



THE REPUBLIC OF SERBIA

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**Protector of Citizens
Ombudsman**

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MS MARGARET SEKAGGYA
Special Rapporteur on the situation of human rights defenders

UNITED NATIONS
Palais des Nations
1211 Geneva 10
SWITZERLAND

Subject: Special Rapporteur's 2013 Report on NHRI and Human Rights Defenders

Dear Ms Sekaggya,

In response to your invitation to share information on the role of National Human Rights Institutions in promoting and protecting the rights of human rights defenders, please find attached contribution of the Protector of Citizens of the Republic of Serbia in a form of fulfilled questionnaire, which contains all requested information regarding this issue.

I hope that you will find this document useful in the process of the preparation of your 2013 report to the Human Rights Council.

We are very interested to see the final results of your effort and are looking forward to our continued cooperation.

Respectfully,

PROTECTOR OF CITIZENS

Saša Janković

QUESTIONNAIRE ON NATIONAL HUMANS RIGHTS INSTITUTIONS
AND HUMAN RIGHTS DEFENDERS

Information Provided by the Protector of Citizens (Ombudsman) of the Republic of Serbia

1. a) *Please provide a brief overview of the legislative framework adopted to establish national Human Rights Institution (hereafter the "Institution") in your country. Please cite the names of any such laws or regulations in full.*

The Protector of Citizens (PoC) is an independent state institution introduced in the Serbian legal system by the Law on the Protector of Citizens in 2005 ("Official Gazette of RS", No. 79/2005 and 54/2007) and its status was confirmed by the Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia", No. 98/2006). The Constitution in its Article 138 lays down that the Protector of Citizens is an independent administrative body which safeguards the rights of citizens and controls the activities of the bodies of government administration, of the body in charge of legal protection of property rights and interests of the Republic of Serbia as well as of any other bodies and organizations, companies and institutions entrusted with the exercise of public powers. The Law says that the Protector of Citizens is independent, autonomous in performing its duties, a state body which safeguards and looks after promotion of citizens' rights and controls the legality and regularity of the work (performed) by bodies of government administration, the body in charge of legal protection of property rights and interests of the Republic of Serbia as well as of other bodies and organizations, enterprises and institutions entrusted with the exercise of public powers. The Law (Art. 1, Para 2) assigns that the Protector of Citizens shall also ensure that human and minority freedoms and rights are protected and promoted.

1. b) *Please indicate how these laws and regulations comply with the international human rights standards, and in particular, the Paris Principles.*

When the Law on the Protector of Citizens was drafted and adopted in 2005, the best practices and the international human rights standards were taken into account and implemented. The fact that the Protector of Citizens was awarded with "A" status by the International Coordination Committee (ICC) means that the its founding law is in compliance with the Paris Principles.

1. c) *Please indicate the current accreditation status of the Institution with the International Coordination Committee (ICC) and what measures, if any, have been taken to implement he recommendation highlighted at the most recent ICC Sub Committee on Accreditation meeting with a view to strengthening NHRI's compliance with the Paris Principles.*

As it is already mentioned above, the Protector of Citizens is the "A" status National Human Rights Institution (NHRI) since its accreditation in 2010. Despite that fact, the PoC is of the opinion that compliance with the Paris Principles is a permanent and continuous process, so it regularly follows and strives to implement the recommendations by ICC Sub Committee on Accreditation in order to protect and promote the human rights, for the ultimate benefit of citizens.

2. a) *Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles.*

The Protector of Citizens adopted the mandate that is fully in compliance with the range of competencies and responsibilities specified in the Paris Principles and also in ICC Sub-Committee on Accreditation' General Observations 1.1. to 1.6. relating to NHRI's competencies and responsibilities. The PoC is established in a both constitutional and legal text with the broad mandate, including and specifying the protection and promotion of human rights. The PoC

continuously advocates for accession and ratification to international human rights instruments and has a very good cooperation with all United Nations human rights mechanisms.

Protector of Citizens, Mr Saša Janković, made an intervention during the General Debate of the 20th session of the Human Rights Council on the Report of the UN Secretary General on National Human Rights Institutions. The intervention titled “Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments” was made through video statement. Also during the 21st session of the HRC, the PoC co-hosted the side-event “Ombuds Institutions for the Armed Forces” with the Geneva Centre for Democratic Control of Armed Forces (DCAF) and the Permanent Mission of the Republic of Serbia to the United Nations Office and other international organizations in Geneva.

The PoC also co-organized “The International Expert Seminar on the relationship between National Human Rights Institutions (NHRIs) and Parliaments” with the UN Human Rights office, the International Coordination Committee of National Human Rights Institutions (ICC) and the National Assembly of the Republic of Serbia in February 2012 in Belgrade. The meeting produced the “Belgrade Principles” which define the relationship between the two institutions, with a view to strengthening and better describing the ‘effective cooperation’ stipulated in the Paris Principles.

With regard to interacting with the UN treaty bodies system, the Protector of Citizens prepared and sent to the UN Committee on the Elimination of Racial Discrimination “The Observations on certain issues concerning the laws and regulations governing the status of national minorities” in relation to the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The PoC also submitted to the UN Human Rights Committee “Observations on the Implementation of the International Covenant on Civil and Political Rights” in the second reporting period for Serbia. The Protector of Citizens participated in the presentation of the Draft Alternative Report on the Situation of Persons with Disabilities, which was presented before the Committee for monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities.

The PoC has a very successful on-going cooperation with statutory institutions established also for the promotion and protection of human rights in other states through bilateral and multilateral channels. The PoC is a member of all major ombudsman networks, such as the International Ombudsman Institute, the Association of Mediterranean Ombudsmen, the European Ombudsman Institute and the European Network of Ombudsmen for Children.

The Protector of Citizens submits a regular annual report to the Assembly that includes information on activities in the preceding year, noted irregularities in the work of administrative authorities and recommendations to improve the fulfillment of human rights. The Protector of Citizens issues special and thematic reports, as well. During the last couple of years it published reports the situation of domestic violence against women in Serbia; on the situation in social care institutions accommodating elderly persons; on health sector; on situation of human rights and social status of LGBT population in Serbia and so on. The PoC follows up actions taken over by the authorities upon its recommendations.

2. b) *Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violations.*

The Protector of Citizens is mandated to act upon citizens’ complaints or at its own initiative, by examining whether a certain administration body or other organization performing activities under public authority has decided on a right or interests of citizens in legal and regular manner. State administration bodies are legally obliged to cooperate with the PoC, provide him access to their premises and all data in their possession, regardless of the degree of secrecy, when of interest to the investigation in process or the PoC’s preventive actions. If the Protector of Citizens determines that irregularities existed in the work of the

administrative authority, he then delivers a recommendation to the administrative authority on steps to be undertaken in order to rectify the noted irregularity on the benefit of citizens' rights.

2. c) *If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and/or military are permitted and how they are dealt with.*

Human rights are not specifically defined in the Law on the Protector of Citizens. The founding law uses the term 'the rights of citizens'. In the Article 1 of the Law is stated that "Protector of Citizens is hereby established, as an independent body that shall protect the rights of citizens". Therefore, there are no limitations with regard to the type of the rights, so the Protector of Citizens has the power to control the respect of all human rights provided for in the Constitution, laws and other regulations and general acts, as well as the ratified international treaties and generally accepted rules of international law.

Under the Law (Art. 17, Para 3), the Protector of Citizens does not have the power to control the work of the National Assembly, President of Republic, Government of Serbia, Constitutional Court, courts and public prosecution's offices. The complaints against the police and military are permitted and are dealt with following the same procedure as the complaints against other authorities.

2. d) *In this regard, please indicate whether the Institution is empowered to carry out the protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities.*

The PoC is empowered to conduct visits to all detention facilities, in response to the complaints lodged by citizens or on own initiative. In order to promote and safeguard the rights of persons deprived of liberty (PDLs) as well as to prevent torture and other cruel, inhuman or degrading treatment or punishment the Protector of Citizens set up the "Preventive Mechanism of Protector of Citizens" on 2 July 2009, as a team of the Protector of Citizens (set up) to monitor the institutions where PDLs are held. On 28 July 2011, under the Law Updating the Law on the Ratification of the Optional Protocol to the Convention against Torture (OPCAT), adopted at the sitting of the Republic of Serbia National Assembly, the Protector of Citizens was designated as the authority performing the duties of the National Preventive Mechanism (NPM).

As with regard to protection of victims of human rights violation, the Law stipulates that in certain justified cases, the Protector of Citizens may decide not to disclose to the administrative authority the identity of the person who submitted a complaint (Art. 29 of the Law). Additionally, Protector of Citizens and his Deputies have the duty of confidentiality as regards the information acquired during his term of office even after the end of office. Also, everyone working in the Protector of Citizens' Secretariat is subject to the pledge of secrecy (the Law, Art. 21, Para 3 and 4).

Regarding the witness protection mechanisms, here it will be understood as a whistleblower protection. The current Law on the Protector of Citizens does not proscribe any measure of their protection. Recognizing the importance of protective measures for whistleblowers, the Protector of Citizens drafted the Amendments to the Law that introduce new section titled "Special Measures for the Protection of Complainant", under which the Protector of Citizens shall be authorised to recommend to the administrative authority against which the complaint has been filed to abandon, temporarily or permanently, the measures it has been undertaking or intends to undertake against the complainant who, in good faith, warned a competent body or the public about the breach of law, principles of good administration or other irregularities to the detriment of the public interest or freedoms and rights of citizens. In addition to that, the Protector of Citizens would be able to recommend to the administrative authority against which the complaint has been filed or to other administrative authority to undertake measures to protect, in accordance with the law, rights and interests of the complainant, if he/she deems that the complainant suffers or may suffer the consequences for having warned about such unlawfulness and/or irregularities.

3. a) *Please indicate what mechanisms if any, are in place within the Institution to insure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases).*

N/A

3. b) *Please indicate whether any obstacles or challenges exist with regard to the effective protection of human right defenders through these mechanisms, and how Institution addresses them.*

N/A

4. a) *Please describe the working relationship between the Institution and civil society, including human right defenders, in accordance with the Paris Principles.*

From the very beginning, the PoC developed close, permanent and continuous cooperation with the civil society organizations, especially with those of “human right defender” profile. Through the years, number of joint activities covering the whole prism of human rights was conducted with the human right defenders, including advocating for legislative changes, campaigns, projects, conferences, round tables and most importantly joint field work. In order to enhance the protection and promotion of the rights of particularly vulnerable groups and also to upgrade its own work, the PoC established advisory based Councils on child’s rights, rights of persons with disabilities and elderly people and national minorities’ rights. The members of the Councils are scholars, experts and prominent human right defenders. It should be noted that the PoC carries out the duties of the NPM in collaboration with the Ombudsman of the autonomous provinces and the associations whose articles of association set forth the promotion and safeguarding of human rights and liberties as the goal of association (the Law Updating the Law on the Ratification of the OPCAT, Art. 2a).

4. b) *Please indicate whether any challenges or obstacles exist that may prevent interaction and cooperation with civil society and/or human rights defenders and how the Institutions seeks to address them.*

There are no obstacles in cooperation with civil society.

5. a) *Please indicate whether any member of the Institution’s staff has ever been the victim of threats, or other kind of harassment, as a result of work carried out of behalf of the organisation.*

There are no data about such events.

5. b) *Please specify what mechanisms, if any, are in place to protect the Institution members investigating human rights violations. If applicable, please specify what mechanisms at the institutional, national, regional and interanational level have been employed to protect the Institution members.*

Under the Article 10 of the Law on the Protector of Citizens, Protector of Citizens and his Deputies enjoy the same immunity as the Members of Parliament. Recognizing the importance of protection of its employees investigating human rights violations, the Protector of Citizens drafted the Amendments to the Law that foresees the status of “authorised persons” for the employees in the Protector of Citizens’ Secretariat that perform the tasks of direct relevance to the execution of legally prescribed control function of the Protector of Citizens.

5. c) *Please indicate whether the Institution has ever been subjected to an unannounced visit by representatives from the police or state authorities, or if it has otherwise been subjected to interference or threat that may jeopardize its independence as a national human rights institution under the Paris Principles.*

No, the Protector of Citizens has never been subjected to an unannounced visit by representatives from the police or state authorities, nor it has otherwise been subjected to interference or threat that may jeopardize its independence as a national human rights institution under the Paris Principles.

6. a) *Please indicate the main source of funding for the Institutions.*

The funds for the work of the Protector of Citizens are provided in the budget of the Republic of Serbia (Art. 37 of the Law). The budget is drafted by the Protector of Citizens in accordance with internal plan and needs. Draft budget is then submitted to the Ministry of finance through which is presented to the National Assembly. It is important to notice that the Ministry of finance has no influence on the proposed budget. The Protector of Citizens is completely independent from the government and has full control over management and expenditure of its allocated budget.

The PoC intends to further strengthen its financial autonomy by proposing the amendments to the Law on the Protector of Citizens, according to which “the Government shall not, without the consent of the Protector of Citizens, suspend, postpone or limit the execution of the Protector of Citizens’ budget.”

The PoC also receives additional funds through external assistance. Over the years a successful cooperation was developed with the Governments of the Czech Republic, Norway and also British Embassy in Belgrade, as well as with international organizations such as Organization for Security and Co-operation in Europe, Council of Europe, European Union, Save the Children Norway, United States’ Agency for International Development, Swedish International Development Cooperation Agency and United Nations (UN Development Fund for Women, UN Children's Fund, Office of the UN High Commissioner for Human Rights and UN Development Programme).

6. b) *In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organization and how this impacts on the work of the institutions.*

The Protector of Citizens enjoys full functional autonomy.

7. a) *Please describe the procedures in place relating to the selection and appointment of members of the governing body.*

The National Assembly elects, by majority of votes of all MPs, the Protector of Citizens following the proposal of the National Assembly Committee for Constitutional Issues. Each parliamentary group in the National Assembly has the right to propose to the Committee its candidate for the Protector of Citizens. It should be added that several parliamentary groups may propose a joint candidate for the Protector of Citizens. The proposal of the Committee has to be supported by a majority vote of all the members of the Committee. Before the proposals for the Protector of citizens are finalized, the Committee can decide to hold a session where all candidates will be able to express their views on the role and manner of fulfillment of the Protector of Citizens' function.

As per the requirements that the candidate for Protector of Citizens needs to meet, the Law (Art. 5) foresees the following: national of the Republic of Serbia; bachelor's degree in law; at least ten years of experience in jobs related to the purview of the Protector of Citizens; high moral character and qualifications; and significant experience in the protection of civil rights.

7. b) *Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.*

Considering the security of tenure, the Law on the Protector of Citizens provides in the Article 11 that the terms of office of the Protector of Citizens shall cease in the following cases: with the end of mandate, unless he/she is re-appointed; in case of death; with the end of mandate, unless he/she is re-appointed; in case of death; by resigning from office; by loss of citizenship, which is determined based on the act of the competent state body; by meeting requirements for mandatory retirement pursuant to the law; by becoming permanently physically or mentally unable to carry out his/her duties, which is determined on the basis of documentation of relevant medical institution; and by dismissal.

The Protector of Citizens may be dismissed only in the following cases (Art. 12 of the Law):

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1. due to incompetence or negligence in discharging his/her duties;
 2. if he/she holds other public function or engages in professional activity, duty or task that might influence his/her independence and autonomy, or if he/she acts contrary to the law regulating the prevention of the conflict of interests in performing public functions;
 3. if convicted for a criminal offence which makes him/her unsuitable for this function.

The National Assembly decides on the dismissal of the Protector of Citizens from office, by the majority of votes of all MPs, following the proposal of the Committee or at least one third of the total number of deputies. If the Committee initiates the motion for dismissal, it must be supported by a majority of the members of the Committee.

The Committee can also recommend to the National Assembly to suspend the Protector of Citizens in situations when: he/she has received measure of remand; or he/she is convicted for a criminal offence which makes him/her unsuitable for this function but his/her sentence is still not enforceable. Decision on the suspension shall be reached by majority of votes of MPs at the session at which majority of MPs is present. The National Assembly has to abolish a decision on suspension as soon as the reasons for suspension are terminated.

With regard to “independent scrutiny of candidates”, the current Law proscribes that only parliamentary group in the National Assembly has the right to propose to the Committee its candidate for the Protector of Citizens, as already mentioned in the answer to the previous question. It should be noted that the PoC proposed the amendments to the Law’s article regulating the selection and appointment, according to which, besides parliamentary groups, civil society organizations for the protection of human and minority rights and freedoms with the seat in the Republic of Serbia would have the right to propose to the Committee its candidate for the Protector of Citizens as well. Another proposed novelty was that in determining the candidate proposal, the Committee would have to take into account the opinions on the candidates provided by civil society organizations for the protection of human and minority rights and freedoms. At the public discussion held on the Draft Law on Amendments and Addenda to the Law on the Protector of Citizens, civil society organizations did not agree with those proposals, so they were left out from the final version of the Draft Law.