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ANALYSIS OF INTERNAL REGULATIONS AND OPERATIONAL GUIDELINES FOR FUTURE WORK OF SECURITY SECTOR INSTITUTIONS IN THE CONTEXT OF HUMAN RIGHTS PROTECTION

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Milena Bešić

Authors
Prof. Dražen Cerović, PhD[1]
Relja Radonjić[2]

Publication associate
Rade Bojović[3]

Translation
Joško Katelan

Graphic design and layaout
Marko Mihailović, M Studio d.o.o., Podgorica

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1 Law School Professor – University of Montenegro, www.drazencerovic.me
2 Head of Normative Affairs Department in the Ministry of Defence of Montenegro
3 Legal expert

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Every democratic society sees as one of the important mechanisms of its progress the strengthening of the rule of law and human rights in relation to the functions and powers of public authorities. Particularly delicate is the monitoring of the quality of exercise of powers by the security sector, since this part of the state authority occupies a special position, performs special functions and has a particular *modus operandi*. In that sense, it is of particular importance to strengthen the capacities of all oversight institutions, including the Ombudsman.

1. Importance of the Ombudsman and of the security sector

1.1 Importance of the Ombudsman

Ombudsman is a specific oversight institution, having as its main task the protection of human rights and freedoms infringed by the documents and actions of the public authorities. Its special position within the legal system implies, in many ways, special powers which have been laid down with the purpose of preventive, alert, critical and advisory character. Ombudsman has no power to annul, alter and abolish administrative or judicial acts, which concurrently represents its limitation in relation to the traditional oversight institutions and mechanisms of the legal system. Instead, it has atypical powers which enable it to move with ease through "vicious red-tape circles" and to act in a way which is uncommon to the traditional legal institutions. As such, the Ombudsman makes an integral part of the legal system, in charge of supplementing the above oversight mechanisms and contributing to the elimination of their shortfalls and correction of errors. To that effect, besides its formal legal powers, Ombudsman must cooperate closely with the entire media community. Public support to its impartial investigations adds the missing power, which is indispensable for its successful fight against the bureaucratized system and blockages that such system, by its nature, often places in between the citizens and justice. Ombudsman, as an institution with special administration oversight role, makes a direct link to the idea of the exercise and protection of human rights. The Ombudsman is thus most often defined as the Protector of Human Rights.

Originally, the Ombudsman's office is of Swedish origin and it designates a parliamentary representative, whose task was to restrict the King's power and to limit the arbitrariness of the executive power in general in the former Swedish legal-political system. In post-feudal political struggles between the then Swedish absolutistic king and the Parliament as people's representative, the Ombudsman was a special parliamentary commissioner who was specifically tasked to monitor how the King and the administration applied the laws enacted by the Swedish Parliament.[4]

4 Compare: Donald Rowat, The Ombudsman, Citizen's Defender, London, 1965.

It can be said that in 1809, the Ombudsman was really something new in the global context, only still isolated (in Sweden, to start with). In subsequent decades, this institution was gradually being introduced in several Nordic countries[5], only as such it took it a long time to find the stronghold in the remaining countries of the world. It had stayed like that until the 1960-ies, when this institution, its Danish model in particular, started spreading beyond the Nordic countries. Despite the differences in terms of organization, functions and name, its idea and objective remain the same: Ombudsman is an independent civil servant who receives complaints against the actions of public authorities, with the powers to investigate, make reports and issue recommendations. Fast progress of the Ombudsman was made conditional upon two main factors.

The first one was the growth of public administration in western democratic countries, especially after the World War II. This led to the requirement for public administration to be in accordance with the rule of law, but also to contribute to the understanding that the administration exists in order to serve the citizens, and not vice versa. Naturally, in the countries based on the rule of law, individual citizens have got the opportunity to lodge complaints against the decisions of public administration bodies, prior to addressing a competent court. Ombudsman as an institution offered an additional and less formal way for resolving problems arising between the citizens and public administration, without extra costs. The fact that it is a procedure which the citizens do not have to pay for was yet another advantage. Besides, the procedures are conducted in a more flexible manner, and in some cases Ombudsman may act simultaneously, on the occasion of a broader range of complaints.

Another Ombudsman progression factor was the increase of the aspiration towards democracy and human rights. As a part of their transition towards democracy, many countries established the Ombudsman with specific competences in the area of the protection of human rights, including the possibility for citizens to participate in the procedures in which public authorities make decisions.

Walter Gellhorn, a professor of administrative law at New York "Columbia" University, who studied legal mechanisms for human rights protection, contributed greatly to the popularization of the Ombudsman as the institution of the protector of citizens' rights. In mid-1960-ies he published a comparative study on the forms of mass and regular violations of citizens' rights in the procedures before administrative bodies searching for, as he put it, „inexpensive and easy" means for the protection of citizens' rights. He pointed out to great potentials that the institution of the Ombudsman has as a parliamentary commissioner.[6] In

5 When Finland became independent from Russia 1917, it established the Office of the Ombudsman, following the Swedish model in its 1919 Constitution.

6 This famous study was a cooperative effort by professors Borislav Blagojević and Nikola Stjepanović from Belgrade and Professor Eugen Pusić from Zagreb. Quoted according to: Stevan Lilić, Upravo pravo & Upravno procesno pravo (Administrative Law and Administrative Procedural law), Pravni fakultet Univerziteta u Beogradu i

that sense, professor Gellhorn emphasizes that contemporary administration is complex and powerful. The oversight over the administrative activities has to correspond to the complexity of administrative processes. Internal (administrative) control, i.e. the purpose of reviewing an administrative decision by a higher instance is to secure the uniformity and coordination of lower administrative levels which, by the nature of things, cannot have in mind the totality of the process and of the problem. The goal of the introduction of an impartial arbiter of the work of the administration in the form of judicial review of administrative decisions, by either specialized administrative courts in France, or general jurisdiction courts in the USA, is to observe the established standards and norms of administrative treatment and decision making.

However, just as the majority of other human creations, these institutions most often fail to operate the way they should, and their activation very often requires efforts and commitments which exceed the effects which citizens would be interested in. They are, thus, not satisfactory. For these reasons, recent decades have seen the intensification of the quest for cheap and straightforward means and mechanisms for determining and eliminating various shortcomings in the work of the administration.[7] Ombudsman proved to be just such means. In certain sense, the Ombudsman, nowadays, is a basic human and citizens' rights protection institution, similarly to judiciary at the beginning of the last century when it acted as the institution for the protection of legality and the organization of the state of law.[8] What is the "secret" of the exceptional efficiency in the protection of citizens' rights and in the oversight of the administration exercised by the Ombudsman, which cannot be achieved by the existing forms of administrative and judicial oversight of the administration? As it is emphasized, ... the essence of the Ombudsman boils down to its immanent appropriateness to break vicious bureaucratic circles and to make transparent the impenetrable authoritative administrative systems, i.e. accessible to parliamentary oversight and to the scrutiny of the general public. Its effectiveness, in the first place, is the result of its possibility to draw the attention of the public and of the Parliament to citizens' complaints on the basis of its report presented to the Parliament.

Publicity based on impartial investigation is a powerful means. Mere awareness of Ombudsman's oversight exerts positive influence on the overall administrative system, making it subject to the publicity of work and justice.[9]

Javno preduzeće „Službeni glasnik", Beograd, 2008, page 434.

7 Walter Gellhorn, Ombudsman And Others – Citizen's Protectors In Nine Countries, Harvard University Press, Cambridge, MA, 1967, str. 3–4.

8 Compare: Stevan Lilić, „Ombudsman u Srbiji – ustavni i zakonski okviri" (Ombudsman in Serbia-Constitutional and Legislative Framework), with: Lokalni ombudsman – uporedna iskustva Srbija, Bosna i Hercegovina, Švajcarska (Local Ombudsman-comparative experiences Serbia, Bosnia and Herzegovina, Switzerlan), Švajcarska agencija za razvoj i saradnju, MSP, Kraljevo 2007, page 23–37

9 H. W. R Wade, Administrative Law, 5th edition, Oxford 1982, p. 76.

Having all this in mind, it can be concluded that Ombudsman's oversight of the administration constitutes a successful combination of legal (for instance, instituting procedures just as a public prosecutor can do) and political oversight of the work of the administration (especially, opening parliamentary debate on the responsibility of a minister who heads certain public administration body), which is indispensable in contemporary conditions in order for the shortcomings of the existing forms of administrative and judicial oversight of the administration to be overcome. Comparative experiences clearly indicate that, together with traditional forms of administrative and judicial oversight of the administration and all their variations, there is a need for the introduction of "straightforward and inexpensive" instruments for the oversight of administration, free from procedural rigidity and legal formalism, but concurrently efficient in achieving transparency of administrative processes and structures. Starting from that, efficient oversight of the existing administrative system would be incomplete without the introduction of Ombudsman as the institution of the Protector of citizens' freedoms and rights and oversight of the administration.[10]

1.1.1. Powers and limitations of the Ombudsman as an institution for the protection of citizens' rights and freedoms in our law

Despite the fact that the Ombudsman, seen through the "eyes" of theory, constitutes a successful combination between legal and political oversight of the work of the administration, its powers are still significantly restricted. They primarily stem from its nature, but also from the nature of the legal system itself. Since formally the Ombudsman does not belong to any branch of power – legislative, executive and/or administrative or judicial, and since it still has some of the features of the three of them, it can be said that it practically represents a *sui generis* institution which was established as an oversight mechanism, intended for one kind of "arbitration", i.e. violation of citizens' rights by means of unjust, unlawful and inexpedient acts of public authorities, or by failure of the authorities to act. On one hand, it is appointed by the Parliament and it reports to the same, but on the other it would be wrong to conclude that the Ombudsman, from institutional point of view, belongs to the legislative power. On the grounds of parliamentary support offered by the Parliament through the mechanism of its appointment, it solely "draws" the necessary legitimacy in order to be able to oversee the work of the executive, and/or administrative and judicial power. It is important to emphasize that the Ombudsman has no power to repeal judicial and administrative decisions, neither does it have any jurisdiction in the sense of modification, quashing or annulment of these decisions.

10 Stevan Lilić, Human Rights and Serbian Transition: Can the Ombudsman Help, Norwegian Institute of Human Rights, University of Oslo, November 2001.

Its powers, especially in the legal system of Montenegro and in the specific Law on the Protector of Human Rights and Freedoms[11] are related in the first place to acting on complaints which concern the work of the courts in case of the stalling of the proceedings, abuse of procedural authorities or failure to enforce court decisions[12]. Also, according to our law, the Protector of Human Rights and Freedoms may make a motion for the enactment of laws, other regulations and general acts for the purpose of harmonization with internationally acknowledged standards in the area of human rights and freedoms[13]. This right to legislative initiative, results from the provision of the same article of the Law, which reads: "The Protector provides the opinion to the bill, draft regulation or draft general act in case he considers that this is necessary for the protection and enhancement of human rights and freedoms"[14].

The Protector may institute a proceeding before the Constitutional Court of Montenegro for the assessment of the compliance of laws with the Constitution and the ratified and published international treaties, and/or the compliance of other regulations and general acts with the Constitution and the Law. In performing its duty the Protector acts in the way that it points out to, warns, criticizes, suggests or recommends[15]. Upon the request of the authorities the Ombudsman can provide an opinion on the protection and enhancement of human rights and freedoms. Also, this institution deals with general issues of importance for the protection and enhancement of human rights and freedoms and cooperates with the organizations and institutions operating in the area of human rights and freedoms. The Ombudsman is not authorized to modify, quash or annul the acts issued by the authorities[16]. Likewise, it may not represent parties to the proceedings or file legal remedies on their behalf, except in the case from the Article 27 paragraph 2 of this law[17]. The President of Montenegro, the Speaker of the Parliament, the Prime Minister and the members of the Government of Montenegro, the President of a municipality, the Mayor of the capital city and the Mayor of the former Royal capital shall receive the Protector upon the request, without any delay. As regards special powers, Montenegrin Ombudsman (Protector of human rights and freedoms) is entitled to: a) inspect the premises in the bodies, organizations, institutions and other places where a persons deprived of his/her liberty can be accommodated, without prior announcement; b)

11 Law on the Protector of Human Rights and Freedoms, ("Official Gazette of Montenegro", no. 042/11 of 15th August 2011, 032/14 of 30th July 2014, 021/17 of 31st March 2017).

12 Official Gazette of Montenegro, no. 42/11 of 15th August 2011.

13 Official Gazette of Montenegro, no. 42/11 of 15th August 2011.

14 Official Gazette of Montenegro, no. 42/11 of 15th August 2011.

15 Art. 20, para. 1 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011.

16 Art. 22, para. 1 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011.

17 When it assesses it necessary, the Protector institutes a proceeding before the court for the protection from discrimination or joins the discriminated party in the procedure as intervener (Art. 27, para. 2 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011).

visit the person deprived of his/her liberty and check the observance of his/her rights, without prior announcement or approval; c) talk to the person deprived of his/her liberty, as well as to another person deemed being capable of providing the necessary information, without the presence of an official or other person, either in person or through an interpreter. The Ombudsman practises the protection of persons deprived of their liberty from torture and other forms of cruel, inhuman or degrading treatment or punishment. The Protector undertakes the actions for the prevention of torture and other forms of inhuman or degrading treatment and punishment in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Punishments or Procedures[18].

The procedure of examining the violations of human rights and freedoms is instituted based on a complaint or upon its own initiative. The Protector examines the violations of human rights and freedoms upon its own initiative when it finds out that certain act, action or failure to act violated human rights and freedoms. In order to be able to act upon its own initiative, the Protector needs to obtain the consent of the injured party. The procedure before the Protector is confidential. The person who files a complaint or taking part in the procedure may not be held responsible, or be put in unfavourable position on these grounds. The complaint is filed by everyone who deems that his/her rights and freedoms have been violated. The complaint contains the name of the authority the work of which it refers to, description of the violation of human rights and freedoms, facts and evidence which substantiate the complaint, the data on legal remedies exhausted, personal name and address of the complainant and the indication on whether the applicant agrees for his/her name to be revealed in the procedure. The complaint is filed within six months as of the day of becoming cognizant of the violation of human rights and freedoms, i.e. within one year as of the violation taken place. In the procedure of examining the complaint, the Protector can refer the applicant to bring other legal action for remedying the violation he/she refers to, providing it is deemed that the violation can be remedied by only such means or that remedying the violation would be more efficient.

The Head, i.e. the person managing the authority is obligated to take a stance in relation to the allegations in the complaint within a deadline fixed by the Protector. The head i.e. the person managing the authority is obligated to make available to the Protector all the data from the area of competence of the authority, irrespective of the degree of secrecy and to enable it free access to all premises, pursuant to the regulations that regulate data confidentiality and the protection of personal data, as well as the handling of official files and documents. In case the Head i.e. the person managing the authority fails

18 Articles 24-27 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011.

to act upon the request within the specified deadline, he/she is obliged to notify the Protector on the reasons, without delay. Failure to act upon the request is considered the interference with the work of the Ombudsman's Office, which can notify directly superior body or the Parliament thereof, or it can notify the public[19]. The authorities are under obligation to cooperate with the Protector and to offer assistance to the same[20].

After completing the examination of the violation of human rights and freedoms, the Ombudsman issues the opinion as to whether, in what way and to what extent have human rights and freedoms been violated. Once the Protector determines that human rights and freedoms have actually been violated, the opinion contains a recommendation as to what actions need to be undertaken in order for the violation to be remedied, including the respective deadline[21]. The Head, i.e. the person managing the authority that the recommendation is related to is obligated to submit the report, within the specified deadline, on the actions undertaken for the enforcement of the recommendation. In case the Head, i.e. the person managing the authority fails to act upon the recommendation within a specified deadline, the Protector may notify directly superior body, file a special report or notify the public[22].

* * *

As we can see, irrespective of its extensive oversight powers, the Ombudsman is not omnipotent and its limitations are not insignificant. Therefore, the Ombudsman "points out to, warns, criticizes, suggests or recommends, but... it is not authorized to modify, quash or annul the acts of the authorities... or represent parties to the proceedings nor file legal remedies on their behalf ..."[23] From all the above, one can conclude that the Ombudsman, as an institution, combines preventive and arbitrating effect, but has no classic legal powers, those vested in the standard legal institutions of the oversight type. This does not make it, nor does it have to make it less significant part of the legal system, quite the contrary. With its particular and atypical powers, it has to act like a supplement to the legal system. The objective of its specific work and powers is exactly to be the "missing link", in order for the legal system to function in a high quality manner. Therefore, this institution can

19 Article 37, para. 1 and 2 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011.

20 Article 38 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011.

21 Article 41 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011.

22 Article 42 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011.

23 Articles from 20 to 27 of the Law on the Protector of Human Rights and Freedoms of Montenegro, "OG MNE", no. 42/11 of 15th August 2011.

do what other institutions are unable to do, while it also has no powers that are vested in typical oversight institutions. Thus, it is solely through their mutually combined action that positive effects are achieved.

1.1.2 Significance of work of the Ombudsman and the media

"Breaking" bureaucratic barriers, which is at the heart of Ombudsman's powers, represents a specific "bypass" and enables its accelerated movement through the institutions of the system. Due to its specific procedural restrictions, this institution is not typical to other oversight mechanisms and institutions. When we say that the Ombudsman has arbitrating effect – we have in mind its mediation in relation to the delay of administrative and judicial procedures, raising issues with the institutions from the executive branch, the possibility for "unblocking" certain judicial procedures, and by doing that its direct influence on securing the right to trial within reasonable time, etc. Its preventive action is "another side of the coin" which requires special attention and it calls for the studying of mechanisms for such action. Preventive action of the Ombudsman is reflected through judicial, but also through extrajudicial mechanisms. The cooperation with objective and impartial electronic and printed media falls undeniably among these mechanisms.

Taking into consideration the specificity of the very nature of the Ombudsman, its structure, legitimacy, appointment method, powers it is vested in and, in general, particular manner and methods of its work, as well as the abovementioned limitations conditioned by its legal nature, logical conclusion being imposed is that the cooperation with media outlets is decisive for the success of its work. The exposure of bureaucratic structures to the public scrutiny, which has to be secured through constructive media relationship, is the instrument which helps the Ombudsman to cope with the restrictions of its powers. Bureaucratized structures, especially the ones in the executive branch, which by the nature of their job are positioned better than the others to violate citizens' rights, frequently seem to be "immune" to the influence of typical oversight mechanisms. The oversight in several instances, official supervision, various inspection services which do the oversight of the administration are still not capable of acting sufficiently fast. The situation is similar in judiciary, too. All procedures run through usual channels, in total routine, which is logical when observed formally. However, mere routine, legal shortcomings, numerous "techniques" of avoiding legislation and many other things prevent justice to be done in an efficient way.

Such features of typical oversight institutions and mechanisms, sometimes even prevent citizens to thoroughly protect their rights and obtain just decisions

of public authorities. In that sense, therefore, the influence of media on the prevention of unlawful and inexpedient decisions of public authorities can be precious to the Ombudsman's Office which cooperates with media community on constructive grounds. Moreover, exposing to public opinion certain civil servants and officials who violate citizens' right by making illegal, inexpedient and unjust decisions, is Ombudsman's principal "weapon".

Since the Ombudsman's powers are special, subsequently its method of work must be special, too. Besides formal framework, which consists of constitutional and legislative solutions, in factual sense its power is in fact contained in strong public support, informed through objective media reporting. This is logical, too – if this institution is (which it is) the protector of citizens' rights, then the support of the very same citizens is concurrently a realistic source of factual power. Press conferences, appearances in live radio and TV shows, articles in the newspapers, periodic reports published by the Ombudsman, its report for the parliament, analyses of specific and characteristic cases, constitute the ways of producing the necessary effect by attracting the attention of the public and their focusing on drastic violations of human rights. Impartial investigation, based on strong public support, has shown its good effects on many occasions. Preventive action, produced by such working method, has very often proved effective in practice.

Potential violators of citizens' rights will think twice whether their acts are unlawful and inexpedient, and whether the actions they undertake are unjust when they know that every move they make is scrutinized by well-informed public. We start here from the assumption that we deal with objective media, free from sensationalism and focused on objective reporting. Nowadays, the assumption of media objectivity in reality is not a frequent case. The fight (including the illegitimate one) for the position on media market, securing profit and perspective for gaining extra profit, are enticing for many media outlets. This is why ever so often lots of them turn to tabloid-type reporting, "live" on scandals, often manufactured by themselves. Objectivity thus becomes an inevitable "victim"; consequently, the same goes for possible positive impact media might achieve.

Nowadays, unfortunately, they become more and more a means of confrontation with the opponents, a weapon for discrediting, defamation, undermining somebody's reputation and influence, and all of it for the sake of acquiring profit, gaining a position on the market which certain media outlet objectively does not deserve, etc. Somewhat hasty removal from the legal system of some of the offences which might be committed through media[24],

24 Removal of defamation and insult from the Criminal Code of Montenegro ("OG RMNE", no. 070/03 of 25th December 2003, 013/04 of 26th February 2004, 047/06 of 25th July 2006, "OG MNE", no. 040/08 of 27th June 2008, 025/10 of 5th May 2010, 073/10 of 10th December 2010, 032/11 of 1st July 2011, 064/11 of 29th December 2011, 040/13 of 13th August 2013, 056/13 of 6th December 2013, 014/15 of 26th March 2015, 042/15 of 29th July 2015, 058/15 of 9th October 2015, 044/17 of 6th July 2017)

as it has been done in Montenegrin case, adds “oil to the fire”.

However, even in such, restrained conditions, the Ombudsman has to look for manoeuvring space for its actions. Not a single model of oversight institution can ever expect to have perfect conditions for its work, but this does not mean that one should not do everything possible in order for it to be able to operate in the existing conditions, with the purpose of its as objective work as possible. Judging by the available information, the Protector of Human Rights and Freedoms of Montenegro (Ombudsman), cannot boast about an overly intensive cooperation with media. If we exclude occasional press-conferences, visits to Montenegrin cities/towns with standard accompaniment of media teams which report from all important events, including the Ombudsman’s press-conferences, one cannot help noticing that the cooperation with media is far from being on the level it should be on.

Since in Montenegro there is a wide and open space for its greater involvement, as well as unquestionable considerable media support it could immediately count on, the Ombudsman should most urgently intensify its activity towards establishing stronger and higher quality cooperation with the entire media community. Finally, this is in the best interest of the Ombudsman itself and the citizens, whose interests its endeavours to protect.

Besides media, Ombudsman must establish quick and high-quality cooperation with state authorities for the purpose of remedying the violations of citizens’ rights. High-quality cooperation with all state authorities is of decisive importance for the sense of work of the Ombudsman. Communication relation between this institution and the state authorities must be precise, fast and clear. Unjustified delay in the sense of communicating reasons for making certain decision by state authorities, on the basis of which Ombudsman requested explanation, must not be allowed. In accordance with the provisions of the Law on the Protector of Human Rights and Freedoms, the expiry of the statutory deadline should be understood as the interference with the work of the Ombudsman. Besides, directly superior body, the Parliament and public should be notified thereof through media[25].

The essence of the Ombudsman required great degree of realism in what can be expected from it. It should be underlined that in similar institutions in the region, but also in democratically developed countries, certain time had to elapse, or even several years, in order to be able to achieve appropriate results. It is beyond any doubt, however, that time is needed for this institution to become operational and to be accepted in an appropriate way by the citizens, state authorities and the entire society. The institution should,

25 Cerović, Dražen, Prva godina rada crnogorskog ombudsmana (First year of work of Montenegrin Ombudsman), Lex Forum, br. 1/2, Beograd, 2005., p. 13.

therefore, be given maximum support in its work, at which, besides the important role of the media, it is necessary to secure special budget for its activities, which would ensure its independent and impartial position to the greatest possible extent[26].

Democratic society requires different views and news from several sources. Therefore, along with all contradictions and risks of possible abuse, broad range of ideas needs to be secured through media, in order to make it possible for the public opinion to choose what it wishes to read, listen or believe. At the same time, however, the audience has to be educated. In democracy, freedom of expression guarantees to everyone the right to speak and write openly, without the interference of the state[27]. Freedom of expression also constitutes a guarantee of the right to inform the public, to express opinion, to advocate changes and, by ensuring minority rights, for their voices to be heard.

1.2 Importance of security sector institutions

Security sector consists of all institutions and other bodies in charge of the security of the state and its citizens. The oversight over security includes the oversight over the armed and security forces of the state (for example, military, police, *gendarmerie*, presidential guards, intelligence services, coast guard, border guard, customs and immigration services and reserve or local security units), then prisons, parole services and private security services. The oversight is carried out in different forms, like monitoring, investigations and reporting, as well as advocating or orders for changes to be introduced. The purpose of oversight mechanisms is to ensure control and balance that are to prevent abuses of human rights, as well as to ensure that the violators be held accountable, to issue recommendations for the prevention of similar abuses, and to ensure efficient and effective work of the institutions, through the observance of the rule of law.[28]

Security sector institutions are a part of the state administration in the legal systems of the majority of the countries worldwide. Their specific powers are accompanied by particular importance of these institutions in a legal system. Three main features of every sovereign state are the powers over security

26 Cerović, Dražen, Prva godina rada crnogorskog ombudsmana (First Year of Work of Montenegrin Ombudsman), Lex Forum, br. 1/2, Beograd, 2005., p. 14

27 Limit, of course, is endangering somebody's personal or business reputation by presenting unverified and false information. There are numerous examples in the most democratic countries of the world, when media, by presenting false and unverified allegations, endanger someone's personal or business reputation, entering thus deeply into the sphere of judicial responsibility (example of Sweden).

28 Bastick, Megan, Integriranje rodnih pitanja u nadzor institucija ombudsmana i državnih institucija za ljudska prava nad sektorom sigurnosti (Integration of gender issues in the oversight over security sector by the Ombudsman and state human rights institutions), (Geneva: DCAF, OSCE, OSCE/ODIHR, 2014.), p. 5.

sector, finance and international relations. Specificity of security institutions is contained in the fact that this sector has at its disposal the power to use force. Such monopoly over the means of repression is given to these institutions for the reason of successful protection of national security, security of citizens and their properties. Every sovereign state constitutes the greatest power within the framework of its territorial boundaries and it must be capable of suppressing any other power and reduce to the observance of constitutional and statutory rules. The power, but also potential danger that these powers of the security sector pose to the public interest, stems exactly from the above reasons. Powerful state mechanism, especially due to the fact that it has at its disposal the monopoly of physical force and coercion, must be more strictly controlled by oversight institutions. The danger of the abuse of powers is all the greater as this is a kind of institutions, which due to the nature of their activities work in a specific way, with lesser degree of transparency, inherent to the delicate essence of the operations undertaken by the police, military and similar services, intelligence and counterintelligence type services.

The most important responsibility of the managers and commanders in the security sector institutions is to make sure the institutions perform their tasks in an effective way and to prevent abuses. Internal oversight is carried out by means of the chain of command. The oversight is performed by overseeing and proactive monitoring of the work, training and professional development of the personnel, as well as through operational practices and procedures. Internal oversight mechanisms can include work appraisal systems and quality management systems, inspectorates and audit units. Most security sector institutions have their own internal mechanism for receiving, investigating and resolving citizens' complaints or complaints coming from their staff members which should in turn be subject to external supervision by independent civilian bodies. Also, they might have an Inspector General, internal auditor or investigator entrusted with the formal role of internal oversight[29].

1.2.1 Importance of oversight over the work of security institutions

Oversight over security and defence institutions is a very important segment of every society and it is of great importance for democratization process, thus special attention is dedicated to the mechanisms of their oversight. Democratic and civilian control of security sector comprises the development of mechanisms of balance and mutual oversight over government branches, by means of which room is reduced for concentration and abuse of power, which is therefore provided for by the Constitution and protected by numerous international documents.

29 Ibid., p. 6.

Building of integrity and trust in security institutions, besides internal oversight, comprises the existence of effective external oversight carried out by the Parliament, independent state authorities, judiciary, media and civil society. Since for security institutions it is particularly typical that certain aspects of their work are not accessible to public, the responsibility of institutional actors who perform external oversight over them is very big. The improvement of work of oversight institutions is thus of decisive importance for achieving effective external oversight and general objectives of security institutions.

When it comes to the oversight performed by independent institutions, dominant position belongs to the Protector of Human Rights and Freedoms. In principle, this is an institution competent for the protection of human rights and freedoms, authorized to investigate the cases related to the violation of rights and freedoms committed by public authorities, both upon citizens' complaints and upon its own initiative, in which way proactive role of the Protector is achieved. Although security sector oversight is not mentioned specifically in the law, having in mind that the competences of this institution spread across state authorities, the oversight performed by the Ombudsman covers security institutions, too.[30]

Direct communication between the Ombudsman and security sector institutions is not expressly mentioned anywhere in the legislation, except in relation to the oversight over the work of the police. Of course, this does not mean that the Ombudsman should not and cannot react on the grounds of the observed irregularities in the work of other institutions from the domain of security. The military, as a segment of the security sector, in accordance with its powers, does not get in touch with the citizens very often, consequently there is not much chance of it being in the position to endanger their rights and freedoms, except in relatively rare cases. However, greater possibility for the Military to endanger rights and freedoms exists within the Military and such possibilities are prevented and resolved in systems by the introduction of special kind of Ombudsman, i.e. Military Ombudsman, for instance.

The National Security Agency, as a specific part of security sector, because of its special powers, is very often targeted by criticism on the grounds of the alleged endangering of individual rights and freedoms, especially in relation to the violation of privacy, interception of electronic communications, supervision, surveillance and other methods, which are integral part of its work. Secrecy, as a feature of its work, which classifies it in the category of secret police, largely limits the possibility of the Ombudsman to perform the oversight over its work and procedures, but in this respect regulation provides for other forms of oversight, which are not the subject matter of this analysis.

30 CEDEM Report on assessing the needs for the improvement of capacities of the Protector of human rights and freedoms in performing the oversight over security and defence institutions.

Greatest part of the relation between the Ombudsman and security sector is related to the work of the police. When it comes to the contact between the police and the Ombudsman, it usually concerns the overstepping of police powers in case of arrest, use of force in relation to offenders etc.

Also, this relation is pronounced when it comes to the communication between the Ombudsman and the prison police, as well as in the cases of visits that the Ombudsman pays to prison facilities and examines the conditions which prisoners are exposed to. The issue of police torture in prisons, as well as overstepping of police powers on the occasion of arrests very often arises in the relation between the Ombudsman and the police, but also between the Ombudsman and the Council for Civil Control of Police.

In quite a few cases, the Ombudsman – Protector of human rights and freedoms, contributed to the suppression of negative practices in the work of the police and to greater observance of citizens' rights and freedoms. The right to file a complaint to the Protector of human rights and freedoms, as well as the right to communication of the persons deprived of their liberty with the Ombudsman, via a sealed letter, Ombudsman's visits to prison facilities, inspecting the conditions in the premises where inmates serve their terms, are all powerful mechanisms aimed at preventing illegal abuse of powers by police officers.

Both the Ombudsman and the state human rights institutions can be significant actors in holding security sector accountable towards the citizens. By receiving complaints, conducting investigations and preparing reports and issuing recommendations, they can help in the identification, resolving and suppressing problematic behaviour of the security sector personnel, as well as flag institutional gaps. Through monitoring, they can promote transparency in the security sector enabling it to introduce methods for improved performance31.

Security sector institutions should be subject to external oversight of civilian authorities. This should at least include relevant minister (for instance, minister of interior, security, police, defence and/or justice), judiciary (whose judgments ad orders have to be observed by the security sector institutions) and the Parliament (by preparing laws that are to specify the powers and duties of the security sector institutions, and by approving their respective budgets). Auditor General's Office can perform financial oversight. The Ombudsman and state human rights institutions are independent bodies in charge of external oversight.

Civil society oversight over the sector constitutes yet another form of external oversight and important component of responsibility.[32]

31 Bastick, Megan, Integriranje rodnih pitanja u nadzor institucija ombudsmana i državnih institucija za ljudska prava nad sektorom sigurnosti (Integration of gender issues in the oversight over security sector by the Ombudsman and state human rights institutions), (Geneva: DCAF, OSCE, OSCE/ODIHR, 2014.), p. 1.
32 Ibid., str. 6.

2. Analysis of the Law on Internal Affairs from the standpoint of powers for repressive activity

2.1 Work and procedures of the police – normative framework

Police affairs, according to the Law on Internal Affairs[33] of Montenegro are the following ones: protection of citizens' security and of constitutionally established freedoms and rights; protection of property; prevention and detection of crimes and misdemeanour offences; finding the perpetrators of criminal and misdemeanour offences and bringing the same before competent authorities; maintaining public order and peace; securing public rallies with high security risk; protection of persons, structures and territory; inspection activity and traffic safety control; border control; control of the movement and stay of foreign nationals; securing conditions for detaining persons. The Police perform the tasks with the application of their powers.

The performance of police tasks is based on the principles of legality, professionalism, cooperation, proportionality in the use of powers, efficiency, impartiality, non-discrimination and timeliness.

Police tasks are performed with the purpose of ensuring the protection of security, rights and freedoms, implementation of laws, as well as of securing rule of law. It is the duty of every police officer, even when out of duty, to offer assistance self-initiatively to any person facing danger, to prevent or suppress actions which might harm public order and peace or endanger human lives, territorial integrity and property of the state, as well as constitutional order. In performing the police tasks, it is solely the means of coercion prescribed by the law that may be used, the purpose of which being to achieve the goal with least possible harmful consequences.

Police officers act in accordance with the Constitution, ratified international treaties, law and other regulations. Police officers abide by the standards

33 Law on Internal Affairs ("OG MNE", no. 044/12 of 9th August 2012, 036/13 of 26th July 2013, 001/15 of 5th January 2015).

of police proceedings, especially those that stem from the commitments determined by the international documents, which are related to the duty of serving the people, observance of legality and suppression of illegality, exercise of human rights, non-discrimination during the execution of police tasks, restrict and refrain from the use of the means of coercion, prohibition of torture and inhuman and degrading treatments, offering assistance to victims, duty to protect confidential and personal data, duty to decline unlawful orders and confrontation to every form of corruption. The Code of Police Ethics constitutes a collection of principles on ethical conduct of police officers based on international standards.

In line with the law, police officers offer assistance to state authorities, public administration bodies, local self-government bodies and to legal entities in the procedure of the enforcement of their decisions, in case physical resistance is expected or offered during the procedure.

2.2 Police powers and duties

Police powers[34] are: collecting and processing personal and other data; establishing identities of persons and objects; summoning; arresting; temporary restriction of the freedom of movement; issuing warnings and orders; use of third party vehicle or communication means; seizure of objects; stopping and searching persons and objects; public promising of rewards; recording in public sphere; police sighting and/or observation; use of means of coercion; undertaking special police actions. Police powers are applied by police officers.

Police powers may be applied solely if statutory conditions have been met for their application. A police officer is obliged to assess the application of powers and he/she is responsible for such assessment. A police officer applies police powers upon the order of the court or state prosecutor; order issued by a superior officer, in accordance with this law; his/her own initiative, in case the superior officer is not present and the reasons of urgency require action without delay. The person against whom police powers are applied shall be entitled to be informed of the reasons for the application of the same, to point out to the circumstances which he/she deems essential in relation to that, to be informed of the identity of the police officer and to asks for the presence of the person who enjoys his/her trust, when circumstances allow it and if it does not jeopardize the execution of the police task.

34 Law on Internal Affairs ("OG MNE", no. 044/12 of 9th August 2012, 036/13 of 26th July 2013, 001/15 od 5th January 2015), Article 23.

The application of police powers must be proportionate to the need they are applied for. The application of police powers must not cause harmful consequences greater than the ones that would occur should such powers not be applied. Among several police powers, the one that will cause least harmful consequences and loss of time is to be applied. On the occasion of the application of the means of coercion, their application should be gradual, from the least severe to the more severe ones, if at all possible and, at any rate, with minimum necessary force.

The police may collect personal and other data to the extent necessary for the purpose of execution of police tasks and the application of police powers aimed at preventing and suppressing crime and maintaining public order and peace. Police officers may collect the data directly, at their own initiative or on the basis of the order of the state prosecutor or a court, pursuant to the Criminal Procedure Code. As a rule, the data are collected directly from the person they are related to. Exceptionally, the data can be collected using publicly available sources, from other state authorities, state administration bodies, local self-government bodies or other legal entities or natural persons, in case it is not possible to collect personal data from the person they are related to or if such collection would jeopardize the application of police powers. Upon the request of the police and within the specified deadline, the authorities, legal entities and natural persons are obliged to enable insight and/or submit data they keep records of within the framework of their competences and powers, which data are necessary for the police to be able to execute the tasks and powers prescribed by the law.

The insight into the data that state authorities and state administration bodies keep the records of is performed in accordance with the law which regulates e-Government. The insight into the data of other entities by means of electronic access can be performed by the police provided there are technical capacities for that. The police may collect data on the grounds of a court order or the order of the state prosecutor from anyone, including financial institutions and telecommunication operators, without stating reasons and purpose which the data are requested for.

The police keeps records of the collected, processed and used data, and in particular of: perpetrators of criminal offences; perpetrators of misdemeanour offences; persons being sought; persons who have been subject of the procedures of establishing identity; operational data; persons subjected to secret surveillance measures in accordance with the regulation related to criminal procedure; results of DNA analysis; events; persons whose freedom has been restricted on any ground or who have been deprived of their liberty; persons' complaints; coercion means used; persons subjected to dactiloscopy; photographed persons;

seized, lost and found objects; criminal-intelligence data on terrorism and international organized crime; measures introduced in accordance with the law that governs criminal procedure; video and audio recordings.

The police apply certain means of coercion in their work. These are physical force; pepper spray; baton; restraint devices; specialized vehicles; official dogs; horses; blocking means; water cannons; chemical devices; special weapons and explosive devices; firearms. These means will be used when it is necessary for the protection of people's security, to repel attacks and prevention of escape if official task cannot be executed by issuing warnings or orders. A police officer will use the means of coercion solely if a task cannot be executed in another way, proportionate to the impending danger which threatens to some protected property and value and/or the severity of an act which is prevented or suppressed, and in a restrained manner.

A police officer will always use the least powerful means of coercion which guarantees success, proportionate to the reason and in the manner in which the official task is executed without unnecessary harmful consequences. Prior to the use of the means of coercion, a police officer shall warn the person against whom means are to be used, provided this is possible in a given situation and that it will not jeopardize the execution of the official action. When using means of coercion, a police officer is obliged to protect human lives, cause least possible harm and material damage, as well as to make sure an injured or endangered person receives the necessary assistance as soon as possible and for his/her family or other relatives to be notified without undue delay.

2.3. Oversight over the work of the police

The oversight over the work of the police is ensured through Parliamentary, civil and internal oversight. Parliamentary oversight is performed in the manner prescribed by a special law.

Civil oversight over the work of the police is carried out by the Council for Civil Control of the Work of the Police. The Council is a body which evaluates the application of police powers for the protection of human rights and freedoms. The Council may be approached by citizens and police officers alike. The Council consists of five members appointed by the following entities: Bar Association of Montenegro, Medical Chamber of Montenegro, Association of Jurists of Montenegro, University of Montenegro and nongovernmental organizations active in the field of human rights. The Council Chair is elected by the majority vote of its members. The term of office of the Council members lasts for five years. The Speaker of the Parliament institutes the procedure

for the appointment of the Council members by sending the invitation to the authorized entities. The Parliament acknowledges the conclusion of the appointment procedure. The Council adopts its Rules of Procedure. Upon the request of the Council, the police are obliged to provide the necessary information. Parliamentary service carries out the expert tasks of the Council. The Council issues assessments and recommendations which are submitted to the Minister, who is then obliged to inform the Council on the measures being undertaken.[35]

Internal oversight over the work of the police is carried out by special organizational unit of the Ministry. Internal oversight activities focus on the legality of the performance of police affairs, especially in relation to the observance and protection of human rights on the occasion of the performance of police tasks and the application of police powers; implementation of the procedure of counterintelligence protection and other controls of importance for efficient and legal work. Internal oversight over the work of the police is carried out by the police officer authorized to conduct the internal oversight of the police work. In order to be able to prove his/her capacities, the authorized officer is provided with the official badge and official ID card. The Ministry prescribes the content and the form of the official ID card, as well as the appearance of the official badge. While carrying out the tasks of internal oversight, the authorized officer acts: upon his/her own initiative; on the basis of the collected information and other intelligence; on the basis of suggestions, complaints and submission of the natural persons and police officers; on the basis of the suggestion and the conclusion of the competent Parliamentary Committee; on the basis of the recommendations of the Protector of human rights and freedoms of Montenegro; on the basis of the analysis of the assessments and recommendations of the Council.

The Minister shall be notified in a timely manner and in writing on all the cases of police actions being undertaken or omitted which the internal oversight procedure found to be contrary to the law.

Besides the application of police powers prescribed by this and other law, the authorized officer, while carrying out internal oversight, is also authorized to do the following: consult the files, documentation and the collections of data procured, compiled or issued by the police in accordance with their competences; take the statements from police officers, injured parties and citizens; require from the police and police officers to submit other data and information from their competences which are necessary for the performance of internal oversight; inspect the premises used by

35 Art. 111, 112, 113 of the Law on Internal Affairs of Montenegro, "OG MNE", no. 044/12 of 9th August 2012, 036/13 of 26th July 2013, 001/15 of 5th January2015.

the police in their work; require certificates and other technical and other data on technical means used by the police, as well as the evidence of the level of skills of police officers for using technical and other means used in their work. A police officer is obliged to make it possible for the authorized officer to conduct internal oversight, as well as to offer him/her the necessary professional and other assistance. On the occasion of the carrying out of internal oversight, the authorized officer must not interfere with the course of individual actions of the police or in any other way interfere with their work or endanger the confidentiality of police actions. Until the decision of the Minister, a police officer may temporarily refuse, only for not longer than 24 hours, to enable the inspection of the documentation, and/or prevent the inspection of the premises and submission of certain data and information, in case there is a danger that the performance of internal oversight would prevent or substantially hinder the application of police powers prescribed by this or any other law, or cause the endangering of lives and health of the persons who apply them.

In performing the internal oversight of the police, the authorized officer undertakes the necessary actions, establishes factual condition, collects evidence and compiles a written report thereof. The report also contains the proposal for the elimination of the established irregularities, as well as the proposal to institute appropriate procedures for the purpose of establishing responsibility. At least once a year, the authorized officer submits the Report on internal oversight to the Minister and the Government.[36]

36 Art. 114-119 of the Law on Internal Affairs of Montenegro, "OG MNE", no. 044/12 of 9th August 2012, 036/13 of 26th July 2013, 001/15 of 5th January2015.

3. Analysis of the Law on the Military of Montenegro from the standpoint of the protection of servicemen/ servicewomen and integrity

3.1. Legal framework for the protection of servicemen/servicewomen in the Military of Montenegro

After regaining independence, Montenegro established the Military, which is under democratic and civilian oversight, pursuant to the Constitution, with the task to defend independence, sovereignty and state territory, in line with the principles of international law.

Montenegrin commitment to be a part of Euro-Atlantic integrations implied the establishment of professional and modern military, which is not based on conscription of its citizens. New concept implied the shift from the closed and rigid system of total defence to the system of collective defence. Also, the role and position of the members of the Military have changed, asking for the new legal framework which will regulate the defence issues, as well as the organization and functioning of the Military. That was a lengthy process of adjusting, learning from own mistakes, but also from the experience of partner countries. Nowadays, after more than ten years since the renewal of independence, it can be said that Montenegro has established its defence system, with clear position of the Military and clear rights and duties of the servicemen/servicewomen.

Legal framework of Montenegrin defence system consists of the following: Constitution of Montenegro, Law on Defence, Law on the Military of Montenegro[37] and Law on the Deployment of Montenegrin Military Units in International Forces and Participation of the Members of Civilian Protection, Police and the Employed in State Administration Bodies in Peace Missions and Other Activities Abroad, as well as the Law on Parliamentary Oversight in the Area of Security and Defence.

37 Law on the Military of Montenegro, "OG MNE", no. 051/17 of 3rd August 2017

The Constitution of Montenegro prescribes human rights of its citizens which are also refer to the Military servicemen/servicewomen. The Article 24 of the Constitution prescribes that the guaranteed human rights and freedoms may only be restricted by law, to the extent permitted by the Constitution and to the extent necessary so as to fulfil the purpose because of which the restriction is allowed in the open and free democratic society, without the possibility for restricting the right to life, legal remedy and legal aid, dignity and respect of person, fair and public trial and principle of legality, presumption of innocence, defence, damages for unlawful or unjustified deprivation of liberty and unjustified conviction, freedom of thought, conscience and religion and marriage solemnization. Besides the possibilities for these restrictions of human rights, the Constitution prescribes special restrictions for the members of the Military of Montenegro. In fact, the Article 45 of the Constitution prescribes that a professional member of the Military may not be a member of a political organization and that the right to strike may be restricted to the employed with the Military for the purpose of the protection of public interest, pursuant to the law. The Law on Strike provides for the employed with the Military of Montenegro to be able to organize a strike in a way that will not put at risk national security, security of persons and property, general interest of the citizens, as well as the functioning of the authorities, while the Law on the Military of Montenegro provides for the prohibition of wearing military uniform or parts of it when taking part in protests or political rallies and other activities unrelated to the performance of military duties, as well as while taking part in a strike outside military facility.

The Law on the Military of Montenegro[38], amongst other things, prescribes the rights, obligations and status of servicemen/servicewomen. The servicemen/servicewomen are professional military persons (officers and officers under contract, non-commissioned officers and non-commissioned officers under contract, soldiers under contract) and civilian persons. Servicemen/servicewomen in the Montenegrin Military are obliged to perform their duties fully and timely, in a lawful and responsible manner, abiding by the Code of Military Ethics, in a politically neutral manner and impartially, avoiding to subject public interest to private. In exercising rights and obligations, it is forbidden to bring a serviceman/servicewoman into a privileged or inferior position or to deprive him/her of his/her rights on any ground or to restrict his/her rights, under equal conditions; all formation jobs are available to them. Promotion of these persons depends on professional and working capacities, competences, quality of work and achieved results.

The Minister of defence makes a decision on hiring and on termination of service in the Military, as well as on other rights and obligations of

38 Ibid.

the servicemen/servicewomen, issues suggestions to the Defence and Security Council regarding the appointment and dismissal of the Head of the General Staff and of the officers, makes promotions to the initial ranks and promotes, appoints and dismisses non-commissioned officers and reserve non-commissioned officers, assigns acting officers and or non-commissioned officer for formation positions, and appoints and dismisses military diplomatic representatives.

Hiring full-time members of the Military, as well as the reserve members, the selection of cadets and professional soldiers to be educated or to undergo special training is carried out on the basis of public announcement which is implemented by the committee established by the Minister of defence, pursuant to appropriate methodology.

Professional military personnel are entitled to professional development and education, to become members of a professional association or a professional international organization, upon the consent of the Minister, to extra work, upon the written consent of the Minister, and to receive a foreign decoration and/or award.

The Law on the Military of Montenegro prescribes detailed conditions for the promotion of professional military personnel, while the promotion procedure is conducted by the committee pursuant to the methodology and a bylaw.

While performing his/her duties, a professional soldier: wears the military uniform and carries and uses firearms and other weapons pursuant to the Law on the Military of Montenegro; with the consent of the Minister of defence, can speak in public on the topics prescribed by law, and, contrary to a greater number of NATO and EU member states, is entitled to membership in trade unions. Trade union activities in the Military may not refer to: composition, organization and formation of the Military, training, readiness and combat readiness of the Military, its use and filling the vacancies, preparedness and mobilization, equipping with arms and military equipment, use of military units in international forces, commanding and management in the Military and in the system of defence, as well as to the decisions of the Defence and Security Council, except in the part related to the status and rights of the employed from the area of labour and labour relations. There are two trade unions at the level of the Military of Montenegro. The Ministry of Defence and the Defence Trade Union and the Military Trade Union concluded the agreement on cooperation. This agreement regulates certain mutual rights, obligations and responsibilities between the signatories of the agreement in more details. Also, the signatories of the agreement pledged to work on the harmonization and signing the branch collective agreement.

A serviceman/servicewoman is entitled to healthcare, retirement and disability insurance; to salary and reimbursement of expenses, in accordance with the law that regulates the salaries of the employed in the public sector; to allowance during the removal from office and during professional development or education abroad; to annual leave; to paid leave; to length-of-service award for incessant service in the Military; a serviceman/servicewoman is provided with financial means and one-off pecuniary assistance if during peacetime, while performing his/her duty or in relation to the military service, sustains an injury or physical disability due to injury. In case of the death of a serviceman/servicewoman, the members of his/her immediate family are entitled to one-off assistance, payment of funeral and travel expenses for the needs of the burial, then to pecuniary remuneration for the children of the deceased during their regular education, also for his/her spouse to be referred to either general of vocational education, if at the moment of the death of the serviceman/servicewoman he/she has no adequate education or employment.

In line with the Law on the Deployment of Montenegrin Military Units in International Forces and Participation of the Members of Civilian Protection, Police and the Employed in State Administration Bodies in Peace Missions and Other Activities Abroad, the Parliament of Montenegro pass decision on the use of the members of the Military in international forces.

While participating in international forces, peace missions and other activities abroad, a member of the Military, pursuant to the Decree on the salaries and other remunerations of the members of the Military of Montenegro, of the civil protection, police and of the employed in state administration bodies, is entitled to salary and other remunerations which he/she would be entitled to at the formation position in the Military, as well as to the pecuniary remuneration because of the duties performed in difficult and risky security, geographic and climatic conditions, threatening life and health.

The Decision on determining the amount of remuneration for insurance in case of injury, wounding, disease or death during the participation in international forces, peace missions and other activities abroad, prescribes that the member of the Military of Montenegro who, during the participation in international forces, as well as who during the time spent at the approved leave, with no fault of his/her own gets wounded, becomes injured or traumatized which led to bodily impairment, or who suffered bodily impairment due to an illness which occurred or got worse as a direct consequence of the participation in international forces, i.e. peace missions and other activities abroad, becomes entitled to remuneration for bodily impairment. In case this person gets killed or dies from the consequences of the sustained wound, injury or trauma, and/or disease occurred as a direct consequence of the

participation in international forces, i.e. peace missions and other activities abroad, his/her immediate family, i.e. parents, in case there is no immediate family, is entitled to pecuniary remuneration.

Other labour rights of servicemen/servicewomen are exercised in accordance with the regulations related to civil servants and public employees.

3.2. Gender equality

Gender equality in the Military of Montenegro is recognized as one of the essential elements for the improvement of the position of servicewomen. For this reason, the Ministry of Defence, as of its establishment, has been undertaking measures towards increasing the number of women in the Military of Montenegro, protection of their rights, as well as their representation at command duties.

In February 2017, the Government of Montenegro adopted the first Action Plan for the implementation of the UN Security Council Resolution 1325 – Women, Peace and Security in Montenegro (2017-2018), which laid down the activities, i.e. measures the implementation of which is within the realm of the Ministry of Defence and the Military of Montenegro.

Strategic documents and regulations in the area of defence defined the lines of action of the Ministry of Defence in the field of human resources, as well as the policy of gender equality, and specified the following strategic goals in this area: greater share of women in the Military to hold command positions, as well as in the missions, and continuous implementation of national gender equality policies, UNSC 1325 Resolution and other applicable and ratified regulations.

The Ministry of Defence enacted a set of planning documents which makes the military service accessible and possible for women through the implementation of the projects which are related to gender equality, education at foreign military academies, scholarships, recruitment and through positive examples and realized careers of women soldiers.

The members of the Military of Montenegro, in line with the key training document – Training Instruction, receive training on gender equality and the USSC 1325 Resolution, within the framework of the preparations for the participation in peace missions. There are training sessions in the country and abroad on the topic of international humanitarian law, gender based violence, culture, tradition and needs of local population and on trafficking in human beings.

In the NATO Nordic Centre for Gender in Military Operations in Sweden, a female officer from the Military of Montenegro successfully completed the training for strategic level gender advisor, after which she was appointed in the Military of Montenegro as the Strategic Level Gender Advisor. Duties of the Gender Advisor are: development, implementation and integration of high standards from the area of gender perspective in the Military, giving advice, monitoring, carrying out gender analysis and proposing activities and measures for the improvement of gender equality at various levels in the Military.

There are ongoing activities in the Military with regards to the appointment of a "trustworthy person" in all military units, an institutional mechanism which should offer advisory assistance to the employed, upon their requests, because of the problems related to gender based discrimination, sexual violence and sex-based ill-treatment.

Continuous promotion and information on the activities of women as professional soldiers in the Military of Montenegro is made possible by means of the official Internet page of the Ministry of Defence and the news bulletin "Partner" issued jointly by the Ministry and the Military.

Databases on all the employed have been developed both in the Ministry and in the Military. These databases ensure recording, keeping and analysing data related to the planning of internal organization and systematization, efficient deployment and utilization of personnel potential, system of continuous education and professional development, as well as to the monitoring of all staff related procedures. With the purpose of the improvement of these databases, the procedure of the development of a unified information system of the Ministry of Defence and the Military commenced, with the support of MoD budgetary funds and donations.

The Ministry of Defence and the Military, through continuous cooperation at the international level (visits of the NATO teams, participation in the implementation of joint activities with partner countries, participation in the work of the NATO Gender Equality Committee, participation at conferences organized by the OSCE and dedicated to gender perspective), exchange good practice, information and data on the position of women in the Military, which include legislative framework and policies, recruitment and promotion of women, service conditions, retention and representation of women in the Military at command duties and in missions, as well as on education and training of women and career management.

On 31st December 2017 there were 9.69% of women employed in the Military of Montenegro, 13 female officers, 19 female non-commissioned officers, 37 professional women soldiers on contract and 103 women employed as civilians. Eight female cadets graduated from foreign military academies, while eight female cadets attend the education. So far, six servicewomen

participated in Afghanistan peace mission, one of whom, a non-commissioned officer, participated in two rotations.

Also, The Law on the Military of Montenegro[39], as a special way of protecting women's rights prescribes that any behaviour that would undermine dignity of servicemen/servicewomen, sexual abuse or harassment in particular shall constitute a disciplinary offence.

The efforts of the Ministry of Defence invested in regulating and improving the area of gender equality and protection of women's rights in the Military, have been recognized by NATO, thus, as of July 2018 a female officer of the Military of Montenegro will be seconded to NATO to carry out the tasks of a gender equality advisor.

3.3. Integrity in the Military of Montenegro

The Ministry of Defence, within the framework of the project "Strengthening Integrity Framework in Public Administration with the Emphasis on the Area of Security", for a series of years now has been dealing with the issues of building and strengthening the integrity in the Military of Montenegro. This project has been implemented in cooperation with the Kingdom of Norway. The first steps towards building the integrity in the Military of Montenegro were made through holding workshops, staging study visits, attending training and making analyses. In accordance with what has been said so far, and pursuant to the Law on Civil Servants and Public Employees, in 2014 the Ministry of Defence passed the first Integrity Plan of the Ministry of Defence and the Military of Montenegro with the Action Plan for its implementation, both published on the web page of the Ministry of Defence.

The Integrity Plan gives the overview of the current state of affairs, recognizes the issues and specifies the manner of resolving the same, while the Action Plan foresees specific activities, responsible persons and deadlines for the implementation of the same.

With a view to achieving transparency and informing public on its activities, the Ministry of Defence presented the abovementioned Integrity Plan to the NGO sector.

Special lectures were organized for the employed with the Ministry of Defence and the Military so as to present to them the Integrity Plan, their rights and obligations related to the integrity building, as well as to present specific activities to be undertaken in this area. The Ministry of Defence submits annual reports to the Corruption Prevention Agency on the degree of implementation of the planned activities.

39 Law on the Military of Montenegro, "OG MNE", no. 051/17 of 3rd August 2017

The Analysis of the Law on the Military of Montenegro[40] was prepared as one of the most important activities from the Integrity Plan. It was made with the assistance of foreign experts and it contained the recommendations for the amendments of this law. Most attention in the Analysis was dedicated to the issues of recruitment, ethics, promotion, rights, obligations and performance appraisal of servicemen/servicewomen, as well as to restrictions related to employment upon the termination of military service. The new law on the Military embraced the majority of the proposals and recommendations from the said analysis.

New law on the Military of Montenegro prescribes that the MoD adopts the Integrity Plan for the purpose of preventing and eliminating the chances for the occurrence and development of corruption in the Military. This plan is developed on the basis of the assessment of the susceptibility of certain formation positions, i.e. jobs susceptible to the occurrence and development of corruption and other forms of biased behaviour of the servicemen/servicewomen holding certain positions.

In 2018, the Ministry of Defence designated the Integrity Manager and established the Working Group for drafting new Integrity Plan of the Ministry of Defence and the Military of Montenegro, as well as for the monitoring of the implementation of the measures aimed at the strengthening of integrity.

Integrity building in the MoD and the Military of Montenegro is carried out through the cooperation with NATO. NATO "Integrity Building Policy" is a programme intended not only for the candidate countries and their membership to NATO, but also for all NATO member states. The focus of this programme is corruption prevention in defence sector.

NATO "Integrity Building Policy" ensures for all military and civilian individuals in defence to be informed about the consequences of corruption, as well as for the leaders to acquire the necessary awareness and knowledge to create the organisational culture of integrity, transparency and responsibility. Within the framework of this project, the Ministry of Defence participate at NATO training events and conferences and submits regular reports on the activities implemented in this area.

For the purpose of the implementation of NATO "Integrity Building Policy", NATO Council adopted the Integrity Building Education and Training Plan. This plan offers support to the existing national efforts towards the strengthening of individual and institutional capacities, as well as towards further development of interoperability of the forces by means of training and skill development.

40 Law on the Military of Montenegro, "OG MNE", no. 051/17 of 3rd August 2017

As a special form of integrity protection, the Law on the Military of Montenegro[41] specifies the types and values of gifts that a professional soldier may receive, and/or accept on behalf of the Ministry of defence, and/or the Military of Montenegro, the types and values of gifts which they may not receive, the manner of reporting and registering the received and/or accepted gifts.

3.4. Protection of rights of servicemen/servicewomen

The protection of rights of servicemen/servicewomen is exercised in the manner which is prescribed for civil servants and public employees. Contrary to earlier statutory solutions, new Law on the Military of Montenegro prescribes that against the acts of the Minister of Defence by means of which decisions are made on: recruitment, termination of service; promotion, appointment and dismissal of non-commissioned officers; appointment of acting officers and/or non-commissioned officers for formation positions, as well as on other rights and obligations of servicemen/servicewomen appeals may be lodged to the Appeals Board in accordance with the Law on Civil Servants and Public Employees.

A serviceman/servicewoman, for the purpose of the protection of his/her rights, is entitled to speak about all the issues related to work and functioning of the General Staff, Command and military unit he/she serves in. He/she is also entitled to address the Defence Inspector in order to protect his/her rights.

In accordance with the Regulation on detailed manner for the performance of internal oversight in the area of defence, Defence Inspectors perform internal oversight of the execution of military intelligence, counterintelligence and security tasks in the Ministry of Defence and the Military of Montenegro with regards to the measures undertaken on the grounds of all forms of non-ethical and unlawful conduct of the employed with the Ministry and the Military. This kind of oversight is extremely important for the reason that military intelligence and security data may be collected secretly from servicemen/servicewomen using special measures and means, provided this is authorized by the President or Deputy President of the Supreme Court of Montenegro. Also, Defence Inspectors carry out internal oversight over the measures undertaken on the grounds of all forms of non-ethical and unlawful conduct of the employed in the Military for the purpose of establishing factual condition related to the observance of the measures or sanctions pronounced to the servicemen/servicewomen.

41 Law on the Military of Montenegro, "OG MNE", no. 051/17 of 3rd August 2017

The Law on the Military of Montenegro prescribes special protection for servicemen/servicewomen in relation to the execution of unlawful orders. In fact, a serviceman/servicewoman is obliged to execute the orders of the superior officer, except for those the execution of which would constitute a criminal offence. In case a serviceman/serviceman receives an order the execution of which would constitute a criminal offence, he/she is obliged to ask the person who issued such order to repeat the same in writing. A serviceman/servicewoman is obliged to notify, without delay, the person who is superior to the one who issued the order about the receipt of the written order, which also the Minister is notified of.

A serviceman/servicewoman can resolve labour disputes with the Ministry of Defence even before the Agency for peaceful resolution of labour disputes. This form of dispute resolution is very suitable because of the possibility for direct agreement between the parties, lesser costs of the procedure and the speed procedures are dealt with.

Besides the abovementioned manner of protecting their rights, servicemen/servicewomen in the Military of Montenegro are entitled to judicial protection, to address the Protector of Human Rights and Freedoms, as well as to report corruption and abuse at workplace (mobbing), pursuant to the law.

3.5. Recommendations

Since servicemen/servicewomen are a part of specific organization and since they perform extremely responsible duties, it is necessary to work continuously on the improvement and protection of their rights. To this end, we consider it necessary to do the following:

- pass the bylaws, within a statutory deadline, for the implementation of the new Law on the Military of Montenegro, especially those related to the exercise and protection of the status rights of servicemen/servicewomen;
- establish Ethics Committee of the Military of Montenegro;
- adopt new Code of Military Ethics, which will prescribe contemporary and precise standards of ethical behaviour adjusted to the duties performed by the servicemen/servicewomen in the Military of Montenegro;
- supplement regular training of servicemen/servicewomen with modules related to the exercise and protection of rights of the servicemen/servicewomen;
- develop internal procedures on the manner in which the servicemen/servicewomen can protect their rights, pursuant to the law;

- representatives of the Protector of Human Rights and Freedoms are to organize special seminars for the servicemen/servicewomen in relation to competences, powers, method of work and procedures of the Protector of Human Rights and Freedoms.

4. Reports on the condition of human rights in Montenegro

4.1. USA Embassy Report on Human Rights for Montenegro from 2016

In the USA Embassy report on Human Rights for Montenegro from 2016 it reads, amongst other things, that the problems related to human rights involve murders committed by criminals, impunity for war crimes, overcrowded and derelict prisons and detention facilities, inappropriate healthcare in prisons, reluctant responding to prisoners' complaints on the violation of human rights, prolonged detention in pre-trial proceedings.[42]

The same document states that there was no report on the authorities or their representatives committing arbitrary or unlawful murders. There was an increase in the number of murders and attempted murders among organized criminal groups. In the first ten months of 2016 there were eight murders and twelve attempted murders linked to organized crime. In the same period in 2015, there were five of each. The authorities continued processing war crime cases against several individuals, primarily lower and middle ranked police officers and military personnel, for the actions they were allegedly undertaking in the wars in the Balkans in the period from 1991 to 1999. According to the words of, the Supreme State Prosecutor, Mr. Ivica Stanković, the Special State Prosecutor Office conducts the analysis of several war crime cases falling among four earlier cases: Morinj, Bukovica, deportation and "Kaluđerski laz". The Prosecution studied earlier cases in order to determine if there are grounds for the reopening of the procedure and issuing the indictment against additional suspects.[43]

It is stated that the Constitution and the law prohibit torture and other cruel or inhuman treatment or punishment. Internal investigations conducted by various institutions have considerably reduced, but not eliminated inappropriate treatment of the detained by police officers and prison guards. The state

42 Web site: https://me.usembassy.gov/wp-content/uploads/sites/250/2017/03/Izvjestaj-o-ljudskim-pravima-za-Crnu-Goru-za-2016.-godinu-.pdf, accessed on 3rd June 2018
43 Ibid.

launched criminal prosecution against police officers and prison guards charged with the overstepping of their powers. Leading human rights organizations and the Ombudsman's Office heavily criticized the Special Antiterrorist Unit (SAU) and the Prosecution for failing to institute the procedure in several instances of the violation of human rights, above all in the case of the beating up of the President of the Montenegrin Boxing Federation, Mr. Milorad Martinović, during the protests organized by the opposition coalition named "Democratic Front" in October 2015. After the Ombudsman lodged criminal report against the SAU Commander, Mr. Radosav Lješković, Basic Prosecutor from Podgorica issued the indictment against the latter on 1st June for complicity because of the fact that he had covered up the evidence on those who had beaten up Mr. Martinović.

On June 30th, the Minister of Interior suspended Lješković until the termination of the criminal procedure being conducted against him. In March, Danilovgrad Court of General Jurisdiction found nine prisoners from Spuž Prison guilty of physical assault and injuring five prison guards during a fight in January 2015. Another trial against ten prison guards for the beating up of thirteen prisoners during the same fight had in December still been open. Certain NGOs stated that one number of police officer responsible for the breach of the rules of service, including the excessive use of force, had remained in service.

The conditions in prisons and detention premises during pre-trial procedure were generally bad, and the buildings were derelict. Certain prison wards were overcrowded. The NGO "Youth Initiative for Human Rights" (YIHR) stated that certain prison buildings were still extremely overcrowded and that the inmates had problems with access to high-quality healthcare. The law provides for healthcare services for all detained persons, but NGOs stated that the prisoners who were drug addicts, those with mental disorders or those with other special needs were unable to receive appropriate treatment. The YIHR pointed out to the shortage of physicians in the prison system, and the NGO "Juventas" appealed to the Ministry of Justice to provide special premises for inmates with mental disorders or for those suffering from drug addiction. Podgorica prison had still not been fully accessible to the persons with disabilities, although the YIHR in its June report stated that the Prison Management had installed several ramps at prison structures. Media reported on two hunger strikes during the first nine months of 2016. The authorities allowed the visitors and the detained to file complaints to judicial bodies and to the Ombudsman, generally uncensored, and to ask for investigation to be conducted on credible allegations with regards to the conditions that were contrary to the standards. The authorities would often conduct investigations on similar issues, but usually only as a reaction to media campaigns or

recommendations coming from the Ombudsman. The Police was not disclosing information on the condition of prison records. The Government allowed prison visits to independent nongovernmental observers, including the groups for the protection of human rights and to media. Even when the observers would come with short notice announcement, Prison administration would let them talk to the inmates without the presence of prison guards. The improvements of buildings, the number of the employed and the training of the guards continued throughout the year. The overcrowding in Podgorica remand prison has been considerably reduced.

As for the role of the police and the security apparatus, the Constitution and the Law prohibit arbitrary arrests and detention, and the authorities mainly complied with it. Still, the police had to pay damages to numerous individuals during the year on the grounds of unjustified detention.

Police administration, which includes Border Police, is entrusted with law enforcement and with the maintenance of order and peace. The Police was acting within the Ministry of Interior and it was generally effective. The competence of the National Security Agency (NCA) is intelligence and counterintelligence work. Impunity remained to be a problem when it comes to security forces. NGOs claimed corruption, lack of transparency and exposure of prosecutors and the members of the Ministry of Interior to the influence of the political parties in power as the obstacles to greater effectiveness. Also, the viewpoint that personal and political connections affect law enforcement was widely spread. Small salaries sometimes contributed to corruption and non-professionalism of police officers. Human rights observers continued to express their concern about a small number of the members of security forces who had stood trials for the violations of human rights. The Prosecution which is competent for investigation of such violations rarely challenged the finding of the police that force had been used within a reasonable degree. Human rights observers claimed that citizens were reluctant to report ill-treatment by the police because of the fear from retaliation. The groups which monitor the work of the Police claimed that the police continued with the practice of launching counterclaims against the individuals who reported ill-treatment by the police, which discouraged the citizens to lodge reports and encouraged other police officers to cover up their responsibility for the committed violation of rights. In the cases where courts found that the police had overstepped the reasonable use of force, sanctions were usually quite mild. With foreign assistance, the Government organized training for the police and security forces with the purpose of reducing abuse, corruption and promoting the observance of human rights. The NGO “Institut Alternativa” stated that the Department for Internal Oversight of the Police still lacked sufficient statutory powers to fully exercise its competences.

The procedure of deprivation of liberty and treatment in detention

Judicial order is required in order for someone to be deprived of his/her liberty, or "grounded suspicion by the police that a suspect has committed a crime". In general, the Police practiced deprivation of liberty on the grounds of judicial order, based on sufficient evidence. Both the Police and the Prosecution may place suspects in custody of up to 72 hours before they are brought before a judge and press charges. The Law prohibits excessive delays in issuing formal indictment against suspects and in conducting investigation procedure, but there were occasional delays. On the occasion of bringing a person before the court, the judge makes the initial decision on the legality of detention. Bringing before the court was mainly being done within the prescribed deadline.

Courts were increasingly using bail. The judges were also able to release the accused without any bail and to restrict their movement, to introduce the duty for them to report or to retain their passports or other documents so as to prevent their escape. The Law allowed the detained persons' lawyers to be present during the police interrogation and judicial procedure, while the detained persons mostly had quick access to lawyer. Although legal aid was supposed to be accessible to those who needed it, there were financial restrictions with regards to it being provided by a foreign country. Competent authorities must notify without delay the family, civil partner or a competent social work institution about the arrest and they normally acted accordingly. There were no reports about people being held in detention by the authorities without the right to communication with external world. Arbitrary arrest: Police continued summoning both witnesses and suspects to "informative interviews" very often using that practice to suppress hooliganism during football matches or to reduce participation at political rallies of the opposition. This practice did not usually imply the detention of suspects for a period longer than six hours, which is a statutory deadline, nor were these situations usually terminated by lodging criminal reports. Pre-trial detention: Courts often pronounced the measure of detention for the persons charged with criminal offences. The Law foresees that the initial duration of pre-trial detention may be up to 30 days, but it also envisages the possibility for prosecutors to prolong it for additional five months. In combination with court decisions on prolongation, the authorities may keep an accused legally detained up to three years, from the moment of his/her deprivation of liberty to the termination of the trial and pronouncing the of the judgment. Average duration of detention was between 90 and 120 days. The authorities claimed that the persons in pre-trial detention on average made about 30% of the total prison population. The Police often relied on prolonged pre-trial detention as an ancillary

means in criminal investigations. Backlog of criminal cases in the courts also contributed to prolonged detention. Courts continued to gradually reduce the number of backlog cases.

The possibility for a detained person to challenge the legality of detention before the court: An accused is entitled to lodge an appeal to the decision on detention. An accused is also entitled to challenge the legal grounds before the court or to point out to the arbitrary nature of his/her detention and to be released without delay, as well as to receive damages in case it is found that he/she is unlawfully detained. This appeal is lodged to the panel of judges within 48 hours as of the passing of the decision.

The Ombudsman acts with the purpose of preventing torture and other forms of cruel, inhuman or degrading treatment or punishment, including discrimination. The Ombudsman's Office may conduct investigation on the alleged violations of human rights by the state, but it may also undertake unannounced visits to all the institutions like prisons and detention facilities. It may access to all documents, irrespective of the degree of their confidentiality, if these are related to the detained or convicted persons, as well as interview the convicted or detained persons without the presence of officials. The Ombudsman may not undertake actions upon complaints which are related to pending court proceedings, unless the complaint is related to delays, obvious breaches of proceedings or the fact that court decision is not enforced. The Ombudsman may propose new laws, ask from the Constitutional Court to assess if certain law is contrary to the Constitution or to the commitments from the international agreements. Upon requests of a competent body, it may issue assessments as to the issues related to human rights, deal with general issues of importance for the protection and promotion of human rights and freedoms and it may cooperate with other organizations and institutions active in the field of human rights and freedoms. When it finds that there has been a violation of human rights by some state institutions, the Ombudsman may propose corrective measures, including the dismissal of the perpetrator, but it may also review the implementation of the corrective measures undertaken by the institution.

Failure to act upon the request for the undertaking of corrective measures submitted by the Ombudsman within the prescribed deadline is subject to a fine from € 500 to € 2.500 (USD 550 to USD 2.750). In principle, the Government and the courts acted upon the recommendations of the Ombudsman, although often with a bit of delay. The Ombudsman was able to work without the interference by the authorities or political parties and it had good cooperation with the NGO sector. In January, four years after its establishment, the Government abolished the Council for the Protection

from Discrimination, without any explanation or public consultations. The Parliament has a permanent working body, Committee for Human Rights and Freedoms, consisting of 11 members. Many observers, however, continued considering its contribution as insignificant and criticized alleged focusing of the Committee on how international and European institutions assess the condition in the country. Certain NGOs criticized the Ministry for Human and Minority Rights for passivism.[44]

4.2. Report of the EU Delegation to Montenegro for 2017

In the Report of the EU Delegation for 2017 it is stated that Montenegro Achieved certain progress in the area of human rights, especially in the area of antidiscrimination, by adopting the amendments to the Antidiscrimination Law enacted in June 2017.

Nevertheless, the enforcement of the laws related to human rights remains weak and the institutional capacity with regards to this issue needs to be improved. Roma minority is the most disadvantaged and the most discriminated one. Gender based violence and violence against children still constitute a serious concern in the country. In the area of the freedom of expression there has been no progress when it comes to the investigations of "old" cases of violence against journalists.[45]

4.3. Third periodic report of Montenegro to the UN Committee against Torture, May 2018

In the Third Period Report of Montenegro to the UN Committee against Torture[46] it reads that the persons deprived of their liberty are brought before the competent prosecutor without delay, i.e. no later than within 24 hours as of the moment of their apprehension. Police officers prepare the official record on the deprivation of liberty, which is submitted to the state prosecutor. It contains all instructions on remedies that a suspect received from police officers. Also, the official record contains the information as to the name(s) of family members who were notified about the deprivation of liberty. The person deprived of his/her liberty is informed by the competent

44 Web site: https://me.usembassy.gov/wp-content/uploads/sites/250/2017/03/Izvjestaj-o-ljudskim-pravima-za-Crnu-Goru-za-2016.-godinu-.pdf, accessed on 3rd June 2018

45 Web site: https://eeas.europa.eu/delegations/montenegro/45639/country-updates-human-rights-and-democracy-2017_en, accessed on 3rd June 2018

46 THIRD PERIODIC REPORT OF MONTENEGRO TO THE COMMITTEE AGAINST TORTURE, according to the Article 19 of the Convention against torture and other cruel, inhuman or degrading punishments or treatments, May 2018

state authority, in his/her language, or in the language he/she understands, about the reasons for his/her deprivation of liberty, about his/her right not to disclose anything, about his/her right to hire a defence counsel, about the right for his/her defence counsel to be present during his/her questioning, as well as about his/her right to discuss with the defence counsel on the defence strategy, and also about his/her right to request that a person of his/her choice be notified of his/her deprivation of liberty, or indeed a diplomatic/consular representative of the country whose citizen he/she is, or a representative of an appropriate international organization in case he/she is a stateless person or a refugee.

With the purpose of ensuring the legality of the procedure towards the persons deprived of their liberty, detained according to the decision of the state prosecutor, the form was developed on detaining a person deprived of his/her liberty. The form contains the data on all aspects of taking someone into custody, i.e. reception of persons, accommodation in detention facilities, storing of personal effects, providing meals, data on possible medical assistance provided, data on the appeal to detention decision, data on possible observed injuries on the occasion of the handover of persons, a part of the minutes related to the handover of the detained person to the competent authorities for further procedure (Sanctions Enforcement Institute, competent courts, other internal affairs bodies), as well as the data on the right to free legal aid, under the conditions provided for by the Law on Free Legal Aid.

A detained person at the moment of being taken to custody receives the so called "Information Sheet for Detained Person" in his/her own language or in the language he/she can understand (English, Russian, German, Italian, Albanian and Romani) which lists all his/her rights, like the rights to lawyer, doctor, etc.

The Ombudsman in its reports to the National Mechanism for the Prevention of Torture, which were adopted by the Parliament of Montenegro, underlined certain inconsistencies in the practical application of the stated regulations regarding the duty to provide every person deprived of his/her liberty with the Information Sheet and issued appropriate recommendation.

The same document reads that the State Prosecutor is obliged, once a person deprived of his/her liberty has been brought before him/her, to inform this person without delay that he/she may hire a defence counsel and to allow him/her to use the phone or some other means of communication in his/her presence so as to inform the defence counsel directly or via family members. Also, if necessary, the prosecutor is obliged to assist the person deprived of his/her liberty to find a defence counsel. A person deprived of his/her liberty has a deadline of 12 hours from the moment when he/she was instructed on

this right, to ensure the presence of his/her defence counsel. The instruction on these rights is contained in every minute on the interrogation of a suspect, and the minute contains the signature of the suspect, to serve as a proof of him/her being acquainted with these rights.

Also, the right to mandatory defence is exercised by the accused who was taken to custody, during the time spent in detention, a suspect interrogated by the police, and/or employees of the public administration body competent for customs affairs must have a defence counsel and, ultimately, a suspect must have a defence counsel when the State Prosecutor issues the decision on detention.

If an accused, in the cases of mandatory defence, fails to hire a defence counsel, the head of the competent state prosecution office decides on the appointment of ex officio defence counsel until the indictment is issued, after the issuing of the indictment until the finality of the judgment and in case when the longest imprisonment sentence is pronounced in the procedure upon extraordinary legal remedies-court president. When an accused is appointed an ex officio defence counsel after the indictment was issued, the accused will be notified thereof concurrently with the servicing of the indictment. If in case of mandatory defence an accused would be left without his/her defence counsel without hiring another defence counsel, the president of the court before which the procedure is conducted will appoint an ex officio defence counsel. Ex officio defence counsel stays in the procedure whilst conditions persist for mandatory defence and/or until the accused himself/herself choses his/her defence counsel. The accused will have his/her defence counsel appointed following the order on the Bar Association List.

Persons deprived of their liberty and the detained are allowed to receive medical assistance upon their request and upon receiving a call from a police officer. Assistance is provided in a special room, equipped with a medical bed. If required, method of further treatment is proposed. Medical assistance provided is recorded in the detainee's file and confirmed by the medical team, by affixing the doctor's signature and seal of the emergency medical service. Doctor's report is also integral part of the detained person's file. When a detainee is brought before the State Prosecutor, he/she is entitled to medical examination by a medical doctor when he/she or his/her defence counsel, a member of his/her family or a civil partner requests it. The report on the performed medical examination is inserted into the case file (Art. 268 para. 6 of CPC). Medical care for the detained is provided in the medical premises of the pre-trial facility. Immediately upon the reception a detainee undergoes medical examination and his/her medical card is created. Medical examination of a detainee is carried out on the occasion of his/her release

from the detention. If there are no conditions for successful treatment of certain disease, detention doctor will refer the detainee to a public healthcare institution where there are appropriate conditions. Detention doctor notifies about it the court president, who is authorized to perform the oversight over the detained persons, without delay. The detained pregnant women and postpartum mothers are provided special care, pursuant to the regulations that regulate healthcare. Regular medical examinations of the detained are carried out every working day, according to a special timetable which is determined by the prison doctor. In urgent cases, a detained person will be referred to medical examination without delay. Upon the approval of a judge for investigation it will be enabled for him/her to be examined by a medical doctor of his/her choice.

As regards the questions related to the bodies which investigate the allegations of torture, ill-treatment and excessive use of force by the police, prison staff, members of security forces and the military, with an indication as to the way how the independence of such bodies is guaranteed, so that there is no hierarchical or institutional link between the alleged perpetrators and investigators, this report states that the Law on Internal Affairs provides for the oversight of the police to be carried out by a special organizational unit of the Ministry of Interior – Internal Oversight Sector, tasked with the oversight of the legality of the execution of police tasks, especially with regards to the observance and protection of human rights during the execution of police tasks and the application of police powers, implementation of the procedure of counterintelligence protection and other oversight of importance for efficient and lawful work.

The Ombudsman of Montenegro, as a national human rights protection institution established by the Constitution, within its basic mandate, while acting upon complaints as an autonomous and independent body, undertakes the measures for the protection of human rights and freedoms.

However, B Status, which was awarded to the institution in the accreditation procedure with the International Accreditation Body, points out to the problems with legislation which are reflected negatively to autonomy and independence.

Other independent investigation bodies are: Security Committee of the Parliament of Montenegro, through which parliamentary oversight is exercised, and Council for Civic Control of the Work of the Police, through which civic oversight over the work of the police is exercised.

The function of civic oversight over the work of the police is the assessment of the application of police powers, protection of rights and freedoms of the citizens of Montenegro, more effective implementation of the Law on

Internal Affairs and other similar domestic regulations and contribution to further development of the police service in Montenegro and improvement of the citizens' trust in the same. The Council may be approached by both the citizens and the police officers. The Council is composed of five members, each appointed by the following entity: Bar Association of Montenegro, Medical Chamber of Montenegro, Association of Jurists of Montenegro, University of Montenegro and NGOs active in the field of human rights. The Council awards marks and issues recommendations which are submitted to the Minister of Interior, who is obliged to notify the Council on the measures being undertaken.

The State Prosecution service carries out the tasks of prosecuting the perpetrators of criminal offences which are prosecuted ex officio. For the purpose of exercising the function of prosecuting the perpetrators of criminal offences, the State Prosecution service is authorized to determine the necessary measures for detecting criminal offences and their perpetrators, together with other competent bodies. A state prosecutor is obliged to investigate all allegations of torture, ill-treatment and excessive use of force by the police, prison staff, members of security services and the military, since these are criminal offences which are subject to prosecution ex officio.

The Constitution of Montenegro provides for the Prosecution Council to ensure the autonomy of the State Prosecution service, whilst the Law on State Prosecution Service provides for the tasks of the State Prosecution Office not to be executed under anyone's influence.

In the cases of torture, ill-treatment and excessive use of force, there is no hierarchical or institutional link between the perpetrators of these criminal offences and state prosecutors, as the investigators of these offences. Pursuant to the Criminal Procedure Code, all state bodies are obliged to act upon the request of a state prosecutor, at which they are obliged to notify the competent state prosecutor before every undertaken action. In this way independence is ensured of the State Prosecution Service when acting in criminal cases for all criminal offences, including the criminal offences of torture, ill-treatment and excessive use of force.

Functional and organizational independence of the Internal Oversight Sector of the Police is ensured by its positioning within the Ministry of Interior (outside the Police Administration, as a public administration body within the Ministry), which is confirmed through the facts that the Head of the Sector is directly accountable for his/her work and for the work of the Sector to the Minister of Interior, as well as that there is no hierarchical and organizational relationship between the officers of the Internal Police Oversight Sector and

the police officers employed with the Police Administration, whose work they oversee.

In the cases in which it is established, following the conducted investigation, that in the procedures implemented by the police officers there were features of serious violation of the official duty, activities are undertaken with a view to instituting a procedure for establishing disciplinary liability of police officers.

Disciplinary procedure in such instances, upon the proposal of the head of the Police Internal Oversight Sector, is instituted by the disciplinary prosecutor and it is conducted by the Disciplinary Board Council which, upon the terminated procedure, recommends to the Minister to pass the appropriate decision.

Pursuant to what has been said above, it concerns two separate and different procedures (internal police oversight procedure and disciplinary procedure) which, through the provisions of the Law on Internal Affairs, Regulation on the Procedure for Establishing Disciplinary Liability of Police Officers and the Regulation on Internal Organization and Job Classification of the Ministry of Interior, ensured total autonomy and independence in their implementation.

In case, on the occasion of the same case, following the conducted investigation, it is established that there is a doubt that in the procedures implemented by the police officers there where characteristics of the criminal offence of ill-treatment or another offence prosecuted ex officio, the report on the performed internal oversight, together with the case file, is submitted to the competent state prosecution office for further procedure and deliberation on the existence of the elements of a criminal offence in the actions and the procedures of the police officer, and/or institution of the procedure to establish criminal liability of the police officer.

Also, even in those cases where in the implemented internal oversight procedures it was not possible to find the existence of evidence and undisputed facts on the unlawful or excessive use of force by police officers, the report on the performed internal oversight, together with the case file, is submitted to the competent State Prosecution Office for further procedure and final assessment and deliberation on the existence of the elements of criminal offence in the actions and proceedings of the police officer.

Criminal Sanctions Enforcement Institute, immediately upon becoming cognizant of the allegations on the ill-treatment of prisoners, notifies thereof without delay the competent institutions, i.e. Police Administration and competent prosecution office, in order for the actions and measures from their competences to be undertaken and for the allegations on ill-treatment to be established.

State prosecutor is notified by the disciplinary bodies which conduct disciplinary procedures against prison officers in relation to the cases of torture and ill-treatment solely in the situation when a disciplinary body considers that there are grounds for suspicions that a criminal offence was committed which is prosecuted ex officio.

As regards legislative and other measures undertaken so as to make sure that all suspects in *prima facie* cases of torture and ill-treatment are suspended or reassigned during the course of investigation, it was stated that in 2014 there were no registered cases; in 2015 two police officers were suspended until final judgement is passed on the criminal procedure; in 2016 there was one case upon the stated grounds; in 2017, after the final acquitting judgment was passed, the suspension procedure for two police two police officers was terminated; in the reporting period, five police officers were suspended for torture and ill-treatment. For serious breach of official duty, pursuant to the provisions of the Law on Internal Affairs, during disciplinary procedure one disciplinary measure was pronounced of reassignment to a different post which requires a directly lower qualification, for a period of two years. The decision is not enforceable. In the period starting in 2014, 2 disciplinary procedures were instituted and terminated against 3 prison officers for excessive use of force, i.e. in one disciplinary procedure against 2 officers and one procedure against one officer. In fact, on 19th January 2015, on the occasion of an incident which happened between the inmates of Podgorica Penitentiary and two prison officers assigned to the tasks of escorting persons deprived of their liberty, during a disciplinary procedure disciplinary liability of an officer was established with disciplinary fine pronounced, namely: fine to one officer lasting for 3 months in the amount of 20% of the wage, and another fine to one officer lasting for 6 months in the amount of 30% of the wage, with 5 months prison sentence pronounced to the same officer in the criminal procedure and served by the same. In another disciplinary procedure conducted against one officer in August 2017, disciplinary liability was established with disciplinary measure, i.e. fine pronounced lasting for 3 months in the amount of 30% of the wage.

In relation to the measures undertaken in order for the Ombudsman of Montenegro to have financial, technical and human resources provided for the performance of is broad mandate on a completely independent basis, especially with regards to its function of a national preventive mechanism and capacity for resolving appeals, it is stated that the Ombudsman's Office has 33 employees together with the Ombudsman and his deputies. In 2015, 2016 and 2017 the Ombudsman continued implementing the activities on the strengthening of its capacities both through new employment (11 newly employed), and through the enhancement of knowledge and skills of the

existing staff, especially in the area of antidiscrimination and prevention of torture. Adequate premises and working space were provided for the work of the employees. NPM working team was also established, consisting of the experts from certain areas (psychology, psychiatry, forensic medicine, penology etc.). The budget allocates financial means for work in all areas of protection, including prevention of torture and protection from discrimination, although these funds should be increased for promotional and research activities. However, in January 2018, the Law on Foreigners was enacted, which laid down new commitment for the Protector as a NPM, i.e. to monitor every instance of the enforcement of forced removal of foreigners and operations of forced repatriation of Montenegrin citizens which are found to be illegally residing in the EU countries. There are no staff nor financial capacities for this competence of the Ombudsman, therefore there is a need for the strengthening of its capacities in this area. The Ombudsman currently has 4 deputies: General Affairs Deputy, Deputy for the Protection from Torture, Trial Within Reasonable Time and National Preventive Mechanism, Deputy for Children's Issues and Social Welfare and Deputy for the Issues of the Protection from Discrimination, and this number is not limited. In August 2016, the Ombudsman's Office received B-Status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Moreover, it is stated that the Law Amending the Law on the Protector of Human Rights and Freedoms of Montenegro from 2014 considerably improved the autonomy and independence of this institution and the financial position of the employed, equalizing them with the employed of the Constitutional Court Montenegro. New rules were passed on the work of the institution aligned with the amended statutory provisions. When it comes to employment, rights, obligations and responsibilities of the employed with the Ombudsman (Article 51b for its chief advisors and advisors) there is no need to procure the certificate on secured financial means from the Minister in charge of the Budget. The Ombudsman has autonomy when deciding on the use of financial means, according to the dynamics established in line with the Law on Budget.

The Law Amending the Antidiscrimination Law from 2017 additionally improved the Ombudsman's Office in the way that it is now authorized to institute the procedure for the protection from discrimination before a court of law for individual; cases of discrimination or to appear as intervener in such a procedure when it assesses that during a procedure there were elements of discrimination which might lead to the violation of human dignity. Concurrently, the Law shifted the burden of proof in the procedures before the Ombudsman to the defendant. The Law on Budget of Montenegro for

the year 2016, in the section reserved for the Protector of Human Rights and Freedoms of Montenegro, allocated the funds in the total amount of € 685.782,25, which was by € 154.327,71 more than for 2015, whilst total allocated funds for 2017 amounted to € 655.117,87. The increase mostly refers to gross salaries and contributions at the expense of the employer, pursuant to the Law on Wages of the Employed in Public Sector.

The procedure for the appointment and proposing the Protector is regulated in the manner in which the President is obliged to conduct broad consultations with scientific and professional institutions, bodies and NGO representatives active in the field of human rights and freedoms. Also, the procedure for the appointment of the Ombudsman starts no later than 60 days prior to the expiry of the Ombudsman's term of office. Furthermore, the issue of functional immunity includes the Protector, deputy and advisors: "Protector, Deputy Protector, Chief Ombudsman's Advisor and Ombudsman's Advisor may not be held responsible for the opinion and recommendations issued during the performance of his/her duty, and/or for proceedings in accordance with its competences and powers prescribed by this law during the term of office, and/or during the term of employment."

This provision ensures permanent protection of the persons employed with the Ombudsman's Office from any sanction or harmful consequences which they might suffer because of their opinion s or recommendations and/or proceedings in line with their powers prescribed by the Law. The powers of the Protector as a National Preventive Mechanism related to the actions aimed at the protection from torture were broadened in such a way that the visits to the closed-type institutions may be undertaken by the advisors and members of the Working team upon the authorization of the Ombudsman without a need to send prior announcement to the body, institution or organization where visits are to be paid.

Torture prevention tasks are precisely laid down in accordance with the Optional Protocol to the Convention against Torture, as follows:

- visits to bodies, institutions or organizations where there are persons deprived of their liberty or persons whose movement is restricted, for the purpose of increasing their protection from torture and other forms of cruel, inhuman or degrading treatment or punishment;
- issuing recommendations to competent bodies, institutions and organizations with a view to improving the treatment of the persons deprived of their liberty, and/or prevention of torture and other forms of cruel, inhuman or degrading treatment or punishment;

- issuing opinions regarding draft laws and other regulations for the purpose of protection and improvement of human rights and freedoms of the persons deprived of their liberty and persons whose movement is restricted;
- cooperation with the UN Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Punishments or Treatments,

Also, amendments were made which enable, thorough, unlimited access to the Ombudsman, deputies, chief advisor/s, advisor/s and the members of the Working Body to all the premises of the institutions, bodies or organizations, as well as the insight into the nec3essary documentation, without any restriction and irrespective of the indicated degree of confidentiality.

5. Operative guidelines and recommendations for further work and development of security sector institutions in the sense of the protection of rights and freedoms, as well as of the cooperation with the Ombudsman's Office

In recent time, when it comes to the work of the Police in Montenegro, certain important steps have been made, like the adoption of the Integrity Plan of the Ministry of Interior, more intensive work of the internal oversight sector of the police, of the Ethics Committee and of the Disciplinary Board.

In order to finalize these measures and to further improve the work of this segment of the executive branch, it is necessary to prepare an even more comprehensive analysis of all the aspects of corruptive conduct in the Police and develop measures which would tackle all forms and risks associated with damaged integrity of Montenegrin police officers. In the same way, it is necessary to inspect the conditions in which police officers work, the issues related to their employment and promotion, wages, training gaps, risky behaviour, physical and psychological health, work motivation and job satisfaction, unlawful political involvement. It is equally necessary to undertake measures for the improvement of financial management in the Ministry of Interior and Police Administration.

New and comprehensive strategy is to be adopted that would contain thus far neglected issues and provide proposals for specific measures with clearly indicated responsibilities for their implementation.[47] When it comes to the Police, no comprehensive approach has still been introduced which would be dealing with specific issues related to anticorruption mechanisms in their work. Not a single Government document analyses specific Montenegrin context, activities of police officers, conditions they work in or scandals they are involved in.

47 Read more at: http://media.institut-alternativa.org/2016/01/kako-ojacati-integritet-policije-u-crnoj-gori.pdf, accessed on 3rd June 2018

Although the Integrity Plan went farthest in terms of risk analysis, this document essentially represents a self-assessment mechanism for which reason it does not cover significant number of risks and various forms of corruptive behaviour. Simply said, this mechanism cannot be a replacement for a comprehensive strategy for the improvement of integrity in the Police.[48]

Therefore, new strategy for better functioning of the Police should have to include the analysis of the following issues: street corruption and coercion by the police, corruption in administrative procedures, criminal activities of police officers and political corruption in the police, as well as the risks and circumstances leading to unprofessional conduct of the police officers. The Ministry of Interior should also introduce strategic measures so as to encourage citizens to report corruption of the police officers, but also to protect the "whistle-blowers" in the Police.

The Ministry should introduce special annual report on the condition of integrity in the Police which will include qualitative analysis of all the cases instituted by the oversight bodies (Ethics Committee, Disciplinary Board, Parliamentary committees, internal oversight, Council for civic control of the work of the police etc.) since their cases are linked, as well as the analysis of working conditions of the police officers, and it should also offer recommendations for improvement.

In reporting special attention should be paid to the cases of highly ranked police officers with a view to preventing investigations to be "swept under the carpet". Besides, it is necessary to analyse how all forms of police oversight could be improved, as well as to prescribe specific, and not general measures for the improvement of the condition, problems in the area of employment and promotion in the police service, financial management, gaps in education and training. More needs to be done with regards to the protection of the police officers. Judiciary should pay more attention to the dissatisfactory case law when it comes to the attacks on police officers while performing their official duty. Also, more attention should be paid to the promotion of the best police officers for the purpose of gaining public support.[49]

"Institut alternativa", an influential NGO, which monitors the issues of reform and regulation of the security sector, in its study entitled "Evaluation of Police Integrity in Montenegro"[50], proposes ten key recommendations for the strengthening of the Police integrity and its cooperation with the Ombudsman:

48 Ibid.
49 Ibid.
50 Web site: http://media.institut-alternativa.org/2015/12/procjena-integriteta-policije-u-crnoj-gori.pdf, accessed on 3rd June 2018

1. Recognizing the importance of the role of the Protector of Human Rights and Freedoms, until the amendment of the Constitution, gentleman's agreement is to be achieved among political parties for the Protector to be elected in the Parliament with two third majority, following broad consultations of the President of the State with all social actors.

2. Information of citizens is to be improved when it comes to the cases of the Ombudsman related to proceedings conducted by the police officers, in order to encourage the citizens to address the Ombudsman to a greater extent.

3. Prescribe the duty of public authorities to automatically report on the implementation of the conclusions and recommendations of Parliamentary working bodies, within the deadline specified by the working bodies.

4. Appoint the Chair to the Security and Defence Committee from among the opposition parties, in order to enable more active work of the Committee and to encourage opposition to engage in a greater number of initiatives for security sector oversight.

5. The Security and Defence Committee and the Anticorruption Committee should initiate regular sessions at the quarterly level, and/or consultative hearings of all the actors entrusted with police oversight, after which measures would be defined for the improvement of the functioning of the police, with special focus on integrity and with specific responsible entities and implementation deadlines.

6. At least twice a year, the Security Committee should oversee the implementation of secret surveillance measures by the Police Administration, with special focus on the legality and the results achieved with the implementation of these measures.

7. The amendments to the Law on Parliamentary oversight in the area of security and defence should prescribe mandatory consideration of key strategic documents related to police by the Security and Defence Committee.

8. The Anticorruption Committee should continue with the practice that commenced in 2014 with regards to considering the Strategy for the fight against corruption and organized crime, as well as with regards to the implementation of the action plans for the chapters 23 and 24 and the report on the implementation of the Ministry of Interior Integrity Plan.

9. Prescribe the duty of informing public and the Parliament in a proactive way on the cases against police officers, from the beginning of the procedures to their final judgments passed by judicial bodies.

10. Broaden the scope of statutory powers of the Council for Civic Control of the Work of Police modelled on the powers and oversight mechanisms of the Protector of Human Rights and Freedoms and of the Security and Defence Committee.

6. CONCLUSION

The relationship between the Ombudsman and security sector institutions (police and military in particular) has always been a very delicate issue from the point of view of the protection of human rights and freedoms. The autarchy of these specific institutions, which the Ombudsman is to oversee, in many ways limit the scope of work of this, in many ways a *sui generis* oversite institution.

Overall improvement of the legal system of the state, increase in the transparency of work of the institutions from the domain of the executive branch which both the police and military belong to, the development of anticorruption mechanisms perceived in the widest sense – democratization of the system, are all the issues of particular priority, when speaking about the most intensive and most successful oversight over the work of security sector.

The institution of the Protector of Human Rights and Freedoms – Ombudsman, has at its disposal the powers of special kind thanks to which it can move through the system in a "non-linear" way. This possibility, by many things, atypical in relation to the remainder of the legal system, contains its power, but also its restrictions. The Ombudsman was conceived and legally-structurally positioned as a supplementary element in relation to the shortcomings of typical legal institutions.

On the other side, its inability to annul administrative and judicial decisions, i.e. deprivation of the possibility for typical administrative or judicial redress of injustice committed in relation to citizens, whose rights and freedoms were violated by individual acts or failure to act of public authorities, constitutes a serious limitation. As it has already been mentioned, this limitation comes into play especially when it comes to the institutions which are "more closed" than the others, like the Police and the Military.

In that sense, the institution of the Protector of Human Rights and Freedoms needs to be understood in the context of integral system only as an institution which represents a characteristic "catalyst" of the processes

in terms of correction of injustices made by public authorities, by applying its special powers.

Setting the standards of the "ideal system of police integrity"[51], besides regulating the foundations of law enforcement and military organization, would vastly assist and facilitate the application of powers by the Ombudsman.

In that sense, good human resource management is necessary (regulated merits based employment system, promotion, training, salaries etc.), professional and good management of the built integrity, regular rotations and strictly regulated gift policy, clear procedures, control of the use of official records and official vehicles, codes of ethics, openness towards public, awareness raising actions and cooperation with citizens, integrity trainings, integrity tests.

Repressive, penal and oversight measures must include detection and processing of corruption (especially among senior police officers), building the system which will enable all this (legal powers for investigation bodies, establishment of special units, technical equipment and trainings), good coordination of all specialized oversight bodies (special investigation techniques and tactics); building efficient internal oversight system, established external police work oversight (for example, parliamentary and civic), effective mechanism for submitting citizens' complaint to the work of the police, protection of whistle-blowers, protection of witnesses and expert investigators.

One should particularly have in mind the fact that, on the basis of the studies on corruption in the Police, most frequent circumstances have been recognized that produce increased "vulnerability to corruption" and result in unlawful conduct of police officers: individual vulnerability (drugs, debts, problematic social connections); workplace dissatisfaction and poor results of the work; insufficient or inadequate oversight of the superiors; previous misdemeanour and/or criminal experience; life and/or work in the same area with criminal groups; social and/or family ties with criminal groups outside workplace.[52]

There is a need for constant institutional empowering of the capacities which undertake the oversight over the use of powers by security system institutions. Taking into consideration and analysing all advantages and shortcomings of the Ombudsman's Office, we can conclude with great deal of certainty that it represents an integral part of legal systems of the majority of democratic countries.

51 Stated according to the web site: http://media.institut-alternativa.org/2016/01/kako-ojacati-integritet-policije-u-crnoj-gori.pdf, accessed on 3rd June 2018
52 Ibid.

Its legal activity combined with media support gives high quality results in the countries with developed legal system, objective and impartial media community. In such countries, the Ombudsman both formally and factually, has precisely defined position and enjoys great respect of all the institutions of the legal system and of the citizens, who, ultimately, express their trust.

It is beyond any doubt that the countries in the process of transition of their legal, political, economic, media and every other system, which have the Ombudsman in their constitutional and legal systems, have to work a lot on the empowering of its position. In that sense, the processes must flow in a synchronized way. Legal system reform, precise legal regulation of security sector oversight, legal regulation of media space, establishment of ethics in all institutions, education of public opinion, are only some of the integral segments, which contribute either directly or indirectly to stricter observance of human rights and freedoms, as well as to the prevention of unlawful actions and redress of those citizens' rights which are violated or endangered by the acts of public authorities.

The Ombudsman's Office can have one of the main roles in that, under the assumption that its strong position is secured in the constitutional-legal system of the country, not only formally, but also factually. Parallel with that, the Ombudsman must strengthen its relations with the media, practically by establishing a specific "coalition", similar to the one in Nordic countries or in some other effective manner.

Its powers, in the sense of the oversight of almost all public institutions are by no means small. It has at its disposal numerous oversight instruments, which no other institution has in the legal system. Moreover, it can and must use these to the overall wellbeing of citizens, whose service it is in, irrespective of the resistance, which it encounters in its work and in the application of its powers.

Finally, if the systems were organized in such a way that everything functions without any resistance, oversight institutions, including the Ombudsman, there would be no purpose for their existence. The sense of the institution of the Protector of Human Rights and Freedoms, is exactly in the fact that it fights all types of resistance and that in this fight it uses all its powers, which might contribute for the committed injustices to be redressed and for the appearance of the new ones to be prevented.

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