tortura* and *mučenje*), prison, detention, freedom of assembly, Savamala, life imprisonment, persons with mental disabilities, pensions, rights of the child, peer violence, national minorities, LGBT, Roma, gay pride, gender equality, migrants, refugees, eviction, annual reports, persons with disabilities.

# III. COMPLIANCE WITH THE PARIS PRINCIPLES

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## 1. ESSENTIAL REQUIREMENTS OF THE PARIS PRINCIPLES

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### 1.1 *The establishment of the institution of the Ombudsman*

*According to GANHRI General Observations of the Sub-Committee on Accreditations*

*An NHRI must be established in a constitutional or legislative text with sufficient detail to ensure the NHRI has a clear mandate and independence. In particular, it should specify the NHRI's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment of an NHRI by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.5)*

**T**he institution of the Ombudsman was introduced in the legal system of the Republic of Serbia in 2005, with the adoption of the Law on Protector of Citizens<sup>4</sup>, and the very

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4 Law on Protector of Citizens, Official Gazette RS, No. 79/2005 and 54/2007.



next year it found its place also in the 2006 Constitution of the Republic of Serbia. The Constitution lays down the competences and election procedures, Ombudsman's accountability to the National Assembly, immunity, as well as the right to propose laws under its purview.<sup>5</sup> The mandate of this institution explicitly excludes the control of the Government, National Assembly, Constitutional Court, courts and public prosecution offices.<sup>6</sup> On the other hand, the Ombudsman has the power to control government authorities, the authority in charge of legal protection of property-related rights and interests of the Republic of Serbia, as well as other authorities and organisations, companies and institutions, entrusted with public powers.<sup>7</sup>

The rise of this institution to the constitutional level is particularly important, considering that this is important guarantee of its independence from the executive power, which it is authorised to control. Unlike amendments to the law, which require a simple parliamentary majority, Constitutional amendments require a two-third majority, which gives legal security to the position of the institution of Ombudsman. However, the Constitution still leaves it to the Law to regulate in detail many areas of importance to the issue of independence, including the conditions for election, duration of the term and possibility for re-election. In addition to immunity equal to the one enjoyed by MPs, the 5-year mandate also provides additional guarantee of independence of the Ombudsperson, being one year longer than the mandate of MPs and members of the Government, and equal to the mandate of the President, with the possibility of one consecutive re-election.<sup>8</sup> A solution that was discussed, but was not included in the 2012 Draft Law on Amendments to the Law on Protector of Citizens, was to extend the term to seven years.<sup>9</sup> In addition

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5 Constitution of the Republic of Serbia, Official Gazette RS, No. 98/2006) Art. 138 Para. 1–5.

6 *Ibid.*, Art. 138, Para. 2.

7 *Ibid.*, Art. 138, Para. 1.

8 Luka Glušac, On the need to improve the legal framework for the Protector of Citizens, p. 7, available at: [http://www.fcjp.ba/templates/ja\\_avian\\_ii\\_d/images/green/Luka\\_Glusac.pdf](http://www.fcjp.ba/templates/ja_avian_ii_d/images/green/Luka_Glusac.pdf) (accessed on 6 August 2019).

9 Information from organised interviews.

to the proposal on extending the term which should exceed the term of representatives of the executive power, also the possibility for re-election was mentioned as additional guarantee of independence of the Ombudsperson, but also as possible cause for weakening independence of the institution because of the need to reach compromises with the Executive, in order to ensure the parliamentary majority necessary for re-election.<sup>10</sup>

The need to amend the Law on Protector of Citizens was noted in the Action Plan for Chapter 23, where the need to strengthen the capacities of this institution, as well as the Provincial and local ombudsmen, was translated into a series of activities. Adopted activities are the result of EU Screening Report<sup>11</sup>, as well as a number of recommendations from international human rights bodies.

The Global Alliance for National Human Rights Institutions (GANHRI), during the procedure of accreditation of the Ombudsman as NHRI, issued on two occasions its recommendations (in 2010<sup>12</sup> and 2015<sup>13</sup>) related to: ensuring adequate financial resources for the Ombudsman, adequate level of salaries, ensuring pluralism in the selection of officials and staff, regulating immunity, regulating interaction with international human rights system and the election of the Ombudsperson.

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- 10 Luka Glušac, On the need to improve the legal framework for the Protector of Citizens, p. 7, available at: [http://www.fcjp.ba/templates/javian\\_ii\\_d/images/green/Luka\\_Glusac.pdf](http://www.fcjp.ba/templates/javian_ii_d/images/green/Luka_Glusac.pdf) (accessed on 6 August 2019).
  - 11 *Screening Report Serbia: Chapter 23 – Judiciary and fundamental rights*, Republic of Serbia Government, Belgrade, 2013, available at: [http://www.mei.gov.rs/upload/documents/skrining/izvestaj\\_pg\\_23\\_16.pdf](http://www.mei.gov.rs/upload/documents/skrining/izvestaj_pg_23_16.pdf) (accessed on 6 August 2019).
  - 12 *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights*, Geneva, 2010, available at: [https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20REPORT%20MARCH%202010%20-%20FINAL%20\(with%20annexes\).pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20REPORT%20MARCH%202010%20-%20FINAL%20(with%20annexes).pdf) (accessed on 6 August 2019).
  - 13 *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights*, Geneva, 2015, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20MARCH%202015%20FINAL%20REPORT%20-%20ENGLISH.pdf> (accessed on 6 August 2019).

Recommendations by UN human rights mechanisms also mostly relate to the ensuring adequate financial and human resources for the performance of the Ombudsman's competences<sup>14</sup>, particularly in the NPM area.<sup>15</sup> Additionally, UN committees have identified the issue of the lack of implementation of the Ombudsman's recommendations<sup>16</sup>, as well as the non-existence of clear provisions on the cooperation of the institution with the international human rights system and the civil society.<sup>17</sup>

It is interesting that the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), in its last Concluding Observations<sup>18</sup>, also covered specifically the weak visibility of the institution and its role in the area of gender equality, but also lack of information on whether the work of the Ombudsman is harmonised with the Paris Principles, and emphasised the need to enhance the institution's transparency. This resulted from the fact that Ombudsman's reporting to UN committees after the expiration of the mandate of the Deputy Ombudsperson in December 2018, practically ceased, and that

- 14 *Concluding observations on the second periodic report of Serbia, Committee against Torture*, Geneva, 2015, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskPzZ7qqLIMiSsYYpivQncppZ1Nq6xPjYePRKLFQ1ZNSnmJYaSrG46Ce2sCAjC%2b1rN3YxuxGlerpjPEnzqCgPcSF7phhkE6y3sRLCLFHKLx> (accessed on 6 August 2019).
- 15 *Concluding observations on the second periodic report of Serbia, Committee against Torture*, Geneva, 2015, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskPzZ7qqLIMiSsYYpivQncppZ1Nq6xPjYePRKLFQ1ZNSnmJYaSrG46Ce2sCAjC%2b1rN3YxuxGlerpjPEnzqCgPcSF7phhkE6y3sRLCLFHKLx> (accessed on 6 August 2019).
- 16 *Ibid.*
- 17 *Concluding observations on the second periodic report of Serbia, UN Committee on Economic, Social and Cultural Rights*, Geneva, 2014., available at: [https://judskaprava.gov.rs/sites/default/files/dokument\\_file/e\\_c-12\\_srb\\_co\\_2\\_17290\\_e\\_clean1.doc](https://judskaprava.gov.rs/sites/default/files/dokument_file/e_c-12_srb_co_2_17290_e_clean1.doc) (accessed on 6 August 2019)..
- 18 *Concluding observations on the fourth periodic report of Serbia, Committee on the Elimination of Discrimination against Women*, Geneva 2019, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskcAJS%2fU4wb%2bdIVicv-G05RzmOxDQgRWICReo5z%2bXdHjw%2bB1%2fSJ3As%2b9r%2fYzqxabDfxyUUu6LFdF5Pj23xmbCU4iP%2bXlFtcEbJXDjNtDIUe> (accessed on 6 August 2019).



alternative reports have not been submitted to the CEDAW Committee either.

Despite the fact that, with the Action Plan for Chapter 23, the Government undertook to adopt the amendments to the Law on Protector of Citizens by the fourth quarter of 2016, the timeframe set has long passed. It is important to note also that the first attempt to adopt amendments to the Law on Protector of Citizens was unsuccessful, with the Draft Law returned from the parliamentary procedure to the present Government for review, after the parliamentary elections of 2012. Despite the missed opportunity, the Ministry of Public Administration and Local Self-Government, as the authorised proposer of the Law, published the Baseline for the development of the Draft Law on Amendments to the Law on Protector of Citizens<sup>19</sup> at the end of 2017, and initiated the procedure of online consultations, which was unsuccessful, in the sense that there were no contributions from the civil society or academia.<sup>20</sup> This summary document announced minimal changes largely focusing on the resolution of problems identified in the relationships of the National Assembly and the Government with this institution, and almost none on the issue of independence and efficiency or the fulfilment of tasks of the NPM, which was emphasised in the Action Plan for Chapter 23. Provisions that would explicitly regulate the interaction of the Ombudsman with the international human rights system and civil society, in accordance with international recommendations, were also left out. Obligations and deadlines imposed to the National Assembly and the Government to fulfil their obligations regarding the cooperation with the Ombudsman did not contain any mechanism for their enforcement. The identification of independent institutions with the people heading them lead

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19 Baseline for the development of the Draft Law on Amendments to the Law on Ombudsman, Ministry of Public Administration and Local Self-Government, Belgrade, December 2017, available at: [https://www.paragraf.rs/nacrti\\_i\\_predlozi/111217-osnove-nacrta-zakona-o-zastiti-gradjana.pdf](https://www.paragraf.rs/nacrti_i_predlozi/111217-osnove-nacrta-zakona-o-zastiti-gradjana.pdf) (accessed on 6 August 2019).

20 Response of the Ministry of Public Administration and Local Self-Government to the request for access to information of public importance dated 13 June 2019.

to volatile relationships and cooperation with government authorities. In line with this, a positive step forward made by the new Ombudsperson could not be attributed to any amendments to the Law, put primarily the good relationship of the current Ombudsperson and the ruling majority that elected him.

The Baseline also deals with the issue of terminology and confusion between the Ombudsman and local ombudsmen, which often have different names, but are not in hierarchy with the Ombudsman, i.e. are not its local offices, thus proposing to prohibit the use of the name and symbol of this institution. The provision contained in the 2012 proposal on increasing the pay of staff in the Ombudsman's Expert Service by 30% compared to other civil servants, did not find its place in the Baseline.<sup>21</sup> One proposed provision also includes an increase in the number of Deputy Ombudspersons from four to five, in line with the number of specialised areas, according to the Law on Protector of Citizens. It is important to mention that the Ombudsperson has not proposed new Deputies to the National Assembly for nearly a year, explaining that this was not a priority, and that amendments to the Law are expected.<sup>22</sup> Talking to former Deputy Ombudspersons, an issue came up, regarding the fact that there is no security regarding specific areas they are in charge of, which can change at the discretion of the Ombudsperson.<sup>23</sup>

An important guarantee of independence of the Ombudsman would be to establish broader competences with regards to the proposal and execution of its budget, which was provided in the 2012 Draft<sup>24</sup> but was also left out of the Baseline. This document

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21 Staff in the State Audit Institution have the so-called institutional bonus of 30% on top of their salaries.

22 Katarina Đorđević, "Zaštitnik građana radi i bez zamenika" (Ombudsman Operational Even Without Deputies), *Politika*, 4 April 2019, available at: <http://www.politika.rs/sr/clanak/428746/Zastitnik-gradana-radi-i-bez-zamenika> (accessed on 6 August 2019).

23 Information from organised interviews.

24 Draft Law on Amendments to the Law on Ombudsman, Government of the Republic of Serbia, Belgrade, 2012., available at: [http://www.transparentnost.org.rs/images/stories/zakoni/pz\\_zastitnik\\_gradjana00599\\_cyr.doc](http://www.transparentnost.org.rs/images/stories/zakoni/pz_zastitnik_gradjana00599_cyr.doc) (accessed on 6 August 2019).

also excludes punishments for non-compliance with the Law on Protector of Citizens.<sup>25</sup> Experiences of the Commissioner for Access to Information of Public Importance and Personal Data Protection show that fines are not effective means to force a public authority to comply with a law, because in this case the money is moved from budget one to another.<sup>26</sup>

One of the possible novelties are the broader competences that, according to Ombudsperson Zoran Pašalić, should also include the control of the courts and their respect of deadlines.<sup>27</sup> It is important to note that the Ombudsperson did not put his legal initiative into a document, even though the Constitution contains explicit powers of the Ombudsman to propose Laws within its purview, but he presented his views and opinions on this issue exclusively during his media appearances. This caused reactions from Miodrag Majić, Belgrade Appellate Court judge and Milan Antonijević, Director of the Open Society Foundation, who expressed their opinions in the daily Danas about this idea being a threat to court independence.<sup>28</sup> The idea on broadening the competences is not new, and in the past there was also mention of the idea for the Ombudsman to become the body in charge of the execution of ECHR judgements in Serbia, but this was given up because of its lack of capacities to perform existing competences

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25 M. Trifković, D. Čurčić i M. Vasiljević, Role and Status of Ombudsperson and Commissioner for the Protection of Equality, Belgrade, January 2019, p.25, available at: <https://crt.rs/wp-content/uploads/2019/01/Uloga-i-položaj-Zaštitnika-građana-i-Poverenika-za-zaštitu-ravnopravnosti.pdf> (accessed on 6 August 2019).

26 “Skrivanje informacija od javnosti građani platili 38 miliona dinara” (Citizens Pay 38 Million Dinars for Hiding Information from the Public), Insajder, 10 May 2017, available at: <https://insajder.net/sr/sajt/tema/4603/> (accessed on 6 August 2019).

27 “Zaštitnik građana: Neefikasnost i neažurnost sudova nameće proširenje nadležnosti i na kontrolu sudske uprave” (Ombudsperson: Inefficiency and Unresponsiveness of Courts Imposes the Broadening of Competence to Control Court Administration), Dijalog.net, 10 December 2018, available at: <https://www.dijalog.net/zastitnik-gradana-neeefikasnost-i-neazurnost-sudova-namece-prosirenje-nadleznosti-i-na-kontrolu-sudske-uprave/> (accessed on 6 August 2019).

28 “Ombudsmanova ideja opasna po nezavisnost sudstva” (Ombudsperson’s Idea Threat to Court Independence), Danas, 8 October 2018.

already defined in the Law.<sup>29</sup> Some focus group participants also expressed their opinions that the institution had not mastered its current competences, so any broadening would be dangerous.

According to the latest information, the public hearing on the adoption of amendments to the Law on Protector of Citizens was planned for the summer months of 2019, while its adoption was planned for the end of this year.<sup>30</sup> Holding public hearings during the summer months, when the majority of potential participants from the civil sector, academia and judiciary are away on holiday, would be a continuation of a troubling practice introduced with the adoption of the Law on Free Legal Aid in 2018.

Since there is no detailed information about the standing working group for the development of the Draft Law, it remains to be seen whether the public hearing will fulfil not only its form but also its quality, i.e. whether the inputs by participants will be accepted or rejected and followed by adequate justifications by the authorised proposer. In line with this, the Law on Protector of Citizens can only suffer minor amendments sufficient for the Government to make the claim that it has fulfilled the activity set out in the Action Plan for Chapter 23, but could go without essential changes that would help increase the independence and efficiency of this institution, and improve its work in the area of NPM.

In addition to the Constitution of the Republic of Serbia and the Law on Protector of Citizens, the following laws are also of great importance: Law on Amendments to the Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Law on the National Assembly, Law on Serbian Armed Forces, Law on Criminal Procedure, Law on the Enforcement of the Prison Sentence for Criminal Offences of Organised Crime, Law on Civil Servants, Data Secrecy Law, Law on the Appearance and Use of the Coat of Arms, Flag and Anthem of the Republic of Serbia, Law on Seal of Government and Other Authorities, Law on Political Parties, Law on Anti-Corruption Agency, Law on Patients' Rights, Law on Public

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29 Information from organised interviews.

30 Response of the Ministry of Public Administration and Local Self-Government to the request for access to information of public importance dated 13 June 2019.

Property, Law on the Amendments to the Law on Budget System, Law on the Maximum Number of Employees in the Public Sector, and the Law on General Administrative Procedure.<sup>31</sup>

The Ombudsman is also mentioned in a number of public policies: National Security Strategy, National Anti-Corruption Strategy 2013–2018, Public Administration Reform Strategy, Strategy for Social Inclusion of Roma Men and Women 2016–2025, Anti-Discrimination Strategy, Strategy for the Implementation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters – Aarhus Convention, Development Strategy for the System of Enforcement of Criminal Sanctions until 2020, National Strategy for the Prevention and Protection of Children from Violence, Action Plan for the implementation of the Strategy for the Implementation of the Aarhus Convention, Action Plan for the implementation of the National Sustainable Development Strategy 2011–2017, Action Plan for the Fulfilment of Rights of National Minorities, Action Plan for the implementation of the Strategy for Social Inclusion of Roma Men and Women 2016–2025, for the period 2017–2018, etc.<sup>32</sup>

.....  
: The position of the Ombudsman in the Constitution of the  
: Republic of Serbia ensures legal security. However, a number  
: of issues related to the independence of the Ombudsman  
: are regulated by the Law on Ombudsman, which can be  
: changed through a simpler procedure than the Constitution.  
: The current Law, according to international bodies, does  
: not provide adequate guarantees of independence, and the  
: Republic of Serbia Government has undertaken to introduce  
: its amendments as part of the implementation of the Action  
: Plan for Chapter 23. Despite this, the implementation of this  
: activity is already 3 years late after the set deadline.  
: .....

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31 Ombudsman, Regular Annual Report for 2018, Belgrade, March 2019, p. 102, available at: [https://www.ombudsman.rs/attachments/article/6062/Zastitnik%20gradjana\\_Godisnji%20izvestaj%20za%202018.%20godinu.pdf](https://www.ombudsman.rs/attachments/article/6062/Zastitnik%20gradjana_Godisnji%20izvestaj%20za%202018.%20godinu.pdf) (accessed on 6 August 2019).

32 *Ibid.*

## 1.2 Human Rights Mandate

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*All NHRIs should be legislatively mandated with specific functions to both promote and protect human rights. The SCA understands 'promotion' to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. 'Protection' functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling. An NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Specifically, the mandate should:*

- extend to the acts and omissions of both the public and private sectors;*
- vest the NHRI with the competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs;*
- provide the authority to address recommendations to public authorities, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues;*
- authorize unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice;*
- authorize the full investigation into all alleged human rights violations, including the military, police and security officers.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.7)*

The Ombudsman's competence includes the protection and promotion of human and minority freedoms and rights. Performing this competence includes both regular communication with citizens and timely response and public appearance in specific situations in which human rights are threatened. The Law, however, does not regulate the manner of communication of the Ombudsman with the public, except in two situations, one in which the Ombudsman can inform the public in case authorities do not follow up on recommendations<sup>33</sup>, and another in which it can recommend publicly the dismissal of an official responsible for the violation of citizens' rights.<sup>34</sup> The Law does not impose any limitations regarding addressing the public or raising citizens' awareness on human rights issues. The only limitation is the prohibition of issuing politically charged statements, which could be arguable considering that its purview also includes the control of government authorities<sup>35</sup>, and that any criticism of executive authorities may be subject to different interpretations.<sup>36</sup>

The Ombudsman has the power to control government authorities, the authority in charge of legal protection of property-related rights and interests of the Republic of Serbia, as well as other authorities and organisations, companies and institutions, entrusted with public powers, following individual complaints lodged by citizens or on own initiative. It has the right to access government authorities' premises and information, regardless of the level of secrecy, unless this is contrary to the Law, and can interview their staff.<sup>37</sup> When it comes to conducting full investigation into all alleged human rights violations, including military, police and security service officers, there are no other formal limitations. As the result of conducted control, recommendations are sent to public authorities.

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33 Law on Protector of Citizens, Official Gazette RS, No. 79/2005 and 54/2007, Art. 31, Para. 5.

34 *Ibid.* Art. 20, Para. 1.

35 *Ibid.* Art. 10a.

36 See: p. 87 (2.1. Case Savamala).

37 *Ibid.* Art. 21.

The Law on Protector of Citizens does not contain any explicit provisions on education being a part of the mandate of this institution, but in practice it cooperates with the academia and participates in the organisation of trainings within the scope of its competences. The interviewees give examples of a training programme for pedagogical associates in cooperation with the Ministry of Education, training programme for civil servants employed by the Serbian Government Human Resources Service, and programme related to good governance and independent institutions with the Academy for Public Administration.

In accordance with the Law, the Ombudsman publishes regular annual reports as well as special reports, as needed. In addition to reports on the NPM, since 2015, the Ombudsman has published a number of special reports related to the protection of women from violence, rights of the child, rights of national minorities, gender equality, and other topics within its purview.

The Law on Protector of Citizens does not contain explicit provisions on the cooperation of this institution with the international human rights system and the civil society, so the need for amendments to the Law was noted in the 2014 Concluding Observations of the Committee for Economic, Social and Cultural Rights. Despite this gap, the Ombudsman does cooperate with UN human rights mechanisms and CSOs.

Also, the Law does not contain any provision that would authorise the Ombudsman to follow up on complaints against the private sector. In the private sector, ombudsmen usually have the role of mediators in peaceful dispute resolution between employees or customers and the legal entity.<sup>38</sup> A special kind of public-private ombudsmen may be established with a decision of a government authority, to be competent for legal entities (bank, insurance company, private pension fund, etc.).<sup>39</sup> It is important to mention that special banking ombudsmen already exist in

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38 Donald C. Rowat, "The new private sector ombudsmen" *Policy options*, November 1, 2003, available at: <https://policyoptions.irpp.org/magazines/corporate-governance/the-new-private-sector-ombudsmen/> (accessed on 6 August 2019).

39 Mr. Miodrag D. Radojević, *Transformation of the Ombudsman in Modern Legal Systems with Special Reference to the Protector of Citizens in the Republic of Serbia*, Belgrade, 2016., p. 280, available



Slovenia, Croatia and Montenegro. Interviewees are divided in their opinions about the broadening of competences of the Ombudsman to include the private sector, while some support the idea, others warn about the lack of capacities to perform the existing competences. In his public appearances, the Ombudsperson has supported broader scope of competences of the institution and has also mentioned control over banks.<sup>40</sup>

According to an interviewee, in 2012, the Council of Europe indicated that it would initiate to extend of the mandate of the Ombudsman to include the execution of the ECHR judgements, but it was obvious then that there were no adequate capacities in the institution, even though the Ombudsman does follow up on complaints for non-execution of ECHR judgements.<sup>41</sup>

Parallel with presenting ideas on broadening own competence to include the judiciary, in 2018, the Ombudsperson, Zoran Pašalić, in a public hearing on amendments to Constitutional provisions regulating the position of the judiciary, agreed with the Government proposal, which, according to professional associations of judges and prosecutors, constitutional law professors and Council of Europe institutions, would not relieve the judiciary of the influence of the Executive. This view is not arguable, since his opinion was not key in this hearing, and it need not necessarily be the opinion of the majority. However, he supported the Government's proposal, even though there was an obvious attempt to create an illusion of inclusive public debate, by replacing professional associations of judges and prosecutors and the civil society with the so-called government-organised non-governmental organisations (GONGO).

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at: <http://uvidok.rcub.bg.ac.rs/bitstream/handle/123456789/1023/Doktorat.pdf?sequence=1> (accessed on 14 August 2019).

40 Miona Živić, “Pašalić: Građani se sve više žale na rad izvršitelja, Poreske uprave, sudova” (Pašalić: Citizens Complain More and More about the Work of Enforcers, Tax Administration, courts), N1, 21 March 2019, available at: <http://rs.n1info.com/Vesti/a469981/Pasalic-Gradjani-se-sve-vise-zale-na-rad-izvrsitelja-Poreske-uprave-sudova.html> (accessed on 6 August 2019).

41 The execution of ECHR judgements is under the purview of the Republic of Serbia Agent before the European Court of Human Rights. The Agent has only six employees, with only two legal advisors working on the execution of judgements.



The public hearing process, in the Government's view, was supposed to be merely a presentation of different ideas regarding amendments to the Constitution in public fora, without discussing or publishing the Government's proposal before sending it to the Venice Commission for an opinion. It was only through great efforts of professional associations and the civil sector that this idea was nipped in the bud, and space was created to confront different arguments and views of the constitutional position of judges and prosecutors. With his uncritical support, the Ombudsperson provided legitimacy to the Government's actions, which are contrary to the mandate of his institution, and thus undermined its reputation. The use of GONGOs to obstruct dialogue on important topics is one of the reasons why CIVICUS<sup>42</sup> downgraded Serbia's status related to the space for civil sector engagement from Narrowed to Obstructed.<sup>43</sup>

The current mandate of the Ombudsman enables the protection and promotion of human rights. Any broadening of the Ombudsman's mandate could significantly jeopardise the functioning of the institution, which has difficulties in efficiently performing its existing competences. Additionally, giving the Ombudsman competences to control the judiciary would create a threat of instrumentalising the institution in conflicts between the government and the judiciary.

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42 World Alliance For Citizen Participation.

43 "Serbia's Civic Space Downgraded", *Civicus*, 11 October 2019, available at: <https://www.civicus.org/index.php/media-resources/news/4113-serbia-s-civic-space-downgraded>, (accessed on 12 October 2019).

### 1.3 Encouraging ratification or accession to international human rights instruments

*According to GANHRI General Observations of the Sub-Committee on Accreditations*

*Encouraging ratification of, or accession to international human rights instruments, and the effective implementation of international human rights instruments to which the state is a party, is a key function of an NHRI. The Paris Principles further prescribe that NHRIs should promote and encourage the harmonization of national legislation, regulations and practices with these instruments. The SCA considers it important that these duties form an integral part of the enabling legislation of an NHRI. In fulfilling this function, the NHRI is encouraged to undertake activities which may include the following: – monitoring developments in international human rights law; – promoting state participation in advocacy for and the drafting of international human rights instruments; and – conducting assessments of domestic compliance with and reporting on international human rights obligations, for example, through annual and special reports and participation in the Universal Periodic Review process. NHRIs should, in encouraging their governments to ratify international human rights instruments, advocate that this be done without reservations.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.10)*

According to the Screening Report<sup>44</sup>, by 2013, the Republic of Serbia ratified 28 conventions and 24 protocols of the Council of Europe<sup>45</sup>, 18 conventions and 6 protocols of the UN and 8 International Labour Organisation's (ILO) conventions. The 2019

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44 Screening report Serbia Chapter 23 – Judiciary and fundamental rights, Government of the Republic of Serbia, Belgrade, 2013, available at: [http://www.mei.gov.rs/upload/documents/skrining/izvestaj\\_pg\\_23\\_16.pdf](http://www.mei.gov.rs/upload/documents/skrining/izvestaj_pg_23_16.pdf) (accessed on 6 August 2019).

45 The Republic of Serbia has ratified as many as 89 different Council of Europe treaties, including conventions, protocols and charters, but only those relevant for human rights were mentioned.

status of UN conventions' ratifications<sup>46</sup> shows that until now, among umbrella human rights instruments, Serbia has not ratified only the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, signed in 2004. It is important to note that in the case of two ratified conventions, Serbia has not also ratified their optional protocols that would enable sending of individual applications by citizens to UN committees in cases of human rights violations deriving from these conventions. These are the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).<sup>47</sup>

Since 2013, Serbia has also, in addition to the above-mentioned Council of Europe conventions and protocols, signed the protocol to the European Landscape Convention and Council of Europe Convention on Cinematographic Co-production, which fall under the domain of cultural rights. On the other hand, it still has not ratified the European Convention on the Compensation of Victims of Violent Crimes, signed in 2010. In 2014, together with 37 CSOs, ASTRA submitted an initiative to relevant institutions to ratify this convention.<sup>48</sup> There is no information in either regular annual reports or special thematic reports on domestic violence on whether the Ombudsman has supported this initiative.

Serbia has not signed or ratified the Optional Protocol to the ICESCR, despite the recommendations in the 2014 Concluding Observations of the UN Committee on Economic, Social and

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46 Please see: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN) (accessed on 6 August 2019).

47 In 2008, adopting the revised European Charter on Social Rights, Serbia introduced a clause to the possibility of sending collective complaints to the European Committee of Social Rights.

48 "Inicijativa nevladinih organizacija za ratifikaciju Evropske konvencije za naknadu štete žrtvama krivičnih dela sa elementima nasilja" (Initiative by NGOs to Ratify the European Convention on the Compensation of Victims of Violent Crimes) ASTRA, 2014, available at: <https://www.astra.rs/inicijativa-nevladinih-organizacija-za-ratifikaciju-evropske-konvencije-za-naknadu-stete-zrtvama-krivicnih-dela-sa-elementima-nasilja/> (accessed on 6 August 2019).

Cultural Rights.<sup>49</sup> Although predominantly complaints submitted to the Ombudsman by the citizens relate specifically to economic and social rights<sup>50</sup>, there is no information available on whether the Ombudsman has ever considered to provide support to this important initiative.

Focus group participants share the views that the Ombudsperson failed to respond to the adoption of numerous laws and by-laws diminishing the attained level of social and economic rights, or that his reaction was declaratory and he did not use all the mechanisms available. The number of his legislative initiatives in this area is not proportional to the number of complaints received each year.<sup>51</sup> It seems that his lack of response represents tacit support to the Government, and their political platform, which is declaratorily based on fiscal accountability. Simultaneously, the Ombudsperson is avoiding to criticise more or less open Government participation in non-earmarked and corruptive spending of public funds saved through violations of citizens' socio-economic rights. Owing to the contribution of the Platform of Organisations for Cooperation with UN Human Rights Mechanisms<sup>52</sup>, the UN Committee on Social, Economic

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49 *Concluding observations on the second periodic report of Serbia*, UN Committee on Economic, Social and Cultural Rights, Geneva, 2014, available at: [https://ljudskaprava.gov.rs/sites/default/files/dokument\\_file/e\\_c-12\\_srb\\_co\\_2\\_17290\\_e\\_clean1.doc](https://ljudskaprava.gov.rs/sites/default/files/dokument_file/e_c-12_srb_co_2_17290_e_clean1.doc), (accessed on 6 August 2019).

50 According to the Ombudsman's Annual Report for 2017, the Department for the protection of economic and property-related rights received 33.93% of complaints, while the Department for the protection of social and cultural rights received 17.83% of complaints lodged by the citizens.

51 Miona Živić, "Pašalić: Građani se sve više žale na rad izvršitelja, Poreske uprave, sudova" (Pašalić: Citizens Complain More and More about the Work of Enforcers, Tax Administration, courts), N1, 21 March 2019, available at: <http://rs.n1info.com/Vesti/a469981/Pasalic-Gradjani-se-sve-vise-zale-na-rad-izvrstelja-Poreske-uprave-sudova.html> (accessed on 6 August 2019).

52 More at: <https://platforma.org.rs/> (accessed on 6 August 2019).

and Cultural Rights included the issue of Ombudsman in the List of Issues in relation to the third periodic report of Serbia.<sup>53</sup>

One focus group participant also singled out as problematic the lack of reaction from the Ombudsperson, Zoran Pašalić, to the amendments to the Criminal Code, introducing life imprisonment without the possibility of conditional release in May 2019, and mentioned his interview in which he had promised a reaction to this, and added that the lack of reaction meant agreement with the Government proposal. According to some focus group participants, the last amendments to the Criminal Code are contrary to the UN Convention against Torture. One of the participants feels that the Ombudsman is not pushing for the ratification of international treaties, because this is not covered by the job classification, and says that the Ombudsperson Zoran Pašalić has even spoken against the application of ECHR case-law in domestic courts, because, in his words, it is not suitable to the domestic legal environment.

Focus group participants also noticed a lack of response from the institution regarding the implementation of public policies, and particularly underlined the non-implementation of the Anti-Discrimination Strategy and non-adoption of the new Action Plan for social inclusion of Roma for the period 2016–2025. One of the participants also mentioned the viewpoint of the Ombudsperson Saša Janković, who saw a threat to the independence of the institution in including it as an implementer of measures listed in a strategic document adopted by the Government.

On the other hand, in late 2018, the A11 Initiative for economic and social rights and Child Rights Centre submitted an initiative to the Serbian Government Office for Human and Minority Rights to sign and ratify the remaining optional protocols.<sup>54</sup> When it

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53 *List of issues in relation to the third periodic report of Serbia, Committee on Economic, Social and Cultural Rights*, Geneva, 2019, available at: [https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/SRB/E\\_C-12\\_SRB\\_Q\\_3\\_38593\\_E.docx](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/SRB/E_C-12_SRB_Q_3_38593_E.docx), (accessed on 6 November 2019).

54 “Podneta Inicijativa za ratifikaciju opcionih protokola uz Konvenciju o pravima deteta i Pakt o ekonomskim, socijalnim i kulturnim pravim” (Initiative Submitted for the Ratification of Optional Protocols to

comes to the Convention on the Rights of the Child, in 2015, the former Ombudsman submitted an initiative to the Government of Serbia to ratify the Optional Protocol signed in 2012, to which there was no response from the Government, which was duly noted in the annual reports for 2016, 2017 and 2018. Focus group participants say that they do not know of any concrete activities implemented by the Ombudsman on this issue.

The Ombudsman's initiative to harmonise the Criminal Code with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) sent in 2011 and 2012 was more successful, as it was partially fulfilled several years later, despite the fact that initially there was no response from the Ministry of Justice. Namely, the 2016 amendments to the Criminal Code are in line with the proposals presented in the initiative, introducing the crimes of stalking, sexual harassment and female genital mutilation, and enhancing punishments for the crimes of rape, sexual intercourse with a helpless person, sexual intercourse with a child, sexual intercourse involving the abuse of official position and inducing a minor to watch sexual acts, while the adoption of the Law on the Prevention of Domestic Violence<sup>55</sup> the same year, regulated, among other issues, the issuance of emergency barring orders (the removal of the perpetrator from shared residence and prohibition to contact and approach the victim). However, Serbia has still not, despite the above-mentioned initiative from the civil society in 2014, ratified the European Convention on the Compensation of Victims of Violent Crimes or established the appropriate fund for compensation.

Unlike the previous initiative, the Ombudsman's 2015 initiative to amend the Criminal Code and the Law on Juvenile Criminal

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the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights), A11 Inicijativa za ekonomska i socijalna prava, 4 December 2018, available at: <http://www.a11initiative.org/podneta-inicijativa-za-ratifikaciju-opcionih-protokola-uz-konvenciju-o-pravima-deteta-i-pakt-o-ekonomskim-socijalnim-i-kulturnim-pravima/> (accessed on 6 August 2019).

55 Official Gazette RS, No. 94/2016.

Offenders and Criminal Protection of Juveniles in order to harmonise it with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on the Rights of the Child and to improve the situation of children in criminal proceedings did not get any response from the Government, which was noted by the Ombudsman in the 2015, 2016 and 2017 reports. The initiative to amend the Law on Public Order and Peace and to decriminalise child begging and give children the status of victim submitted that same year and to comply with the same convention, had the same result, and was not even taken into consideration when the new Law on Public Order and Peace was being adopted in 2016.

Referring to CRC provisions, in January 2019, the Ombudsman advocated for introducing misdemeanour liability for the violation of articles 77 and 79 of the Law on Public Information and Media (LPIM), related to dignity of a person or publishing content harmful for the free development of minors.<sup>56</sup>

It is important to mention that Article 77 LPIM does not refer to children alone, and that the introduction of misdemeanour liability would also mean the renewed incrimination of slander, after it was decriminalised in 2012. It is interesting that in his opinion, the Ombudsman does not reflect on the fact that other important provisions of the LPIM (e.g. violation of the presumption of innocence, violation of rights of minors, etc.) are hardly even implemented in practice, in spite of daily violations in tabloids.<sup>57</sup>

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56 Opinion of the Ombudsman on the Amendments to the Law on Public Information and Media, (13–2–2089/18 of 16 January 2019), available at: <https://www.ombudsman.rs/index.php/2011-12-11-11-34-45/6000-ishlj-nj-z-sh-i-ni-gr-d-n-iz-n-i-d-pun-z-n-vn-inf-r-is-nju-i-di-i> (accessed on 6 August 2019).

57 According to research conducted in 2018 by the Layers' Committee for Human Rights YUCOM, between 2015 and 2017, pursuant to the Law on Public Information and Media, only 29 proceedings were initiated before the courts in Belgrade, Novi Sad, Niš and Kragujevac, followed by only five meritorious decisions, four convictions and one acquittal. The Press Council regular monitoring records close to 1,000 violations of the Serbian Journalists' Code of Ethics annually, in relation to the violation of the presumption of innocence alone.



Another initiative of the Ombudsman that did not receive a response from the Government is the initiative to amend the Criminal Code and harmonise the definition of torture with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and to prescribe other obligations in line with the CAT, such as audio and visual recording, regulating the use of force by police officers, staff in security services and penal institutions and communal police officers.

Another important recommendation of the Ombudsman also related to the resettlement of informal settlements (2011), and in accordance with it, the 2016 Law on Housing and Building Maintenance harmonised the forced eviction process considerably with the ICESCR and the General Comment No. 7 of this UN Committee. The Ombudsman found that this law improved the country's fulfilment of obligation to ensure adequate standard of living and conditions necessary for survival, living and development of children, social protection and support and assistance to parents and families with children in the area of housing, undertaken by ratifying the CRC.

Considering that the actions of public enforcement officers cause a huge public odium, the new Ombudsman has advocated for humanisation of the execution process and has mediated in one such case. This institution has also submitted a legislative initiative to amend the Law on Enforcement and Security Interest (LESI), which would prevent the sale of property of third parties. The latest amendments to the LESI from July 2019, made the sale of only home of the enforcement debtor considerably more difficult, but did not entirely exclude it. Despite the fact that the Ombudsman is offering mediation in such situations, it seems that his participation is of a more humanitarian and ad hoc character, than offering concrete recommendations for systemic solutions to this burning issue. It is also important to say that the Ombudsman has the powers to control legal entities entrusted with public legal powers, but that these powers do not apply to natural persons, that is, public enforcers. One of focus group participants pointed out to the issue of a conclusion made in 2012 by the then Ombudsperson,

Saša Janković, regarding amendments to individual laws in order to regulate the area of LGBTI rights, rather than adopting a systemic solution. As she says, an analysis by SIPRU<sup>58</sup> identified over 70 laws that should be amended, and that thus far, six years after the arguable conclusion, only the Law on Civil Records has been amended. According to her, Ombudsperson Zoran Pašalić has had the opportunity to correct this mistake, saying that his attitude towards LGBTI rights and sudden support provided to the Law on Same-Sex Unions and Law on Gender Identity, is an example of the institution's dependence on political will. She mentions that her organisation offered a model Law on Gender Identity a while ago, which was changed so much after the intervention of the competent ministry, that she had to publicly distance herself from the draft in its current form. She adds that recommendations related to the improvement of the situation and fulfilment of rights of the LGBTI community are not being implemented, and thus being repeated from one annual report to the next.

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58 Government of the Republic of Serbia, Social Inclusion and Poverty Reduction Unit.

## **1.4 Interaction with the international human rights system**

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the United Nations Human Rights Treaty Bodies, can be an effective tool for NHRIs in the promotion and protection of human rights domestically. Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:*

- submitting parallel or shadow reports to the Universal Periodic Review, Special Procedure*
- mechanisms and Treaty Bodies Committees;*
- making statements during debates before review bodies and the Human Rights Council;*
- assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and*
- monitoring and promoting the implementation of relevant recommendations originating from the human rights system.*

*While it is appropriate for governments to consult with NHRIs in the preparation of a state's reports to human rights mechanisms, NHRIs should neither prepare the country report nor should they report on behalf of the government. NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right. NHRIs should not participate as part of a government delegation during the Universal Periodic*



*Review, during periodic reviews before the Treaty Bodies, or in other international mechanisms where independent participation rights for NHRIs exist.*

*Where independent participation rights for NHRIs do not exist in a particular fora and an NHRI chooses to participate in proceedings as part of a state delegation, the manner of their participation must clearly distinguish them as an independent NHRI.*

*In considering their engagement with the international human rights system, NHRIs are encouraged to actively engage with the Office of the United Nations High Commissioner for*

*Human Rights (OHCHR), GANHRI, their Regional Network and other NHRIs, as well as international and national NGOs and civil society organizations.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.12)*

The Ombudsman is a member of numerous regional, European and global NHRI networks<sup>59</sup>, participating in reporting on the implementation of international conventions and attending the sessions of these bodies and presenting the findings in its reports. Regular annual reports of the Ombudsman and reports on NPM implementation translated into English, are regularly sent to international networks the institution is a member of, and in particular the UN Committee on Torture (CAT), UN Subcommittee on Prevention of Torture (SPT) and European Committee for the Prevention of Torture (CPT). Respecting the established principle, the Ombudsman is not a member of state

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59 The Ombudsman is member of the Global Alliance of National Human Rights Institutions (GANHRI), European Network of National Human Rights Institutions (ENNHRI), the International Ombudsman Institute (IOI), the Association of Mediterranean Ombudsmen (AOM), the European Ombudsman Institute (EOI), the European Network of Ombudsmen (ENO), the European Network of Ombudspersons for Children (ENOC), Children's Rights Ombudsmen Network in South-East Europe (CRONSEE), Network of Ombudsmen for Environmental Protection, the Network of Balkan Ombudsmen.

delegations at the sessions of UN human rights treaty bodies, despite the government's invitations.<sup>60</sup>

During the period covered by the analysis, the Republic of Serbia presented the following documents before UN treaty bodies:

- ▶ Initial Report on the implementation of the International Convention on the Protection of All Persons from Enforced Disappearances (February 2015);
- ▶ Second periodic report on the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (April 2015);
- ▶ Initial report on the implementation of the Convention on the Rights of Persons with Disabilities (April 2016);
- ▶ Second and Third Periodic Report on the implementation of the Convention on the Rights of the Child (January 2017);
- ▶ Third Periodic Report on the implementation of the International Covenant on Civil and Political Rights (March 2017);
- ▶ Second and Third Periodic Report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (November 2017);
- ▶ Fourth Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (February 2019).

In the previous period, the Republic of Serbia has submitted to UN treaty bodies the following:

- ▶ Second and Third Periodic Report on the implementation of the Convention on the Rights of the Child (May 2015);
- ▶ Third Periodic Report on the implementation of the International Covenant on Civil and Political Rights (September 2015);

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60 Response of the Office for Human and Minority Rights to the request for access to information of public importance dated 25 June 2019.



- ▶ Second and Third Period Report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (January 2016);
- ▶ Report on the implementation of recommendations number 17 and 23 of the Concluding Observations on the Second and Third Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (April 2016);
- ▶ Report on the implementation of recommendations number 9a and 19 of the Concluding Observations on the second periodic report on the implementation of the Convention against Torture (April 2016);
- ▶ Report on the Implementation of recommendations number 11, 14 and 28 of the Concluding Observations on the Initial Report on the implementation of the International Convention on the Protection of All Persons from Enforced Disappearances (May 2016);
- ▶ Report on the implementation of recommendations number 34 and 54 of the Concluding Observations on the Initial Report on the implementation of the Convention on the Rights of Persons with Disabilities (May 2017)
- ▶ Fourth Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (July 2017)
- ▶ Report on the implementation of recommendations number 15, 33 and 39 of the Concluding Observations of the Human Rights Committee on the Third Period Report on the implementation of the International Covenant on Civil and Political Rights (June 2018)
- ▶ Report on the implementation of recommendations contained in Paragraphs 16 and 17 of the Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on the II-V periodic reports on the implementation of the International Convention on

the Elimination of All Forms of Racial Discrimination (December 2018);

- ▶ Third periodic report on the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (May 2019);
- ▶ Third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (April 2019).

Republic of Serbia in the third cycle of the Universal Periodic Review

- ▶ The Report of the Republic of Serbia for the third cycle of the Universal Periodic Review (UPR) submitted in November 2017.
- ▶ The Report of the Republic of Serbia for the third cycle of the Universal Periodic Review (UPR) presented in January 2018.
- ▶ Responses of the Republic of Serbia to the recommendations of UN member states for the third UPR cycle submitted in April 2018.

Since 2015, the Ombudsman has submitted its reports to the UN Committee against Torture<sup>61</sup> (April 2015), UN Committee on the Rights of Persons with Disabilities<sup>62</sup> (August 2015), UN Committee on the Elimination of Racial Discrimination<sup>63</sup> (October 2017), UN

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61 Protector of Citizens, Observations on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment in the Republic of Serbia, April 2015, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNHS%2fSRB%2f20113&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNHS%2fSRB%2f20113&Lang=en) (accessed on 10 August 2019).

62 Protector of Citizens, Selected list of issues on the implementation of the United Nations Convention on the Rights of Persons With Disabilities in the Republic of Serbia, July 2015, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fFL%2fSRB%2f21317&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fFL%2fSRB%2f21317&Lang=en) (accessed on 10 August 2019).

63 Protector of Citizens, Observations on implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in the Republic of Serbia, October 2017, available

Human Rights Committee<sup>64</sup> (February 2017) and UN Committee on the Elimination of Discrimination against Women<sup>65</sup> (June 2018). During the same period, the UN Committee on the Elimination of Discrimination against Women (2016) and the UN Committee on the Rights of the Child (2016) submitted annexes regarding the fulfilment of recommendations issued by these bodies to Serbia. The Ombudsman submitted independent reports for the third cycle of the Universal Period Review (UPR), as well as annexes to the government's report related to the work of the Ombudsman.<sup>66</sup>

According to information received during interviews, the Ombudsman and his Deputies participated in the sessions of the UN Committee against Torture (2015), UN Committee on the Rights of the Child (2016), UN Committee on the Rights of Persons with Disabilities (2016), Subcommittee on Prevention of Torture (SPT) and UN Human Rights Council, as well as sessions of other UN committees, but always separately from the state delegation.

During the same period, the Ombudsman participated in the session of the European Committee for the Prevention of Torture (CPT) in 2015. Communication with CPT was

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at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fIFN%2fSRB%2f29351&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fIFN%2fSRB%2f29351&Lang=en) (accessed on 10 August 2019).

- 64 Protector of Citizens, Observations on implementation of the International Covenant on Civil and Political Rights in the Republic of Serbia, February 2017, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNHS%2fSRB%2f26508&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNHS%2fSRB%2f26508&Lang=en) (accessed on 10 August 2019).
- 65 Protector of Citizens, Selected list of issues on the implementation of the United Nations Convention on the Elimination of all Forms of Discrimination against Women in the Republic of Serbia, June 2018, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fIFL%2fSRB%2f31493&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fIFL%2fSRB%2f31493&Lang=en) (accessed on 10 August 2019).
- 66 Response of the Office for Human and Minority Rights to the request for access to information of public importance dated 26 June 2019.



established on the evaluation of the implementation of the CPT report. Deputy Ombudsperson in charge of the rights of persons deprived of liberty submitted informal annual reports, as well as NPM reports to the CAT, SPT and CPT. Additionally, the Ombudsman addressed also the Council of Europe Committee for the Rights of the Child and submitted reports on the situation of the LGBTI population. After the expiry of the Deputy Ombudsperson's mandate, in December 2018, there has been a visible decline of the institution's reporting to UN Committees, due to which alternative reports to UN Committee on Social, Economic and Cultural Rights and UN Committee on the Elimination of All Forms of Discrimination against Women were not sent.

*Table 1: Ombudsman's contributions to the reporting to UN Committees*

| Convention   | Year | Alternative report | Contribution to list of issues |
|--|------|--------------------|--------------------------------|
| Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) | 2015 | Yes                | No                             |
|  | 2017 | No                 | No                             |
| International Covenant on Civil and Political Rights (CCPR)                                    | 2017 | Yes                | No                             |
| International Convention on the Protection of All Persons from Enforced Disappearances (CED)   | 2015 | No                 | No                             |
| Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)             | 2019 | No                 | Yes                            |
| International Convention on the Elimination of All Forms of Racial Discrimination (CERD)       | 2017 | Yes                | /                              |
| International Covenant on Economic, Social and Cultural Rights (CESCR)                         | 2019 | No                 | No                             |
| Convention on the Rights of the Child (CRC)  | 2017 | No                 | No                             |
| Convention on the Rights of Persons with Disabilities (CRPD)                                   | 2015 | No                 | Yes                            |

According to information received during interviews, at one moment, in the lack of a systemic mechanism, there was an initiative for the Ombudsman to take over monitoring of the implementation of recommendations received from the UN human rights protection system. Like the idea for the Ombudsman to be the authority in charge of the implementation of ECHR judgements in Serbia, this idea was also abandoned because of the institution's lack of capacities to perform its existing competences.<sup>67</sup>

Deputy Ombudsperson presented the situation of the rights of the child before the UN Committee on the Rights of the Child, so a considerable number of recommendations given to Serbia were the result of her presentation. The topics included children on the move, children living and working in the streets and missing babies. The Ombudsman worked particularly hard on the execution of the EHCR judgement *Zorica Jovanović v. Serbia*, i.e. the issue of establishing a mechanism for compensation to parents and for reliable answers in relation to the real fate of each child. An interviewee mentioned that the Ombudsman cooperated on the development of shadow reports with CSOs, such as AŽC (Autonomous Women's Centre) and Incest Trauma Centre.

The Ombudsman also cooperated with ombudsmen from the region, signed cooperation agreements with ombudsmen from Russia, Turkey, Belarus and Slovakia related to cooperation on cases of human rights violations of Serbian citizens in these countries and vice-versa. Cooperation with ombudsmen was also established through organisation and participation in international events, as well as sending Ombudsman representatives for professional development to ombudsman institutions in Slovenia and Portugal.

The Ombudsman cooperated with all relevant international CSOs regarding the prevention of torture and protection of persons with mental disabilities. An interviewee listed the Association for the Prevention of Torture (APT), Penal Reform International (PRI)

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67 *Ibid.*

and National Protective Mechanism Observers (NPM Obs). He went on to say that the representatives of the Ombudsman, as well as the Ombudsperson himself, had participated in GANHRI meetings, and that an employee of this institution had spent six months on professional development with this organisation.

During the period covered by the research, he met with the UN Special Rapporteur on adequate housing, Leilani Fhra, UN Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, UN Special Rapporteur in the field of cultural rights Karima Bennoune, delegations of ombudsmen from Belarus, Moldova and Georgia, the President of the European Parliament Martin Schulz, European Parliament Rapporteur for Serbia David McAllister, Council of Europe Human Rights Commissioner Nils Muižnieks, Chancellor of Germany Angela Merkel, UK Foreign Secretary Boris Johnson, US Assistant Secretary of State, as well as UN, Council of Europe and other experts.<sup>68</sup>

A Deputy Ombudsperson was member of the ENOC Bureau, and she participated in policy making and in the visits to the Council of Europe and the European Commission, with the aim to present to these institutions the importance of consulting NHRIs prior to planning activities or issuing guidelines. She participated in study visits in Armenia and Turkey.

According to information received during interviews, the Ombudsman also participated in monitoring and promoting the implementation of CAT, SPT, CPT and ECHR recommendations, as well as UN Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules), European Prison Rules of the Council of Europe and recommendation of CoE Committee of Ministers, by organising visits to institutions within the scope of competence of the Ombudsman.

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68 Ombudsman Annual Reports (2015–2018).

The Ombudsman cooperates with the international human rights system by sending parallel reports and attending sessions of UN and CoE bodies, as well as via membership in numerous associations of regional, European and global character. The scope and the quality of cooperation are largely the credit of Deputy Ombudspersons, each in their respective area of expertise. The delay in proposing Deputies is a reason for concern relating to the continuance of this cooperation, which has lately recorded a significant decline.

## 1.5 Cooperation with other human rights bodies

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*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.15)*

Beside the Ombudsman in Serbia, as independent national-level institution, there is also the Commissioner for the Protection of Equality and the Commissioner for Access to Information of Public Importance and Personal Data Protection. For several years now there has been an initiative to establish a special children's ombudsman, in line with the recommendation of the UN Committee for the Rights of the Child, in a special law on the protection of the rights of the child, which has still not been adopted, so that currently this area is under the purview of the Deputy Ombudsman in charge of children's rights.

The Law on Protector of Citizens does not regulate the relationship of this institution with other human rights institutions. The only law regulating the relationship between two national institutions is the Law on Anti-Corruption Agency<sup>69</sup>, which contains a provision under which a member of the Agency Board is elected on joint proposal by the Ombudsman and the Commissioner for Access to Information of Public Importance and Personal Data Protection. In 2015, the then Ombudsperson, Saša Janković, and Commissioner Rodoljub Šabić, sent a joint proposal for a candidate to the National Assembly Committee on Judiciary. After their proposal had been ignored by the Committee for two years<sup>70</sup>, the new Ombudsperson, Zoran Pašalić, withdrew the institution's consent to the joint proposal, and proposed a candidate independently without reaching an agreement with the Commissioner. His move caused controversies in the public, while the Commissioner assessed that his proposal, as well as the behaviour of the Committee on Judiciary, were against the law. Namely, the Committee on Judiciary presented to the National Assembly, rather than the joint proposal for one candidate, a proposal for two candidates, one by the Ombudsman and the other by the Commissioner for Access to Information of Public Importance. Not only did the Ombudsman act contrary to the Law on Anti-Corruption Agency<sup>71</sup>, but simultaneously obstructed the selection of the previously proposed joint independent candidate. As a reminder, this was about the selection of the Anti-Corruption Agency Board Member, the competence of which also includes the control of public officials' property and political party financing. Five months before that, a funder of the ruling political party

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69 Official Gazette RS, No. 97/2008, 53/2010, 66/2011 – CC decision 67/2013 – CC decision, 112/2013 – authentic interpretation and 8/2015 – CC decision.

70 “Skupštinski odbor o izboru članova Odbora Agencije za borbu protiv korupcije: Pravna zavrzlama i sporna rešenja” (Parliamentary Committee on the Election of Members of the Board of the Anti-Corruption Agency: Legal Tricks and Arguable Solutions), Insajder, 8 June 2018, available at: <https://insajder.net/sr/sajt/vazno/11517/> (accessed on 10 August 2019).

71 Official Gazette RS, No. 97/2008, 53/2010, 66/2011 – CC decision 67/2013 – CC decision, 112/2013 – authentic interpretation and 8/2015 – CC decision.

became the Director of the Agency, violating the provisions of the Law on Financing Political Activities. Namely, he appeared on the list of political party donors, including also some social assistance beneficiaries, who donated equal, maximum sums allowed for natural persons, in an obvious attempt to cover the origin of the money<sup>72</sup> It seems that the Ombudsman, acting contrary to the law and his own mandate, actually participated in putting another independent institution under the control of the Government.

In practice, the issue of competence of a human rights institution to control another institution arose, so views were presented that the Ombudsman, as an umbrella institution, included in the Constitution, should be the only one with such competence. The Commissioner for Access to Information of Public Importance initiated proceedings against the Ombudsman regarding free access to information of public importance, while according to an interviewee, the Ombudsman showed constraint taking into consideration the fact that the Commissioner's delay in resolving citizens' complaints was a result of limited adequate human and material resources, which were being denied by government authorities for several years.

The Ombudsman and the Commissioner for the Protection of Equality have an informal agreement on delimitation of competences, according to which the Ombudsman is competent in all situations in which discrimination is related to process and to the violation of good governance principles, while the Commissioner is competent when it comes to essential discrimination.

Volatile cooperation and conflicting competences exist in the work of local ombudsmen, which the Ombudsman cannot influence or control. Pursuant to the Law on Local Self-Government<sup>73</sup>, towns and municipalities can establish local ombudsmen. They are not in hierarchy with the national Ombudsman, while their

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72 "Minić: Sikimić je u sukobu interesa" (Minić: Sikimić Has a Conflict of Interest), Danas, 20 January 2018, available at: <https://www.danas.rs/drustvo/minic-sikimic-je-u-sukobu-interesa/> (accessed on 10 August 2019).

73 Official Gazette RS, No. 129/2007, 83/2014 – other law, 101/2016 – other law and 47/2018, Art. 97.

competences, organisation and relationship with the local self-government unit are in practice regulated in different ways.

The Provincial Ombudsman was established with the Decision of the AP Vojvodina Assembly in 2014. The Ombudsman has good cooperation with the Provincial Ombudsman and has signed a memorandum with this institution on visits to places of detention on the territory of AP Vojvodina.<sup>74</sup> According to one of the interviewees, the Provincial Ombudsman, by receiving complaints related to torture, usurps the exclusive competence of the Ombudsman. One interviewee says that the fact that the citizens are not sufficiently informed about the competences of different independent institutions and that they often confuse them is a particular problem. The Ombudsman, Provincial Ombudsman and local ombudsmen are covered by the Action Plan for Chapter 23, within the measure related to the enhancement of their capacities.<sup>75</sup>

Before 2017, while Saša Janković was occupying the function, the Ombudsman cooperated with domestic CSOs well, which, according to focus group participants, declined significantly, or ceased completely after Zoran Pašalić was elected to the function in 2017.

The cooperation was realised in different ways, specifically:

- ▶ CSO representatives cooperated within the NPM;
- ▶ CSO representatives were advisors to the Ombudsman or members of advisory bodies, such as the Gender Equality Council and Council on National Minorities;
- ▶ the Ombudsman organised ad hoc meetings with CSOs regarding issues within its purview;
- ▶ CSO representatives were engaged to develop legal analyses in the Ombudsman's field of work;

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74 Ombudsman, National Preventive Mechanism: Report for 2018, Belgrade, 2019, p.9, available at: <https://npm.rs/attachments/article/853/GI%20NPM%202018.pdf> (accessed on 10 August 2019).

75 Action Plan for Chapter 23, Government of the Republic of Serbia, April 2016, measure 3.2., available at: [http://www.mei.gov.rs/upload/documents/pristupni\\_pregovori/akcioni\\_planovi/akcioni\\_plan\\_23.pdf](http://www.mei.gov.rs/upload/documents/pristupni_pregovori/akcioni_planovi/akcioni_plan_23.pdf) (accessed on 10 August 2019)..



- ▶ the Ombudsman cooperated with CSOs on projects;
- ▶ the Ombudsman participated in events organised by CSOs.

A focus group participant underlines the cooperation of her organisation with the Ombudsman during the migrant crisis in 2015 and 2016, which led to improved reputation of the country abroad, especially by organising international events in Belgrade and Thessaloniki and the adoption of the Belgrade Declaration and Action Plan in Thessaloniki. She says that the cooperation ceased with Zoran Pašalić, and that no more joint visits were organised to migrant centres, unlike during the previous period. Considering that her organisation is part of NPM, she also points out that there have been no reports on visits since the beginning of the year, which she evaluates as devastating because the purpose is to work transparently, and not to conduct visits for visits' sake. She also says that the lack of deputies and specialised people can be felt. One of the interviewees also mentioned the proposal of the Ombudsperson Zoran Pašalić to reduce cooperation with CSOs within the NPM, to participation in round tables.

Other participants share the opinion on decline of cooperation after the new Ombudsperson took office. One of the participants pointed out that none of the complaints sent to the Ombudsman by his organisation since January 2018 was addressed and suggested the lack of staff working on the issues of national minorities as possible cause. He added that the emergency service did have some success in delaying the forced eviction, but saw it primarily as a humanitarian action, which did not serve to determine anything and from which no concrete recommendations would derive. He also pointed out that in a politically sensitive situation, the reaction of this service was lacking for almost three weeks, but that he had similar experiences in working with the Ombudsman before. His organisation is formally cooperating with the Ombudsman on the development of a thematic report regarding Roma rights.

One of the participants mentioned that in December 2018, his organisation unsuccessfully attempted to establish cooperation with the Ombudsman on a project involving local ombudsmen and education of youth about human rights protection mechanisms. Other participants say that, despite meetings held and promises made by the Ombudsman regarding



legislative initiatives, no assistance was extended in this area. They particularly mentioned the harmonisation of the Law on the Protection of the Right to Trial within a Reasonable Time with ECHR case-law, so as to encompass the administrative proceeding, as the issue of discriminatory provisions in the draft Law on Veteran and Social Protection which should be adopted.

A representative of a journalist association specifically underlined enormous differences between the Ombudsman's annual reports, before and after the election of the new Ombudsperson, and stressed that the last report did not refer to concrete situations to illustrate the poor situation regarding media freedoms, nor any of the relevant studies conducted by media associations. As he says, the report only repeats general findings, referring to international sources. He feels there is an obvious difference in the scope, quality and severity of assessments in the reports from 2016 and 2018. In his opinion, the reason why earlier practice changed is because it is clear that criticism is not welcome in the existing political environment. The Ombudsman had an initiative to establish a database on attacks on journalists, but there was no cooperation because the purpose of such database was not clear when NUNS had been working on an identical database for 10 years. He added that the Ombudsman, despite the mentioned initiative, actually did not show any interest in annual reports issued by the NUNS platform for journalist safety, and considered that in case an issue was political, he would not decide in favour of citizens.

One of the forms of cooperation is the participation of CSO representatives in Ombudsman advisory bodies, such as the Gender Equality Council, Council for the Rights of the Child and the Council on National Minorities. Information on these bodies is not available in annual reports, and according to one of the focus group participants, the representative of their organisation, who is a member, did not get an invitation to the Council for two years and had no information about the functioning of that body. The situation is similar with the Council on National Minorities.

One focus group participant mentioned bad experiences working on a project with the Ombudsman, stating that due to delays in communication by the institution, and even ignoring emails, the first phase of the project was almost ruined, while

the second was not even implemented after the cooperation ceased in February 2018. It is a project in cooperation between the Ombudsman and CSOs on drafting legal analyses within the scope of work of this institution. Focus group participants report that there is no practice of consultation with the Ombudsman before sending shadow reports to international bodies.

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Contrary to the Law on Anti-Corruption Agency, the Ombudsman proposed to the competent National Assembly committee a candidate for membership on the Board of this institution, without previous agreement with the Commissioner for Access to Information of Public Importance and Personal Data Protection. This contributed to Government efforts to marginalise the institution of the Commissioner, which had for years endured attacks from pro-Government tabloids, because of its independent work. Additionally, there is serious concern that the selection for the member of the Anti-Corruption Agency Board proposed by the Ombudsman helped the Government strengthen its control over this independent institution. Simultaneously, a decline in the level of cooperation with CSOs occurred, existing consultative mechanisms ceased to function and relevant sources from media associations were not taken into consideration anymore when developing Ombudsman's annual reports.

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### **1.6 Recommendations by NHRIs**

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*Annual, special and thematic reports of NHRIs serve to highlight key national human rights concerns and provide a means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities. NHRIs, as part of their mandate to promote and protect human rights, should undertake follow up action on recommendations contained in these reports and should publicize detailed information on the measures taken or not taken by public authorities in implementing*



*specific recommendations or decisions. In fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow up activities to promote and advocate for the implementation on its recommendations and findings, and the protection of those whose rights were found to have been violated. Public authorities are encouraged to respond to recommendations from NHRIs in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the NHRI's recommendations.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.17)*

The Law on Protector of Citizens (Articles 18 and 19) provides that the Ombudsman has the right to propose laws under its purview, has the powers to submit initiatives to the Government and the Parliament to amend laws and other regulations and general acts, if they deem the violation of citizens' rights occurred because of faults in regulations, to initiate the adoption of new laws, other regulations and general acts, when they deem this to be of importance for the fulfilment and protection of citizens' rights, and the Government, i.e. the competent parliamentary committee, must consider initiatives submitted by the Ombudsman. The Ombudsman can also, during the procedure for the preparation of regulations, provide opinions to the Government and the Parliament to draft laws and other regulations and initiate proceedings before the Constitutional Court to determine the constitutionality and legality of laws, other regulations and general acts.

According to data in the reports for the period 2015–2018, the Ombudsman used these powers and published 129 opinions and submitted 39 initiatives to amend regulations, submitted amendments to draft laws, or draft laws to committees and the National Assembly. Between 2015 and 2018, the Ombudsman initiated proceedings to determine constitutionality and legality of regulations before the Constitutional Court of Serbia four times: two times in 2015 and 2016, respectively. In 2017 and 2018 there were no initiated proceedings to determine the constitutionality and legality of regulations by the Ombudsman before this Court.<sup>76</sup>

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76 See Table 1 and 2.

To which extent government authorities (Government, National Assembly, ministries and administration bodies) relied on proposals, opinions and recommendations of the Ombudsman when adopting laws and regulations and accepted its initiatives can be seen in annual reports for 2015 and 2016, which list recommendations from earlier years, which had not been followed up on. According to data in 2015 report, competent authorities did not follow up on 189 recommendations, opinions and legislative initiatives issued by the Ombudsman. A similar number (215) recommendations that were not followed up on were listed also in the report for 2016.<sup>77</sup> Unfortunately, the practice of listing unfulfilled recommendations was abandoned after 2016.

*Table 2: Opinion*

| Year | Opinions for preventive action | Opinions during regulation preparation procedure | Total |
|------|--------------------------------|--|-------|
| 2018 | 12                             | 25   | 37    |
| 2017 | 8                              | 24   | 32    |
| 2016 | 8                              | 29   | 37    |
| 2015 | 15                             | 8  | 23    |

*Table 3: Legislative initiatives and Constitutional Court address*

| Year | Total | Amendments to NA Committee | Amendments to National Assembly | Proposal of laws | Initiative to amend or adopt laws | Proposal to Constitutional Court | Not accepted | Accepted | In procedure |
|------|-------|----------------------------|---------------------------------|------------------|-----------------------------------|----------------------------------|--------------|----------|--------------|
| 2018 | 5     | 0                          | 0                               | 0                | 5                                 | 0                                | 1            | 0        | 4            |
| 2017 | 10    | 7                          | 0                               | 0                | 3                                 | 0                                | 6            | 1        | 3            |
| 2016 | 9     | 2                          | /                               | /                | 5                                 | 2                                | /            | 2        | 7            |
| 2015 | 15    | 4                          | 3                               | 1                | 5                                 | 2                                | 6            | 5        | 4            |

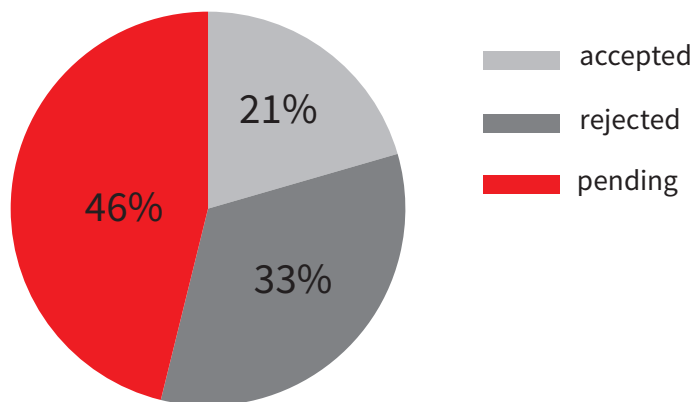
77 It should be borne in mind that these numbers refer to recommendations in all sectors, as well as that many of them repeat for both years.



After 2016, in addition to the lower number of legislative initiatives in reports, concrete information on their outcomes are also lacking. Parallel to this trend, the number of accepted initiatives has declined, while the number of unaccepted initiatives and initiatives not followed up on before the finalisation of annual reports has increased.

Information gathering on concrete outcomes of legislative initiatives by the Ombudsman is considerably impeded by the fact that the institution itself has not published this information since 2015, when they were submitted to a number of different institutions, and that, if there is no information about the proposer of a legislative initiative, it is not possible to determine with certainty the causal relationship of these initiatives by the Ombudsman and the decisions adopted. In practice there were also situations when initially adopted solutions would not be included in the draft Law, or they were changed by last-minute amendments.<sup>78</sup> Considering that the Ombudsman publishes institutions' responses to submitted initiatives on their website, it is visible that the majority do not get any, even a formal response, despite the legal obligation of the Government and the National Assembly to consider them. The impression is that the omissions of the useful parts of the reports come as a favour to the ruling majority in the National Assembly, so it can review the report without the opposition being provided with material to criticise the work of the Government.

*Chart 1: Outcomes of legislative initiatives 2015–2018*



78 Information from organised interviews.

From the 2017 report onward, the Ombudsman abandoned the custom of listing unfulfilled recommendations, which is why this mechanism to call the Government to account could not be used by the National Assembly to develop conclusions, which, in 2019, after a break of several years, finally decided to review the institution's annual report. Additionally, when it comes to legislative initiatives of the Ombudsman, the new, reduced structure of the report no longer enables to monitor their results, i.e. reaction or lack of reaction of the institution they were issued to (Government, ministries, National Assembly), which has rendered this mechanism of calling the Government to account meaningless.

## 1.7 Ensuring pluralism of the NHRI

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*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*A diverse decision-making and staff body facilitates the NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI for all citizens. Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes, for example, ensuring the equitable participation of women in the NHRI.*

*The SCA notes there are diverse models for ensuring the requirement of pluralism in the composition of the NHRIs as set out in the Paris Principles. For example:*

- Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict*

*the diversity and plurality of the composition of the NHRI's membership should be avoided;*

- *Pluralism through the appointment procedures of the governing body of the NHRIs for example, where diverse societal groups suggest or recommend candidates;*
- *Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or*
- *Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member NHRIs, such as an Ombudsperson.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.20)*

The Law on Protector of Citizens does not regulate ensuring pluralism with regards to the selection of the Ombudsperson and his/her deputies, nor to the recruitment of staff. The Law on Civil Servants<sup>79</sup>, which applies to employees in the institution of the Ombudsman, stipulates that recruitment should be carefully done so as to reflect, to the extent possible, the structure of the population regarding nationality, representation of sexes and the number of persons with disabilities.<sup>80</sup> The way to achieve this provision in the institution of the Ombudsman is regulated by the Decree on internal and public recruitment in government authorities<sup>81</sup> and the Rulebook on recruitment in the Expert Service of the Ombudsman<sup>82</sup>, which prescribe that special care shall be taken to increase the share of members of national minorities in jobs in branch offices at locations traditionally populated by national minorities.<sup>83</sup> It is not clear to what extent this has been implemented in practice, considering that the

79 Law on Civil Servants, Official Gazette RS, No. 79/2005, 81/2005 – corr., 83/2005 – corr., 64/2007, 67/2007 – corr., 116/2008, 104/2009, 99/2014, 94/2017 and 95/2018.

80 *Ibid.*, Art. 9, Para. 3.

81 *Ibid.* Art.61, Para. 5.

82 Rulebook on recruitment in the expert service of the Ombudsman (31 – 267/ 15 of 24 December 2019), available at: [https://www.ombudsman.rs/attachments/4506\\_pravilnik.doc](https://www.ombudsman.rs/attachments/4506_pravilnik.doc) (accessed on 14 August 2019).

83 *Ibid.*, Art. 3.



Ombudsman, in their reply to our request to access information of public importance, stated that they did not keep records of the ethnicity of their staff, considering that they were not required by the law to report it.<sup>84</sup> Interviewees confirm that there were staff members in the institution belonging to national minorities, but that this is not a result of the implementation of the Law or by-laws, which they feel are hard to implement in practice.

It is important to mention also that in line with the Ombudsman's Opinion on Draft Law on Employees in Public Services<sup>85</sup>, this Law prescribes affirmative measures in the selection of candidates, so that the proclaimed principle of equal access to jobs would be fully attained. The Law prescribes that, if several candidates meet the eligibility criteria with equal best results, the candidate belonging to a disadvantaged group shall be given priority, such as victims of domestic and intimate partner violence, persons with disabilities, members of the Roma national minority, and the law regulating the public service or collective agreement may also define other disadvantaged groups.<sup>86</sup> A special provision prescribes that in order to achieve appropriate representation of national minorities, advantage shall be given to qualified members of national minorities.<sup>87</sup>

Considering that on 31 December 2018 the Ombudsman had 98 employees<sup>88</sup>, the institution fulfilled its legal obligation and employed 2 persons with disabilities, in accordance with

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84 Response of the Ombudsman to the request for access to information of public importance dated 5 August 2019.

85 Opinion of the Ombudsman on Draft Law on Employees in Public Services (183–29/17 of 16 October 2017), available at: <https://www.ombudsman.rs/attachments/article/5501/Misljenje%20Zastitnika%20gradjana.pdf> (accessed on 14 August 2019).

86 Law on Employees in Public Services, Official Gazette RS, No. 113/2017 and 95/2018, Art. 58, Para.4.

87 *Ibid.*, Art. 10, Para. 3.

88 Ombudsman, Regular Annual Report for 2018, Belgrade, March 2019, p. 115, available at: [https://www.ombudsman.rs/attachments/article/6062/Zastitnik%20gradjana\\_Godisnji%20izvestaj%20za%202018.%20godinu.pdf](https://www.ombudsman.rs/attachments/article/6062/Zastitnik%20gradjana_Godisnji%20izvestaj%20za%202018.%20godinu.pdf) (accessed on 14 August 2019).



the provisions of the Law on Professional Rehabilitation and Employment of Persons with Disabilities.<sup>89</sup>

The selection of the Ombudsperson and their deputies does not indicate any attention to their ethnic or minority background, while the deputies' positions have always been filled by two men and two women. This is not the case with the staff, where women constitute the majority compared to men. An obstacle to ensuring pluralism regarding the selection of the Ombudsperson and their deputies can lie in inadequate selection of candidates, in the parliamentary procedure. Namely, in 2017, the Committee on Constitutional Issues was presented with several candidates who did not even meet the formal eligibility criteria, so it was not possible to set additional criteria relating to gender, ethnic or minority background. The manner of proposing the Ombudsperson and their deputies is such that it does not provide for the opportunity for different social groups to propose or recommend candidates, unless maybe through political parties that would defend their interests in the Parliament, although in practice it happens that the civil society recommends candidates.<sup>90</sup>

The Ombudsman has established advisory bodies through which it cooperates with experts from the academia, civil society and different social groups, but there is no information available on whether these bodies are still functional. In addition to the Panel of Young Advisors, bringing together youth aged 13–15, the institution has also established the Gender Equality Council, Council on the Rights of the Child and Council on National Minorities. Despite the lack of information about the Council on National Minorities, which includes civil society representatives, the Ombudsman does hold regular meetings with the Presidents of the National Minority Councils.

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89 Official Gazette RS, No. 36/2009 and 32/2013.

90 The Human Rights House and 60 civil society organisations submitted an initiative on 22 May 2018 for the selection of Miloš Janković for Ombudsman, after Saša Janković resigned, available at: <http://www.yucom.org.rs/wp-content/uploads/2017/05/Inicijativa-poslanickim-grupama-Narodne-skupstine-RS-za-izbor-Milosa-Jankovica-za-Zastitnika-gradjana.pdf>. (accessed on 14 August 2019).

As stated in the response to the request for access to information of public importance, the Ombudsman does not maintain official statistics on national or minority background of its employees, and the only available statistics are about the sex of the employees. This information shows that the institution employs 71 women and 24 men<sup>91</sup>. There is no publicly available information on whether the institution employs Roma, LGBTI or other members of vulnerable groups.

When it comes to the election of the Ombudsperson and their deputies, the issue of pluralism is not specifically regulated by the Law on Ombudsman, although equal representation of men and women among the deputies is customary. Pluralism among the Ombudsman staff cannot be ensured, due to obstacles in the implementation of existing affirmative measures prescribed by the Law on Civil Servants, with the exception of persons with disabilities, whose employment is regulated by the Law on Professional Rehabilitation and Employment of Persons with Disabilities. According to available information, several consultative mechanisms that included representatives of different social groups ceased to function at the time of the election of the new Ombudsman in 2017.

### ***1.8 Selection and appointment of the decision-making body of NHRIs***

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the NHRi's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence*

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91 Report on Implementation of Action Plan for Chapter 23, Council for the implementation of the Action Plan for Chapter 23, Belgrade, February 2019.



*of, and public confidence in, the senior leadership of an NHRI. Such a process should include requirements to:*

- a) Publicize vacancies broadly;*
- b) Maximize the number of potential candidates from a wide range of societal groups;*
- c) Promote broad consultation and/or participation in the application, screening, selection and appointment process;*
- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria; and*
- e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent.*

*(GANHRI SCA, General Observations, Geneva, 2018, p. 22)*

Pursuant to the Republic of Serbia Constitution and the Law on Protector of Citizens, the National Assembly elects the Ombudsperson, by a majority vote, on the proposal of the Committee on Constitutional Issues. The Committee chooses the candidate by a majority vote, among proposals submitted by MP groups separately or jointly. The Committee may and does in practice hold a session, enabling the candidates to present their views on the role and the manner they would perform their function as Ombudsperson.<sup>92</sup>

The mandate of the Ombudsperson is 5 years, with the possibility of one consecutive re-election.<sup>93</sup> In addition to Republic of Serbia citizenship, the Ombudsperson must have a law degree and a minimum of 10 years of experience on legal tasks relevant for the implementation of tasks within the purview of the Ombudsman, with high moral and professional qualities and notable experience in protecting citizens' rights.<sup>94</sup>

Deputy Ombudspersons, four of them, are elected by the National Assembly, by a majority vote, on the proposal of the Ombudsperson, who is responsible to select candidates specialised to fulfil tasks within the Ombudsman's purview, particularly related to the

92 Law on Protector of Citizens, Art. 4, Para. 5.

93 *Ibid.*, Art.4, Para. 6.

94 *Ibid.*, art. 5.

protection of the rights of persons deprived of liberty, gender equality, rights of the child, rights of national minorities and rights of persons with disabilities. The duration of the mandate and limitations to re-elections are the same as for the Ombudsperson, while the only difference regarding the qualifications is that, other than university education, they need not have a law degree and only five years of previous experience is sufficient.<sup>95</sup>

From June 2007, Saša Janković performed the function of the Ombudsperson, and in August 2012 the National Assembly re-elected him for his second five-year term, on the proposal of the MPs from the Democratic Party, Liberal-Democratic Party and Socialist Party of Serbia. The re-election of Janković was voted by all MP groups in the Parliament. 167 MPs voted (two-thirds) and only one person sustained.

The institution of Ombudsman of the Republic of Serbia was given A Status in 2010, although at that time the institution had existed for a little over two years. This status was renewed in 2015, which speaks to the fact that the actions of the Ombudsperson, Saša Janković, but also the Expert Service of this independent government institution, met the strict criteria related to the fulfilment of Paris Principles. The confirmation of the status, in addition to the results achieved and activities performed by the institution, was also supported by the fact that Saša Janković was elected by a two-thirds majority vote in the Parliament.

The mandate of Saša Janković was to expire on 4 August 2017, and pursuant to Article 4, Paragraph 7 of the Law on Protector of Citizens, the procedure for the election of the new Ombudsperson must start six months before previous expired. In late December 2016, Janković announced he would run for presidential elections, and on 7 February he resigned, and in line with his legal powers, he delegated Miloš Janković, Deputy Ombudsperson for the protection of persons deprived of liberty and head of the NPM to act as Ombudsperson.<sup>96</sup>

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95 *Ibid.*, Art. 6.

96 “Saša Janković podneo ostavku” (Saša Janković Resigns) RTS, 7 February 2017, available at: <http://www.rts.rs/page/stories/sr/story/9/politika/2621993/sasa-jankovic-podneo-ostavku.html>. (accessed on 14 August 2019).

Over sixty civil society organisations sent an official letter to the National Assembly in May 2017, the competent committees and MP groups, calling on MPs to support the election of Miloš Janković to the function of the Ombudsperson, justifying it as providing continuity in the work of the institution, considering that he knew its functioning very well, had the necessary professional qualifications, as lawyer, Director of the Directorate for the Enforcement of Criminal Sanctions, and importantly, that he was renowned internationally, considering he was the member of the UN Sub-Committee on the Prevention of Torture.<sup>97</sup> However, only two opposition parties, Democratic Party and Social-Democratic Party, supported this initiative. Janković was also publicly supported by the Commissioner for Information of Public Importance and Personal Data Protection, Rodoljub Šabić.

The ruling coalition MPs strongly opposed the election of Miloš Janković. They proposed Zoran Pašalić as the new Ombudsperson, thus far the president of the Misdemeanour Appellate Court in Belgrade, who resigned that position the day before. 142 MPs voted for his election, with 20 against. Opposition MPs presented a number of criticisms of the elected Ombudsperson during the parliamentary debate, considering that the only requirement that he met was his law degree. They also claimed that the candidate did not meet the criteria to be elected, because he did not have ten years of work experience on legal tasks relevant to the tasks within the purview of the Ombudsman, and that he did not have any notable experience in the protection of citizens' rights. They also pointed out that he had studied law for over ten years, that he graduated with a very low average grade, adding that they doubted he would be independent in his work, considering that individuals in the MP group that proposed him kept insisting, as his advantage, that he would do a completely different job than the former Ombudsperson, Saša Janković.

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97 “Inicijativa poslaničkim grupama Narodne skupštine Republike Srbije za izbor Miloša Jankovića za Zaštitnika građana” (Initiative to Serbian Parliament MP Groups to Elect Miloš Janković as Ombudsperson), Kuća ljudskih prava i demokratije, 22 May 2017, available at: <http://www.yucom.org.rs/wp-content/uploads/2017/05/Inicijativa-poslanickim-grupama-Narodne-skupstine-RS-za-izbor-Milosa-Jankovica-za-Zastitnika-gradjana.pdf> (accessed on 14 August 2019).

Mandates of all Deputy Ombudspersons expired at the beginning of December 2018. Since then, until the day of writing this report, Zoran Pašalić has not proposed new Deputy Ombudspersons, being the only one with the powers to do so, pursuant to the Law on Protector of Citizens (Article 6, Paragraph 4). On several occasions, he even gave his statement to the media that appointing new Deputies was “not a priority”, adding that they would be appointed only when the amendments to the Law on Protector of Citizens have been finalised, and the platform to record all pressures and attacks on journalists has been developed.<sup>98</sup>

In the absence of Deputies, at the end of 2018, the Ombudsperson authorised the General Secretary of the Expert Service to lead the procedures of control of the legality and regularity of the work of government authorities. In addition to the fact that the grounds for this type of delegation of tasks of the Ombudsman are suspicious<sup>99</sup>, it should also be said that from the beginning of January until the end of October 2019, 32 control procedures were finalised in this institution with recommendations issued to government authorities, out of which as many as 26 were managed by the General Secretary with recommendations issued to authorities, and only 6 by the Ombudsperson.<sup>100</sup>

On the other hand, during the past several months, several employees with the Expert Service of the Ombudsman, have left or have been intending to leave their jobs, after an initiative of

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98 Katarina Đorđević, “Zaštitnik građana radi i bez zamenika” (Ombudsman Operational Even Without Deputies), *Politika*, 4 April 2019, available at: <http://www.politika.rs/sr/clanak/428746/Zastitnik-gradana-radi-i-bez-zamenika> (accessed on 14 August 2019).

99 The Law on Protector of Citizens prescribes that the Ombudsperson may authorise his/her deputies to assist him/her in fulfilling the tasks determined by that law (Article 6), and the Decision on the establishment and operations of the Expert Service of the Ombudsman (Official Gazette RS, No. 105/2017 and 99/2018) stipulates that the Expert Service is established to perform expert and other tasks “of importance for the performance of competences of the Ombudsman”, and that it is managed by the General Secretary, “who organises and ensures uniformity in the operations of the Expert Service”.

100 Information obtained by reviewing finalised control procedures published on the Ombudsman’s website (accessed on 1 November 2019).

the new Ombudsperson to change the job classification in the Expert Service. There is an interesting and illustrative example of the former head of the NPM, Jelena Unijat, who left the institution, with the position officially vacant<sup>101</sup>, but actually filled by an employee, as “unofficial head of NPM,” who has no previous experience related to the rights of persons deprived of liberty and the prohibition of abuse.<sup>102</sup>

The election of the new Ombudsperson sparked controversy in the public, considering there were many saying that the chosen candidate did not meet the eligibility criteria prescribed in the Law on Ombudsman, since he had no previous experience in the area of human rights. It is of particular concern that the new Ombudsperson has not proposed his Deputies for nearly a year, justifying this by lack of urgency and expectation of adoption of the new Law on Ombudsman.

### 1.9 Political representatives on NHRIs

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*The SCA notes that the Paris Principles require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, free from political interference.*

*For these reasons, government representatives and members of parliament should not be members of, nor participate in, the decision-making of organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI*

101 Act of the Ombudsman, No. 3611–540/19, of 24 July 2019.

102 Response of the Obudsmen to the request for access to information of public importance dated 24 July 2019, containing the CV of Tamara Blagojević, Advisor with NPM.



*has the potential to impact on both the real and perceived independence of the NHRI.*

*The SCA recognizes that it is important to maintain effective working relationships, and where relevant, to consult with government. However, this should not be achieved through the participation of government representatives in the decision-making body of the NHRI.*

*Where government representatives or members of parliament, or representatives of government agencies, are included in the decision-making body, the NHRI's legislation should clearly indicate that such persons participate only in an advisory capacity. In order to further promote independence in decision making, and avoid conflicts of interest, an NHRI's rules of procedure should establish practices to ensure that such persons are unable to inappropriately influence decision-making by, for example, excluding them from attending parts of meetings where final deliberations and strategic decisions are made.*

*The participation of government representatives or members of parliament, or representatives of government agencies, should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the NHRI, and whose advice and cooperation may assist the NHRI in fulfilling its mandate. In addition, the number of such representatives should be limited and should not exceed the number of other members of the NHRI's governing body.*

*(GANHRI SCA, General Observations, Geneva, 2018, p. 24)*

The Law on Protector of Citizens prescribes that the Ombudsperson and their Deputies cannot be members of political parties<sup>103</sup>, or that on the date of taking office all their public, professional and other functions, i.e. duties or tasks fulfilled until then must cease, if they are contrary to the provisions of this Law, as well as membership in political organisations.<sup>104</sup> On the other hand, the Law does not regulate in detail the issue of participation of political representatives in the work of the institution, whether

103 Law on Protector of Citizens, Art. 9, Para. 2.

104 *Ibid*, Art. 9, Para. 4.



by prescribing a concrete mechanism or any prohibition of their participation.

Until now, the Ombudsman has on principle refused invitations by the government to participate in bodies established by the government (e.g. Government council for monitoring UN human rights recommendations) and sent their representatives exclusively as observers.<sup>105</sup> There is no additional information available, neither on the participation of Ombudsman representatives in advisory bodies established by the Government<sup>106</sup>, or on the participation of Government representatives in advisory bodies established by the Ombudsman.<sup>107</sup>

Representatives of the Government or the National Assembly do not participate in the work or decision-making in the institution of the Ombudsman.

### 1.10 Adequate funding of NHRIs

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*To function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the NHRI's operations and the fulfilment of its mandate.*

105 Response of the Ministry of Public Administration and Local Self-Government to the request for access to information of public importance dated 13 June 2019.

106 Council monitoring the implementation of the Action Plan for the implementation of the Strategy for the Prevention and Protection from Discrimination for the period 2014–2018, Council monitoring the Action Plan for Chapter 23, etc.

107 Ombudsman's Gender Equality Council, Council on the Rights of the Child, etc.

*Provision of adequate funding by the State should, as a minimum, include the following:*

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;*
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;*
- c) remuneration of members of its decision-making body (where appropriate);*
- d) the establishment of well-functioning communications systems including telephone and internet;*
- e) the allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.*

*Funding from external sources, such as from international development partners, should not compose the core funding of the NHRI, as this is the responsibility of the State. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support an NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases, an NHRI should not be required to obtain approval from the state for external sources of funding, as this requirement may detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the NHRI.*

*Government funding should be allocated to a separate budget line item applicable only to the*



*NHRI. Such funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff.*

*While an NHRI should have complete autonomy over the allocation of its budget, it is obliged to comply with the financial accountability requirements applicable to other independent agencies of the State.*

*(GANHRI SCA, General Observations, Geneva, 2018, p. 27)*

When it comes to adequate funding of NHRIs, it is important to mention that during the past years there have been practices of denying adequate financial and human resources to independent institutions, which has had a significant effect on their operations. This is why the strengthening of financial independence of the Ombudsman is among the recommendations issued by international bodies, including the recommendations issued to Serbia within the UPR system.<sup>108</sup> The result of this practice, which keeps hampering independent bodies, are also recommendations by other relevant international bodies and Government's commitment to use measures within the Action Plan for Chapter 23 to comply with international standards in this area.

Strengthening the capacities of the Ombudsman is part of the above-mentioned Action Plan within which a number of activities are implemented, which also include amendments to the Law on Protector of Citizens. An important issue that the Action Plan does not deal with specifically is the issue of strengthening the financial independence of this institution, coming from recommendations in the 2014 Concluding Observations of the UN Committee for Social, Economic and Cultural Rights.

Pursuant to the current Law on Protector of Citizens, this institution drafts a proposal for funding for the following year and submits it to the Government to include it in the Republic

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<sup>108</sup> *Report of the Working Group on the Universal Periodic Review: Serbia, Human Rights Council, Geneva 2018*, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/113/90/PDF/G1811390.pdf?OpenElement>. (accessed on 14 August 2019).

of Serbia Budget.<sup>109</sup> Annual funds for the Ombudsman should be sufficient to enable its effective and efficient functioning, as well as be in line with the macroeconomic policy of the Republic of Serbia.<sup>110</sup>

According to the Ombudsman, the issue in attaining financial independence is the required consent from the Government to the institution's budget and the National Assembly's Committee on Administrative and Budgetary Issues to new recruitment. This is a very serious issue, to the extent that it represents a threat to independence and effectiveness of the Ombudsman, guaranteed by domestic and international regulations.<sup>111</sup>

In comparative law, financial independence of the Ombudsman may be ensured in different ways, for example through the possibility of direct budget proposal to the Parliament, limitations regarding any reductions in the budget or linking the budget level to specific criteria.<sup>112</sup> The 2012 Draft Law on Protector of Citizens also contained provisions to increase the financial independence of the institution, but they were omitted from the Baseline. Namely, the Draft Law provided that the Government could not, without the Ombudsman's consent, cancel, delay or limit the execution of budget funds allocated for this authority's operations. Additionally, the Draft Law contained a provision on increased salaries of staff by 30%, similarly to the so-called institutional bonus awarded to the State Audit Institution.<sup>113</sup>

A specific issue that has come up in practice is the issue of adequate funding of NPM operations, i.e. the establishment of a

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109 Law on Protector of Citizens, Art. 37, Para.2.

110 *Ibid.* Art. 37, Para. 3.

111 Ombudsman, Regular Annual Report for 2016, Belgrade, March 2017, p. 46, available at: <https://www.ombudsman.rs/attachments/article/5191/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202016.%20godinu%20LATINICA.pdf> (accessed on 14 August 2019)..

112 Mr. Miodrag D. Radojević, Transformation of The Ombudsman in Modern Legal Systems with Special Reference to the Protector of Citizens in the Republic of Serbia, Belgrade, 2016, p. 276, available at: <http://uvidok.rcub.bg.ac.rs/bitstream/handle/123456789/1023/Doktorat.pdf?sequence=1> (accessed on 14 August 2019).

113 Law on State Audit Institution, Official Gazette RS, No. 101/2005, 54/2007, 36/2010 and 44/2018 – other law, Art. 56a.



special organisational unit within the Ombudsman with its own budget. The international association NPM Obs reported that it was necessary for NPMs in cooperation with competent authorities to ensure that salaries and other resources for all participants are sufficient to cover the costs of their activities and to reflect their status and responsibilities.<sup>114</sup> It is important to note that the latest Rulebook on internal organisation and job classification in the Expert Service of the Ombudsman<sup>115</sup>, the NPM which used to function at the level of the Secretariat, now plans for a separate organisational unit, at the level of department, and increases the number of employees. This, according to some focus group participants, is still not sufficient to improve the conditions for the work of the National Preventive Mechanism.

The issue of Ombudsman funding is in principle regulated by the Law on Ombudsman. In order to fully harmonise this issue with international recommendations, it would be necessary to use the future amendments to the Law to introduce additional guarantees regarding budget execution, as well as the institutional bonus on salaries for staff to prevent the highly qualified experts from leaving.

### **1.11 Annual reports of the Ombudsman**

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of an NHRI. The reports also provide a means by*

114 *Observation visits to the National Preventive Mechanism of Serbia*, NPM observatory, Grenoble, 2019, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2019/07/NPM-OBS-Serbia-NPM-eng.pdf> (accessed on 14 August 2019).

115 Rulebook on internal organisation and job classification in the Expert Service of the Ombudsman (363–241/2019 of 1 March 2019), available at: <https://www.ombudsman.rs/attachments/article/142/pravilnik%201.pdf> (accessed on 14 August 2019).

*which an NHRI can make recommendations to government and monitor respect for human rights by government.*

*The importance for an NHRI to prepare, publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters, is stressed.*

*This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.*

*The SCA considers it important that the enabling laws of an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It is preferable for the NHRI to have an explicit power to table reports directly in the legislature rather than through the Executive and, in so doing, to promote action on them.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.30)*

The Ombudsman submits regular annual reports to the National Assembly thus meeting its obligation defined in Article 33 of the Law on Protector of Citizens. This provision stipulates that the report should contain information on activities, observed inefficiencies in the operations of the authority and suggestions for improving the position of citizens in relation to other authorities. The same Article defines that the report is published in the Official Gazette of the Republic of Serbia and on the Ombudsman's website, and it is also submitted to the media. In practice, Ombudsman's reports have been submitted to many authorities (most often ministries), other independent institutions, NGOs, libraries, participants in events and press conferences organised by the Ombudsman, as well as during visits or monitoring procedures of authorities.<sup>116</sup>

In addition to regular reports, during this period the Ombudsman published a certain number of special reports, which were followed by press conferences. The majority of these reports

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116 Information from organised interviews.

were products of research conducted by the Expert Service of the Ombudsman or by donor-funded projects. These reports also include reports on NPM activities. The Ombudsman has published the following reports: Special Report of the Ombudsman on the Implementation of the General and Special Protocols on Protection of Women Against Violence, Special Report with Ombudsman's Recommendations on the Fulfilment of Rights of Consumers-Buyers of Electricity, Special Report with Ombudsman's Recommendations on Mechanisms for the Protection of Patients' Rights, Special Report of the Ombudsman on Training for Acquiring and Improving Knowledge and Competencies on the Prevention, Elimination and Protection of Women from Domestic and Intimate Partner Violence, Special Report of the Ombudsman on Information-Sharing in National Minority Languages after the Privatisation of Media, Protection of Women from Domestic and Intimate Partner Violence – Selected Recommendations, Special Report Regarding the Construction of the Concrete Wall around Roma Settlement Marko Orlović in Kruševac, Special Report of the Ombudsman on the Situation of the Rights of the Child, Special Report of the Ombudsman on the Representation of Women in Decision-Making Positions and Activities of Local Gender Equality Mechanisms in Local Self-Government Units in Serbia, Special Report of the Ombudsman on Accessibility for All, Special Report of the Ombudsman on Reproductive Health of Roma Women with Recommendations.

If we compare annual reports of the Ombudsman between 2015 and 2018, several regularities can be perceived. Namely, the reports for 2015 and 2016 are much longer (the first is 324 and the second is 382 pages) than the reports for 2017 and 2018 (which are 107 and 115 pages). There are 12 photographs in the report for 2017, which is less than half the length of the previous two.

Although the length of the report is not crucial in assessing whether it provides the necessary information useful for improving the situation of human rights and the work of authorities with the aim to fulfil citizens' rights, it is evident that the reports for the first two years contain much more concrete information and details on citizens' rights violations



and sufficient information about the key problems faced by the citizens in their proceedings before government authorities.

In these two reports, the Ombudsman has at the very beginning (in the Introduction) presented a general assessment on the respect of citizens' rights (on 30 pages in 2015 and 27 pages in 2016) and in much detail, with a lot of examples from their own practice, indicated key issues and circumstances (political and social) which had over the two years presented challenges for the fulfilment of human rights.

In the largest part of the report – chapter on overview of the situation by areas and sectors, in addition to statistical data, government achievements were listed, results of the Ombudsman, as well as gaps at the government level and most important recommendations, opinions and legislative initiatives of the Ombudsman from previous years, which were followed up on, with elaborate justification. A presentation of characteristic cases was also included, submitted to the Ombudsman in those years, as well as recommendations to improve the position of citizens in relation to authorities in a specific public administration area or sector.

The 2017 report was the shortest report that had been submitted to the National Assembly, which can be explained with the fact that in February of that year, the until then Ombudsperson, Saša Janković, resigned from this function, and the new Ombudsperson was not elected before late July 2017. The institution kept working, receiving complaints from citizens and starting initiatives, but the Expert Service was to a certain extent limited in its efficiency, especially at the time of the election campaign for the President of Serbia, considering that the, by then former Ombudsperson, ran for these elections, which reflected negatively on the institution itself. In addition, the election of the new Ombudsperson was waited on for six months, and the institution was headed *ad interim* by Miloš Janković, one of the four Deputy Ombudspersons.

In the relationship with the National Assembly, particularly important aspects of cooperation relate to the review of annual reports of the Ombudsman, monitoring the implementation of its recommendations, and the relationship of the Ombudsman



with competent working bodies of the Parliament. Although the Ombudsman regularly and timely (by 15 March for the previous year) submitted annual reports to the Parliament, the 2018 Annual Report states that the Ombudsman's report had not been discussed in the plenary for four years, even though the National Assembly was legally obliged to do so.<sup>117</sup> This clearly proves that the Parliament does not understand the role of control bodies and illustrates lack of will to use democratic procedure to enable effective oversight of government authorities implementing laws.

The last report of the Ombudsman that was discussed in the plenary was the 2013 Annual Report, and at that time, in July 2014, the National Assembly adopted two conclusions, having accepted the proposals put forward by the Committee on Human and Minority Rights and Gender Equality and the Committee on Judiciary, Public Administration and Local Self-Government. The National Assembly did not discuss Draft Conclusions of the Committee on the Rights of the Child, because the Committee session ended directly before the plenary session. The conclusions presented foundations for a monitoring system of the implementation of Ombudsman's recommendations, also defining an obligation of the Government to report to the National Assembly once in six months on the implementation of Ombudsman's recommendations.

However, as early as 2015, the practice began which lasted until 2019, contrary to the provision in Article 58 of the Law on National Assembly and Articles 238 and 239 of the National Assembly Rules of Procedure, where the Parliament did not discuss the Ombudsman's annual report in plenary sessions. The 2014 report was only discussed by the Committee on Human and Minority Rights and Gender Equality and the Committee on Judiciary, Public Administration and Local Self-Government, and draft conclusions were adopted, but the report was not included in the agenda of the plenary session. The only form of cooperation with government authorities in 2015, were regular monthly meetings of the Prime Minister and the Ombudsperson, although the report

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117 Ombudsman, Regular Annual Report for 2018, Belgrade, March 2019, p. 93, available at: [https://www.ombudsman.rs/attachments/article/6062/Zastitnik%20gradjana\\_Godisnji%20izvestaji%20za%202018.%20godinu.pdf](https://www.ombudsman.rs/attachments/article/6062/Zastitnik%20gradjana_Godisnji%20izvestaji%20za%202018.%20godinu.pdf) (accessed on 14 August 2019).

assessed that this was not adequate replacement for the necessary cooperation of the Ombudsman with government authorities.

The fate of the Ombudsman's 2015 Annual Report was similar. The 2016 Report stated that a decline in the level of cooperation with the National Assembly and the Government had been recorded. In September 2016, the Committee on Judiciary, Public Administration and Local Self-Government and the Committee on Human and Minority Rights and Gender Equality discussed the Ombudsman's 2015 Annual Report, but these two committees had never adopted reports with draft conclusions or submitted them for discussion and adoption to the plenary. Not only did they not adopt any conclusions, but the committee members from the Serbian Progressive Party and Serbian Radical Party used this meeting to severely criticise the then Ombudsperson, Saša Janković, rather than address the information contained in the Ombudsman's Report.<sup>118</sup>

Also, in 2016, regular monthly meetings between the Prime Minister and the Ombudsperson ceased, which had been the practice during previous year. On the other hand, the Government did not comment on certain initiatives undertaken by the Ombudsman, submitted to it in accordance with the provision of the Law on Protector of Citizens (e.g. about the initiative for the Government to present a Draft Law on amendments to the Law on Entering and Executing International Treaties, and the initiative to present a draft law on ratifying the Optional Protocol to the Convention on the Rights of the Child). A practice was also mentioned that, although the Government and ministries had submitted to the Ombudsman draft laws and other regulations for opinion, there were no reports on the reasons for not accepting the Ombudsman's input to the drafts.

Annual Reports for 2016 and 2017 were not discussed in plenary sessions either.

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118 Beta, "Janković: Napadaju me i sami me projektuju kao kandidata" (Janković: I Am Being Attacked and Projected as Candidate), Beta, 15 September 2016, available at: <http://rs.n1info.com/Vesti/a193673/Jankovic-Napadi-vladajuće-vecine.html> (accessed on 14 August 2019).

A highly negative and critical attitude of MPs in the Serbian Parliament towards the Ombudsperson, and thus the annual reports, changed since the election of the new Ombudsperson to head this institution. For the first time after four years, in July 2019, the National Assembly discussed in plenary the Ombudsman's Annual Report for 2018, which can be explained primarily with the positive attitude of the ruling coalition MPs towards Zoran Pašalić, who was proposed by this MP group for the function of the Ombudsman, but also with the European Commission Report, which was presented to the public in late May 2019, stating that government authorities were obliged to submit reports on the implementation of recommendations by the Ombudsman, but also that for four consecutive years, the Parliament had not discussed annual reports of the Ombudsman in its plenary sessions, and as a result, no conclusion had been submitted to the Government for review.<sup>119</sup>

Considerable differences in the scope and quality of Ombudsman's annual reports have diminished its importance as the reference document for human rights situation in Serbia after 2017. Additionally, the lack of information about unfulfilled recommendations and outcomes of legislative initiatives, diminished the importance of this document for calling the Government to account. In 2019, the National Assembly discussed the Ombudsman's annual report after several years, so they did not have information available relevant for the adoption of good-quality and meaningful conclusions to present to the Government.

119 Although balanced and diplomatic, the EC Report contains a lot of criticism on delays in reform processes. The Prime Minister, Ana Brnabić, and Minister for European Integration, Jadranka Joksimović, even President Aleksandar Vučić himself, had a lot of negative comments immediately after it had been published, but the rhetoric was soon softened and it is the public impression that the government in Serbia got the message. EC Report available at: [http://www.mei.gov.rs/upload/documents/eu\\_dokumenta/godisnji\\_izvestaji\\_ek\\_o\\_napretku/20190529-serbia-report\\_SR\\_-\\_REVIDIRANO.pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/20190529-serbia-report_SR_-_REVIDIRANO.pdf) (accessed on 14 August 2019).

## 2. PRACTICES THAT DIRECTLY PROMOTE PARIS PRINCIPLES COMPLIANCE

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### 2.1. *Guarantee of tenure for members of the NHRI decision-making body*

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*The SCA is of the view that in order to address the Paris Principles requirements for a stable mandate, which is important in reinforcing independence, the enabling legislation of an NHRI must contain an independent and objective dismissal process, similar to that accorded to members of other independent State agencies. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed based solely on the discretion of appointing authorities. Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.30)*

The Law on Protector of Citizens prescribes the procedure of dismissal of the Ombudsperson and Deputy Ombudspersons. The function of the Ombudsperson and Deputy Ombudspersons shall cease upon the expiry of tenure, death, resignation, loss of citizenship, fulfilment of conditions for retirement, permanent loss of physical or mental capacity to perform the function, which shall be determined by inspecting relevant medical documents and result in dismissal.<sup>120</sup>

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120 Law on Protector of Citizens, Art. 11.

The Ombudsperson shall be dismissed by a majority vote, on the proposal of the Committee or at least one-third of MPs.<sup>121</sup> The Deputies may be dismissed if: they perform their function incompetently or unconscientiously, they perform another public function or professional activity, they perform other duty or work that could affect their independence and autonomy, or they act contrary to the law regulating the conflict of interest in the performance of public functions and are convicted of a crime making them inadequate to perform this function.<sup>122</sup> In addition to the dismissal, the Ombudsperson may also be suspended in case they are ordered detention and they are convicted of a crime making them inadequate, even if the judgement is not final.<sup>123</sup>

Pursuant to the Law on Civil Servants, the General Secretary, as a high official, shall cease to work after the expiration of their term of office, if they submit a resignation in writing, if they are appointed to a position in a central government, autonomous province or local self-government authority, if the position is cancelled, if their employment is terminated because they have reached the age for retirement or submitted a resignation in writing, or if they are dismissed.<sup>124</sup>

The General Secretary may be dismissed if their annual or ad hoc performance evaluation shows that they need improvement or if their employment is terminated due to: prison sentence of a minimum of six months or suspended prison sentence of a minimum of six months, regardless of the period, for a crime making them unworthy of performing duty, final decision ordering disciplinary measure of termination of employment, final decision, based on performance evaluation, establishing that they have not met the majority of expectations, as well as other reasons provided in general regulations on the termination of employment irrespective of the wishes of the employee or the employer.

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121 *Ibid.* Art. 12, Para. 1.

122 *Ibid.* Art. 12, Para. 3.

123 *Ibid.* Art. 13, Para. 1.

124 Law on Civil Servants, Official Gazette RS, No. 79/2005, 81/2005 – corr., 83/2005 – corr., 64/2007, 67/2007 – corr., 116/2008, 104/2009, 99/2014, 94/2017 and 95/2018, Art. 76.

The General Secretary may be dismissed if the Ombudsperson accepts the initiative for dismissal based on the measure of publication of recommendation for dismissal issued by the Anti-Corruption Agency. Additionally, they may be dismissed also if they are responsible for not fulfilling of work plans and strategic objectives, if it is determined that during the time they managed it, there were serious impacts on the operations the government authority.<sup>125</sup> Other officers with the institution of the Ombudsman (10) that the provisions of the Law on Civil Servants apply to are: Sector Assistants to the General Secretary and Head of Cabinet of the Ombudsman.

.....  
: The Law on Ombudsman provides the procedure for the :  
: Ombudsperson's dismissal, with clearly defined reasons :  
: limited to those that would prevent the Ombudsman from :  
: fulfilling its mandate. Although it has not been explicitly :  
: stated, in case of dismissal due to actions that are contrary :  
: to the law regulating the prevention of conflict of interest :  
: in performing public functions, the National Assembly :  
: would have to implement the public recommendation for :  
: dismissal by the Anti-Corruption Agency, or to address this :  
: independent institution before initiating the procedure of :  
: dismissal to receive its opinion on any existing conflict of :  
: interest.  
: .....

## **2.2 Full-time members of an NHRI**

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*The enabling law of the NHRI should provide that members of its decision-making body include full-time remunerated members. This assists in ensuring:*

- a. the independence of the NHRI free from actual or perceived conflict of interests;*
- b. a stable tenure for the members;*
- c. regular and appropriate direction for staff; and*

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125 *Ibid.* Art. 78.

d. *the ongoing and effective fulfilment of the NHRI's functions. An appropriate minimum term of appointment is crucial in promoting the independence of the membership of the NHRI, and to ensure the continuity of its programs and services. An appointment period of three (3) years is considered to be the minimum that would be sufficient to achieve these aims. As a proven practice, the SCA encourages that a term of between three (3) and seven (7) years with the option to renew once be provided for in the NHRI's enabling law. A further requirement in ensuring the stability of a member's mandate, and the independence of a NHRI and its members, is the requirement that the terms and conditions of a member's service cannot be modified to their detriment during their period of appointment. Additionally, such terms and conditions should be equivalent to those with similar responsibilities in other independent State agencies.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.35)*

The Law on Protector of Citizens sets the term of the Ombudsperson and Deputy Ombudspersons to 5 years, with the option of one consecutive renewal. The first Ombudsperson, Saša Janković, after his first term expired, was re-elected in 2012, and held the function until his resignation in February 2017. After him, the same year, Zoran Pašalić was re-elected to the position of Ombudsperson.

The Law does not define the situation where a Deputy, after two consecutive mandates, is elected as Ombudsperson and vice-versa. This situation could have happened in practice, considering that one of the candidates for Ombudsperson in 2017 was Miloš Janković, Deputy Ombudsperson, who had two mandates behind him and was acting as Ombudsperson between February and July 2017, after the resignation of Saša Janković.

When it comes to Deputy Ombudspersons, apart from the provision on their being specialised in specific human rights areas, there is no provision protecting them from the situation in which the Ombudsperson could, at their discretion, swap their areas of work or add new ones. Consequently, even though in



public they are known as ‘Deputy for the rights of the child’ or ‘Deputy for persons deprived of liberty’, the Law or by-laws do not define legal security regarding their specific area of work. One of the interviewees underlined this as a particular problem. During the first mandate of Saša Janković, his deputies were:

- ▶ Goran Bašić (rights of minorities)
- ▶ Tamara Lukšić Orlandić (rights of the child)
- ▶ Zorica Mršević (rights of persons with disabilities and gender equality)
- ▶ Miloš Janković (rights of persons deprived of liberty)

The Deputies during the first mandate of Saša Janković were not re-elected, with the exception of Miloš Janković. In addition to Miloš Janković, during the second term of Saša Janković, and part of term of Zoran Pašalić, Deputy Ombudspersons were:

- ▶ Gordana Stevanović (rights of the child and gender equality)
- ▶ Robert Sepi (rights of national minorities)
- ▶ Vladana Jović (rights of persons with disabilities)

After the expiration of the Deputies’ terms in December 2018, their positions remained vacant, and the new Ombudsperson, Zoran Pašalić, did not propose their replacements, justifying it as not a priority, and that amendments to the Law on Protector of Citizens are being expected. The salaries of Ombudspersons and Deputies are tied to the salaries of Constitutional Court judges, so the Ombudsperson has the right to salary equal to the President of the Constitutional Court, and Deputies equal to Constitutional Court judges. This solution was criticised by Zoran Pašalić himself, stating the opinion that the salaries of the Ombudsperson and Deputies were unseemly high.<sup>126</sup> However, the salary of the Ombudsperson has remained the same, since it is necessary to amend articles in the Law to reduce them.

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126 “Pašalić: Nepristojno visoka plata zaštitnika građana” (Pašalić: Unseemly High Salary of the Ombudsperson), *NI*, 30 July 2017, available at: <http://rs.n1info.com/Vesti/a287341/Zoran-Pasalic-o-plati-zastitnika-gradjana.html> (accessed on 14 August 2019). .

Despite the fact that the constitutional position of the Ombudsman provides this institution with legal security, the requirements for renewal, duration, option of renewal and termination of mandate are regulated by the Law on Ombudsman and can be amended through a simpler procedure for amendments to laws. Considering that the Constitution does not regulate the election and termination of the mandate of Ombudsperson and Deputy Ombudspersons, it does not provide additional guarantees that would apply to their positions in case legal requirements for the election to these functions change, during their mandates.

Despite the fact that the constitutional position of the Ombudsman provides this institution with legal security, the requirements for renewal, duration, option of renewal and termination of mandate are regulated by the Law on Ombudsman and can be amended through a simpler procedure for amendments to laws. Considering that the Constitution does not regulate the election and termination of the mandate of Ombudsperson and Deputy Ombudspersons, it does not provide additional guarantees that would apply to their positions in case legal requirements for the election to these functions change, during their mandates.

### **2.3 Protection from criminal and civil liability for official actions and decisions undertaken in good faith**

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member of the decision-making body or a staff member of the NHRI. For this reason, members and staff of an NHRI should be protected from both criminal and civil liability for acts undertaken in good faith in their official capacity. Such protections serve to enhance the NHRI's ability to engage in critical analysis and commentary on human rights issues, safeguard the independence of senior leadership, and promote public confidence in the NHRI. While the SCA considers it preferable for*

*these protections to be explicitly entrenched in NHRI legislation or another applicable law of general application, it acknowledges that such protection may also exist by virtue of the specific legal context in which the NHRI operates. It is acknowledged that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift these protections. However, the decision to do so should not be exercised by an individual, but rather by an appropriately-constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provide for well-defined circumstances in which these protections may be lifted in accordance with fair and transparent procedures.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.37)*

The Constitution and the Law on Protector of Citizens prescribe that the Ombudsperson and Deputy Ombudsperson shall enjoy immunity equal to the immunity of an MP.<sup>127</sup> MPs shall enjoy immunity from criminal and other liability for expressed opinion or voting in performing their function (substantive immunity) and immunity from detention or proceedings that can result in a prison sentence (procedural immunity).

Consequently, the lifting of the immunity of the Ombudsperson and Deputy Ombudspersons is decided by the Parliament by a majority vote of all MPs.<sup>128</sup> The Ombudsperson and Deputies may not be called to criminal or other account for an expressed opinion or cast vote in performing their functions. If they invoke their immunity, they may not be detained, nor may criminal or other proceedings be brought against them which can result in a prison sentence, without the approval of the Parliament. The only situation in which they might be ordered detention without the Parliament's approval, is if they are caught committing a crime punishable with a prison sentence of over five years. The Parliament may grant immunity also when the Ombudsperson and Deputy Ombudsperson do not invoke it.<sup>129</sup>

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127 Republic of Serbia Constitution, Art. 138 Para. 5.

128 *Ibid.*, Art.105, Para. 2, Item 5.

129 *Ibid.*, Art. 103.

In line with GANHRI recommendations<sup>130</sup>, the Law on Protector of Citizens should clarify the circumstances under which the immunity of the Ombudsperson may be lifted, and a special issue of legal liability for official actions undertaken in good faith. GANHRI recommends introducing special majority of the National Assembly for lifting immunity. The introduction of two-thirds majority for decisions of the National Assembly related to the Ombudsman, such as the decision on dismissal or decision on lifting immunity would be desirable, having in mind international standards.

The Law on Protector of Citizens contains provisions prohibiting the Ombudsperson from giving political statements. This is in conflict with the institution's role of control, which may often lead the Ombudsperson to criticise the work of the Executive, but with substantive immunity for expressed opinion in performing their function. Namely, although the Law does not provide for concrete sanctions for violating this prohibition, this provision might represent grounds for dismissal of an Ombudsperson for unprofessional and unconscientious work. This is important because of unclear lines between criticising the Government in the performance of the work of the institution, and giving political statements, and therefore can serve to discourage the Ombudsman from openly criticising the Government.

The protection of the Ombudsperson from criminal and civil liability for official actions is in principle in compliance with the Paris Principles, considering that the Constitution of the Republic of Serbia guarantees the Ombudsperson and his/her Deputies immunity equal to immunity enjoyed by MPs. The Law on Ombudsman should clarify constitutional provisions related to immunity in detail, and the prohibition from giving political statements should be removed, because it may discourage the Ombudsman from openly criticising the Government.

130 *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Geneva, 2015*, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20MARCH%202015%20FINAL%20REPORT%20-%20ENGLISH.pdf> (accessed on 6 August 2019).

## 2.4 Recruitment and retention of NHRI staff

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*NHRIs should be legislatively empowered to determine the staffing structure and the skills required to fulfil the NHRI's mandate, to set other appropriate criteria (for example, to increase diversity), and to select their staff in accordance with national law. Staff should be recruited according to an open, transparent and merit-based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfil the NHRI's mandate. Such a process promotes the independence and effectiveness of, and public confidence in, the NHRI. A fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. The SCA highlights that this requirement should not be seen to limit the capacity of an NHRI to hire a public servant with the requisite skills and experience. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the NHRI. Where an NHRI is required to accept staff assigned to it by the government, and in particular where this includes those at the highest levels in the NHRI, it brings into question its capacity to function independently. NHRIs must be provided with sufficient resources to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate. Such resources should allow for salary levels, and terms and conditions of employment, equivalent to those of other independent of State agencies.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.39)*

The Law on Protector of Citizens prescribes that the Ombudsman shall adopt a general act on the organisation and job classification in the Expert Service, with the consent of the National Assembly.<sup>131</sup> The current Rulebook on internal organisation and job classification in the Expert Service of the

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131 Law on Protector of Citizens, Art. 38, Para. 3.

Ombudsman<sup>132</sup>, came into effect on 1 March 2019 and provides for the following organisational units and number of staff:

- ▶ Sector for the protection of human rights and freedoms of persons deprived of liberty (15 staff members)
- ▶ Sector for the protection of the rights of the child, gender equality and rights of persons with disabilities (12 staff members)
- ▶ Sector for the protection of rights of national minorities and other minority rights and freedoms (10 staff members)
- ▶ Sector for projects (3 staff members)
- ▶ Sector for normative affairs (3 staff members)
- ▶ Sector for general affairs (15 staff members)
- ▶ Sector for citizen relations (5 staff members)
- ▶ Sector for financial affairs (10 staff members)
- ▶ IT Sector (4 staff members)
- ▶ Cabinet of the Ombudsman (4 staff members)
- ▶ National Preventative Mechanism Department (6 staff members)
- ▶ Emergency Procedure Department (4 staff members)
- ▶ Reporting Department (3 staff members)
- ▶ Media Relations Department (4 staff members)

Focus group participants underlined the issue of internal organisation and job classification within the institution of the Ombudsman, which they consider not to be in line with its basic competence, which is the control of government administration authorities. Namely, although according to the number of staff (98) the Ombudsman represents one of the larger national human rights institutions, fewer staff members (37) work on tasks of the control of government administration compared to the

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132 Rulebook on internal organisation and job classification in the Expert Service of the Ombudsman (363–241/2019 of 1 March 2019), available at: <https://www.ombudsman.rs/attachments/article/142/pravilnik%201.pdf> (accessed on 14 August 2019).

number of staff working on other tasks, such as public relations or logistics (61). As reported, by distributing available resources to increase media presence, the efficiency of the institution in processing complaints decreased and procedure was prolonged, which resulted in severe damage to the institution's reputation and a decline in the number of complaints by the citizens.

According to focus group participants, the new Rulebook exacerbates the existing problem, by creating new jobs in auxiliary services, so individuals expressed concern that this opened room for partisan recruitment in the institution of the Ombudsman. The criticism also referred to changes in the internal organisation diminishing the importance of the NPM or missing the chance to raise it to the appropriate level, so that after the adoption of the Rulebook, staff were shifted between jobs, regardless of their experience and competencies.

The recruitment in the Ombudsman is covered by the provisions of the Law on Civil Servants, which means that the employment can be effected through an agreement on takeover from another government authority, transfers from other government authorities after internal recruitments, or public recruitments. New employments in the Ombudsman are exempted from the Law on the Maximum Number of Employees in the Public Sector, so the maximum number of employees is determined by the parliamentary committee in charge of administration and budget-related issues, on the proposal of the Ombudsperson. Additionally, the Ombudsman must submit to the Ministry of Finance, draft annual HR plan for approval, which is also a legal requirement for filling the vacancies in the institution.

During the period covered by the research, the institution published calls for a total of 8 internal and 2 public vacancies for official and executive functions. In 2016, 49 vacancies and in 2017, 3 vacancies were posted. The Ombudsman met its obligations regarding the recruitment of persons with disabilities. The number of staff in the institution grew, so in 2015 there were 82, in 2016 84, in 2017 95 and in 2018 98 staff members. Apart from the text of the calls, there are no documents available on the

website regarding the results of the calls, which would contribute to higher transparency of the institution.

The Danas daily attempted to investigate allegations that the sudden increase in the number of staff after Zoran Pašalić was elected was the result of partisan recruitment.<sup>133</sup> The Ombudsman did not provide the documents requested to the journalists for months after the legal due date, thus violating the Law on Free Access to Information of Public Importance. The Ombudsman's silence regarding these serious allegations indicates the possibility of dependency of this institution from the executive power, as well as lack of competencies in media relations, in an institution that actually has a disproportionately high number of people working on these tasks. If this serious issue is not addressed, it may be cause for departure of experienced and qualified officers employed with this institution. During the period covered by the research, 15 staff members left the office of the Ombudsman, most often on mutual agreement (6), followed by dismissal (3), expiration of labour agreement (3), agreement on transfer to another government authority (2), resignation (1) and meeting age requirements for retirement (1).<sup>134</sup> The future of the Ombudsman as independent institution relies on whether the vacancies will be filled by partisan staff or in a public and transparent manner.

The Law on Civil Servants allows for transfer of civil servants from one government authority to another according to an agreement. Due to lack of transparency, entering into agreements between government authorities is a possible channel for partisan recruitment in independent institutions. In addition to the agreement on transfer, the issue of internally filled vacancies is also important in the context of the Paris Principles for the recruitment process to be open to all, transparent, merit-based and at the sole discretion of the NHRI. Namely, the Government Decree on internal and public recruitment in government

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133 "Ombudsman nije odgovorio na pitanja Danasa" (Ombudsman Has Not Provided Answers to Danas' Questions), Danas, 7 March 2017, available at: <https://www.danas.rs/dijalog/licni-stavovi/ombudsman-nije-odgovorio-na-pitanja-danasa/>, (accessed on 15 October 2019)

134 Response of the Ombudsman to the request for access to information of public importance of 10 July 2019.



authorities<sup>135</sup> prescribes that internal calls are published first open only to civil servants employed in other government authorities. Only if the internal call is not successful is the public call announced, which rarely happens in practice. This limitation is contrary to the Paris Principles and questions the ability of the institution to work independently from Government interference.

According to interviewees, the career advancement system does not function in practice, but the reasons for this do not lie with the institution, but it is a broader issue related to civil servants. One of the interviewees reports that it is much harder for the Ombudsman, than any other government authority, to change its job classification, but that without the change of classification, i.e. if an increase in the number of posts and salary levels is not approved, there is no room for career advancement. The Law on Civil Servants prescribes precisely the percentage of staff that can be appointed as senior advisors or independent advisors, which further impedes the advancement of staff.<sup>136</sup>

The issue of salary levels is of particular importance for retaining qualified human resources in the institution. Namely, according to interviewees' opinions, the salaries in the Ombudsman should reflect the status of the Ombudsman as NHRI. It refers to the institutional bonus, such as the one that exists in the State Audit institution and Anti-Corruption Agency. The introduction of the bonus was an idea in the 2012 Draft Law on Protector of Citizens, which was withdrawn from the parliamentary procedure after the new Government was constituted.<sup>137</sup>

In the period covered by the analysis, 5 people were employed with the institution of the Ombudsman based on agreement on professional training and 4 persons based on temporary employment contracts. During the same period, the Ombudsman entered into 4 agreements on mutual rights and obligations regulating their professional development.

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135 Government Decree on internal and public recruitment in government authorities, Official Gazette RS, No. 79/05, 81/05 – corr, 83/05 – corr, 64/07, 67/07 – corr, 116/08, 104/09, 99/14, 94/17 and 95/18, available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/uredba/2019/2/3/reg> (accessed on 14 August 2019).

136 Information from organised interviews.

137 See Table 4.

Table 4: Salary ranges in independent institutions<sup>138</sup>

| Date       | Position            | Ombudsman          | State Audit Institution | Commissioner for Access to Information of Public Importance and Personal Data Protection | Commissioner for the Protection of Equality |
|------------|---------------------|--------------------|-------------------------|--|---|
| 31/12/2015 | Advisor             | 43,266–<br>43,266- | 54,515–<br>76,710       | 43,266–<br>47,713  | 45,430–<br>50,098                           |
|            | Independent Advisor | 54,040–<br>72,509  | 68,090–<br>95,887       | 54,040–<br>65,840  | 56,742–<br>72,544                           |
|            | Senior Advisor      | 67,721–<br>95,254  | 86,006–<br>122,878      | 67,721–<br>95,254  | 71,107–<br>98,169                           |
| 31/12/2016 | Advisor             | 43,266–<br>43,266  | 54,515–<br>76,710       | 43,266–<br>47,713  | 45,430–<br>50,098                           |
|            | Independent Advisor | 54,040–<br>72,509  | 68,090–<br>95,887       | 54,040–<br>72,509  | 56,742–<br>72,544                           |
|            | Senior Advisor      | 67,721–<br>95,254  | 86,006–<br>122,878      | 67,721–<br>95,254  | 78,290–<br>100,017                          |
| 31/12/2017 | Advisor             | 45,429<br>45,429   | 54,515–<br>76,710       | 43,266–<br>43,266  | 45,430–<br>50,098                           |
|            | Independent Advisor | 56,742–<br>76,134  | 68,090–<br>95,887       | 54,040–<br>72,509  | 56,742–<br>72,544                           |
|            | Senior Advisor      | 71,107–<br>100,016 | 86,006–<br>122,878      | 67,721–<br>95,254  | 78,290–<br>100,017                          |
| 31/12/2018 | Advisor             | 45,430–<br>45,430  | 59,058–<br>83,102       | 45,430–<br>50,098  | 48,610–<br>52,295                           |
|            | Independent Advisor | 56,742<br>–76,135  | 73,765–<br>103,877      | 56,742–<br>76,135  | 60,714–<br>85,499                           |
|            | Senior Advisor      | 71,107–<br>95,169  | 92,439<br>–130,022      | 71,107–<br>100,017   | 78,085–<br>107,018                          |

138 Data obtained based on responses to requests for access to information of public importance.

The new internal organisation and job classification in the institution of the Ombudsman are not in line with its basic competence, since fewer employees are engaged on the tasks of government administration control, and more are engaged on other tasks, such as public relations or logistics. This has led to a decrease in efficiency of the institution's processing of complaints, the prolongation of the procedures, and as a result, damaged reputation of the institution and lower number of citizens' complaints. The opening of new jobs in auxiliary services has made room for partisan recruitment, which is something that has taken hold in government institutions.

## **2.5 NHRIs during the situation of a coup d'état or a state of emergency**

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*In the situation of a coup d'état or a state of emergency, it is expected that an NHRI will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate. NHRIs are expected to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. In situations of conflict or a state of emergency, this may include monitoring, documenting, issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.41)*

According to the Republic of Serbia Constitution<sup>139</sup> and the Law on National Assembly<sup>140</sup>, announcing the state of emergency is under the purview of the National Assembly in the situation of a public danger threatening the survival of the state or the citizens. During the state of emergency or conflict, the Constitution provides for the

139 Official Gazette RS, No. 98/2006, Art. 99.

140 Official Gazette RS, No. 9/2010, Art. 15(5).



possibility to deviate from human and minority rights guaranteed by the Constitution, except the ones listed in the relevant article, in the scope necessary.<sup>141</sup> Regarding these deviations, the same article underlines that no differences may be made on the grounds of race, sex, language, religion, nationality or social background. The measures used to deviate from human and minority rights are prescribed by the National Assembly.

In case that the National Assembly cannot convene, the state of emergency may be announced in a joint decision by the President of the Republic, Speaker of the National Assembly and Prime Minister, while measures deviating from human and minority rights may also be prescribed by the Government and co-signed by the President of the Republic.<sup>142</sup>

Since the establishment of the institution of the Ombudsman in 2005, state of emergency has never been announced in Serbia, so in practice it has not been tested how this institution would respond to any human rights violations in this context and whether it would be efficient.

A term similar to state of emergency, but different from the legal perspective is, an emergency situation, which may become official on the territory of a municipality in case of natural disasters, or technological hazards, because of terrorism, war and other large-scale disasters. The Law on Disaster Risk Reduction and Emergency Situation Management<sup>143</sup> or the former Law on Emergency Situations<sup>144</sup> do not prescribe the option of limiting human rights. However, during the emergency situation caused by the disastrous floods of 2014, there were attempts of censorship of online content, i.e. disappearance of texts and comments showing criticism from the Internet, and initiation of criminal proceedings against individuals because of the crime of spreading panic because of their posts on social networks.<sup>145</sup>

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141 Official Gazette RS, No. 98/2006, Art. 202.

142 *Ibid*, Art. 200.

143 Official Gazette RS, No. 87/2018.

144 Official Gazette RS, No. 111/2009, 92/2011 and 93/2012.

145 SHARE Foundation, "Analiza u vreme vanredne situacije u Srbiji: O cenzuri: Internet sve pamti" (Analysis of the Time of Emergency Situation in Serbia: On Censorship: Internet Records Everything),

These events also caused a reaction from the Ombudsperson, Saša Janković, who assessed that the freedom of expression was in a state of emergency, because of efforts invested in trying to suppress criticism.<sup>146</sup> In 2015, the Ombudsman submitted to the Serbian Government a model Law on Government Assistance after Natural Disasters, which would regulate this issue systematically. In 2016, the Ombudsman acted as mediator between the citizens and local self-government authorities, commission assessing the damage caused by natural disasters and Public Investment Management Office, to enable more efficient fulfilment of citizens' rights.<sup>147</sup>

Since the establishment of the institution of Ombudsman in 2005, there has been no emergency situation in Serbia, so it has not been tested in practice in what way and how efficiently this institution would respond to any human rights violations in this context.

## 2.6 Limitation of power of NHRIs due to national security

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*The scope of the mandate of an NHRI may be restricted for national security reasons. While this limitation is not inherently contrary to the Paris Principles, it should not be unreasonably or arbitrarily applied and should only be exercised under due process*

*(GANHRI SCA, General Observations, Geneva, 2018, p.43)*

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KONTRAPRESS, 28 May 2014, available at: <https://kontrapress.com/clanak.php?rub=Dru%C5%A1tvo&url=O-cenzuri-Internet-sve-pamti> (accessed on 14 August 2019).

146 "Janković: Nije na Vučiću da procenjuje ima li cenzure" (Janković: Vučić Is Not the One to Say if Censorship Exists), RTV, 2 June 2014, available at: <http://www.seebiz.eu/sasa-jankovic-vanredna-situacija-nad-slobodom-izrazavanja-u-srbiji/ar-88579/> (accessed on 14 August 2019).

147 Ombudsman, Regular Annual Report for 2016, Belgrade, March 2017, p. 288, available at: <https://www.ombudsman.rs/attachments/article/5191/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202016.%20godinu.pdf> (accessed on 14 August 2019).

The Republic of Serbia Constitution prescribes the option to legally limit freedom of expression when it is necessary to protect national security.<sup>148</sup> The Law on Protector of Citizens prescribes the possibility to dismiss and suspend the Ombudsperson, on the decision of the National Assembly<sup>149</sup>, however, it does not prescribe any possibility to limit the mandate of this institution for any reason.

The laws regulating the powers of the Ombudsman to visit prisons and other places holding persons deprived of liberty<sup>150</sup>, as well as to inspect information that is marked as secret<sup>151</sup>, also do not contain provisions that could limit these rights of the Ombudsman in cases of emergency or state of war or for other reasons of national security.

Interviewees that had worked in the institution of the Ombudsman reported that in practice their powers were not limited by government authorities, for these or any other reasons.

The Ombudsperson can be dismissed on the decision of the National Assembly, but the limitations to the Ombudsman's mandate for reasons of national security are not provided for in the Constitution, Law on Ombudsman or any other laws relevant to this institution.

## 2.7 Administrative regulation of NHRIs

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*The classification of an NHRI as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting.*

*Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use*

148 Official Gazette RS, No. 98/2006, Art. 46.

149 Law on Protector of Citizens, Official Gazette RS, No. 79/2005 and 54/2007, Art. 11–13.

150 Law on Enforcement of Penal Sanctions, Official Gazette RS, No. 55/2014 and 35/2019.

151 Data Secrecy Law, Official Gazette RS, No. 104/2009.

*of public funds, the application of such rules or regulations on an NHRI is not considered inappropriate provided they do not compromise the NHRI's ability to perform its role independently and effectively.*

*The administrative requirements imposed on an NHRI must be clearly defined and should be no more onerous than those applicable to other independent of State agencies.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.44)*

Administrative requirements imposed on the Ombudsman are prescribed by the following laws: Law on Civil Servants, Law on the Maximum Number of Employees in the Public Sector, Law on Public Property, Law on Public Procurement, Law on Audit, Law on Amendments to the Law on Budget System. The requirements imposed on the Ombudsman are in principle no different than the requirements imposed on government authorities, with the exception of the Law on the Maximum Number of Employees in the Public Sector, and Law on Budget System, which provide exceptions to the institution of the Ombudsman, regarding employment.

New employment with the Ombudsman is exempted from the Law on the Maximum Number of Employees in the Public Sector<sup>152</sup>, so the maximum number of employees is determined by the National Assembly committee in charge of administrative and budgetary issues, on the proposal of the Ombudsman.

.....  
: The laws related to administrative regulations do not provide :  
: for special exemptions for the Ombudsman, except for :  
: the the Law on the Maximum Number of Employees in the :  
: Public Sector, according to which the maximum number of :  
: employees in the institution is set by the National Assembly :  
: Committee, based on the proposal of the Ombudsman. The :  
: exception is also the relevant provision of the Law on Budget :  
: System, which also relates to this issue. :  
.....

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152 Law on the Maximum Number of Employees in the Public Sector, Art. 5, Para. 1.2.

## 2.8 Assessing NHRIs as National Preventive and National Monitoring Mechanisms

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*Where, pursuant to an international human rights instrument, an NHRI has been designated as, or as part of, a national preventive or monitoring mechanism, the SCA will assess whether the applicant has provided sufficient information to demonstrate that it is carrying out its functions in compliance with the Paris Principles*

*Depending on the specific roles and functions ascribed to the NHRI, in undertaking this assessment, the SCA will consider, as appropriate:*

- whether a formal legal mandate has been provided;*
- whether the mandate has been appropriately defined to encompass the promotion and*
- protection of all relevant rights contained in the international instrument;*
- whether the staff of the NHRI possess the appropriate skills and expertise;*
- whether the NHRI has been provided with additional and adequate resources;*
- whether there is evidence that the NHRI is effectively undertaking all relevant roles and functions as may be provided in the relevant international instrument. Depending on the instrument and the mandate of the national human rights institution, such activities might include monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations.*

*The SCA may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.46)*



During the observed period, the Ombudsman continued to carry out the mandate of the NPM.<sup>153</sup> Until October 2018, this mandate was carried out by a special unit within the institution of the Ombudsman – NPM Secretariat. The staff in the NPM Secretariat reported directly to the Ombudsperson and Deputy Ombudsperson in charge of the NPM. After the new Rulebook on internal organisation and job classification in the Expert Service of the Ombudsman was adopted, these tasks were transferred to the NPM Department in which, according to the act on classification, the number of employees was extended. Employees in the NPM Department report to the Ombudsperson and Deputy in charge of the NPM.<sup>154</sup>

From the beginning of 2014 until the end of 2018, performing NPM tasks, the Ombudsman carried out a total of 393 visits to institutions holding or potentially holding persons deprived of liberty (police stations, institutions for enforcement of penal sanctions, psychiatric institutions, social protection institutions, asylum centres and reception centres). In 2018, the number of visits was strikingly lower than during the previous years.<sup>155</sup>

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153 NPM in Serbia was established with the Law supplementing the Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 2011 (Official Gazette RS, No. 7/2011). It stipulates that the Ombudsman shall perform the tasks of the NPM and cooperate in the performance of these tasks with ombudspersons in autonomous provinces and with associations defining, in their statutes, their aim to promote and protect human rights and freedoms (Article 2a).

154 NPM Report for 2018, p. 9. As it has already been said, the functions of Deputy Ombudsman have been vacant since the end of 2018.

155 This was also recorded in the European Commission Serbia 2019 Progress Report (p. 23–24). Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>, (accessed on 17 October 2019).



Table 5: Number of NPM visits 2014–2018, by years

| Year             | 2014 | 2015 | 2016 | 2017 | 2018 |
|------------------|------|------|------|------|------|
| Number of visits | 79   | 117  | 92   | 61   | 44   |

In their role as NPM, the Ombudsman has cooperated with several CSOs. It seems that this cooperation was satisfactory for the first several years, both for the NPM and the CSOs that cooperated with it, since it provided significant space for the exchange of information, comprehensive situation overview and joint action in the area of prohibition of ill-treatment. In 2014 and 2015, the Ombudsman carried out the NPM mandate in cooperation with as many as nine associations: Belgrade Centre for Human Rights, Lawyers' Committee for Human Rights, Helsinki Committee for Human Rights in Serbia, International Aid Network, Mental Disability Rights Initiative, Victimology Society of Serbia, Centre for Human Rights Niš, Dialogue and Committee for Human Rights Valjevo.<sup>156</sup> In 2016 and 2017, it also established cooperation on the performance of these tasks, in addition to the above-mentioned associations, with the Group 484, while the cooperation with Dialogue ceased.<sup>157</sup> In 2018, the Ombudsman published a call for cooperation on tasks of the NPM, and continued cooperation with the Belgrade Centre for Human Rights, Lawyers' Committee for Human Rights, International Aid Network and Mental Disability Rights Initiative.<sup>158</sup> According to an interviewee, the current Ombudsperson considers that the cooperation with the civil sector should be "less direct" than it was in the previous period.<sup>159</sup> Interviewees from some associations that the Ombudsman is still cooperating with as NPM claimed that the current Ombudsperson (Zoran Pašalić) went to several follow-up visits after the NPM team, and that during an event he stated that the findings of the NPM visit were inaccurate.<sup>160</sup> In 2019, the Belgrade Centre for Human

156 NPM Report for 2014, p. 23; NPM Report for 2015, p. 27–28.

157 NPM Report for 2016, p. 20; NPM Report for 2017, p. 20.

158 NPM Report for 2018, p. 9–10.

159 Information from organised interviews.

160 Focus group participant on 18 September 2019.

Rights terminated their cooperation with the Ombudsman in the area of NPM, as they thought that the NPM's performance had been unsatisfactory during the previous several years.<sup>161</sup>

The Ombudsman has regularly published reports on carrying out the NPM mandate, both on visits to institutions and annual reports. All NPM reports are available on the official webpage of the Ombudsman.<sup>162</sup>

NPM reports on visits to institutions that hold or may hold persons deprived of liberty, have a uniform and consistent structure. NPM findings contained in them are detailed, often supported by photographs. They consist of a description of the situation found, presentation of the valid normative framework (national and international) about the relevant issue and NPM recommendations. The reports regularly indicate also information about the institution being monitored, type of visit (regular, follow-up, thematic or ad hoc), announcement of the visit (whether it was previously announced to the institution), the composition of the NPM team and the course of the visit. The NPM used follow-up visits to monitor the implementation of recommendations issued by the NPM and the CPT.

In annual NPM reports, in addition to the assessment of the situation by individual areas, presentation of the most important results achieved by the NPM and recommendations issued, the Ombudsman often issued general situation assessments in the area of the prohibition of ill-treatment. Thus, since 2015, the Ombudsman considered “there is no *torture*<sup>163</sup>, organised and encouraged by government authorities” in Serbia, and that “there is awareness among civil servants treating persons deprived of liberty that torture is a fully prohibited behaviour”.<sup>164</sup>

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161 Moreat: [www.bgcentar.org.rs/saopstenje-povovodom-izvestaja-npm-obs-o-radu-nacionalnog-mehanizma-za-prevenciju-torture-srbije/](http://www.bgcentar.org.rs/saopstenje-povovodom-izvestaja-npm-obs-o-radu-nacionalnog-mehanizma-za-prevenciju-torture-srbije/), (accessed on 15 October 2019).

162 See: [www.npm.rs/](http://www.npm.rs/). (accessed on 15 October 2019).

163 Emphasis by author.

164 NPM Report for 2015, p. 9; NPM Report for 2016, p. 4; NPM Report for 2017, p. 4.

Annual NPM reports have been submitted to the National Assembly, President of the Republic, Prime Minister, Public Prosecution Office, Supreme Court of Cassation, Constitutional Court, Office for Human and Minority Rights, line ministries, Commissariat for Refugees and Migration and monitored institutions (police stations, institutions for the enforcement of penal sanctions, psychiatric hospitals), and in English, they have also been submitted to the Sub-Committee on the Prevention of Torture (SPT), Committee against Torture (CAT), European Committee on the Prevention of Torture (CPT) and Association for the Prevention of Torture (APT).<sup>165</sup>

The National Assembly has not discussed annual NPM reports for several years. The last annual report (for 2018) states that after several years, the Ombudsman had the opportunity to present the NPM annual report for 2017 to the National Assembly, and that the members of the Committee on Judiciary, Public Administration and Local Self-Government, Committee on Human and Minority Rights and Gender Equality and Committee on the Rights of the Child discussed that report in a joint sitting in December 2018.<sup>166</sup>

The Ombudsman is also active in the in South East Europe NPM Network, within which it participated in many events (national NPM meetings, conferences, etc.).

Unlike other areas covered by the NPM, where its findings largely coincide with those of international monitoring bodies, this is not the case with the area of police monitoring. It is worth mentioning that the number of visits to police stations by the NPM from the beginning of 2014 until the end of 2018 decreased year after year and dropped from nearly 50 visits in 2014 to 8 visits in 2017, and 5 in 2018. Looking at the number of visits to police stations compared to the total number of visits conducted by the NPM during each individual year, it can also be concluded there was less focus on police monitoring. So that in 2014, the share of visits to the police in the total number of NPM visits was 61%, while in 2017 this share was around 13%, or only slightly over 11% in 2018.

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<sup>165</sup> NPM Report for 2018, p. 13.

<sup>166</sup> NPM report for 2018, p. 13.

As main issues regarding the police, in its annual reports, the NPM mentioned poor accommodation conditions in detention rooms, non-compliance of the Instructions for the treatment of detainees of the Ministry of Interior (Moi) with valid standards for the mandatory use of means for restraint when a person is taken to police and the obligation of police officers to attend medical examination of the detained person, as well as the lack of trained police officers for treating persons with mental disabilities.

Contrary to this, during the observed period, Serbia was harshly criticised several times because of the situation regarding the prohibition of ill-treatment, especially regarding police work. Several CPT delegations came to Serbia, first in 2015, then in 2017 also for an ad hoc visit<sup>167</sup>, and at the end of 2017, the situation in Serbia regarding abuse was also monitored by the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SRT).<sup>168</sup> The findings of these two bodies, in all three reports, assessed the situation in Serbia as worrying. The CPT report on the ad hoc visit in 2017, says that the delegation during this visit received a significant number of allegations of inadequate treatment of detained persons during arrest or questioning by police officers, such as slapping, punching, kicking, truncheon blows and strikes with various non-standard objects, or even exposure to electrical shocks from electrical discharge devices.

In a number of cases the delegation collected medical evidence and documents indicating consistencies with the allegations on inadequate treatment of detained persons by police officers. As during previous visits, the CPT delegation found non-standard objects in the offices of criminal inspectors, such as baseball bats, electrical extension cords, police batons, knuckle-dusters, etc. In this report, the CPT called on Serbia to accept the fact that inadequate treatment by police officers existed and that

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167 CPT reports are available at: [www.coe.int/en/web/cpt/serbia](http://www.coe.int/en/web/cpt/serbia). (accessed on 14 August 2019).

168 SRT report is available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/59/Add.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/59/Add.1). (accessed on 14 August 2019).



it represented a widely accepted practice in the current police culture, notably among criminal inspectors.<sup>169</sup>

A lot can be learned about possible reasons for great discrepancies between the findings of international monitoring bodies on one hand, and NPM on the other, in the area of police work, from the report of the NPM Obs (Observatory of national preventive mechanisms against torture), which presents observations on the work of the NPM.<sup>170</sup> On the invitation of the Ombudsman, in mid-2018, experts from the above-mentioned association monitored the NPM's work during its visits to a psychiatric institution, an institution for the enforcement of penal sanctions and one police station. The main findings of the NPM Obs report talk about how since 2017, NPM's abilities to fulfil its mandate have been greatly reduced. It has been found that the Ombudsperson prohibited NPM staff to visit police stations for a period of three months, took away their credentials to access secret information and for a while there was limited engagement of external experts during NPM visits. NPM Obs directed most of its focus on the issue of the efficiency of NPM Serbia to fulfil its main task – prevent torture and other forms of ill-treatment. It was assessed that during visits to institutions, NPM dedicated more attention to the conditions for accommodation of persons deprived of liberty, procedural irregularities and administrative issues, than indications of cases of ill-treatment in these institutions.

The delegation reported having noticed many situations where the NPM did not react to information or suspicions that could indicate individual or general ill-treatment in the monitored institution, but readily moved on to the next question. Also, the report describes in detail that the NPM team during their visit to a police station omitted to inquire in any way in the origin of a blood smear found in one of the detention rooms, as well as to interview the person that was brought at the time of the NPM visit, who “seemed to be in distress”.

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169 CPT/Inf (2018) 21, § 9 and onward.

170 See more at: <https://www.npmobs.org/activities#Pilotvisits> (accessed on 14 August 2019).

The report stated that the NPM was “working in very difficult circumstances” and that there was danger that the changes in NPM leadership undermined the confidence of the team that they would be supported if they were critical of abuses without very strong evidence. The delegation concluded that this arose from a combination of factors, such as: policy of trying to visit as many institutions as possible, limiting the possibility to undertake in-depth monitoring; lack of training and resources; focus on material conditions, procedural irregularities with categorisation and administrative matters and a lack of specific focus on issues/information directly related to possible torture; lack of clear encouragement by the leadership of the NPM and the Ombudsman; team decision not to note allegations if they are not corroborated by other evidence.<sup>171</sup>

Until 2017, the Ombudsman had a very important role in cases of human rights violations that attracted the attention of the Serbian public, related to the work of the police and the area of prohibition of ill-treatment. For example, they found numerous human rights violations in the well-known cases of attacks against Istinomer<sup>172</sup> and KRIK<sup>173</sup> journalists by the representatives of the Belgrade Community Police, the Savamala case,<sup>174</sup> the case of the arrests of two police officers who spoke about illegal orders in the MoI regarding the Prime Minister’s visit to Srebrenica in July 2015,<sup>175</sup> etc.

However, during the following years, the work of the Ombudsman became much less visible in this area, especially when it comes to “sensitive” cases, involving the work of the highest government

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171 See NPM Obs Report: Paragraph 138 and onward.

172 More available at: [www.ombudsman.rs/index.php/2012-02-07-14-03-33/4502-2015-12-23-11-12-34](http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4502-2015-12-23-11-12-34). (accessed on 15 October 2019).

173 More available at: [www.ombudsman.rs/index.php/2012-02-07-14-03-33/4586-2016-02-04-09-05-51](http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4586-2016-02-04-09-05-51). (accessed on 15 October 2019).

174 More available at: [www.ombudsman.rs/index.php/2012-02-07-14-03-33/4723-2016-05-09-14-55-34](http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4723-2016-05-09-14-55-34), [www.bbc.com/serbian/lat/srbija-48028370](http://www.bbc.com/serbian/lat/srbija-48028370). (accessed on 15 October 2019).

175 More available at: [www.ombudsman.rs/index.php/2012-02-07-14-03-33/5548-u-r-sh-nji-z-drz-v-nju-su-njic-nih-nisu-br-zl-z-ni-r-zl-zi-z-pri-v-r](http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5548-u-r-sh-nji-z-drz-v-nju-su-njic-nih-nisu-br-zl-z-ni-r-zl-zi-z-pri-v-r), [www.krik.rs/zastitnik-gradana-policajci-u-slucaju-potocari-nezakonito-zadrzani-u-pritvoru/](http://www.krik.rs/zastitnik-gradana-policajci-u-slucaju-potocari-nezakonito-zadrzani-u-pritvoru/). (accessed on 14 August 2019).

representatives (e.g. ministers), or those in which government officials spoke publicly about the work of some institutions.

In this respect, the *Ayaz case* is indicative and well-known in public.<sup>176</sup> It concerns a Turkish citizen, who applied for asylum in Serbia in 2016, and against whom parallel extradition proceedings were brought by the request of Turkish authorities.. The asylum application procedure in Serbia was never finally concluded, but there was a non-final decision that the asylum application would not be decided on, because the country from which Ayaz entered Serbia was considered a safe third country. For the entire duration of the extradition and asylum procedures, Ayaz was in detention. Regarding this case, in early December 2017, the UN Committee against Torture issued a interim measure indicating the competent authorities to refrain from returning Ayaz to Turkey, because of the risks of him being subjected to ill-treatment there. Twenty-five days before his extradition to Turkey, and after extradition detention was terminated, Ayaz was illegally deprived of liberty by the police, because of which, in early December 2017, his defence lawyer lodged a complaint with the Ombudsman. Although media in Serbia informed the public regularly about this case, even about the CAT issuing a interim measure in this case<sup>177</sup>, at the very end of December 2017, Ayaz was extradited to Turkey, on the decision by the Minister of Justice. After the complaint was lodged, the Ombudsman did not, either before or after Ayaz's extradition to Turkey, undertake any actions to examine whether police detention was legal, since he was detained on no grounds and deprived of liberty for nearly a month, or whether the Minister's decision on extradition was legal, which was made despite the interim measure issued by the CAT. This had not changed until July 2018, when the Ombudsman

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176 For more about this case, see: Human Rights in Serbia 2017, Belgrade Centre for Human Rights, 2018, p. 32, 39–40 and 359.

177 See more at: [www.slobodnaevropa.org/a/intervju-jens-modvig/28944192.html](http://www.slobodnaevropa.org/a/intervju-jens-modvig/28944192.html); <http://rs.n1info.com/Vesti/a352107/Srbiju-ceka-proces-pred-Komitetom-UN-zbog-izrucenja-Kurda.html>; [www.blic.rs/vesti/hronika/un-srbija-da-postuje-svoje-obaveze-u-slucaju-dzvedeta-ajaza/etpg5gd](http://www.blic.rs/vesti/hronika/un-srbija-da-postuje-svoje-obaveze-u-slucaju-dzvedeta-ajaza/etpg5gd) (accessed on 14 August 2019).



was asked for a copy of this case file.<sup>178</sup> In August 2019, the UN Committee against Torture determined in the application by Ayaz that there was a violation of the Convention by his extradition and the CAT interim measure was not acted on. The Ombudsman is still not saying anything about this case, and it is unclear which phase was reached in the processing of the complaint since December 2017.

Similarly, until the day of writing of this report, the Ombudsman had not decided on the complaint on police work, submitted in early September 2017, on behalf of a child from Afghanistan. Finding that it was an unaccompanied minor, without any identification documents, passports or means for sustenance, who came to Serbia and applied for asylum, in mid-2017, the police made a decision ordering this minor to leave the territory of the Republic of Serbia, not having examined in any way the risk of ill-treatment in case of return to the country of origin or some third country. In this case, the European Court of Human Rights issued an interim measure, ordering competent authorities to refrain from expelling the minor, M. W. from the territory of Serbia. Although in November 2017 the Ombudsman asked from the police for some information about the case, the minor's legal representative and temporary guardian have not received any information regarding the Ombudsman's actions in this case.<sup>179</sup>

During a civil protest in Belgrade, in March 2019, several police officers used excessive force on a citizen. The video recording of this event was published on the Internet, showing police officers striking the citizen who was not resisting<sup>180</sup>, and several days after this event, the Ombudsperson was asked on a TV show whether he would address this case. On this show, the Ombudsperson,

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178 Ayaz's complaint is registered with the Expert Service of the Ombudsman under the No. 13-32-3911/17.

179 The complaint by the minor M. W. was registered with the Ombudsman's Expert Service under the no. 13-2-2806/2017. On the other hand, this case before the ECHR is in the stage of submitting written observations from the representative of the Government before this court (Application No. 70923/17).

180 See: [www.youtube.com/watch?v=dCVCJO9rQK0&feature=youtu.be&t=11](http://www.youtube.com/watch?v=dCVCJO9rQK0&feature=youtu.be&t=11) (accessed on 14 August 2019).

Zoran Pašalić, said several things deserving attention. For example, he claimed that this case could not qualify as “torture” even though he said that he had not seen the video of the event (he did not say whether the case could be considered some other form of ill-treatment – *note by author*), that he wished to leave the case to the prosecution office and the court, calling on the TV host to file a complaint if he felt that the Ombudsman should react, that he (Ombudsperson) was prevented by law from acting while proceedings were ongoing<sup>181</sup>, that the Ombudsman was not the one to establish whether there had been unjustified use of force (excessive use of police force) before this was done by the police internal control, etc.<sup>182</sup> The impression is that the Ombudsperson tried to avoid working on this case in all possible ways, which is also supported by the fact that until the writing of this report nothing has been done concerning the case.

Finally, it should be noted that during the first half of 2019, Serbia introduced life imprisonment without the possibility of conditional release for certain crimes. This topic attracted much attention from the general and expert public, considering there were serious disagreements between the Ministry of Justice and CSOs about whether it was justified to introduce this sentence and about its effects on human rights (primarily the prohibition of ill-treatment). The Ombudsman was called upon twice, in writing, to provide their opinion about the draft – and later on proposal – for these amendments to the Criminal Code, which he ignored.<sup>183</sup> Before the amendments were adopted, the Ombudsperson stated publicly that he would give the competent authorities an opinion on the amendments to the Criminal Code, noting that otherwise “he considers that the Ombudsman agrees with all parts of a draft Law if he does not provide an opinion on it”.<sup>184</sup>

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181 No grounds can be found for this claim of the Ombudsperson in the Law on Protector of Citizens or any other regulation in Serbia. This issue was also addressed by the UN Committee against Torture in Concluding Observations on the second periodic report of Serbia. See: CAT/C/SRB/CO/2, § 21.

182 For more, see: <https://youtu.be/M8vopUN6X3Y?t=958>. (accessed on 14 August 2019).

183 Focus group participant on 18 September 2019.

184 See more at: <https://youtu.be/qk--bLVjgqc?t=1572>. (accessed on 14 August 2019).

The carrying out of the mandate of the NPM is under threat, particularly in the area of police work and prevention of police ill-treatment, which is the result of: 1) lack of adequate human and material resources; 2) actions of the new Ombudsperson which have caused the NPM staff to believe that they do not enjoy unconditional support of the Ombudsperson in the fulfilment of their tasks on the prevention of ill-treatment; 3) appointment of unqualified staff to management positions in the NPM; 4) discontinued or reduced cooperation with certain NGOs that have cooperated with the Ombudsman on carrying out the NPM mandate.

## **2.9. The quasi-judicial competence of NHRIs (complaints-handling)**

*According to GANHRI General Observations of the Sub-Committee on Accreditation*

*The Paris Principles do not require that an NHRI have the ability to receive complaints or petitions from individuals or groups regarding the alleged violation of their human rights. However, where it is provided with this mandate, the Paris Principles suggest that certain functions should be considered. In essence, NHRIs are expected to handle complaints fairly, speedily and effectively through processes which are readily accessible to the public.*

*When an NHRI is provided with a mandate to receive, consider and/or resolve complaints alleging violations of human rights, it should be provided with the necessary functions and powers to adequately fulfil this mandate.*

*Depending on its mandate, such powers and functions might include:*

- the ability to receive complaints against both public and private bodies in its jurisdiction;*
- the ability to receive complaints that are filed by persons on behalf of the alleged victim(s), where consent is given;*
- the ability to commence a complaint on its own initiative;*

- *the ability to investigate complaints, including the power to compel the production of evidence and witnesses, and to visit places of deprivation of liberty;*
- *the ability to protect complainants from retaliation for having filed a complaint;*
- *the ability to protect witnesses from retaliation for having provided evidence in relation to a complaint;*
- *the ability to seek an amicable and confidential settlement of the complaint through an alternative dispute resolution process;*
- *the ability to settle complaints through a binding determination;*
- *the ability to refer its findings to courts of law or specialized tribunals for adjudication;*
- *the ability to refer complaints falling beyond its jurisdiction or in a concurrent jurisdiction to the appropriate decision-making body;*
- *the ability to seek enforcement through the court system of its decisions on the resolution of complaints;*
- *the ability to follow up and monitor the implementation of its decisions on the resolution of complaints; and*
- *the ability to refer its findings to government in situations where a complaint provides evidence of a widespread or systematic violation of human rights.*

*In fulfilling its complaint-handling mandate, the NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, an NHRI should:*

- *ensure that its facilities, staff, and its practices and procedures, facilitate access by those who allege their rights have been violated and their representatives; and*
- *ensure that its complaint-handling procedures are contained in written guidelines, and that these are publicly available.*

*(GANHRI SCA, General Observations, Geneva, 2018, p.4p)*

The analysis covers annual reports of the Ombudsman for the period 2015–2018. According to the statistics presented in these annual reports, the number of citizens' complaints was rising in the period 2015–2016. In 2015, there were 6,161 complaints lodged and 6,457 resolved. In 2016, the trend was similar, with the number of complaints at 6,203, while 6,567 citizens' complaints and independently initiated cases were resolved.

However, there is a strikingly declining trend in the number of citizens' complaints in 2017 and 2018. According to report data, in 2017 4,060 complaints were received and 3,071 resolved, while in 2018, 3,282 complaints were received and 3,789 resolved.<sup>185</sup> Considering there is no final data for 2019, since the report is submitted not earlier than March 2020, by looking at statistical data on the Ombudsman's website, it can be assumed that the decline in the number of citizens' complaints will continue, because in seven months in 2019, 1,838 complaints were received and 893 cases resolved. The number of resolved cases cut in half is a logical result of the lower number of received complaints, but it can be also concluded that the Expert Service of the Ombudsman had less work during the last two years.

Data presented can speak to two things. First, that the trust of the citizens in this institution declined during the last two years, or second, that the human rights situation in Serbia was better than during the previous years, so the citizens did not have any reason to address the Ombudsman.

That the situation in Serbia, when it comes to human rights and fundamental freedoms, has most certainly not improved, but, on the contrary, it has been regressing year after year, is shown in reports of domestic and international NGOs (e.g. Coalition PrEUgovor<sup>186</sup>, YUCOM<sup>187</sup>, Transparency Serbia<sup>188</sup>, Belgrade Centre

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185 The number of resolved cases for each year includes cases from previous years and cases resolved after complaints received during the reporting year. Comparative data can be found in Table 6.

186 More at: [www.preugovor.org.rs](http://www.preugovor.org.rs). (accessed on 14 August 2019).

187 More at: [www.yucom.org.rs](http://www.yucom.org.rs). (accessed on 14 August 2019).

188 More at: [www.transparentnost.org.rs](http://www.transparentnost.org.rs). (accessed on 14 August 2019).



for Human Rights<sup>189</sup>, GRECO<sup>190</sup>, Freedom House<sup>191</sup>, Reporters without Borders<sup>192</sup> and others). In the European Commission reports also, for all four years, findings appear on Serbia's weak progress related to two key chapters (Chapter 23 and Chapter 24), related to the areas that fall under the purview of the Ombudsman (although not entirely).<sup>193</sup> Therefore, we can conclude that the reason for the reduced number of complaints the citizens submit to the institution of the Ombudsman does not lie with the improved human rights situation but that there are other factors that influenced this.

One of the reasons for the lower number of people addressing the Ombudsman could be that the expectations of citizens who addressed the Ombudsman during the first years were high, primarily because Saša Janković, since he took office as Ombudsperson, was visible in the public, criticising violations that caused a lot of public attention, demanding accountability of both institutions and individuals, speaking openly about the omissions by government authorities and showing willingness to address issues encountered by the citizens in the fulfilment of their rights.

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189 More at: [www.bgcentar.org.rs](http://www.bgcentar.org.rs). (accessed on 14 August 2019).

190 See GRECO Report for 2015, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca35d>, and the statement of Marin Mrčela, GRECO Chairman, from October 2018, available at: <http://rs.n1info.com/Vesti/a431452/Predsedavajuci-GRECO-Ceka-se-dopunski-izvestaj-Srbije.html>. (accessed on 14 August 2019).

191 The Freedom House Report *Freedom in the World 2019* found that Serbia was partly free, which is a decline compared to the previous year, when it was in the group of free countries, available at: [https://freedomhouse.org/sites/default/files/Feb2019\\_FH\\_FITW\\_2019\\_Report\\_ForWeb-compressed.pdf](https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf). (accessed on 14 August 2019).

192 Available at: <https://rsf.org/en/ranking#>. According to this report, Serbia dropped 14 places, from the 76th to the 90th place when it comes to the freedom of press, more at: <http://rs.n1info.com/Vesti/a477243/Srbija-pala-na-Indeksu-slobode-medija-Reportera-bez-granica.html>. (accessed on 14 August 2019).

193 European Commission reports are available at: <http://www.mei.gov.rs/src/dokumenta/eu-dokumenta/godisnji-izvestaji-ek>. (accessed on 14 August 2019).

However, in time it turned out that citizens, even though they were satisfied with the actions of the Ombudsman, were often dissatisfied with the outcome of the control procedure . Namely, the essence of the Ombudsman's control procedure, is to warn the government authority that the citizens complained against, that there are some omissions made by them and to issue recommendations aimed to improve their work. However, the Ombudsman, except for the force of their arguments and public pressure, does not have the power to change or directly influence the final decision.

Table 6: Implementation of recommendations by authorities

| Year | Recommendations issued in complaints procedure | Recommendations issued within NPM | Recommendations from complaints procedure due | Recommendations from NPM due | Accepted from complaints procedure | Accepted from NPM | Total recommendations issued |
|------|--|-----------------------------------|---|------------------------------|------------------------------------|-------------------|------------------------------|
| 2018 | 497  | 296                               | 245   | 164                          | 233                                | 148               | 793                          |
| 2017 | 490  | 309                               | 373   | 183                          | 333                                | 169               | 799                          |
| 2016 | 1,022  | 318                               | 929   | 186                          | 822                                | 169               | 1,340                        |
| 2015 | 1,182  | 265                               | 935   | 167                          | 796                                | 155               | 1,447                        |

On the other hand, the statistics kept by the Ombudsman and published in annual reports also show that the citizens do not have sufficient knowledge of this authority's competence, so in nearly all years that are analysed here, a large number of complaints was rejected because of lack of competence, untimely or premature submission of complaints, but also because they had been filed anonymously or improperly.<sup>194</sup> Often, the citizens' complaints were rejected because available legal remedies were not exhausted before submitting the complaint to the Ombudsman, and the citizens were not explained based on which facts the Ombudsman found there to be no grounds to initiate the control procedure over government authorities before exhausting them (which is its right, pursuant to provisions in Article 25, Paragraph 5 of the Law on Protector of Citizens).<sup>195</sup>

194 See Table 8.

195 Focus group participant on 18 September 2019.




*Table 7: Number of complaints according to data found in Ombudsman's Annual Reports*

| Year | Number of received complaints/<br>cases | Number of cases initiated<br>independently | Total | Telephone interviews | Citizens inter viewed/number of<br>citizens addressing the ombudsman | Finalised cases in current year | Number of cases from<br>previous years | Number of finalised cases from<br>previous years | Number of ongoing cases from<br>previous years | Total finalised cases |
|------|---|--|-------|----------------------|--|---------------------------------|--|--|--|-----------------------|
| 2018 | 3,282                                   | 56   | 3,338 | 3,350                | 2,432  | 2,346                           | 2,720                                  | 1,443  | 1,277  | 3,789                 |
| 2017 | 4,060                                   | 69   | 4,129 | 5,155                | 2,897  | 2,687                           | 1,136                                  | 384  | 752  | 3,071                 |
| 2016 | 6,203                                   | 69   | 6,272 | 8,149                | 4,213  | 4,315                           | 3,127                                  | 2,252  | 875  | 6,567                 |
| 2015 | 6,161                                   | 70   | 6,231 | 9,327                | 4,585  | 4,812                           | 2,000                                  | 1,645  | 355  | 6,457                 |

*Table 8: Outcome of complaints*

| Year | Rejected | Unfounded | Recommendation from<br>shortened procedure | Recommendation from<br>control procedure | Complaint<br>withdrawn | Advice given | Opinion or release | Death of applicant | Legislative initiative |
|------|----------|-----------|--|--|------------------------|--------------|--------------------|--------------------|------------------------|
| 2018 | 1,649    | 391       | 192  | 20                                       | 62                     | 40           | 8                  | 1                  | 1                      |
| 2017 | 1,987    | 381       | 234  | 9  | 45                     | 24           | 4                  | 2                  | /                      |
| 2016 | 3,228    | 606       | 257  | 146                                      | 62                     | /            | 16                 | /                  | /                      |
| 2015 | 3,698    | 1,276     | 558  | 716                                      | 107                    | /            | 58                 | 8                  | 36                     |



The Ombudsman has often warned that in Serbia, a functional system for removing irregularities in the work of government authorities does not exist, that there is no efficient system enabling to control government authorities internally or to use legal remedies with government authorities and the judiciary, providing the reason why citizens in the majority of cases address the Ombudsman as the first, and not the last instance of control.<sup>196</sup>

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196 See e.g. the Ombudsman's Annual Report for 2016, p.5.

# IV. OMBUDSMAN IN THE MEDIA

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## 1. General Overview

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The total number of articles in the Ebart Media Documentation eArchives since the beginning of 2015, mentioning the Protector of Citizens, Ombudsman, Saša Janković and/or Zoran Pašalić is 4,581. Data show that media focus on the institution of the Ombudsman and the office holders dropped over the years, which is shown not only by the total number of articles in seven daily papers analysed by years, but also in each of them individually. The table below may be interpreted as showing significantly reduced visibility of the institution and office holders, at least when it comes to reporting of seven daily papers covered by the analysis. Namely, during the first two years, 2015 and 2016, the search found a total of 2,632 articles, and in 2017, while Deputy Ombudspersons were still working with the institution and appeared in the public regarding issues within their fields of work, 1,209 articles, while in the period between the beginning of 2018 and September 2019 (longer than one and a half years), the total number of published articles was only 740.



Table 9: Overview of articles mentioning the Ombudsman

| Year  | Danas | Informer | Kurir | Politika | Večernje novosti | Blic | Alo | Total |
|-------|-------|----------|-------|----------|------------------|------|-----|-------|
| 2015  | 389   | 136      | 87    | 322      | 179              | 254  | 77  | 1,444 |
| 2016  | 361   | 92       | 104   | 224      | 151              | 197  | 59  | 1,188 |
| 2017  | 326   | 112      | 154   | 182      | 136              | 164  | 135 | 1,209 |
| 2018  | 144   | 22       | 29    | 82       | 54               | 52   | 24  | 407   |
| 2019  | 139   | 13       | 11    | 72       | 45               | 38   | 15  | 333   |
| Total | 1,359 | 375      | 385   | 882      | 565              | 705  | 310 | 4,581 |

If we analyse the content of the published texts in more detail, we can see that between 2015 and 2017, certain dailies, mostly those close to the government (e.g. *Informer* and *Alo*), dedicated an extremely high number of articles to the alleged participation of the Ombudsperson, Saša Janković, in the murder of his friend in 1993, supporting such claims with data received directly from police sources.<sup>197</sup> Although the analysis cannot confirm this, because it is limited mainly to the review of statistical data, the reduced trust in the institution of Ombudsman could also be connected with the extremely negative reporting by tabloid media, containing suspicions of his involvement in the murder of his friend<sup>198</sup>, as well as the statements from certain high-level officials in the ruling coalition.

Towards the end of 2016 and in 2017, interest of all media outlets was caused by Saša Janković's decision to run in the presidential elections in spring 2017. According to data from Ebart media archives, out of 1,188 newspaper articles searched by keywords

197 See, among many: [informer.rs/vesti/politika/211055/iza-afere-pistolj-krije-zlocin-sta-skriva-zastitnik](http://informer.rs/vesti/politika/211055/iza-afere-pistolj-krije-zlocin-sta-skriva-zastitnik), [informer.rs/vesti/politika/355358/posle-dve-godine-jankovic-konacno-priznao-pistolj-moj-necu-kazem-kako-stradao-predrag-gojkovic](http://informer.rs/vesti/politika/355358/posle-dve-godine-jankovic-konacno-priznao-pistolj-moj-necu-kazem-kako-stradao-predrag-gojkovic), [www.alo.rs/vesti/politika/glisic-sasa-treba-da-bude-iza-brave/131146/vest](http://www.alo.rs/vesti/politika/glisic-sasa-treba-da-bude-iza-brave/131146/vest) (accessed on 29 August 2019).

198 See, e.g.: [www.novosti.rs/vesti/haslovnna/politika/aktuelno.289.html:544779-Sasa-Jankovic-imao-barut-na-rukama-Ombudsman-Nadjenisu-nitrati-prijatelj-sam-mazio-po-kosi](http://www.novosti.rs/vesti/haslovnna/politika/aktuelno.289.html:544779-Sasa-Jankovic-imao-barut-na-rukama-Ombudsman-Nadjenisu-nitrati-prijatelj-sam-mazio-po-kosi) (accessed on 29 August 2019).

Protector of Citizens / Ombudsman, for the year 2016, 463 texts were published in the period 1 November – 31 December 2016, which is the time when stories began around Saša Janković's running, and in the period between 1 January and 8 February 2017, when he resigned, 289 news articles were published. For the period between 9 February and 20 July, when the new Ombudsperson, Zoran Pašalić, was elected, 797 entries were found in the archives.

When it comes to the part of the search with keywords selected according to the areas of competence of the Ombudsman, which were perceived in the public as areas in which there were human rights violations in the analysed period, findings show that there is a considerably lower number of articles and reactions of the institution of Ombudsman for some areas, while in certain areas the statistics have not changed much. It is difficult to claim with certainty that the interest of journalists writing for daily papers covered by the analysis resulted from the fewer number of appearances by the Ombudsman, considering that media in Serbia, especially tabloids included in this analysis, often publish news that are sensationalist, and the editorial policy largely depends on politics. Yet, there is a considerable number of articles containing entries such as LGBT population and pride, peer violence, Ombudsman's annual reports, police, abuse, torture (*mučenje* or *tortura*), as well as the words prison and detention.

Table 10: Overview of articles with key selected words

| KEYWORDS  | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|---|------|------|------|------|------|-------|
| Protector of Citizens / Ombudsman and persons with mental health issues | 0    | 4    | 4    | 0    | 0    | 8     |
| Protector of Citizens / Ombudsman and pensions                          | 81   | 66   | 62   | 26   | 20   | 255   |
| Protector of Citizens / Ombudsman and child's rights                    | 31   | 12   | 19   | 17   | 19   | 98    |
| Protector of Citizens / Ombudsman and peer violence                     | 7    | 6    | 17   | 6    | 3    | 39    |
| Protector of Citizens / Ombudsman and national minorities               | 34   | 22   | 28   | 29   | 9    | 122   |
| Protector of Citizens / Ombudsman and Roma                              | 14   | 7    | 21   | 12   | 12   | 66    |
| Protector of Citizens / Ombudsman and LGBT                              | 23   | 19   | 26   | 7    | 9    | 84    |
| Protector of Citizens / Ombudsman and gay pride                         | 179  | 10   | 19   | 4    | 4    | 216   |
| Protector of Citizens / Ombudsman and gender equality                   | 21   | 11   | 24   | 2    | 14   | 72    |
| Protector of Citizens / Ombudsman and persons with disabilities         | 17   | 13   | 20   | 20   | 7    | 77    |
| Protector of Citizens / Ombudsman and health                            | 124  | 85   | 57   | 31   | 48   | 345   |
| Protector of Citizens / Ombudsman and maternity leave                   | 3    | 6    | 1    | 0    | 6    | 16    |
| Protector of Citizens / Ombudsman and missing babies                    | 3    | 1    | 6    | 2    | 3    | 15    |
| Protector of Citizens / Ombudsman and annual reports                    | 38   | 33   | 30   | 8    | 22   | 131   |

|  |       |     |     |     |     |       |
|--|-------|-----|-----|-----|-----|-------|
| Protector of Citizens / Ombudsman and eviction                   | 4     | 4   | 4   | 0   | 8   | 20    |
| Protector of Citizens / Ombudsman and refugees                   | 40    | 28  | 22  | 5   | 9   | 104   |
| Protector of Citizens / Ombudsman and migrants                   | 18    | 25  | 15  | 4   | 5   | 67    |
| Protector of Citizens / Ombudsman and constitutional reform      | 0     | 1   | 5   | 2   | 1   | 9     |
| Protector of Citizens / Ombudsman and constitutional amendments  | 0     | 0   | 1   | 5   | 4   | 10    |
| Protector of Citizens / Ombudsman and freedom of gathering       | 3     | 6   | 1   | 1   | 0   | 11    |
| Protector of Citizens / Ombudsman and control of courts          | 0     | 0   | 0   | 2   | 0   | 2     |
| Protector of Citizens / Ombudsman and control of media           | 6     | 5   | 2   | 1   | 1   | 15    |
| Protector of Citizens / Ombudsman and police                     | 414   | 327 | 205 | 70  | 53  | 1,069 |
| Protector of Citizens / Ombudsman and abuse                      | 43    | 23  | 16  | 13  | 23  | 118   |
| Protector of Citizens / Ombudsman and torture ( <i>tortura</i> ) | 20    | 18  | 12  | 8   | 5   | 64    |
| Protector of Citizens / Ombudsman and torture ( <i>mučenje</i> ) | 19    | 5   | 4   | 0   | 8   | 36    |
| Protector of Citizens / Ombudsman and prison                     | 32    | 34  | 42  | 22  | 17  | 147   |
| Protector of Citizens / Ombudsman and detention                  | 22    | 17  | 29  | 19  | 8   | 95    |
| Total  | 1,196 | 784 | 688 | 316 | 318 | 3,311 |



Chapter III describes the election of the new Ombudsperson in 2017, including claims in the public that the new Ombudsperson did not meet the criteria to perform this important public function, especially regarding experience in legal affairs important for the fulfilment of tasks within the Ombudsman's purview.<sup>199</sup> This is why the analysis examines the visibility of the new Ombudsperson before his election to this function related to human rights issues. Ebart data show that before his election as Ombudsperson (between 2015 and 2017), Zoran Pašalić was mentioned in 7 daily newspapers as the President of the Misdemeanour Appellate Court, where he gave statements related to the Law on Misdemeanours, punishments for misdemeanours and registry of unpaid fines for misdemeanours, or as one of the members of the management of the football club Partizan.

*Table 11: Overview of articles mentioning Zoran Pašalić in the period before election*

| Year | Danas | Informer | Kurir | Politika | Večernje novosti | Blic | Alo | Total |
|------|-------|----------|-------|----------|------------------|------|-----|-------|
| 2015 | 1     | 2        | 0     | 3        | 0                | 0    | 1   | 7     |
| 2016 | 2     | 4        | 1     | 4        | 6                | 6    | 0   | 23    |

## 2. Selected topics

Considering that a large number of articles in daily newspapers was found in the database by searching keywords, the research had to limit itself to several events representing human rights violations, which were included in reports by NGOs from Serbia, but also the reports of international organisations (European Commission, European Parliament, Council of Europe and United Nations authorities and bodies), regarding which the Ombudsman could undertake certain measures.

<sup>199</sup> See: p. 46.



## 2.1. The Savamala case

In April 2016, in early morning hours in Savamala (part of the Belgrade city centre), an organised, motorised group of several dozens of persons wearing black uniforms and balaclavas, equipped with telescopic batons, using heavy machinery and diggers took actual control over this part of the city. In Hercegovačka Street, blocked by two machines, physical force and threats were used to drag citizens out of buildings and vehicles in this area. Several citizens called the on-call service of the City of Belgrade police service, some even went to the Police Station Savski Venac and reported these events, which had elements of crime prosecuted *ex officio*. It was only eleven days later that the Higher Public Prosecution Office in Belgrade ordered the police to investigate the case of demolition of buildings in Savamala and make a report to the Prosecution Office on established facts, and as late as mid-May, addressed the public with the information that the pre-investigative proceedings were underway and asked the internal control service of the police to check for participation of police officers in this case.

In the report for 2016 submitted by the European Parliament Special Rapporteur, David McAllister, Serbian government was called to promptly resolve the Savamala case.<sup>200</sup> Also, in November 2018, the European Parliament adopted a resolution on Serbia<sup>201</sup>, reporting that the European Parliament “notes some progress in the case of the unlawful demolition of private property and the deprivation of the freedom of movement in the Belgrade neighbourhood of Savamala in April 2016 and calls for it to be resolved and for full cooperation with the judicial authorities in the investigations to bring the perpetrators to justice”.

200 More at: [www.politika.rs/sr/clanak/371662/Nacrt-lzvestaja-EP-protiv-mesanja-bilateralnih-razmirica#!](http://www.politika.rs/sr/clanak/371662/Nacrt-lzvestaja-EP-protiv-mesanja-bilateralnih-razmirica#!) i [www.danas.rs/politika/nadam-se-da-ce-istrage-o-slucaju-savamala-uskoro-doneti-rezultate/](http://www.danas.rs/politika/nadam-se-da-ce-istrage-o-slucaju-savamala-uskoro-doneti-rezultate/) (accessed on 29 August 2019).

201 Available at: [www.europarl.europa.eu/doceo/document/TA-8-2018-0478\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0478_EN.html), European Parliament resolution of 29 November 2018 on the 2018 Commission Report on Serbia (2018/2146(INI))(accessed on 29 August 2019).

Statistical data on reports in seven daily newspapers using keyword Savamala, lead to a conclusion that the number of articles published mentioning or featuring the Ombudsman, has decreased since 2018.

*Table 12: Overview of articles including the word Savamala*

| Year  | Danas | Informer | Kurir | Politika | Večernje novosti | Blic | Alo | Total |
|-------|-------|----------|-------|----------|------------------|------|-----|-------|
| 2016  | 105   | 8        | 13    | 43       | 12               | 29   | 5   | 215   |
| 2017  | 46    | 2        | 12    | 7        | 2                | 12   | 2   | 83    |
| 2018  | 16    | 0        | 0     | 0        | 0                | 3    | 0   | 19    |
| 2019  | 8     | 0        | 0     | 1        | 0                | 0    | 0   | 9     |
| Total | 175   | 10       | 25    | 51       | 14               | 44   | 7   | 326   |

A more detailed analysis and insight into 326 texts, most of which were published in 2016, can lead to a conclusion that the Ombudsman, Saša Janković, reacted promptly and conducted the procedure to control the legality and regularity of the Ministry of Interior's actions, and determined that the Police Directorate for the City of Belgrade did not follow-up on citizens reports timely or efficiently.<sup>202</sup> Daily papers also published that the Ombudsman issued a comprehensive report on 12 pages about everything that went on in the night of the demolition of buildings in Hercegovačka Street, and that it issued five recommendations to MoI. Namely, it was established that the said omissions in the actions of the authorities and police officers were organised and implemented as part of a prepared plan and issued orders. Police officers and commanders, including the Head of the Police Directorate for the City of Belgrade, and acting Police Director,

<sup>202</sup> Nearly all daily newspapers that were the subject of analysis regularly reported Ombudsman's reports, and in the months that followed it regularly gave interviews and published findings from the control of legality of the police work in the night of the demolition of buildings in Savamala, which was cited in 72 among 215 texts published in 2016.

did not know or were not allowed to divulge the identity of the issuing authority/ies to the Ombudsman.<sup>203</sup>

The analysis of all texts in 2016 also shows that because of requests to establish who demolished the buildings in Savamala and on whose request, Saša Janković, was exposed to criticism by high government officials, especially officials from the MoI.<sup>204</sup> Out of 215 texts, 28 contain either direct criticism of the operations and actions of the Ombudsman regarding the Savamala case (most often in tabloids close to the coalition in power), or they quote statements and allegations of high government authorities or ruling party members against the Ombudsman.

Early in 2017, the Ombudsperson gave statements about court proceedings initiated by the Minister of Interior, Nebojša Stefanović, against the weekly NIN, because of their writings about his role in the Savamala case<sup>205</sup>, although during this year, Savamala appeared as keyword mostly in reports on the reactions about Saša Janković as presidential candidate.

In May 2017, when Miloš Janković was fulfilling the duty of the Ombudsperson, it was published that two buildings in Savamala were illegally erased from cadastral records, although they were not demolished in April 2016. Following up on the complaint, the Ombudsman recommended to the Republic Geodetic Authority – Cadastral Service Savski Venac, to share the decision on entry of public property to the applicant, and without delay, determine which officers were responsible for the omissions regarding the erasure of buildings from the cadastral records and inform the Ombudsman about their follow-up on recommendations within 60 days.<sup>206</sup>

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203 See e.g.: [www.danas.rs/drustvo/policija-bila-deo-plana-za-rusenje-u-savamali/](http://www.danas.rs/drustvo/policija-bila-deo-plana-za-rusenje-u-savamali/) (accessed on 29 August 2019).

204 See e.g.: [www.danas.rs/drustvo/jankovic-mup-precutao-da-nije-ispunio-zakonske-obaveze-u-slucaju-savamala/](http://www.danas.rs/drustvo/jankovic-mup-precutao-da-nije-ispunio-zakonske-obaveze-u-slucaju-savamala/); [www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:619439-Rekontra-saopstjenjima](http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:619439-Rekontra-saopstjenjima) (accessed on 30 August 2019).

205 See: [www.danas.rs/drustvo/da-li-je-ministar-policije-odgovoran-za-rad-policije/](http://www.danas.rs/drustvo/da-li-je-ministar-policije-odgovoran-za-rad-policije/) (accessed on 29 August 2019).

206 More at: [www.blic.rs/vesti/politika/ombudsman-dva-objeka-u-savamali-nezakonito-izbrisana-iz-katastra/tdfttr7](http://www.blic.rs/vesti/politika/ombudsman-dva-objeka-u-savamali-nezakonito-izbrisana-iz-katastra/tdfttr7) (accessed on 29 August 2019).



The newly elected Ombudsperson, answering the journalists' questions even before he took office, stated that the Savamala case was legally and practically finalised<sup>207</sup>, and that it was on the competent authorities to inform the public about their actions and results, and several days after he took office, he stated that the case including demolished shacks in the Belgrade neighbourhood Savamala in 2016, was not closed, that it was being monitored, but he also thought that the case was made "too political".<sup>208</sup> Two months later, questioned by journalists about the Savamala case, he answered that the report of the MoI's internal control had not been received, and that the institution of the Ombudsman would react when they received this report, and he added that the case of demolitions in Savamala was in the hands of the police, the prosecution office and the court, and that he expected the police to inform them about any issued remarks in this case. To the question of whether, after the police finish their job, individual complaints would be followed up on, he said it would be done.<sup>209</sup> He also stated that this case had been filed in February 2017, and that the Prosecution Office's response was being awaited.<sup>210</sup> In May 2019, the former Deputy Ombudsperson in charge of rights of persons deprived of liberty and NPM and the newly elected Ombudsperson blamed one another for delays in the institution's response in the Savamala case<sup>211</sup>, which was caused by publishing information in the media that Zoran Pašalić was making unauthorised recordings of his conversations with staff.<sup>212</sup>

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207 More at: [www.blic.rs/vesti/drustvo/pasalic-slucaj-savamala-pravno-ikfakticki-završen/t7ym63r](http://www.blic.rs/vesti/drustvo/pasalic-slucaj-savamala-pravno-ikfakticki-završen/t7ym63r) (accessed on 30 August 2019).

208 More at: [www.blic.rs/vesti/politika/pasalic-slucaj-savamala-previsepolitizovan/j7ekmgv](http://www.blic.rs/vesti/politika/pasalic-slucaj-savamala-previsepolitizovan/j7ekmgv) (accessed on 30 August 2019).

209 More at: [www.blic.rs/vesti/drustvo/pasalic-postupacu-po-pojedinacnim-prituzbama-u-slucaju-savamala/kdx14xv](http://www.blic.rs/vesti/drustvo/pasalic-postupacu-po-pojedinacnim-prituzbama-u-slucaju-savamala/kdx14xv) (accessed on 30 August 2019.).

210 More at: [www.danas.rs/drustvo/pasalic-ocekujem-reakciju-tuzilastva-o-savamali/](http://www.danas.rs/drustvo/pasalic-ocekujem-reakciju-tuzilastva-o-savamali/) (accessed on 29 August 2019).

211 See: [www.danas.rs/drustvo/jankovic-pasalic-ne-zeli-da-se-zamerivlastima/](http://www.danas.rs/drustvo/jankovic-pasalic-ne-zeli-da-se-zamerivlastima/), [www.danas.rs/dijalog/reakcije/milos-jankovic-je-arhivirao-predmet-savamala/](http://www.danas.rs/dijalog/reakcije/milos-jankovic-je-arhivirao-predmet-savamala/), [www.danas.rs/dijalog/reakcije/pasalic-zeli-da-slucaj-savamala-ode-u-zaborav/](http://www.danas.rs/dijalog/reakcije/pasalic-zeli-da-slucaj-savamala-ode-u-zaborav/) (accessed on 29 August 2019).

212 Available at: [www.danas.rs/drustvo/pasalic-neovlasceno-snima-razgovore-sa-zaposlenima/](http://www.danas.rs/drustvo/pasalic-neovlasceno-snima-razgovore-sa-zaposlenima/) (accessed on 30 August 2019).

## 2.2. Introduction of life imprisonment

In 2019 in Serbia, life imprisonment was introduced for all crimes for which the prison sentence used to be 30 to 40 years long. This sentence is related to several other crimes in the group of crimes against sexual freedom (rape, intercourse with a helpless person, intercourse with a child, intercourse by abuse of office), for which conditional release is prohibited.<sup>213</sup> Amendments were proposed through an emergency procedure, and they were adopted by the Parliament without a public discussion. Although around 160 thousand people supported the initiative to introduce life imprisonment<sup>214</sup>, a large number of experts were against introducing this sentence without the right to conditional release for the people sentenced to it, considering this was a violation of their human rights.<sup>215</sup>

Council of Europe Commissioner for Human Rights, Dunja Mijatović, in a letter addressed to the Serbian Minister of Justice dated 7 May 2019, called the authorities in Serbia to reconsider draft amendments to the Criminal Code introducing life imprisonment without the right to conditional release for some crimes, expressing concern because of the government's decision not to hold a public hearing on this and indicating that the sentence of life imprisonment, to be harmonised with Article 3 of the European Human Rights Convention, must be reducible, i.e. there must be the prospect for the prisoner's release and the possibility to review the sentence.<sup>216</sup>

213 Article 46, Paragraph 5 of the Criminal Code (available at the official database of regulations: [www.pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2005/85/6/reg](http://www.pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2005/85/6/reg)).

214 See, e.g.: [www.blic.rs/vesti/drustvo/veliki-uspeh-fondacije-tijana-juric-i-blica-prikupili-smo-150000-potpisa-da-monstrumi/yzdvw3y](http://www.blic.rs/vesti/drustvo/veliki-uspeh-fondacije-tijana-juric-i-blica-prikupili-smo-150000-potpisa-da-monstrumi/yzdvw3y) (accessed on 29 August 2019).

215 More available at: [www.bgcentar.org.rs/struka-protiv-kazne-dozivotnog-zatvora-bez-prava-na-uslovni-otpust/](http://www.bgcentar.org.rs/struka-protiv-kazne-dozivotnog-zatvora-bez-prava-na-uslovni-otpust/), [www.danas.rs/drustvo/struka-protiv-dozivotnog-zatvora-bez-uslovne/](http://www.danas.rs/drustvo/struka-protiv-dozivotnog-zatvora-bez-uslovne/), [rs.n1info.com/Vesti/a482266/Struka-protiv-uvodjenja-dozivotne-kazne-zatvora.html](http://rs.n1info.com/Vesti/a482266/Struka-protiv-uvodjenja-dozivotne-kazne-zatvora.html) (accessed on 29 August 2019).

216 Available at: <https://rm.coe.int/letter-to-nela-kuburovic-minister-of-justice-of-serbia-by-dunja-mijato/168094720c> (accessed on 29 August 2019).

In the European Commission on Serbia 2019 Report, it was found that in early May 2019, the Serbian Government, under urgent procedure, submitted draft amendments to the Criminal Code, proposing the introduction of the sentence of life imprisonment without possibility for conditional release for certain crimes, and that the National Assembly adopted these amendments on 21 May, but that there are relevant provisions of the European Convention on Human Rights and the case-law of the European Court of Human Rights, on the basis of which these amendments should be assessed.<sup>217</sup>

It is hardly possible to find texts in the media in which the Ombudsman was mentioned in relation to this topic. As a guest on a television show he said that the certainty of punishment had more significant preventive effect on potential perpetrators of a crime than the severity of prescribed punishments<sup>218</sup>, adding it was certain that the Ombudsman would provide an opinion on the introduction of life imprisonment, and if not – it could be considered that they agreed with all proposed amendments.<sup>219</sup> In a release on the occasion of 10 October, World Day against the Death Penalty, the Ombudsperson mentioned that “in developed countries life sentences prevail, as the most severe sentences issued, with or without conditional release”.<sup>220</sup>

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217 Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf> (accessed on 29 August 2019).

218 Available at: [www.danas.rs/drustvo/milojevic-pitanje-je-da-li-ce-doivotni-zatvor-nesto-smanjiti/](http://www.danas.rs/drustvo/milojevic-pitanje-je-da-li-ce-doivotni-zatvor-nesto-smanjiti/) (accessed on 29 August 2019).

219 See: p. 80.

220 Available at: [www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6296-10-2](http://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6296-10-2) (accessed on 11 October 2019).

Even though the analysis does not cover all the media in Serbia, during the last two years there has been notably less attention paid to the institution and the holder of the function of the Ombudsman, considering that half the number of articles have been found on the Ombudsman in the daily papers that were the subject of research. It is also possible to conclude that Saša Janković was often the target of tabloids, considering he initiated proceedings in cases of human rights violations in which political players had certain roles. The approach of media close to the government changed the moment that the new Ombudsperson was elected. Part of the keyword search also showed a decrease in the number of articles containing keywords such as LGBT population and gay pride, peer violence, Ombudsman's annual reports, police, abuse, torture (*mučenje or tortura*), as well as the words prison and detention.





## V. CONCLUDING REMARKS

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**T**he work of the Ombudsman is not in compliance with the Paris Principles with regards to two important principles, independence and competencies. The results of the Analysis of the Work of the Protector of Citizens of the Republic of Serbia during the past 5 years show that the integrity of the institution has considerably declined, that it is not in line with international standards, and that its efficiency and visibility has been reduced. Simultaneously advocating for ideas on considerably extending competences, to the judiciary among other areas, the Ombudsperson has, for over 10 months, not put forward the candidates for his Deputies specialising in specific areas and failed to react to significant human rights violations.

With significant decline of cooperation with the civil society, the ability of the institution to retain qualified and experienced staff has also declined, especially after the Ombudsman's silence to questions from the media about possible partisan recruitment in the institution. The Ombudsman did not reply to the questions asked, thus violating the Law on Free Access to Information of Public Importance, instead of making all information publicly available. If these serious allegations are true, then silence indicates the danger of the control of the institution being taken over by the Government.

Lack of the institution's reaction is obvious when it comes to violations of socio-economic rights, which shows that the Ombudsman supports the Government's position, favouring the

so-called “fiscal accountability” to the detriment of the Serbian Constitution and international human rights instruments. It seems that their efforts in this area are more declarative and humanitarian in character, than they are directed at truly finding systemic solutions for burning issues of human rights.

The relationship with the Government can also be seen in the considerable reduction in the scope and quality of annual reports, which may lead not only to this document losing its status as reference point when it comes to human rights situation in Serbia, but also its role as mechanism to call the Government to account. The role of the Ombudsman in the illegal election of the member of the Anti-Corruption Agency Board was particularly worrying, which actually assisted the Government in putting this independent institution under its control, simultaneously undermining the authority of a third independent institution, Commissioner for Access to Information of Public Importance and Personal Data Protection, with whom the decision on supporting a joint candidate was supposed to be made.

Further, coordination with Government efforts to amend the Constitution and create an illusion of inclusive public debate is obviously contrary to its role in the protection of human rights and additionally illustrates the lack of independence from the executive power. This undermines the institution’s ability to fulfil its role of control, particularly in cases with political background. Problems identified in the work of the National Preventive Mechanism are particularly disturbing, especially when it comes to the drop in the number of visits to prisons and ceased cooperation with important civil society organisations. Such a situation threatens to reduce the NPM to just one of many inefficient mechanisms for calling the Government to account, and the support of the Ombudsperson to the introduction of life imprisonment without conditional release, contrary to UNCAT, speaks to such developments.

All of the above are largely results of the election of the new Ombudsperson, who did not have any prior experience in the area of human rights protection and promotion. This has also led to a considerable decline in trust of the citizens in the institution, which is evident from the lower number of complaints.

# VI. RESOURCES

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## 1. Legal regulations and rules

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Akcionni plan za Poglavlje 23, Vlada Republike Srbije, april 2016.  
(Action Plan for Chapter 23, Government of the Republic of Serbia, April 2016)

Global alliance of National human rights institutions, *General Observations of the Sub-Committee on Accreditation*, February 2018

Global alliance of National human rights institutions, *Rules of procedure for the GANHRI Sub-committee on accreditation*, March 2017

Pravilnik o popunjavanju radnih mesta u stručnoj službi Zaštitnika građana (31 – 267/ 15 od 24. decembra 2019. godine) (Rulebook on recruitment in the Expert Service of the Ombudsman, 31 – 267/ 15 of 24 December 2019)

Pravilnik o unutrašnjem uređenju i sistematizaciji radnih mesta u stručnoj službi Zaštitnika građana (363–241/2019 od 1.3. 2019. godine) (Rulebook on internal organisation and job classification in the Expert Service of the Ombudsman, 363–241/2019 of 1 March 2019)

United Nations, General Assembly, *Principles relating to the Status of National Institutions (The Paris Principles)*, Resolution A/RES/48/134

Uredba Vlade o internom i javnom konkursu za popunjavanje radnih mesta u državnim organima, *Sl. glasnik RS*, br. 79/05, 81/05 – ispravka, 83/05 – ispravka, 64/07, 67/07 – ispravka, 116/08, 104/09, 99/14, 94/17 i 95/18 (Government Decree on internal and public recruitment in government authorities, *Official Gazette RS*, No. 79/05, 81/05 – corr, 83/05 – corr, 64/07, 67/07 – corr, 116/08, 104/09, 99/14, 94/17 and 95/18)

Ustav Republike Srbije, *Sl. glasnik RS*, br. 98/2006 (Republic of Serbia Constitution, No. 98/2006)

Zakon o agenciji za borbu protiv korupcije, *Sl. glasnik RS*, br. 97/2008, 53/2010, 66/2011 – odluka US, 67/2013 – odluka US, 112/2013 – autentično tumačenje i 8/2015 – odluka US (Law on Anti-Corruption Agency, Official Gazette RS, No. 97/2008, 53/2010, 66/2011 – CC decision, 67/2013 – CC decision, 112/2013 – authentic interpretation and 8/2015 – CC decision)

Zakon o državnim službenicima, *Sl. glasnik RS*, br. 79/2005, 81/2005 – ispr., 83/2005 – ispr., 64/2007, 67/2007 – ispr., 116/2008, 104/2009, 99/2014, 94/2017 i 95/2018 (Law on Civil Servants, Official Gazette RS, No. 79/2005, 81/2005 – corr., 83/2005 – corr., 64/2007, 67/2007 – corr., 116/2008, 104/2009, 99/2014, 94/2017 and 95/2018)

Zakon o Državnoj revizorskoj instituciji, *Sl. glasnik RS*, br. 101/2005, 54/2007, 36/2010 i 44/2018 – dr. zakon (Law on State Audit Institution, Official Gazette RS, No. 101/2005, 54/2007, 36/2010 and 44/2018 – other law)

Zakon o izvršenju krivičnih sankcija, *Sl. glasnik RS*, br. 55/2014 i 35/2019 (Law on Enforcement of Penal Sanctions, Official Gazette RS, No. 55/2014 and 35/2019)

Zakon o lokalnoj samoupravi, *Sl. glasnik RS*, br. 129/2007, 83/2014 – dr. zakon, 101/2016 – dr. zakon i 47/2018 (Law on Local Self-Government, Official Gazette RS, No. 129/2007, 83/2014 – other law, 101/2016 – other law and 47/2018)

Zakon o načinu određivanja maksimalnog broja zaposlenih u javnom sektoru, *Sl. glasnik RS*, br. 68/2015, 81/2016 – odluka US i 95/2018 (Law on Maximum Number of Employees in the Public Sector, Official Gazette RS, No. 68/2015, 81/2016 – CC decision and 95/2018)

Zakon o Narodnoj skupštini, *Sl. glasnik RS*, br. 9/2010 (Law on National Assembly, Official Gazette RS, No. 9/2010)

Zakon o smanjenju rizika od katastrofa i upravljanju vanrednim situacijama, *Sl. glasnik RS*, br. 87/2018 (Law on Disaster Risk

Reduction and Emergency Situation Management, Official Gazette RS, No. 87/2018)

Zakon o tajnosti podataka, *Sl. glasnik RS*, br. 104/2009 (Law on Data Secrecy, Official Gazette RS, No. 104/2009)

Zakon o vanrednim situacijama, *Sl. glasnik RS*, br. 111/2009, 92/2011 i 93/2012 (Law on Emergency Situations, Official Gazette RS, No. 111/2009, 92/2011 and 93/2012)

Zakon o zaposlenima u javnim službama, *Sl. glasnik RS*, br. 113/2017 i 95/2018 (Law on Employees in Public Services, Official Gazette RS, No. 113/2017 and 95/2018)

## 2. Ombudsman's reports, opinions and recommendations

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Mišljenje Zaštitnika građana na Nacrt zakona o zaposlenima u javnim službama (183–29/17 od 16. oktobra 2017. godine) (Opinion of the Ombudsman on Draft Law on Employees in Public Services, 183–29/17 of 16 October 2017)

Mišljenje Zaštitnika građana o izmenama i dopunama Zakona o javnom informisanju i medijima, (13–2–2089/18 od 16. januara 2019. godine) (Opinion of the Ombudsman on the Amendments to the Law on Public Information and Media, 13–2–2089/18 of 16 January 2019)

Protector of Citizens, *Observations on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment in the Republic of Serbia*, April 2015.

Protector of Citizens, *Observations on implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in the Republic of Serbia*, October 2017

Protector of Citizens, *Observations on implementation of the International Covenant on Civil and Political Rights in the Republic of Serbia*, February 2017



Protector of Citizens, *Selected list of issues on the implementation of the United Nations Convention on the Rights of Persons With Disabilities in The Republic of Serbia*, July 2015

Protector of Citizens, *Selected list of issues on the implementation of the United Nations Convention on the Elimination of all Forms of Discrimination against Women in the Republic of Serbia*, June 2018

Zaštitnik građana, *Nacionalni preventivni mehanizam: Izveštaj za 2014. godinu*, Beograd, 2015. (Ombudsman, National Preventive Mechanism: Report for 2014, Belgrade, 2015)

Zaštitnik građana, *Nacionalni preventivni mehanizam: Izveštaj za 2015. godinu*, Beograd, 2016. (Ombudsman, National Preventive Mechanism: Report for 2015, Belgrade, 2016)

Zaštitnik građana, *Nacionalni preventivni mehanizam: Izveštaj za 2016. godinu*, Beograd, 2017. (Ombudsman, National Preventive Mechanism: Report for 2016, Belgrade, 2017)

Zaštitnik građana, *Nacionalni preventivni mehanizam: Izveštaj za 2017. godinu*, Beograd, 2018. (Ombudsman, National Preventive Mechanism: Report for 2017, Belgrade, 2018)

Zaštitnik građana, *Nacionalni preventivni mehanizam: Izveštaj za 2018. godinu*, Beograd, 2019. (Ombudsman, National Preventive Mechanism: Report for 2018, Belgrade, 2019)

Zaštitnik građana, *Redovan godišnji izveštaj za 2015. godinu*, Beograd, mart 2015. (Ombudsman, Regular Annual Report for 2015, Belgrade, March 2016)

Zaštitnik građana, *Redovan godišnji izveštaj za 2016. godinu*, Beograd, mart 2017. (Ombudsman, Regular Annual Report for 2016, Belgrade, March 2017)

Zaštitnik građana, *Redovan godišnji izveštaj za 2017. godinu*, Beograd, mart 2018. (Ombudsman, Regular Annual Report for 2017, Belgrade, March 2018)

Zaštitnik građana, *Redovan godišnji izveštaj za 2018. godinu*, Beograd, mart 2019. (Ombudsman, Regular Annual Report for 2018, Belgrade, March 2019)

### 3. Reports by international bodies and civil society organisations

---

*Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors, GRECO, Strasbourg, 2015*

*Freedom in the world 2018, Freedom House, New York, 2019*

*Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Strasbourg, 2017*

*Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Strasbourg, 2015*

*Ljudska prava u Srbiji 2017, Beogradski centar za ljudska prava, Beograd 2018. (Human Rights in Serbia 2017, Belgrade Centre for Human Rights, Belgrade 2018)*

*Observation visits to the National Preventive Mechanism of Serbia, NPM observatory, Grenoble, 2019*

*Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Geneva, 2010*

*Zaključna zapažanja o Drugim periodičnom izveštaju Republike Srbije, Komitet UN za socijalna, ekonomska i kulturna prava, Ženeva, 2014. (Concluding observations on the second periodic report of Serbia, Committee on Economic, Social and Cultural Rights, Geneva 2014)*

*Serbia's Civic Space Downgraded, Civicus, Johannesburg, 2019*



## 4. Reports by the Republic of Serbia Government

---

*Izveštaj o primeni Akcionog plana za Poglavlje 23, Savet za sprovođenje Akcionog plana za Poglavlje 23, Beograd, februar 2019. (Report on Implementation of Action Plan for Chapter 23, Council for the implementation of the Action Plan for Chapter 23, Belgrade, February 2019)*

*Izveštaj o skriningu za Srbiju: Poglavlje 23: pravosuđe i osnovna prava, Vlada Republike Srbije, Beograd, 2013. godine (Screening report Serbia: Chapter 23 – Judiciary and fundamental rights, Government of the Republic of Serbia, Belgrade 2013)*

## 5. Draft regulations

---

*Inicijativa za dopunu Zakonika o krivičnom postupku, Zaštitnik građana, Beograd, 2017. (Initiative to amend the Law on Criminal Procedure, Ombudsman, Belgrade, 2017)*

*Inicijativa za stvaranje pravnog okvira kojim će se urediti procedure postupanja nadležnih organa na opravdani zahtev fizičkog lica, radi pribavljanja podataka o identitetu lica (vlasnika naloga na društvenim mrežama) kada postoje okolnosti koje ukazuju da je posredstvom društvenih mreža učinjeno delo koje se goni po privatnoj tužbi, Zaštitnik građana, Beograd, 2017. (Initiative to develop the legal framework to regulate procedures for actions of competent authorities upon justified requests by natural persons to obtain information on the identity of persons – owners of social network accounts – in circumstances indicating that social networks were used to perpetrate an act prosecuted on private charges, Ombudsman 2017)*

*Inicijativa za za dopunu zakona kojima su propisana ovlašćenja policije, komunalne policije i službi za obezbeđenje zavoda za izvršenje krivičnih sankcija, Zaštitnik građana, Beograd, 2016.*



(Initiative to amend laws regulating the powers of the police, communal police and security services in institutions for the enforcement of penal sanctions, Ombudsman, Belgrade 2016)

*Polazne osnove za izradu nacрта Zakona o izmenama i dopunama Zakona o Zaštitniku građana*, Ministarstvo državne uprave i lokalne samouprave, Beograd, decembar 2017. (Baseline for the development of the Draft Law on Amendments to the Law on Ombudsman, Ministry of Public Administration and Local Self-Government, Belgrade, December 2017)

*Predlog zakona o izmenama i dopunama zakona o vraćanju oduzete imovine i obeštećenju*, Zaštitnik građana, Beograd, 2015. (Draft Law on Amendments to the Law on the Restitution of Confiscated Property and on Compensation, Ombudsman, Belgrade 2015)

*Predlog Zakona o izmenama i dopunama Zakona o Zaštitniku građana*, Vlada Republike Srbije, Beograd, 2014. (Draft Law on Amendments to the Law on Ombudsman, Government of the Republic of Serbia, Belgrade, 2015)

## 6. Scientific papers and articles

---

Luka Glušac, *O potrebi unapređenja zakonskog okvira za rad Zaštitnika građana* (On the need to improve the legal framework for the Protector of Citizens)

M. Trifković, D. Ćurčić i M. Vasiljević, *Uloga i položaj Zaštitnika građana i Poverenika za zaštitu ravnopravnosti*, Beograd, januar 2019. (Role and Status of Ombudsperson and Commissioner for the Protection of Equality, Belgrade, January 2019)

Mr. Miodrag D. Radojević, *Preobražaj ombudsmana u savremenim pravnim sistemima s posebnim osvrtom na instituciju Zaštitnika građana u Republici Srbiji*, Beograd, 2016. (Transformation of the Ombudsman in Modern Legal Systems with Special Reference to the Protector of Citizens in the Republic of Serbia, Belgrade, 2016)

## 7. Media articles and releases

---

- “(Re)kontra saopštenjima”, *Večernje novosti*, 10. avgust 2016. godine (Re/Counter to Statements, *Večernje Novosti*, 10 August 2016)
- “Da li je ministar policije odgovoran za rad policije”, *Danas*, 6.januar 2017. godine (Is the Police Minister Responsible for What the Police Do, *Danas*, 6 January 2017)
- “DA LI SE IZA AFERE “PIŠTOLJ” KRIJE ZLOČIN? Šta skriva zaštitnik?!”, *Informer*, 23. april 2015 (IS A CRIME HIDING BEHIND THE GUN AFFAIR, *Informer*, 23 April 2015)
- “Inicijativa poslaničkim grupama Narodne skupštine Republike Srbije za izbor Miloša Jankovića za Zaštitnika građana”, *Kuća ljudskih prava i demokratije*, 22. maj 2017. godine (Initiative to Serbian Parliament MP Groups to Elect Miloš Janković as Ombudsperson, House of Human Rights and Democracy, 22 May 2017)
- “Janković: MUP prečutao da nije ispunio zakonske obaveze u slučaju Savamala”, *Danas*, 10. avgust 2016. godine (Janković: MoI Covers Failure to Fulfil Legal Obligations in the Savamala Case, *Danas*, 10 August 2016)
- “Janković: Nije na Vučiću da procenjuje ima li cenzure”, *RTV*, 2. jun 2014. godine (Janković: Vučić Is Not the One to Say if Censorship Exists, *RTV*, 2 June 2014)
- “Janković: Pašalić ne želi da se zameri vlastima”, *Danas*, 13. maj 2019.godine (Janković: Pašalić Does Not Want to Be on the Government’s Bad Side, *Danas*, 13 May 2019)
- “Milojević: Pitanje je da li će doživotni zatvor nešto smanjiti”, *Danas*, 28. april 2019. godine (Milojević: It is Doubtful that Life Imprisonment Will Be Effective, *Danas*, 28 April 2019)
- “Miloš Janković je arhivirao predmet “Savamala”, *Danas*, 17. maj 2019. godine (Miloš Janković Archived the Savamala Case, *Danas*, 17 May 2019)
- “MUP O SAMOUBISTVU PRIJATELJA ZAŠTITNIKA GRAĐANA:Saša Janković imao barut na rukama; Ombudsman: Nađeni su nitrati, prijatelja sam mazio po kosi”, *Večernje novosti*,

22. april 2015. godine (MOI ON THE OMBUDSPERSON'S FRIEND'S SUICIDE: Saša Janković had powder on his hands; Ombudsperson: Nitrates found, I stroked my friend's hair, *Večernje Novosti*, 22 April 2015)

“Nadam se da će istrage o “slučaju Savamala” uskoro doneti rezultate”, *Politika*, 9. jun 2017. godine (I Hope the Investigations on the Savamala Case Will Soon Yield Results, *Politika*, 9 June 2017)

“Ombudsman: Dva objekta u Savamali nezakonito izbrisana iz katastra”, *Blic*, 18. maj 2017. godine (Ombudsman: Two Buildings in Savamala Unlawfully Erased from the Cadastre, *Blic*, 18 May 2017)

“Pašalić neovlašćeno snima razgovore sa zaposlenima”, *Danas*, 11. maj 2019. godine (Pašalić Recording Conversations with Employees without Authorisation, *Danas*, 11 May 2019)

“Pašalić želi da slučaj “Savamala” ode u zaborav”, *Danas*, 22. maj 2019. godine (Pašalić Wants the Savamala Case to Be Forgotten, *Danas*, 22 May 2019)

“Pašalić: Nepriстойno visoka plata zaštitnika građana”, *NI*, 30. jul 2017. godine (Pašalić: Unseemly High Salary of the Ombudsperson, *NI*, 30 July 2017)

“Pašalić: Očekujem reakciju Tužilaštva o Savamali”, *Danas*, 23. decembar 2017. godine (Pašalić: I Expect the Prosecution Office's Reaction on Savamala, *Danas*, 23 December 2017)

“Pašalić: Postupaću po pojedinačnim pritužbama u slučaju Savamala”, *Blic*, 13. septembar 2017. godine (Pašalić: I will Follow-Up on Individual Complaints in the Savamala Case, *Blic*, 13 September 2017)

“Pašalić: Slučaj Savamala pravno i faktički završen”, *Blic*, 1. avgust 2017. godine (Pašalić: Savamala Case Legally and Practically Closed, *Blic*, 1 August 2017)

“Pašalić: Slučaj Savamala previše politizovan”, *Blic*, 8. avgust 2017. godine (Pašalić: Savamala Case Too Politicised, *Blic*, 8 August 2017)

- “Podneta Inicijativa za ratifikaciju opcionih protokola uz Konvenciju o pravima deteta i Pakt o ekonomskim, socijalnim i kulturnim pravim”, *A11 Inicijativa za ekonomska i socijalna prava*, 4 decembar 2018. godine (Initiative Submitted for the Ratification of Optional Protocols to the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, A11 Initiative for Economic and Social Rights, 4 December 2018)
- “Policija bila deo plana za rušenje u Savamali”, *Danas*, 9. maj 2016. godine (Police in on the Plans for Demolition in Savamala, *Danas*, 9 May 2016)
- “Policija u naselju Savamala nije blagovremeno postupila po prijavama građana”, *Zaštitnik građana*, 9. maj 2016. godine (Police Did Not Act Promptly on Citizen’s Reports in the Savamala Neighbourhood, Ombudsman, 9 May 2016)
- “POSLE DVE I PO GODINE JANKOVIĆ KONAČNO PRIZNAO: PIŠTOLJ JE MOJ! Neću da kažem kako je stradao Predrag Gojković!”, *Informer*, 11. novembar 2017. godine (TWO AND A HALF YEARS LATER JANKOVIĆ FINALLY ADMITS: THE GUN IS MINE! I Won’t Say how Predrag Gojković Was Killed!, *Informer*, 11 November 2017)
- “SAOPŠTENJE povodom izveštaja NPM Obs o radu Nacionalnog mehanizma za prevenciju torture Srbije”, *Beogradski centar za ljudska prava*, 30. jul 2019. godine (RELEASE on the NPM Obs Report on the National Preventive Mechanism against torture in Serbia, Belgrade Centre for Human Rights, 30 July 2019)
- “Saša Janković podneo ostavku” *RTS*, 7. februar 2017. godine (Saša Janković Resigns, *RTS*, 7 February 2017)
- “Skupštinski odbor o izboru članova Odbora Agencije za borbu protiv korupcije: Pravna zavrzlama i sporna rešenja”, *Insajder*, 8. jun 2018. godine (Parliamentary Committee on the Election of Members of the Board of the Anti-Corruption Agency: Legal Tricks and Arguable Solutions, *Insajder*, 8 June 2018)

- “Sutra u Briselu izveštaj o napretku Srbije u evrointegracijama”, *Politika*, 8. januar 2017. godine (Tomorrow in Brussels Serbia’s EU Integration Progress Report, *Politika*, 8 January 2017)
- “U rešenjima o zadržavanju osumnjičenih nisu obrazloženi razlozi za pritvor” *Zaštitnik građana*, 23. novembar 2017. godine (Decisions on Detaining Suspects Do Not Justify Reasons for Detention, Ombudsman, 23 November 2017)
- “Utvrdene mnogobrojne nepravilnosti u radu Komunalne policije u postupanju prema novinarskoj ekipi sajta “Istinomer”” *Zaštitnik građana*, 23. decembar 2015. godine (Numerous irregularities found in the actions of the Communal Police with the Istinomer Team of Journalists, Ombudsman, 23 December 2015)
- “UZVRATIO JANKOVIĆU Glišić: Saša treba da bude iza brave”, *Alo*, 13. novembar 2017. godine (STRIKE BACK TO JANKOVIĆ; Glišić: Saša Should Be Locked Up, *Alo*, 13 November 2017)
- “VELIKI USPEH FONDACIJE “TIJANA JURIĆ” I “BLICA” Prikupili smo 150.000 potpisa da MONSTRUMI koji ubiju dete nikada ne izađu na slobodu”, *Blic*, 31. oktobar 2017. godine (HUGE SUCCESS OF THE TIJANA JURIĆ FOUNDATION AND BLIC We collected 150,000 signatures for the MONSTERS that kill a child never to be out free, *Blic*, 31 October 2017)
- “Zaštitnik građana preporučio razrešenje načelnika Komunalne policije Grada Beograda” *Zaštitnik građana*, 4. februar 2016. godine (Ombudsman recommends the dismissal of the Chief of Communal Police of the City of Belgrade, Ombudsman, 4 February 2016)
- “Zaštitnik građana: Neefikasnost i neažurnost sudova nameće proširenje nadležnosti i na kontrolu sudske uprave” *Dijalog.net*, 10 decembar 2018. godine (Ombudsperson: Inefficiency and Unresponsiveness of Courts Imposes the Broadening of Competence to Control Court Administration), *Dijalog.net*, 10 December 2018)



“Zaštitnik građana: Policajci u “slučaju Potočari” nezakonito zadržani u pritvoru”, *KRIK*, 23. novembar 2017. godine (Ombudsman: Police Officers in the Potočari Case Illegally Detained, *KRIK*, 23 November 2017)

Beta, “Janković: Napadaju me i sami me projektuju kao kandidata”, *Beta*, 15. septembar 2016. godine (Janković: I Am Being Attacked and Projected as Candidate, *Beta*, 15 September 2016)

Beta, “Srbiju čeka proces pred Komitetom UN zbog izručenja Kurda”, *Beta*, 26. decembar 2017. godine (Serbia to Expect Proceedings before UN Committee for the Extradition of a Kurd, *Beta*, 26 December 2017)

Donald C. Rowat, “The new private sector ombudsmen” *Policy options*, November 1, 2003

Jelena Zorić, “UN: Srbija da poštuje svoje obaveze u slučaju Dževdeta Ayaza”, *NI*, 25. decembar 2017. godine (UN: Serbia to Respect its Commitments in the Cevdet Ayaz Case, *NI*, 25 December 2017)

Katarina Đorđević, “Zaštitnik građana radi i bez zamenika”, *Politika*, 4. april 2019. godine (Ombudsman Operational Even Without Deputies, *Politika*, 4 April 2019)

Miloš Teodorović, “Komitet UN: Srbija izručila Ayaza izvoru torture u Turskoj”, *Radio slobodna Evropa*, 29. decembar 2017. godine (UN Committee: Serbia Extradites Ayaz to Source of Torture in Turkey, *Radio Free Europe*, 29 December 2017)

Miona Živić, “Pašalić: Građani se sve više žale na rad izvršitelja, Poreske uprave, sudova”, *NI*, 21. mart 2019. godine (Pašalić: Citizens Complain More and More about the Work of Enforcers, Tax Administration, courts, *NI*, 21 March 2019)

NI Beograd i Darko Popović, “Srbija pala za 14 mesta na Indeksu slobode medija Reportera bez granica” *NI*, 14. april 2019.

godine (N1 Belgrade and Darko Popović, Serbia Drops 14 Places in the World Press Freedom Index by Reportuers without borders, *NI*, 14 April 2019)

N1 Beograd, “GRECO: Srbija u polju korupcije nije uradila puno”*NI*, 28. oktobar 2017. godine (N1 Belgrade, GRECO: Serbia has not done much in the field of corruption, *NI*, 28 October 2017)

SHARE fondacija, “Analiza u vreme vanredne situacije u Srbiji: O cenzuri: Internet sve pamti”, *KONTRAPRESS*, 28. maj 2014. godine (SHARE Foundation, Analysis of the Time of Emergency Situation in Serbia: On Censorship: Internet Records Everything), *KONTRAPRESS*, 28 May 2014)

Stefan Veselinović, “Rušenje u Hercegovačkoj: “Kompletni idioti” i nekompletna istraga”, *BBC*, 24. april 2019. godine (Demolitions in Hercegovačka: *Complete Idiots* and Incomplete Investigation, *BBC*, 24 April 2019)

V.J., “Ombudsmanova ideja opasna po nezavisnost sudstva”, *Danas*, 8. oktobar 2018. godine (Ombudsperson’s Idea Threat to Court Independence, *Danas*, 8 October 2018)

## 8. Other sources:

---

2019 World Press Freedom Index, *Reportuers without borders*, 2019

Pilot visits, *NPM obs*, 2019



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5 Years : analysis of the Work of the Protector of Citizens of the Republic of Serbia : 2015–2019 / [translation Ljubica Gavanski]. – Belgrade : Lawyers' Committee for Human Rights-YUCOM, 2019 (Belgrade : Dosije studio). – 141 str. : table ; 21 cm

Nasl. izvornika: 5 godina : analiza rada Zaštitnika građana Republike Srbije u periodu 2015-2019. godine. – Prema impresumu publikacija je nastala na osnovu istraživanja koje je sproveo tim u sastavu: prof. dr Vesna Petrović, dr Katarina Golubović, Milan Filipović, Vladica Ilić, Teodora Tomić i Tara Petrović, uz podršku Tima Ujedinjenih nacija za ljudska prava u Srbiji. – Tiraž 100. – Napomene i bibliografske reference uz tekst. – Bibliografija: str. 129–141.

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