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# THE ROLE OF THE PROTECTOR OF THE CITIZENS IN PROTECTING PERSONS WITH DISABILITIES

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**Abstract:** *The Ombudsman Institute is established by the special law as an independent state body that protects the rights of citizens, controls the work of state bodies, protects the property and property interests of the Republic of Serbia, as well as other institutions and organizations entrusted with public authority. Within the framework of this defined competence, the special activity of the Ombudsman is aimed at indirect or direct protection against discrimination against persons with mental or physical disabilities, which, as a constitutional principle, is proclaimed by the Constitution of the Republic of Serbia. As a special system of organized network of offices covering the entire territory of Serbia, and as an independent and single body, the Protector of Citizens is concerned with the protection and promotion of human rights and no one has the right to influence on his work and conduct. In submitting the report on the work to the competent assembly of the territorial unit, in each calendar year, the achieved results are determined, as well as the activities for achieving of the planned objectives for the next year. In achieving the goals set, one of the most important tasks of the Protector of Citizens is to provide the most powerful legal assistance and support to the citizens in the realization of social and labour protection.*

**Keywords:** *The role and function of the Protector of Citizens, the protection of persons with disabilities from discrimination.*

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## INTRODUCTION

Having in mind wide scope of legal jobs given to the Protector of Citizens, the most findings about his work, we may find in annual work reports and we can say poor science

and expert 's comments published in literature that refers to this and similar questions. Beside the knowledge that the Protector of Citizens is relatively new institute in our legal system, we cannot entirely make a scientific judgement on its deeper importance and large legal influence. Beside the Protector of Citizens, there are some other independent state bodies that have similar working conception as well as similar field of activity, such as the Commissioner for the Protection of Equality (Official Herald RS, 22/2009) established by the Anti-Discrimination Law (Article 1), that performs entrusted tasks for protection from discrimination, implementation and improvement of protection measures for equality and the Commissioner for Information of Public Importance and Personal Data Protection who performs its activities, among other regulations, on the basis of two laws relevant for this area of work (Official Gazette of RS, 120/2004, 54/2007, 104/2009, 36/2010 ) and (Official Gazette of RS, no.97/2008, 104/2009, 68/2012, 107/2012).

The Law on the Protector of Citizens stipulates that the protection of the human rights of persons with disabilities is within the competence of the ombudsman, that is, the Ombudsman, although he is not specialized in the protection of social rights, has developed over the time, a certain practice by which he has significantly contributed to the protection of social rights and the development of a culture of social human rights (Lubarda , 2010:14-31).

## **WORK OF THE PROTECTOR OF THE CITIZENS FOR PROTECTION OF PERSONS WITH DISABILITIES**

During the last ten years of work of the Protector of Citizens, we may observe increased number of complaints submitted by the persons with disabilities i.e. during 2008 he has acted per only 14 complaints submitted by the persons with disabilities and in 2009 that number of complaints has increased on 75. In 2009, the Protector of Citizens has begun on his own initiation a procedure in three cases in which right of the persons with disabilities was damaged and continued with ten more procedures started in 2008. The largest number of complaints referred to violation of rights in the area of social protection - 11, labour relations - six and discrimination - six. In 25 cases there were no grounds for the show, in 12 it was rejected, nine were withdrawn, and in three cases the procedure was suspended. In one case, the Protector of Citizens has brought a recommendation . (Službeniglasnik, 2011:189)

The Ombudsman expanded his activity to protect persons with disabilities (Mršević et al. 2012:75-82) through continuous communication and cooperation with associations of persons with disabilities. The largest number of contacts was achieved with the Association of patients with multiple sclerosis, the Association of Multiple Sclerosis and the Association of Multiple Sclerosis of the Zlatibor District. In communication with members it was found that employment is the main problem of the ill. Regarding the characteristics of the diseased, the following is important: the illness is twice as likely to attack women than men; the working life of the illed is short; very frequent is rejected from the environment; the frequency of divorce of a healthy spouse from an ill woman after getting diagnosed; lack of medical therapy and looks for healing. In Serbia, this illness is often hiding, and the families are ashamed of their ill members. Associations provide psychosocial support to patients to accept the illness and help them to continue living in new circumstances.

It is also worked with families, because the family is one of the most important factors in the life of a person with multiple sclerosis.

Similar problems are observed in cooperation and communication with other associations, which also point out that the biggest problem of persons with disabilities is their poor socio-economic position in the society, that medicines and therapies are often very expensive, which can be overcome if the association has good cooperation with health institutions in the surroundings.

### ***Acting per complaints of the persons with disabilities***

In the scope of complaints submitted by the Ombudsman, (9) the complaints are problematically grouped into several thematic units, such as: the requirement to include the supplementary allowance in the basis for determining the pension; the right to more often rehabilitation on the expense of the Fund (in order for this right to be re-established, according to the Rule, it must pass more than five years from the last referral to rehabilitation); recognition of the right to an increased allowance for helping and care of another person; the right to recognition of the status of a war-disabled military person; right to disability pension; the state's inability to act under legally recognized fiscal impediments; inaccessibility to residential buildings; involvement of persons with disabilities in the processes of preparation and implementation of the national strategy for HIV; difficulties in finding a solution that confirms the degree of physical damage; the specificity of the daily existence of people suffering from multiple sclerosis in Belgrade.

In 2010, intensive project activities were carried out by the Ombudsman through EU Twinning activities and support to the Ombudsman, and accordingly, in April, a roundtable "Networking for the Prevention of Violence and Discrimination against Persons with Disabilities" was held in cooperation with the Greek and Dutch Ombudsmen and European Centre for Public Law. The round table discussion was focused on the issue of widespread domestic violence against persons with disabilities, the role of traditional associations in the promotion of the rights of people with disabilities and the role of non-governmental organizations in their protection against domestic violence, as well as the experience and practice of the Ombudsman in the EU regarding the protection of rights persons with disabilities (Mršević, 2012)

### ***The problem of depriving legal capacity of the persons with disability***

In legal theory and practice, the issue of the level of legal capacity of persons with a certain degree of disability of psychologically and psycho-physical nature is being brought into focus. These are questions of medical and legal profession, which sometimes do not have the right answer, or the answer must be sought in each case or problem when it appears. This issue of deprivation of the legal capacity of persons with disabilities was also raised on the agenda of the Protector of Citizens. Therefore, in the joint organization of the the Protector of Citizens of the Republic of Serbia and the Initiative for Inclusion "Veliki - Mali" from Pancevo, a conference entitled "The Right to Make a Decision - the Issue of Deprivation of the Legal capacity of Persons with Disabilities in Serbia" was organized. The conference was held on June 9, 2010 with the aim of pointing out widespread practice and serious violation of the rights of people with disabilities due to deprivation of legal capacity and launching

an initiative to change this approach in our country. The message is that total deprivation of legal capacity implies on the deprivation of all personal rights, and that this procedure is completely in contravention of the Constitution of the Republic of Serbia.

The findings of the Ombudsman were collected by direct insight into the data of local self-government units and institutions where these persons were placed for treatment, as well as reports from professional and non-governmental organizations. That there is a need for improvement of their position, indicates the initiative of the Ministry of Health for adoption of the law on the rights of persons with mental disorders. The basis for the improvement of their position and overall mental health, as was established by the National Strategy for the Development of Mental Health Protection, (Official Gazette of RS, 8/2007) should be in the local community, but this is not ensured due to the normative inconsistency and factual unwillingness of local governments to provide appropriate support to people with mental health difficulties. From the point of view of the realization of human rights, it is disputable that a large number of these persons are completely excluded from public life by depriving them of their legal capacity.

## **THE PRESENTATION OF THE REPORT ON VIOLATION OF RIGHTS OF PERSONS WITH DISABILITIES DURING 2015 AND 2016 PER DATA FROM THE REPORT ON THE WORK OF THE PROTECTOR OF CITIZENS**

In regular annual report of the Protector of Citizens for 2012, in the review according to the area/resources, are given statistical reports that shows increased number of violation of rights.

The number of complaints relating to the realization of the rights of persons with disabilities has almost doubled in comparison to 2011 as a result of the immediate receipt of complaints in local communities, as well as the strengthening of citizens' trust in the work of the Ombudsman in relation to the realization of the rights of persons with disabilities. Poverty, as a rule, goes with disability and, therefore, in addition to developing effective support systems and services, it is important, whenever is possible, to encourage their independence, rehabilitation and employment through appropriate measures. Considering the fact that more than 5% of persons with disabilities are engaged in the work, and that among them there is a number of pensioners with the lowest pensions, it can be concluded that a large part of this population is in a state of social need. A significant number of persons with disabilities are beneficiaries of the right to financial compensation for other help and care, but these funds are not used to provide a better level of services, but for settling basic living needs. Improving the position of persons with disabilities depends directly on the improvement of the support system that are bound to provide authorized public administration bodies and services established to make the rights reachable to the citizens.

**Table 1.** Violation of special rights of the persons with disabilities, its number and percentages in relation to 98 recorded violation of these rights

Type of violated right	No	%
1. Right on money compensation for helping and care of another person	29	29,59%
2. Right to an enlarged supplement for help and care of another person	14	14,29%
3. Right to allowance for help and care of another person	12	12,24%
4. Right to employment and professional rehabilitation	12	12,24%
5. Architectural approach to objects	11	11,22%
6. The right to a financial compensation for physical damage	7	7,14%
7. The right to equal access to services	6	6,12%
8. The right to benefits and privileges in public transport	3	3,06%
9. Right to Customs and Fiscal Exemptions and Benefits	2	2,04%
10. The right to orthopaedic supplies	2	2,04%
<b>Total</b>		<b>98</b>

From the Report on the work of the Protector of Citizens for 2016, there has been a slight increase in the number of complaints (the number of elderly people is also included into a number of complaints).

**Table 2.** Special rights in the filed of the rights of the persons with disabilities and elderly persons, their number and percent

Type of violated right	no	percent	Type of violated right	No	percent
Right to employment and professional rehabilitation	26	17,33%	Architectural approach to objects	6	4%
Right on pension due to disability	24	16%	Right based on the status of RVI	6	4%
Right to allowance for helping and care of another person	18	12%	The right to a financial compensation for physical damage	5	3,33%
Right on money compensation for helping and care of another person	14	9,33%	Right on status of RVI	5	3,33%

Right of persons deprived from legal capacity	12	8%	Right on increased allowance for helping and care of another person	4	2,67%
Discrimination due to disability	10	6,67%	The right to orthopaedic supplies	2	1,33%
The right to benefits and privileges in public transport	9	6,43%	The right to benefits and privileges in public transport with companions	1	0,67%
Right on equal availability of services	8	5,33%	Total	150	100%

It should also be noted that there is also a large number of old people with double problems, old age and disability problems, which, when they exist in older age, are far more difficult to perceive and require greater engagement of society than in younger people with disabilities. The position of the elderly, or 1,250,316 citizens over 65 (17.4% of the total population), is not regulated in a way that ensures safety and dignified life. Low pensions and social policy measures do not support meeting the basic needs of the elderly (Population by age and gender and according to the Population Census from 2011)

## CONCLUSION

It is indisputable that the role of the Protector of Citizens as an independent state body, of great importance in the protection of persons with disabilities and that in a number of different bodies and organizations dealing with the problems of the protection of persons with disabilities, it shows its useful and affirmative action.

People with disabilities in Serbia most often face problems in accomplishing their rights in disability insurance, social and health care, education, employment, professional rehabilitation, and in connection with the problem of poverty. The cause of the problem lies with ubiquitous prejudices, discrimination and "unavailability of rights" due to inaccessibility of public institutions and communication barriers. Citizens' complains also point to problems concerning the achievement of the status of a war-disabled military person and in relation to the realization of the right to social protection based on disabilities acquired during the armed conflicts during the 1990s.

People with disabilities are faced on daily bases with complex problems that prevent them from accomplishing and protecting their rights. Problems persist, on the one hand, because the existing legal system of legal protection of these persons has not been completed, and on the other, some of the legal solutions cannot be effectively and fully realized.

The law allows and gives to the Protector of Citizens, through a "legal power" that he obtains to a certain extent, as well as a network of bodies established on the territory of the Republic of Serbia, to establish a stronger action using the complains of persons with disabilities as an instrument of direct help to these persons in correcting the injustice caused

by poor implementation of regulations, silence of the administration, untimely handling in emergencies and other disorders in which people with disabilities are found.

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