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Corresponding author: ena.todorovic@fsp.edu.rs

# INSTRUMENTS OF HUMAN RIGHTS PROTECTION IN THE LEGAL SYSTEM OF THE REPUBLIC OF SERBIA

**Ena Todorović, Ljupka Petrevska**

*ena.todorovic@fsp.edu.rs, ljupka.petrevska@fsp.edu.rs*

*Faculty of Business Studies and Law, Union University - Nikola Tesla,  
Belgrade Serbia*

**Abstract:** *This paper will discuss the exercise and protection of basic human rights guaranteed by the Constitution as the highest legal act. The introductory part of the paper includes a summary of the concept of human rights and their protection, while the second section refers to the instruments of human rights protection in the legal system of the Republic of Serbia before administrative bodies, judicial bodies and the Constitutional Court, as well as the Protector of Citizens as an independent institution.*

**Key words:** *human rights, protection, Constitution, Serbia, legal system*

## INTRODUCTORY PART - ON HUMAN RIGHTS AND THEIR PROTECTION

The provision of Article 1 of the Universal Declaration of Human Rights, adopted and promulgated by United Nations General Assembly Resolution 217 (III) of 10 December 1948, states that: "All human beings are born free, with equal dignity and rights" establish the universal principle of freedom and equality of all. people which were given to them by birth itself. These are rights that are guaranteed to every human being, rights that must be enjoyed by every individual, regardless of place of birth, age, family, living conditions.

The basic characteristics of human rights are their inalienability and indivisibility. They are universal, interconnected and dependent on each other. The precondition for their survival in a society is the rule of law, responsibility, equality and non-discrimination. Human rights are primarily personal, then political and civil, and finally economic, social and cultural.

Under the strong influence of the natural-legal theory, according to which human rights are natural and are acquired by birth, after the great bourgeois revolutions, human rights gradually begin to take shape in the form they have today. As a consequence of the great world wars and crises, an international community was formed which showed interest in the development and protection of human rights. Until then, human rights and the relationship between the individual and the state in terms of their protection were exclusively a matter of the internal law of each state. After the Second World War, a number of international documents were adopted regulating human rights and their protection, the principles of which were largely implemented in modern national legislation. Among them, the most important are, in addition to the mentioned Universal Declaration, the United Nations Charter of 1945 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Human rights are universal for all people on Earth. However, they are treated differently in different societies and different countries, which depends on the cultural and political progress of the society. Therefore, the forms of endangering and violating human rights are different in different societies.

As early as the 19th century, Benjamin Constant claimed that states were preceded by human rights. (Milosavljević B.; Popović D., 2008: 39). Since these are rights given at birth, the highest task of the state as a social creation is to ensure the protection of these human rights.

From the aspect of constitutional law, human rights are the rights of the individual guaranteed by the constitution as the highest legal act. The constitutional protection of human rights limits the power of state authority, defines the relations between individuals and the government and determines the very limits of exercising that power. (Milosavljević B.; Popović D., 2008: 141).

By ratifying international documents and their implementation in domestic legislation, as well as by establishing institutions of international and national law, the protection of human rights in a society is achieved. It is modern constitutions and basic international documents that guarantee the realization of human rights. The guiding principle is the obligation of all to protect human rights, while respecting equality and non-discrimination.

However, the mere existence of the constitution is not a guarantee that human rights will be protected, but it is necessary to ensure their protection by the constitution. The constitutional guarantee of human rights will have real significance only when an accessible and effective system of human rights protection is established. (Slavnić Lj., 2007: 371) Thus, in many modern constitutions, general principles of protection have been established, such as constitutionality and legality, independence of courts, impossibility of easy adoption and change of the constitution by prescribing a complex procedure, etc. The possibility for citizens to turn to international institutions for the protection of their constitutionally guaranteed human rights is certainly the culmination of the point of connection between international and national constitutional law. These are all principles on the basis of which the democracy of a regime is assessed.

More than a third of the provisions of the Constitution of the Republic of Serbia are dedicated to human rights. Human rights, which are guaranteed by generally accepted rules of international law and confirmed by international treaties and laws, are guaranteed by the Constitution of the Republic of Serbia and are applied as such. (see more at the link <https://>

cup.s.rs/2014/09/05/449/) The Constitution exhaustively lists the human rights that are subject to protection: The right to life, the prohibition of mental and physical integrity, the prohibition of slavery, the position similar to slavery and forced labor, The right to liberty and security, The right to a fair trial, The right to rehabilitation and damages, The right to equal protection of rights and remedies, The right to legal personality, The right to citizenship, Freedom of movement, Inviolability of the apartment, Freedom of thought, conscience and religion, Freedom of opinion and expression, Freedom of expression, Freedom of the media, Right to information, Election right, Right to participate in the management of public affairs, Freedom of assembly, Freedom of association, Right to petition, Right to asylum, Right to property, Right to inherit, Right to work, Right to strike, Right to marry and equality of spouses, Rights and duties of parents, Right to legal aid, Health care, Social protection, P right to education.

## **INSTRUMENTS OF HUMAN RIGHTS PROTECTION IN THE LEGAL SYSTEM OF THE REPUBLIC OF SERBIA**

The Constitution of the Republic determines the mechanisms for the legal protection of human rights, which are: administrative protection, judicial protection, constitutional-judicial protection and protection of an independent institution - the ombudsman or the protector of citizens. Protection itself and protection procedures are regulated by line laws and bylaws.

### ***1. Protection of human rights before administrative bodies***

The protection of basic human rights is exercised before administrative bodies. When we say administrative bodies, we primarily mean state administrative bodies (administrative bodies and organizations), as well as administrative bodies and organizations at the level of the autonomous province and local self-government, which decide on the rights and obligations of both individuals and legal entities.

Administrative bodies have the role to ensure the protection of human rights from endangerment by their act or action. Thus, by an act of an administrative body, certain activities that may endanger the environment or human health may be suspended. Also, members of the police are obliged to provide protection to people in terms of security, which includes the protection of human life, personal integrity, rights and freedoms, as well as property from illegal forms of endangerment. Also, administrative bodies issue public documents, take certain actions or adopt administrative acts, all with the aim of exercising human rights. It is through their actions that individuals can exercise the right to work, because the precondition for employment is the possession of a certificate of citizenship issued by the competent administrative body. On the other hand, in order for a person to be able to exercise the right to move freely outside the borders of our country, it is necessary to have a travel document (identity card or passport), which is also issued by the competent administrative body.

An appeal is a legal means by which human rights can be protected from illegal acts of the administration, as well as court decisions and decisions of other bodies and organizations which decide on the rights, interests and obligations of both individuals and legal

entities. This legal remedy can be filed against the decision (decision or conclusion) of the administrative body that was made in the first instance and it initiates the procedure of reviewing that decision. It is a second-instance procedure that is conducted before a higher instance (an administrative body that is of a higher rank and which is obliged to control the work of the first-instance body).

Therefore, when we talk about human rights, the role of the administration is twofold. On the one hand, its role is to protect and exercise human rights, while on the other hand, it is legitimate by law also to encroach on human rights. However, it should be noted that the administration may also appear as a party from whose inaction or wrongdoing human rights should be protected in court.

Any person may initiate an administrative dispute before the court. This dispute is initiated by a lawsuit. This is a special type of judicial protection that is provided in relation to the final acts of the administration, ie those acts that were passed on appeal in the second instance. A person who has filed a lawsuit have the right to request the court to examine whether the act lawfully or not. This procedure before the court is called an administrative dispute. The administrative court is competent to resolve this type of dispute in our legal system.

It is important to note that an administrative dispute can also be initiated against an administrative act that was passed in the first instance and against which an appeal is not allowed in the administrative procedure.

It should also be noted that any person who thinks that his basic human right has been endangered by negligent, illegal or improper work or action of a state body, organization, holder of public authority, local self-government body or autonomous province body, has the right to compensation, both material or non-material. (Milosavljević B.; Popović D., 2008: 179-181)

## **2. Judicial protection of human rights**

The Constitution of the Republic of Serbia proclaims the principles of judicial protection of constitutional freedoms and rights. Namely, every person has the right to protection by the court, if he has been denied or violated a human or minority right proclaimed by the Constitution, as well as the right to eliminate the consequences of the violation. That protection consists of the possibility of availing of legal remedies.

There are regular and extraordinary remedies in our legal system. The Law on Civil Procedure prescribes that a person has the right to appeal as a regular legal remedy to any decision (judgment, decision, conclusion) of the civil court. Our law also provides for revision as an extraordinary legal remedy. According to the interpretation of international human rights bodies, this extraordinary legal remedy is considered regular and effective, while the domestic Law on Civil Procedure contains restrictions for declaring a review. Revision can be declared due to absolutely significant violations of the provisions of the Law on Civil Procedure and incorrect application of substantive law, it can be declared in certain legal matters (type of legal matter and value of the subject matter of the dispute) and it can only challenge final judgments rendered in the second instance. This extraordinary legal remedy is not allowed: in property disputes, when the value of the subject matter of the disputed act does not exceed the value of 40,000 euros in dinars on the day when the lawsuit is filed

and in case of erroneously established facts. The Supreme Court of Cassation decides on the revision.

According to the law, there is a possibility to repeat the procedure, which has been finalized at the proposal of the party, due to significant violations of the provisions of the ZPP, illegal actions of participants in the procedure and presentation of new facts and evidence. This extraordinary legal remedy is possible in a situation when a party uses the decision of the European Court of Human Rights which established a violation of human rights. Also, the procedure may be repeated when the Constitutional Court in the procedure on the constitutional complaint has determined the denial or violation of human rights and freedoms proclaimed by the Constitution in civil proceedings. (Belgrade Center for Human Rights, 2017: 55-57) In both cases, this extraordinary legal remedy can be used only if it could have had an impact on making a more favorable decision for the person who submitted the request for retrial.

According to the Code of Criminal Procedure, it is possible to file a request for protection of legality if the decision of the European Court of Human Rights in the proceedings preceding its adoption or if the final decision denies or violates the human rights and freedoms of the defendant or another participant in the proceedings which is proclaimed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and by additional protocols or by the Constitution.

Further, if the Constitutional Court finds that the rights of the convicted person have been violated, and the violations are such that they have had impact on the correct and lawful making of a court decision, according to the cited Code, it is possible to file a request for protection of legality (Belgrade Center for Human Rights, 2017: 55-57) A request for protection of legality as an extraordinary legal remedy may be filed by the Federal Public Prosecutor and the accused through their defense counsel. The Supreme Court of Cassation decides on this request.

### **3. Constitutional-judicial protection of human rights**

Constitutional-judicial protection is a special type of protection of human rights, which is provided in parallel with other forms of protection before other courts. Within the general control of constitutionality and legality, the primary form of protection is realized. Constitutional complaint or *actio popularis* - a kind of popular complaint would be another form of constitutional and judicial protection of constitutionally proclaimed rights and freedoms (Slavnić, 2007: 371)

In order to be able to initiate proceedings before the Constitutional Court in order to protect some of our human or minority rights that have been proclaimed by the Constitution, we need to use a special legal remedy, and that is a constitutional complaint. This procedure is based on the principle of disposition.

According to Article 170 of the Constitution of the Republic of Serbia, if no other legal remedies for the protection of human or minority rights are provided or all other legal remedies are exhausted, it is possible to file a constitutional complaint against individual acts or actions of state bodies or organizations entrusted with public powers which deny or violate human or minority rights proclaimed by the Constitution.

If the submitter of the Constitutional Complaint is denied by law the right to protect some of his human or minority rights in court or his right to a trial within a reasonable time

has been violated, according to Article 82 of the Law on the Constitutional Court, he has the opportunity to file a Constitutional Complaint. (See more at <http://www.ustavni.sud.rs/page/view/sr-Latn-CS/65-101110/postupak-po-ustavnoj-zalbi>)

Only ten years ago, the Constitutional Court finally began to make decisions on constitutional appeals, and since then the European Court of Human Rights has valued the constitutional appeal as a legal remedy.

If a natural or legal person, whether domestic or foreign, considers that a human or minority right proclaimed by the Constitution has been endangered, that natural or legal person must have a personal or real interest in order to eliminate the disputed act. On the other hand, other natural persons, state bodies and organizations may file a constitutional complaint only if they have the written authorization of the person whose rights or freedoms have been violated.

The deadline within which a constitutional complaint may be filed is 30 days from the day of taking the action which violates or denies the right guaranteed by the Constitution or the delivery of an individual act. (Article 84, paragraph 1 of the Law on the Constitutional Court). However, if a person misses the deadline within which he should have filed a constitutional complaint, the Constitutional Court will allow him a *restitutio in integrum* (return to the previous state), if that person within 15 days from the day of cessation of the reason that led to the omission within 30 days, submit at the same time a constitutional complaint and a proposal for restitution. (Article 84, paragraph 2 of the Law on the Constitutional Court). It is important to note that after the expiration of three months, it is not possible to request a return to the previous state (Article 84, paragraph 3 of the Law on the Constitutional Court).

If the Constitutional Court finds that a certain human right has been violated by a decision of a regular court, it may annul that decision. Among other things, the Constitutional Court may decide on damages, if such a request is contained in a constitutional complaint. (Belgrade Center for Human Rights, 2017: 55-57)

#### **4. Protector of Citizens**

The first state to introduce the institution of the Protector of Citizens (Ombudsman) by the Constitution of 1809 was Sweden. The institution of the Protector of Citizens was introduced into the legal system of the Republic of Serbia in 2005, when the Law on the Protector of Citizens was passed. Article 138 of the Constitution of the Republic of Serbia from 2006 confirms the existence of this institution, which finally started working in 2007. The Republic of Serbia was among the last to introduce this institution into its legal system.

According to Professor Milosavljević, the ombudsman is primarily a guardian of legality (protector of citizens' rights from bad administration), but he is also the one who advises the administration. (Milosavljević, 2001: 71)

The Protector of Citizens (Ombudsman) is an independent state body whose task is to protect the rights of citizens from illegal acts and actions of state administration bodies. He is independent and autonomous in performing his activity. He is responsible for his work to the legislative body - the National Assembly, which elects him for a period of five years and also dismisses him. In order for someone to be a candidate for such a position, he must have graduated from the Faculty of Law and have at least ten years of experience in working

on jobs that deal with the protection of citizens' rights. In addition, he must possess moral qualities.

He submits an annual report to the National Assembly in which he points out the shortcomings of the administrative bodies and at the same time gives his proposals for their improvement.

The Protector of Citizens is granted independence and autonomy in his work by the immunity he enjoys. In our country, the model of an independent institution is applied, which has the authority to control the holders of state authorizations and the whole state administration. It has no authority to control the work of the Government, courts, the head of state, public prosecutor's offices and parliament. (Slavnić, 2007: 324)

Among other things, he takes care of the protection of property rights and interests of the Republic of Serbia, controls the work of state administration bodies, controls the work of other bodies and companies entrusted with public authorities. The Protector of Citizens protects human and minority rights and freedoms. He pays special attention to the protection of gender equality, the rights of the child, the rights of persons deprived of their liberty, the rights of persons with disabilities, as well as the rights of persons belonging to national minorities.

The Protector of Citizens has the right to initiate and conduct proceedings on his own initiative or upon a complaint of a citizen. He may file a complaint on his own initiative if, on the basis of an anonymous complaint, his own knowledge or knowledge obtained from other sources, he establishes or assesses that the inaction of the administrative body, their acts or actions, violated certain human freedoms and rights.

Every person, whether natural or legal, domestic or foreign, has the right to lodge a complaint with the Protector of Citizens, if he considers that any of the rights guaranteed by the Constitution or the European Charter of Human Rights have been violated. In the case of a violation of a child's rights, a complaint will be filed on his or her behalf by his or her parent, legal representative or guardian. If it is a violation of the rights of a legal entity, the complaint will be filed by the legal representative of that legal entity.

When it is in the interest of the procedure, the administrative bodies have a legal obligation to cooperate with the Protector of Citizens, to provide him with access to their premises and to make all information available, regardless of the degree of secrecy.

The official of the administrative body is obliged to make it possible for the Protector of Citizens to have an interview with every employee in the administrative bodies.

There are situations when the Protector of Citizens can initiate proceedings even before all means have been exhausted. These are the following situations - if the complaint relates to untimely work or other violations of the rules of ethical conduct of employees in administrative bodies, if the complainant would cause irreparable damage, if there was an incorrect relationship with the complainant or if the complaint itself relates to the violation of the principle of good administration.

The complaint is submitted orally or in writing. No administrative fee or other fee is paid. It can be submitted no later than one year from the last action or non-action of the administrative body in connection with the violation of the rights of citizens, or within one year from the violation of the rights of citizens. The complaint must contain the following elements: the name of the body to which the work relates, a description of the violation of

the right, facts and evidence supporting the complaint, information on which legal remedies have been used and information on the complainant.

Experts working in the service of the Protector of Citizens are obliged to help a person to file a complaint free of charge.

The Protector of Citizens is the one who informs the complainant and the administrative body about the initiation and completion of the procedure. The administrative body is obliged to respond to all requests of the Protector of Citizens, as well as to provide him with all the information he requested, within a period that cannot be shorter than 15 or longer than 60 days.

## CONCLUSION

The highest goals and democratic ideals of the society in which we live today are human rights and freedoms. After long discussions in the social sciences, with the end of the great world wars, common standards of international law were finally defined in terms of the existence and content of human rights. These are the standards that should be achieved by all the peoples of the world, so that every individual can enjoy and contribute to the establishment of human rights. The degree of democracy of a society also determines the degree of development of human rights in it. Although most countries declaratively accept and implement international standards in domestic legislation, their application in practice is often denied. Thus, there are societies where they are to some extent, or even worryingly, deprived or endangered. On the other hand, in some societies there are almost no restrictions.

In the Republic of Serbia, human rights are applied and exercised to a greater extent. The 2006 Constitution proclaimed and guaranteed some of the most important human rights, such as the right to life, the right to freedom of movement, speech, opinion and many others. Mechanisms for the protection of human rights have been established, which are reflected in the constant development and improvement of laws and institutions that apply them: courts - regular, administrative and Constitutional Court, administrative bodies and organizations - state and provincial and local and protectors of citizens. All of them, together with the citizens of the Republic of Serbia, are on a common task, and that is to constantly raise the level of protected human rights. However, only with the establishment of true democracy in our society, with an individual who is highly aware of his rights, on the one hand and the obligation of state protection, on the other hand, our country has a chance to reach high standards of international law in this area.

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