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**THE PROTECTOR OF HUMAN RIGHTS AND  
FREEDOMS IN MONTENEGRO;  
POSITION AND FIRST EXPERIENCES**

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IN MONTENEGRO  
- MONTENEGRIN OMBUDSMAN -  
- Position and first experiences -**

**I Introduction**

The protection of human rights and freedoms is one of the main aims and objectives of each country. The level of accomplishment of this aim, in real life, is the measure of democracy, successfulness and development of that country. It is a feature upon which the quality and progress of one system and institutions of each country are determined; and upon which the state is classified as democratic or anti-democratic.

There is no such a system, in the world, in which violations of human rights and freedoms never occurs. There are only systems with different intensity of those violations. However, civilized countries deal with the violations of human rights and freedoms in two ways. First, by establishing of legal system and overtaking measures for providing law observance and cultivation in the work of state organs, self-local government and other public organs; as well as strengthening of responsibility for every illegal act or violation of human rights and freedoms. And the second, by establishing special, independent institution which main aim is to protect human rights and freedoms from disorder, unconsciousness, illegal acting and abuse of power and to strengthen constitutionality, legislation, attainable process in concrete situations.

The Assembly of the Republic of Montenegro passed the Law on the Protector of Human Rights and Freedoms, on 8. July 2003, by which Montenegro has become one of the modern and democratic states that has the Institution of Ombudsman. Anyway, the Protector of Human Rights and Freedoms in the republic of Montenegro is the youngest institution of this kind in the region (only Serbia, between former republics of SFRJ, doesn't have this institution).

Establishing of the Institution as expert-professional, legal and democratic one, into Montenegrin legal system, is motivated, first of all, by preparing conditions and providing efficient and quality institutional protection of human rights and freedoms, and in consequence to that enforcement of state of law based on principles of rule of law.

The best example gives experience and practice of the countries, where the Ombudsman Institution exists for over hundred years (Sweden ombudsman was established in 1809), as well as the number of over 100 countries in which this institution acts successfully. In transition countries it is shown as one of the most efficient means of out-of-court control of state organs and protection of civil rights in the process of transformation into democratic country and the society in which the rule of law is obeyed. The introduction of this institution into the Montenegrin legislation is also important for its harmonization with legislation of European Union and international standards in area of human rights and freedoms.

## **II Mission and the Protector's competencies**

The Protector of Human Rights and freedoms is sovereign and independent institution with following competencies:

- protection of human rights and freedoms, guaranteed by the Constitution, laws, ratified international treaties on human rights, and generally recognized rules of international law, when these are violated by means of enactment, action; when state bodies, authorities of local self-government and public services as well as other holder of public power or failure to act of;
- dealing with general issues that are important for the protection and promotion of human rights and freedoms and co-operation with appropriate organizations and institutions dealing with human rights and freedoms;
- acting upon complaints referring to the on case of delay, if an obvious abuse of procedural powers occurred or if court decisions have not been executed;
- launching an initiative for amending certain legislation, especially for the purpose of harmonization with internationally recognized standards in the field of human rights and freedoms;

- providing an opinion on the draft laws, other regulations or general enactment if he finds it necessary for the purpose of protecting and promoting human rights and freedoms;
- proposing the initiation of proceedings before the Constitutional Court of the Republic of Montenegro for the purpose of assessing the constitutionality and legality of the legislation and general enactment relating to human rights and freedoms;
- providing the opinion on the protection and promotion of human rights and freedoms, notwithstanding the nature or degree of the procedure that is on these authorities;
- communicating with individuals deprived of their liberty without being monitored by officials.

Apart this function, protector has grater mission and taht is to create awarness and atmosphere about need for providing principles of rule of law; complete and consistent protection of citizens' rights and feedoms an in general – creation of atmosphere of legal security for citizens; legal and impartial work of all public bodies at wich citizens are realizing their rights, feedoms, obligations and legal interests.

Montenegrin Parliament elect Protector (Mr. Sefko Crnovrsanin, ex judge of Montenegrin Supreme and Constitutional Court was elected in October, 2003, as first Montenegrin Ombudsman) upon proposal of authorized parliamentary body by majority of total number of MPs. To be qualified for election candidate for Protector has to be Montenegrin citizens with university degree, experience in area of human rights and freedoms and high personal and professional authority.

Protector has at least one deputy (so far one deputy was elected) and Parliament decides on number of deputies upon proposal of Protector. It should e mentioned that, according to Law, one of the deputies deals with protection of minority rights. Mandate of Protector and deputy is six years and after that they can be reelected once again.

### **III First experiences**

The office of the Protector officially started its work, symbolically on the World Human Rights Day, December 10, 2003. At the beginning of its work the institution has certain

organizational problems<sup>1</sup>, which were in utmost urgency solved which created conditions for optimal operation.

However, because of postponing the decision of the Assembly of the Republic of Montenegro to elect the Deputy Ombudsman, as well as to complete professional staff, the work upon complaints started March 1, 2004. One of the two Deputies was elected on that function March 22, 2004, and the other that would deal with minority rights hasn't yet been elected, but the procedure has started.

The professional staff is mostly completed and consists of 19 employees. Eleven of them have high degree qualifications; all six legal advisers have rich legal experience. The structure of employees is multiethnic.

In order to educate staff and to get familiar with the work of the similar institutions in the region the staff of the Protector's office thanks to the international financial support, has already been on study visits to Ombudsman Institutions in Slovenia, Albania, Greece and Bosnia and Herzegovina. The education of the staff will be continued in the future.

From December 10, 2003, when it officially started operating, till December, 2004, the Institution received 565 complaints from citizens (41 of them were complaints of certain groups of citizens and non-governmental organizations) who believe that their rights or freedoms have been violated by means of enactment, action or failure to act of state authorities, authorities of local self-government and public services and other holders of public power in Republic of Montenegro.

The Institution received over 1000 telephone calls in which the citizens asked for information and help in solving particular problems. Also, the Protector and his collaborators have received over 800 citizens and communicated with them personally. The Institution receives about 10 telephone calls, and 5-7 citizens a day visit its premises.

The majority of complaints (about 50%) is regarding citizens' dissatisfaction of courts (decisions, non-implementation of those decisions and also dragging out judicial proceedings).

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<sup>1</sup> Facilities for the work of the Protector were provided by Montenegrin Government (a special house was rented) and equipment (office furniture, computers and etc) was financed by European Agency for Reconstruction.

Citizens also complained on violations in the field of labor relations, social and pension protection, health protection, housing problems, work of certain ministries, on violation of provisions on the protection of urban and natural environment, work of the local self-government, violations in the field of education, right on property and restitution of property, taxes and finance, stock market, old savings, on solving the problems of citizenship. Few complaints were made by arrested persons and persons serving jail sentences. The Protector received a few complaints from the citizens of the neighboring countries, who asked for help in protecting their rights in their countries. Their complaints have been preceded to the Ombudsman Institutions of those countries (Slovenia, Croatia, Bosnia and Herzegovina, Greece). Part of complaints wa related to violations made before Law on Protector of Human Rights and Freedoms went into effect. In about 60 complaints the citizens asked the Protector for different kinds of help (material and legal), and also asked for certain information.

Expert service processed all copmlaints. It is important to emphasize that the great number of complaints was not sent in prescribed form and didn't contain necessary evidence of violation of their rights, so that the Protector could eventually act upon them. All the complaints that have been after that supplemented, were processed, otherwise the procedure was stopped.

The communication with the state organs, on which the citizens' complaints refer, is generally good. They give us all the asked information on time.

The Institution pays special attention in the field of the protection and promotion of children rights. So fare the Protector has received about 25 complaints dealing with children rights. The frequent problems were related to alimentation for the children with divorced parents, establishing personal relationship and contacts between parents and children that doesn't live together, as well as the rights on education. We have also received a few complaints related with the problems of children abuse in family, because of which we have contacted competent centers for social work and police as well, and made an agreement about the continued supervision of these cases.

According to the protection of children rights we have astablished the cooperation with international organizations dealing with promotion and protection of children rights (Save the Children UK, Save the Children Norway, UNICEF); with the aim to realize the projects and

programs from this field together, as well as to provide appropriate professional education of the staff.

As the field of protection of children rights is not organized as a separate department or even separate Children Ombudsman Institution, like everywhere in the region, it is planned to make visits to those countries in region that have special Ombudsman for children rights in order to get familiar with their experience and to make conditions for ensuring appropriate institutional frame for the protection of children rights in Montenegro. There are some indications that certain international organizations would financially support this kind of project.

#### **IV Recommendations and proposals**

After having conducted and finished procession, the Protector has given 30 final opinions upon complaints with recommendations to competent state organs. In 25 cases the Protector confirmed that there was no violation of human rights and in 35 cases he mediated personally in order to protect certain rights.

Because the greatest number of complaints concerns the work of the courts, the greatest number of recommendations was addressed to courts. For example, because of delaying of judicial proceedings and violation of the Article 6 of the European Convention on Human Rights, which is about the right on fair judgment and judicial proceedings in reasonable time, he sent 15 recommendations to Municipal Courts in Podgorica, Bar, Cetinje, Herceg-Novi, and High Court in Bijelo Polje.

The Protector has sent recommendations to the Government of the Republic of Montenegro and Montenegro Railway Company, because the rightful court decision was not executed; The Ministry of Finances, the Ministry of work and social matters, the Monstat and the Republic Pension fund received the recommendations because they have violated the rights of retired persons which were related to the decision made on increasing of the pensions. The Constitutional Court of the Republic of Montenegro has also confirmed this decision not to be legal.

To the Ministry of education the recommendation has been sent because they deprived the students of the one secondary school of the right to choose the foreign language they like to learn.

The Protector has sent recommendation, in order to prohibit involvement and participation of children in lottery TV programs and other similar events, because that violates the Convention on Children Rights and Law on media. The Protector has also sent recommendations to the municipal Assemblies in Montenegro in which were not formed commissions for returning and refunding of expropriated possession even if the legal deadline has already passed.

All the organs that are given the recommendations acted upon them and informed the Protector about the measures they intend to overtaken in order to follow them.

According to the complaints of a group of citizens, about the deprivation of the right concerning old foreign currency savings, the Protector has sent the proposal to the newly established Court in Serbia and Montenegro about the harmonization of the Article 3 of the Law on regulation of public debt of SR Yugoslavia in relation with foreign currency savings of the citizens with Constitutional Charter. Citizens that have permanent residence in Montenegro and savings with the banks which are not on the territory of Montenegro were overtaken by the Law on returning of old foreign currency savings whith wich their rights were fundamentally violated.

As one of the competences of the Protectro is to give opinions on the draft laws he has sent his opinion on a few laws (on state officials, the free information access, on family law, law on expropriation, children and social protection).

#### **IV Protector's Days**

It is determined by the Law, that the residence of the Protector is in Podgorica, but that he has the right to organize "The Protector's Days", i.e. visits to other municipalities in Montenegro. Their purpose is to inform the citizens about the competencies, jurisdiction of the Office, and to receive citizens' complaints personally.



The organization of these "Days" is very useful, because it is important to be in contact with citizens as much as possible, and inform them about the jurisdiction of the Institution. Till now the Protector visited seven (of 22) municipalities in Montenegro. During these "Days" he has received over 300 citizens and about 100 written complaints. The Protector used these visits for contacts local self-government representatives, legal organs and NGO-s, during which they were personally informed on work of the Office as well as obligations of these organs to the Protector's demands.

## **V International cooperation and other activities**

So far, the Institution had intensive international and other activities. The cooperation is established with all the Ombudsman Institutions in the region. The Protector of Human Rights and Freedoms of the Republic of Montenegro is involved into Greek Ombudsman's Project EUNOMIA, which aims to promote the Ombudsman Institutions in South Eastern Europe, and which is financed by European Union and Stability Pact for South Eastern Europe. The Protector and his cooperators actively participated The Regional Conference "The Ombudsman in South Eastern Europe", which was held in Belgrade, September 27/28, 2004, and where the experiences about the work of the institutions were shared and talked about the development of regional cooperation.

At the end of May 2004, the Office of the Protector hosted workshop for Ombudsperson of Kosovo and Ombudsman of Voivodina, which was sponsored by OSCE. At the end of September, two representatives from Greek Ombudsman visited the Office.

During last year, the Protector has received and had conversation with the representatives of many international organizations (OSCE, Council of Europe, UN, UNICEF...), ambassadors and other representatives of different countries, also as foreign NGO-s that are interested in situation of human rights and freedoms in Montenegro and in the work of the Institution.

The cooperation with NGO-s wasn't satisfactory, but has been promoted and intensified during the period of last few months. The Institution established contacts with few NGO-s that deal with human rights and freedoms (Montenegro Helsinki Committee, Monitoring Center, MANS, Human Rights Center...), and also made an agreement about the models of further cooperation.

The Protector has also good cooperation with media in Montenegro.

## **Conclusion**

What are the features, visible from the work so far, and on which of them the attention should be paid in the future?

First of all, from the experience so far it is obvious that citizens are not enough informed about the jurisdiction and mandates of this institution. They mostly see it as an over court institution that can change decisions and acts brought by state organs, as well as some kind of people's advocate, i.e. legal adviser service. It is also evident that citizens haven't developed consciousness about their own rights. That is the reason why the steps are taken to inform and educate citizens (through media, expert lectures, creation of informative material), in order to get them know all about integrations and the ways they can contact the Protector. Part of such campaign is realised within so called "Protector's Days".

The preparation of the web site is under construction. It will contain all the information related of the Office operation, the form of the complaint and introduction of the new system for evidence in complaints. The expert lectures are planned to be given to the officials from public administration aiming to develop and speed up answering on the Protector's demands and provide deliberate access to information.

In the next period the Office will trace its way towards establishment of better cooperation with state organs, NGO-s and international organizations, greater legislative initiative and engagement in all the projects that deal with reform of the legal system and state administration; better cooperation with the Parliament, cooperation with Ombudsman Institution from the region for realization of common projects (displaced persons, property, citizenship, combating trafficking in human beings, anti-corruption), completing institutional frame, concerning protection of children rights, promotion of standards in the field of the protection of human rights and further education of staff.

The information on the work of the Protector of Human Rights and Freedoms done so far shows that the establishment of this kind of institution in Montenegro is justified. The citizens show enthusiasm about its aims: establishment of rule of law and democratic society as well as promotion and protection of human rights and freedoms in Montenegro.

The nature and meaning of the Protector's Office requires the great deal of realism in expectations. The expectations that this institution could achieve greater results are not realistic. Great expectations especially in the beginning phase of its work, could make unsatisfactory influence on establishment of its authority and to undermine confidence in the institution and its existence. It is important to emphasize that in the similar institutions from the region, even in democratically more developed countries, it took certain period of time, even a few years, to survive and accomplish expected results. The quality features, on which insist people in our country, are not enough, and are not the most important ones for estimating the efficiency of this institution. Concerning political and socio-cultural environment in Montenegro, the Institution of the Protector of human Rights and Freedoms needs certain period of time to survive and become accepted as it deserves by citizens, state organs and whole society. The very fact that through the work of the institution citizens can get assistance and protection of their rights as well as that the work of public services and courts are always under examination, and that its faults could be publicly announced, that they could be responsible morally and legally because of them, is enough to strengthen democratic system and establishment of rule of law. The Office needs maximal support in its work in which the media role has special significance as well as moral support, tolerance, and patience when its concrete results are in question. In the process of the Office establishment the very important contribution was provided through expert support from local and foreign experts in the field of human rights as well as safe and regular financial resources were obtained for the work which insured its independent and impartial position.

Podgorica, December 2004