

DO WE NEED LOCAL OMBUDSMAN – PROTECTOR OF HUMAN RIGHTS

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Abstract. *The institution of the local and regional ombudsman is well-known in the world. There are different models in respect of the organization of this institution: beside state ombudsmen, federal states have an ombudsman at the level of member states; there are also regional and local ombudsmen, as well as ombudsmen for general and special issues. Each of these institutions functions within the framework of its jurisdiction and powers of authorities.*

In the Republic of Serbia, the local ombudsman is established only if there is a need for such a local institution, and if it can be organized and financed. In Serbia, this institution has been established only in 14 out of the total number of 167 cities and municipalities. What is the reason for such a small number of civil defenders (ombudsmen) at the local government level? The first reason is the lack of the binding character of statutory regulation on this matter; the second reason is the essential misunderstanding of the position and role of the local ombudsman. Namely, in the local political structures, the ombudsman is often perceived as an independent political person who shall control the legality of the work of the local government and is, therefore, seen as a danger for the local government authorities. The third reason is the problem of professional competence and financial assets, particularly in smaller and impoverished municipalities. Considering the fact that the role of the ombudsman presumes professional competence, previous work experience, good reputation in the society, etc, there is a problem of providing suitable qualified professionals for this position.

There is also the issue of political impartiality, as there is still a lack of relevant mechanisms for establishing full political neutrality. Another problem related to the ombudsman's independence is the funding. The third reason is the period of his term of office. The issue of his political independence and impartiality is directly related to the question whether the local ombudsman's term of office is directly corresponds and overlaps with the term of office of the municipal parliamentary assembly.

Key words: *local ombudsman, local government, public service, municipal parliamentary assembly*

1. Contemporary administration is a very complex and powerful institutional system. Violations of citizens' rights in procedures before administrative agencies happen in different forms every day. Therefore we need to find efficient, simple and cheap means and mechanism of controlling administration, for establishing and elimination of miscellaneous lacks in the work of agencies and for protecting rights of citizens.¹ Existing institutions for control of administration doesn't satisfy, because they don't function according to the real state of affairs and because their activation is difficult, slow, expensive and complicated. Notion of this institution one finds in ideas of Valter Gellhorn which thinks that we need to create simple and fast procedures (cheap and easy) for protecting human rights opposite to slow, formal and expensive trials.²

Term ombudsman originates from the old Swedish word *ombudsmathr*, which has the meaning of "commissioner which represents", the "respective deputy (spokesman)". In wider context ombudsman³ is called the "protector of legality, protector of citizens, leader (tribune) of plebs" etc. Popularity of this institution is shown by the fact that this term is used in its original Swedish form in many countries around the world. However in most countries the institution of ombudsman has a different name, mainly colored by the national spirit in which it operates.

Ombudsman first emerged in the Sweden, where it was instituted by the Swedish constitution from 1809, and after that have been accepted in other Scandinavian countries, Great Britain, Canada etc. First institution of ombudsman outside of the Sweden had been the ombudsman of Finland (1918) and first institution of ombudsman outside of Nordic countries has been institution of Ombudsman on the New Zealand (1962). From the seventies of XX century this institution has been represented in legal systems of many European and non European countries, and from the beginning of nineties of last century in former socialist states of east Europe including the former SFRY.

Basic common characteristics of ombudsman are:

- This institute is based on the notion of human rights. In the center of the legal and political life philosophy of human rights places the individuality of human and independence of its personality. Human rights as highest legal standard.
- He protects legality and citizens rights by performing the efficient control of administration. His basic task is the protection of rights of citizens especially from illegal and irregular work of administration (maladministration);
- This agency has no power to abolish, cancel or change acts of administrative agencies, like courts, it can only state their illegality, ask for removal of noted shortages,

¹ **S. V. Anderson**, *Proposals and politics*, Andersons "Ombudsman for American Government?" New York, 1968. p. 155.

² **Walter Gellhorn**, *Ombudsman And Others - Citizen's Protectors In Nine Countries*, Harvard University Press, Cambridge, MA, 1967, p. 3-4.

³ In Scandinavian countries preserves the name "Ombudsman" with the supplement "parliamentary". In the France this is "Mediator Republics", in the Great Britain "Parliamentary representative for the administration", in the Austria "National attorney", in the Slovenia "Protector of human rights", in the Croatia "Ombudsman", in Romania "National lawyer", in the Russia "Commissary for human-rights", in the Albania "Lawyer of Nation", in the Argentina "National defender", in the Bosnia and Herzegovina "Ombudsman for human-rights Bosnia and Herzegovina", in the Montenegro "Protector of human rights and freedoms", in the Serbia "Protector of citizens"..

- bring out the opinion about the concrete case, review the expediency of administrative action, and get into reviewing of usage of discretionary powers;
- This agency is independent and impartial in performing its functions, and is chosen by parliament;
 - Citizens address to this organ without any special formalities and cost.⁴

2. Institution of ombudsman on local and regional level is familiar to many legal systems of the world. In some countries this institution has been brought up by the constitution, but in most of the countries it has been brought up by the statutes. In respect of organization of this institution there are several different models: besides state ombudsman, in federal states one can meet and ombudsmen on the level of member states, then there can exist regional and local ombudsmen, as well as general and specialized ones (for example, ombudsman in the area of health care, education, protection of personal data, the social guardianship, police, army, consumer ombudsman, sport, ecology, or protection of determined categories of inhabitants like for example, protection of children and women, students, journalist, so called "press ombudsman" etc.). Besides ombudsman in the public sector, one minor number of countries have ombudsman in the private sector.

Some countries have decentralized institution of ombudsman, so that it exists on regional or local levels. Everyone from these institutions works in framework of its own jurisdiction. Unlike this, some national level ombudsman have deconcentrated structure, in order to perform their functions closer to the citizens on local and regional level (for example Bosnia and Herzegovina).

Regional and local ombudsman exists in Great Britain, Denmark, Italy, Canada, USA, France, and Holland, Switzerland and in some other countries. In Denmark exists regional ombudsman (Landstingets), as well as the special ombudsman for the Greenland. All larger Dutch towns have municipal ombudsman. In France there exists the special ombudsman (Médiateur) for Il-de-Frank and Paris municipality. Majority of Italian provinces has brought in their regulations provincial ombudsman (Defensori civici regionali). First this was done in Tuscany (at the beginning of 1974), then Liguria (in the middle of 1974) and after that in 14 other provinces, so that ombudsmen exists in overall 16 provinces. In Spain eight regions have ombudsman (Defensor del Pueblo). Besides the Parliamentary commissary for administration, United Kingdom of Great Britain and Northern Ireland has the special Parliamentary commissary for the administration and complaints in Northern Ireland (enacted in 1969), as well as commissions for the local government of England, Wales and Scotland (imposed in 1974-1975). Because British system of local authorities does not enable "the simple transplantation" or the interference of Parliamentary commissary for the administration (like agency of central government) in the work of local authorities, there have been established the special commissions for local government in whose structure officially (ex officio) enters and Parliamentary commissary for the administration. Commissions are authorized for complaints on injustices emerged as consequence of bad performance of administrative functions of local administrative authorities, police and some other local authorities. Ombudsmen on local level enjoys the widest sup-

⁴ **Donald Rowat**, *The Ombudsman, Citizen's Defender*, London, 1965; **Miodrag Jovičić**, *Ombudsman guardian of legality and citizens rights*, Belgrade, 1969.

port in the USA, where they are founded nationwide in counties, towns and municipalities, with general or special powers.

Ombudsman powers extend on the control over actions of state administrative agencies, and also over actions of local authorities, as well as the other agencies and organizations which are performing public powers.

Ombudsman proceeds complaints of citizens which consider that their rights are violated by acts and procedures of administrative authorities, but the ombudsman can set up proceedings on its own initiative (*ex officio*) when it finds that there has come to injuries of citizens rights by an agencies whose actions are controled. Thereat he has been empowered to ask for data and information from administrative authorities, have access in official documents, take declarations from employed, authorized officials, witnesses and assessors. After conducted procedure ombudsman gives opinions, suggestions and recommendations in connection with found irregularities, which are directed to authority which has committed the violation. If there are more serious violations of wider importance, ombudsman will deliver all his findings to the highest government authorities so that they can undertake measures from their jurisdiction. In some countries ombudsman have been empowered to initiate changes of the statutes, start procedure before the constitutional court, initiate disciplinary and criminal proceedings, and even to act in the position of the prosecutor (for example Sweden). Citizens who consider that their rights have been violated by administrative authorities can directly apply to the ombudsman in writing; this complaint must be signed, because the anonymous complaints usually are not taken into a consideration.

3. Establishment of protector of citizens – ombudsman in the legal system of Serbia,⁵ has started a few year ago by enacting of appropriate regulations which regulated the powers and procedure of ombudsman on local and provincial level, as well as the enactment of the Protector of Citizens Act ("The Official Gazette RS", no. 79/2005), which established the state ombudsman like an independent government agency which controls actions of government administration and protects rights of citizens.⁶

Prior to enacting this Protector of Citizens Act (2005), there have been enacted some regulations which, partially and on lower levels, introduced institution of ombudsman in Serbia. This institution is the regulated first by the Local Government Act ("The Official Gazette RS", number 9/2002) like the optional institution (the civil protector), Decision on the Provincial Ombudsman (for the AP Vojvodina) and by the Decision of the Republic Ministry of health there has been established the special ombudsman – protector of patients rights.

Thus, in our country Ombudsman has been brought in trough small wickets, by one article (the article 126. Local Government Act). Secondly, what comes to one's attention is the terminological maladjustment of terms used for this institute (in the Province of Vojvodina –

⁵ **Jovan Đorđević**, Political system, Belgrade, 1967, p. 636. **Stevan Lilić**, Why the new Constitution left the Serbia without a ombudsman, Archive for legal and social science, Belgrade, no. 2-3, 1991. **Bogoljub Milosavljević**, Ombudsman protector of citizens rights, CAA, Belgrade, 2001. **Dragan Radinović**, Ombudsman and executive power, Belgrade, 2001.

⁶ Unfortunately, we must say that the Parliament of Republic of Serbia has not yet chosen Protectors of citizens, although all deadlines have been elapsed.

The Provincial Ombudsman, in units of local self-government – The Civil Protector, in health care – The Protector of Patient's Rights, while the lawmaker chose the term Protector of citizens for state ombudsman. Thirdly, in the legal regulations of this institute government went by inverse way from lower towards higher, instead of firstly enacting the statute for Republic, in other words the State Protector of citizens which should be the legal basis for the further working out on this institute on lower levels and under the same name.

4. Local Government Act ("the Official gazette RS", number 9/2002) has gave the legal basis and possibility for units of local self-government to establish a civil protector (the ombudsman) which protects individual and collective right and interests of citizens and in that way conducts general control of administrative actions and civil services.

This Act envisages the possibility, but not obligation of establishing of the civil protector (the ombudsman) on the level of local self-governments. Ombudsman is established on the local level only if it is considered that this institution is necessary, possible to organize and finance.

Today this institution has been established in only fourteen towns and municipalities in Serbia from overall number of 167 municipalities and towns. It was considered, that passing of this Act should improve the establishment of civil protectors (the ombudsmen) on the level of local self-governments.

The question is what is the cause for this small number of the established civil protectors (the ombudsmen) on the level of units of local self-government? The first reason is in its legal facultativeness, and other is in the essential misunderstanding of position and role of local ombudsman. Namely, in local political structures he is experienced like an independent political person who will be entitled to control the legality of their work and danger for the performance of local authority. The third reason is the problem of the professional and financial capacity, especially in the small municipalities. In small and poorer municipalities it is very difficult to find the suitable specialist personnel, since the role of ombudsman supposes, first of all competence, work experience, reputation etc.

Like solution for quoted problems there is a possibility for two or more small municipalities to establish one joint ombudsman, which would protect human rights or solve other problems in the work of public administration and its personnel. For such way over-running the problem does not exist any legal barrier, so that all remains in the domain of political will of local politicians.

5. Civil protector (the ombudsman) is appointed by the unit of local self-government assembly amongst respectable and politically independent persons, under conditions and in a way established by statute and other general acts of local self-government. The civil protector is impartial and independent in a performance of this function and no one has the right to influence on his work and actions.

In order to realize its role in protecting of the rights of every citizen this institutions must be impartial, independent, specialized and professional, and at the same time must have good cooperation with the parliament, citizens, media and with all relevant institutions at all levels of power as well as with the nongovernmental sector.

The civil protector and his deputy cannot hold the other public office neither professionally conduct any other activity, duty or work, which could influence on their impartiality and independence. They cannot be members of political organizations. The civil pro-

tector and deputy have the position of public official in the meaning of the statute which regulates the prevention of conflict of interest in the performance of the public functions and on them are purely applied provisions of this statute.

However, question of political impartiality is open, because there has not been found the mechanism for establishing of the complete political neutrality. He is appointed by the local assembly on the suggestion of municipality's president or an authorized working body. This speaks about the fact that it is difficult to achieve the political impartiality in the full sense. The other problem is independence of financing his work. His work is financed from the municipality's budget, which is projected by the president of municipality. The third reason is question of length or duration of its mandate. If the mandate of local ombudsman is connected with the mandate of a local assembly, then this fact also calls into question his political independence and impartiality.

On the real independence and impartiality in the work crucial is financial moment so the local ombudsman needs the maximum amount of monthly earnings on the local level, i.e. payment of president of municipality or president of assembly. Hence that would psychologically show that the local ombudsman has been equalized with the first man in the municipality and that no one is capable to influence on his work.

In some municipalities a statute has provided that the institution of ombudsman will be arranged by the decision about the organization of administration. In this way the ombudsman becomes component of administrations, what in no way should happen, because he is the agency of parliament which in the name of the parliament has to perform control of administration. He must be the organ which controls the administration and is organizationally outside of an administration.

In some local decisions Assembly places civil protector and his deputy on the proposal of mayor, in other words president of municipality, by positive casts from majority of members of the assembly. Also, according to general act about the internal organization and systematizations of working positions in the professional service, previous assent gives the mayor, or the president of municipality. This violates principle of division of powers on the local level. On the other hand, under the legislation the mayor, in other words the president of municipality guides and adjusts work of local administration, proposes the nomination and resolve head of municipal administration, and administrative agencies for exact fields.

Question is how his political impartiality will be achieved when his position is determined by act brought up by political majority in local parliament. It is very often the case that statutes which have established ombudsman stipulate that he is appointed by municipal assembly in its quorum. This also calls into question his political impartiality, because he is in this way placed by the political majority. This fact gets even more on the importance if it is kept in mind that the fact that by law president of the municipality guides and adjusts work of administration, proposes the nomination and resolving of a head of municipal administration, and officers in other fields. On the basis of these powers it is clear that he must cooperate with ombudsman and that the ombudsman is not only bound for the local parliament. In such situation if the parliamentary majority and president of municipality belong to the same political option ombudsman who has been chosen by the political majority very easily can become a cover for the maladministration. If the president of municipality and parliamentary majority belongs to opposed political options ombudsman can serve like the mean of pressure on president of municipality.

Because of these possible problems it is good to provide by statute that the ombudsman is chosen by the high qualified absolute majority, i.e. the two-thirds majority voted from the total amount of members of a local assembly. In this way he can really gain the political consensus and impartiality because all the political options must agree on one candidate. At the same time this is the way to gain large support, authority and legitimacy of this institute. In principle this would lead to absence of obstruction of ombudsman's work caused by political conflict because the candidate is chosen by the qualified absolute majority and presents joint solution.

The other question is length of mandate. Municipal statutes mainly specify that the mandate of local ombudsman lasts for four years. It is clear that if local ombudsman is chosen by the simple majority and if his mandate lasts for same period as mandate of assembly members then his function depends from the political trends and political temper of voters. Thus this function is connected indirectly for political parties and for elections which is not good, because it needs to be politically impartial and directed towards the control of administration. If it would be proposed that the mandate of ombudsman lasts longer than mandates of assembly members it would make his function certainly more politically independent because he would not depend from the political changes.

6. Function of civil protector is to protect citizens from the maladministration by performing general control of administrative actions and civil services.

General control of administrative actions imply that an ombudsman has been empowered to control the legality and expediency of administrative actions and also all other actions and non-actions of administration which present maladministration. By legality of work is implied that all acts and all actions must be in accordance with the law. Administration can act legally but this does not always mean expedient action. In single matters it could happen that administration violate interests or some rights of citizens and that it has not acted illegally, but expediently because it has not acted according to the public interest in the concrete case. Maladministration, comprise of different administrative errors, misses and injustices. For the understanding of notion of mismanagement from the large importance is to define contrary notion of so called "the good administration", "good administrative behavior" or the "rightful administration". The European Ombudsman has in 1998 started the initiative for the passing the Code of good administrative behavior. Good administrative behavior is "proper", "fair" and "impartial" treatment of citizens and legal persons. These three standards of good administrative behavior consist of concrete behavioral regulations of administration, which needs to be known by citizens and civil servants. List of standards for the good conduct of civil servants on the occasion of the daily communication with citizens has been established on the original made by the state ombudsman of Irish Republic. (ombudsman@ohro.ba). Civil servants need to behave according to these ethical standards with citizens like their clients (partners) and users of their administrative services on the daily basis.

However, there are certain limitations in the powers of local ombudsmen. So, civil protector is not able to take into the consideration petition for the initialization of proceedings which carries off on the work of assembly, municipality, town, mayor and town council (the Decision about the Civil protector for the Town of Belgrade, "Official gazette of town of Belgrade", no. 25/05, Decision about the Civil protector for Municipality of Kraljevo, "Official gazette of municipality of Kraljevo", 24. February 2005). Similar so-

lutions exist in other local self-governments. Consider that this so called negative enumeration, limits the jurisdiction and real powers of local ombudsman and that it is needed to give him considerable wider powers which reach state organs because human rights are universal category and the task of ombudsman is their protection.

7. The local ombudsman is authorized to protect individual and collective rights and interests of citizens, by performing general control of administrative work and civil services (the article 126, par. 1. of Local Government Act). He has been empowered that, about appearances of the illegal and irregular (expedient) work which offend rights and interests of citizens, **warns** the administration and civil service, **directs them recommendations, critiques** and **informs** assemblies of units of local self-government and public itself about that.

Consequently, it has been proposed that the ombudsman about illegal and irregular action will warn the administration and civil service, give recommendations for the adjustment of omissions and errors, as well as that about that informing the local assembly and public. This is the essence of his function: control, suggestions, corrections and informing the public. In this way he protects citizens.

What assures respecting of recommendations or what are the consequences of his critical observations? The basic strength of his role is publicly spoken word. In largest measure the successfulness of his work, will depend from the strength of his personality, reputation and respect which he enjoys in the community.

Administration units of local self-government and civil service are obliged to give data and information of importance for the performance of his power to local ombudsman on his request.

Every citizen which considers that there exists, by some action or act, violation of some right or interest (poor performance of administrative power, harassing, the unequal treatment, slowness and unpromptness, withholding rights, discrimination, unfriendliness etc.), by the municipal administrative agency, is able to address to local ombudsman. Addressing to ombudsman has not been complicated by some formalities. Enough is that one considers that he has been suffered the violation and that can address the ombudsman.

However, addressing to civil protector (the ombudsman) presumes the impoverishment of the all regular legal means. Addressing to the civil protector (the ombudsman) can not precede, neither substitute administrative proceedings before the higher administrative authority, nor administrative dispute resolution before the court (judicial review of administrative action). The civil protector (the ombudsman) is additional (subsidiary) mean of control and his intervention follows only after exhaustion of all means of protection.

Ombudsman must not be the replacement for the existing ways of protection. Before the addressing of complaint to the ombudsman, petitioner is obliged to try to protect his own rights in suitable legal (administrative or court) the procedure. Ombudsman will direct petitioner to start suitable law-suit, if such procedure has been set down and act according to complaint while previous exhaustion of all legal means, in the suitable legal procedure. It would not be good that this way of human rights protection go around because this would then mean the usurpation of powers and by this ombudsman would turn into it contrariness.

However, on the local level it would not be appropriate to insist on complete exhaustion of all legal means because this would limit the actions of ombudsman. In municipal decisions exists the exceptional situation when the ombudsman can react even before the ending of all legal procedures. So, exceptionally, ombudsman can institute proceedings and

before exhaustion of all legal expedients if petitioner of complaint would suffer irreparable damage or in the case of offensive breaking of rules of the ethical behavior of employed in the local government or the civil service. This exceptions need to be broaden to all the cases when there has come to the obvious violations of human rights or clear violations of rights and interest of citizens etc.

8. Ombudsman first of all protects individual and collective rights and interests of citizens when they are violated by act, action or non-action of local governments or civil services, when the violation have been done in the execution of decision and other general acts or in the performance of powers (original and transferred) of local self-governments. The local ombudsman especially protects human rights and freedoms from violations done by municipal administration and civil services which perform administrative and public powers, and whose founder is municipality. Because of the protection and promotion of human rights ombudsman supervises regulations implementation, controls the legality, expediency and efficiency of administration and can investigate administrative actions in order to protect human rights.

However, jurisdiction of local ombudsman does not need to be limited only on violations of human rights on municipal territory. In the core nature of this institution is protections of human rights and human rights are the universal value and local ombudsman needs to intervene even in the case of state violations and endangering of human rights out of a municipal territory. He does not need to be limited in that sense, in other words to limit his territorial jurisdiction, because it does not damage anyone, but only contributes to efficient, systemic and complementary effect of this institution on the whole territory of a state. Especially, because often laws and sub legal acts of government authorities are generator of violations of human rights on the local level.

From the other side, local ombudsman can propose the initiative for the change and addition of statutes and other regulations if he considers that it comes to violation of rights of citizens because of lack in regulations. He can initiate adoption of new statutes, other regulations and general acts, when consider that this is of importance for the protection of citizens rights. Ombudsman gives the opinion on the draft general act of local self-government when it is connected up with questions of protecting and promoting of rights and interests of citizens.⁷

In the working version of Local Government Act in the article which has arranged institution of ombudsman, have been envisaged that the ombudsman can suggest starting of disciplinary procedure or the procedure for a suspension of a local government or civil services officials, in cases when he during the control of administration founds existence of serious omissions in work. In the Local Government Act which has been passed there is no such provision. This means that such empowers can be provided for in the statutes of local governments.

For the purpose of wider powers of local ombudsman we should emphasize and possibility for the initialization of proceedings before the Constitutional court. That is, ombudsman can start the initiative for the initialization of proceedings before the Constitutional court for the reviewing of constitutionality and legality of laws and general acts which are connected with questions of rights and interests of citizens.

⁷ *Decision about the Civil Protector for the Town of Belgrade, "Official gazette of town of Belgrade", no. 25/05.*

Also, he has the power of initialization of proceedings before other competent bodies. If find that in acts of leading worker or employed in the local government and civil service there are elements of criminal or other punishable act, ombudsman is empowered to submit to competent body the claim, respective registration for starting of the criminal, misdemeanor or other suitable procedures.

Local Government Act has stipulated the duty of cooperation with the civil protector. Local authorities and civil services are obliged to cooperate with the civil protector. It is their duty to give all the necessary information when the ombudsman demands this. The civil protector (the ombudsman) is entitled to the conversation with every employed in the local government and local civil service when this is of importance for the procedure which has been kept and this without the presence of chiefs and superiors.

The duty of reception of local civil protector has also been standardized because the president of local assembly, president of local municipality, mayor, head of local administrations and managers of civil services are obliged to accept, without delay, and latest within 15 days, civil protector on his demand.

9. Lack of legal regulations is the fact that neither statute has not arranged the relationship between the ombudsman on the level of local self-government and ombudsman on the republic level. Essentially they both find them selves on the same task and this is protection of human rights. Their work is complementary and supplemental where ever it comes to a violation of human rights, on local or the state level. Human rights are a universal value and it is often impossible to divide violations of rights of citizens since violations on the local level, are caused by acts and actions of state administrative authorities.

The largest problem is the fact that regulation have been almost completely over given to local statutory provisions. Statutory regulations are very severe. Organization, jurisdiction and empowering, proceedings, election and the end of duty are regulated by the statutes of units of local self-government. Practice in the legal regulating of local ombudsman by municipal statutes and decisions shows enough similarities along the structure as well as along content of these acts. Passing of a republic statute could only contribute to accompaniment of legal regulations on the local level, as well as more confident and more creative regulation of this already unavoidable institute of local political system, which needs and de iure to become the obligatory agency.

10. Ombudsman is very specific control mechanism which supervises, controls, warns and secures. He is not the governmental authority, has no ordering power and no instrument to force. He does not bring decision on merits, does not decide in final about the violation or a injury of citizens rights, and if he even intervene, it would be by a recommendation, finding, conclusion without a obligatory strength, by bringing out such examples in the yearly report, calling out the responsible persons in media etc.

Ombudsman has been empowered to accompany and investigates the work of local authorities, agencies of government administration, civil services, in other words all subjects which directly decides about rights and obligations of citizens, and whose work or inactivity, violated or jeopardized rights of citizens. Basic goal of establishing this institution is the promotion of good administration and rule of law, protection of rights and freedoms of citizens and legal persons. Controlling function of Ombudsman includes the mediation between citizens and authorities, giving the advice and opinion to both sides, whe-

reby acting preventively he contributes to more quality of work of administrative authorities, and thereby to protection of citizens and their rights.

Advantages of institution of ombudsman are breaking through the bureaucratic bewitched circle and creating the atmosphere of open society. The authoritative administrative system becomes transparent. Ombudsman is entitled to start a procedure of control and lead impartial investigation. His reports turn attention of parliament and public on complaints of citizens. There is no procedural hardness and legal formalism. Activity of ombudsman is the combination of legal (a initialization of proceedings like a public prosecutor) and political control (a opening of parliamentary debate about the ministerial responsibility). Awareness of the efficient surveillance is a powerful mean of administrative justice. It establishes the publicity of administrative actions. Transparency of administrative structures and process. Ombudsman is by its nature antibureaucratic institution.⁸

DA LI NAM JE POTREBAN LOKALNI OMBUDSMAN – ZAŠTITNIK LJUDSKIH PRAVA

Predrag Dimitrijević

Institucija ombudsmana na lokalnom i regionalnom nivou vlasti nije nepoznata u svetu. U pogledu organizacije ove institucije zastupljeni su različiti modeli: pored državnih ombudsmana, u federalnim državama srećemo i ombudsmane na nivou država članica, potom postoje i regionalni i lokalni ombudsmani, kao i opšti i specijalizovani. Svaka od tih institucija deluje u okvirima svoje nadležnosti.

U Republici Srbiji Ombudsman se ustanovljava na lokalnom nivou samo ako se smatra da je ova institucija potrebna, da se može organizovati i finansirati. Danas je ova institucija ustanovljena u svega četrnaest gradova i opština u Srbiji od ukupno 167 opština i gradova. Šta je uzrok ovako malom broju ustanovljenih građanskih branilaca (ombudsmana) na nivou jedinica lokalne samouprave? Prvi razlog je u zakonskoj neobaveznosti, a drugi u suštinskom nerazumevanju položaja i uloge lokalnog ombudsmana. Naime, u lokalnim političkim strukturama on se doživljava kao nezavisna politička ličnost koja će imati pravo da kontroliše zakonitost njihovog rada, pa se doživljava kao opasnost za vršenje lokalne vlasti. Treći razlog je problem stručnog i finansijskog kapaciteta, naročito malih opština. U malim i siromašnijim opštinama vrlo je teško naći odgovarajući stručni kadar, budući da uloga ombudsmana pretpostavlja, pre svega stručnost, radno iskustvo, ugled u društvu i sl.

Pitanje političke nepristrasnosti je otvoreno, jer nije pronađen mehanizam za uspostavljanje potpune političke neutralnosti. Njega postavlja skupština opštine na predlog predsednika opštine ili nadležnog radnog tela. Ova činjenica govori o tome da je teško postići političku nepristrasnost u punom smislu. Drugi problem samostalnosti je finansiranje njegovog rada. Treći razlog je pitanje dužine trajanja njegovog mandata. Ukoliko se mandat lokalnog ombudsmana vezuje za man-dat skupštine, onda i ova činjenica dovodi u pitanje njegovu političku nezavisnost i nepristrasnost.

Ključne reči: *Lokalni ombudsman, lokalna samouprava, javna služba, opštinska skupština*

⁸ Stevan Lilić, Dejan Milenković, Biljana-Kovačević-Vučo, Ombudsman international documents, comparative law, legislature and practices, Committee of lawyer human-rights, Belgrade, 2002.