

# Helsinki bulletin



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## BRUTAL ASSAULTS AT INDEPENDENT AGENCIES



Ombudsman Saša Janković

Serbia's independent agencies (Citizens' Ombudsman, Commissioner for Information of Public Interest and Commissioner for Equality)<sup>1</sup> have already earned the reputation of human rights defenders citizens and civil society organizations trust in. More and more citizens

are turning to these agencies for protection of their rights. However, the regime's pressure on them grows in parallel. This was more than evident in the second half of 2014 and practically rocketed in 2015.

In his 2014 report the Citizen's Ombudsman alerts of growing violation of human rights; the Commissioner for Information of Public Interest reports the growing number of cases, including complex ones, his Agency has to cope

<sup>1</sup> The Council of National Auditing Commission and the Anti-corruption Agency are also independent agencies, this paper deals not with as it focuses on independent institutions concerned with human rights and fundamental freedoms, and prevention of discrimination.

with; the Commissioner for Equality's report quotes that the number of recommendations grew from 24 in 2013 to 198 in 2014.

Executive and judicial branches ignore independent agencies' systemic recommendations for the protection of fundamental human rights and freedoms. At the same time all individuals and organizations advocating thorough reforms of security services are exposed to brutal anti-campaigns.

Independent agencies have been established to control the executive branch. The same task is conferred to the parliament, independent judiciary, independent control agencies, the media, non-governmental organizations, citizens and the opposition. Unfortunately, these mechanisms are underdeveloped, institutions understaffed with professionals and generally weak. Uncertain about its standing and incompetent as a rule, every regime, especially the present one has been responding brutally to every criticism and reminding of laws. The parliament and the judiciary are the weakest links in the chain. The situation of the media has never been as bad as it is now. Non-governmental organizations are being targeted whenever criticizing anything. The Serb Progressive Party /SNS/, in power for the past three years, has been ascribing all the failures to its predecessors.

The ongoing campaign against the Citizens' Ombudsman, staged by the media, the parliament and the government, indicates the regime's plan to prevent independent agencies from raising some crucial questions, especially those about the control over the security services. The regime pulls down the blind on any attempt at placing security services under civilian control – the Citizens' Ombudsman and the Commission for Information of Public Interest have been insisting on – by accusing them of “undermining the reputation of the army and national security.”

Even in the parliament independent agencies are subject to insults and defamation. Speaker Maja Gojković did not even intervene when MPs from the ruling party were directly insulting Ombudsman Saša Janković and Commissioner Nevena Petrušić at the session she presided.

The former regime neither had a liking for independent agencies; however, persons in charge of these institutions have never been so openly insulted during its rule as they are now. The problem is in non-transparent institutions that consequently deny to provide information of public interest and to implement recommendations for advancement of human rights.

The present situation testifies of the incumbent regime's attitude toward the concept of human rights, the attainment modern states and societies rest on. Accountability cannot be separated from the rule of law: and the present regime opposes this axiom in a most brutal way.

## CITIZENS' OMBUDSMAN

The parliament elected Saša Janković the Citizens' Ombudsman twice, in 2017 and in 2012. Though unsupportive of his nomination the civil society and human rights defenders turned out to respect him for his professionalism in almost no time. Before appointed to the office Saša Janković was subject to strict scrutiny as any other official dealing with classified documents.

However, for some time now the Citizen's Ombudsman has been targeted by SNS officials and some media outlets calling him “a political aspirant,” “traitor,” “an evil-minded person” and the one that undermines national interests and sides with the opposition.<sup>2</sup>

2 <http://www.blic.rs/Vesti/Politika/552388/EVROPSKA-KOMISIJA-ZESTOKO-Sramota-je-sta-rade-zastitniku-gradjana>.

SNS MP Vladimir Đukanović called the Ombudsman's report was a political pamphlet at the session of the parliamentary Committee for the Judiciary (April 2015). The Committee ignored all the information provided by the report, thus showing total disrespect for the institutions of the Citizens' Ombudsman.

The Citizens' Ombudsman warns that a functional system for remedies has not been established so that his office could react in exceptional cases only. Namely, the percentage of the accepted recommendations he gave is rather high – 90. On the other hand, in 50 percent of cases citizens are turning to the Ombudsman in the first instance rather than as in the last. This means that the authorities are correcting their mistakes only once the Ombudsman intervenes.

In his 2013 report the Ombudsman called for regulation of the functioning of inspections as efficient mechanisms of the protection of citizens' rights. Nothing was done in this regard. The draft Law on Inspection has been submitted to the parliament for consideration but not placed at the parliamentary agenda yet.

Over the past couple of years the Ombudsman has submitted to the parliament several drafts to ensure bare existence of most vulnerable groups.<sup>3</sup> For instance, in May 2013 he put forth the draft labor law and the draft law on assistance to families with many children.

In 2010, in cooperation with the European Ombudsman he submitted to the parliament the Code of Good Governance. The parliament has never placed it on its agenda. His report for the year 2014 quotes that the protection of citizens' right to good governance is among his main

3 For more details see the reports by the Citizens' Ombudsman and the Commissioner for Information of Public Interest published in March 2015.

duties, which was the reason why he initiated adoption of the Code in the first place. The biggest majority of citizens' complaints to him (44 percent) related to the administration dragging out their cases, sitting on its hands, misinterpreting laws and ignoring "good governance."

## PRESSURES ON THE CITIZENS' OMBUDSMAN

The most powerful party's /SNS/ continued allegations against Ombudsman Saša Janković for undermining national security – voiced in the parliament of publicized in the media – clearly indicate that the present regime would not tolerate any criticism and has not the protection of human rights on its priority list. And the campaign against Saša Janković should be viewed in this context – in the context of the dangerous trend of undermining fundamental human rights, the freedom of expression and media freedoms in the first place. What growingly marks Serbia's political arena is violence against political opponents.

On January 21, 2015 Saša Janković released that he felt unsafe because of all the threats addressed to him; he had informed President of Serbia Tomislav Nikolić about all this before the media began spinning his case, he explained.<sup>4</sup>

No high-ranking official or MP from the parliamentary majority has stood for the institution of the Citizens' Ombudsman or Saša Janković as a person so far. This indicates that assaults at him have been coordinated involving the media, governmental officials and officials of the SNS.

4 *Blic online*, January 21, 2015, <http://www.blic.rs/Vesti/Drustvo/528162/Jankovic-Prete-mi-ne-osecam-se-bezbedno>.

## CONTEXT OF THE CAMPAIGN

The campaign against the Citizens' Ombudsman began when he dare to touch security services wishing to investigate some actual cases. In 2014 several officials of the Military-Security Agency /VBA/, either retired or still in active service, turned to the Ombudsman complaining of the Agency's misconduct to the detriment of political, trade-union and other rights of citizens and its employees.<sup>5</sup>

For 2014 the Ombudsman planned to conduct the first comprehensive investigation ever into the legality of VBA work, including unannounced interviews with its officials.

Practically at the same time he spoke about his plans charges were pressed against President of the Humanitarian Law Fund Nataša Kandić whose organization had raised anew the issue of Head of General Staff Ljubiša Diković's responsibility for war crimes committed in Kosovo.

## THE ANDREJ VUČIĆ CASE

What triggered off the orchestrated campaign against the Ombudsman (in January 2015) was his motion dealing with the incident of September 2015 during the Pride Parade.

That was when gendarmes used force against civilians (brothers of the Premier and the Mayor of Belgrade, Andrej Vučić and Predrag Mali). What really happened has not been revealed up to now (April 2015). The incident also involved officers of the Serbian Army – more precisely, military policemen of the special unit "Cobra."

When the Ombudsman began investigating the case VBA released that it had taken some measures in that direction but refused to provide

further information to the Ombudsman and cooperate with him.<sup>6</sup> The response of the Ministry of Defense was the same. That was for the first time in seven years – since the office of the Ombudsman was established – that the Ombudsman was denied any information whatsoever.<sup>7</sup>

Janković pressed criminal charges against two military policemen guarding Andrej Vučić at the time of the Pride Parade for having attacked gendarmes on duty. He also joined in the criminal charge the police – as ordered by the Prosecution – pressed against seven gendarmes for torture and mistreatment. Janković said that the criminal charge against two military policemen was based solely on the documentation of the Ministry of the Police, according to which one of the two, who had been armed, hit a gendarme on his head. The documentation also showed that VBA had confiscated illegally all evidence.<sup>8</sup>

Premier Vučić himself cut short the investigation into the incident involving his brother. He actually disqualified the institution of the Ombudsman saying that Janković had "deprived himself of the freedom of expression" in the case of his brother, that he would not comment on the criminal charges against the Ombudsman and adding he believed in the efficiency of authorized institutions, the Prosecution and the judiciary (January 15, 2015).<sup>9</sup>

6 "Submission of documentation, giving statements and full cooperation are provided under the law obliging VBA as well...The international principle of democratic civilian control over security services has been breached and the laws on the Ombudsman, the Army, security services, VBA and protection of whistleblowers violated." The Ombudsman's report, March 2015.

7 Ibid.

8 *Blic online*, January 21, 2015, <http://www.blic.rs/Vesti/Drustvo/528162/>

*Jankovic-Prete-mi-ne-osecam-se-bezbedno.*

9 <http://www.blic.rs/Vesti/Politika/526852/Vucic-sebi-oduzeo-slobodu-izrazavanja-o-slucaju-prebijanja-nje->

5 The Ombudsman's report, March 2015.

The parliamentary Committee for the Control of Security Services was convened to discuss VBA's alleged misconduct the Ombudsman had alerted of (January 28, 2015). The session of the Committee turned into investigation of the Ombudsman himself with MPs of the ruling coalition bombarding him with accusations. They even raised the question of his high monthly salary intent to provoke citizens' grudge. They accused him of "undermining the reputation of VBA and inciting public paranoia."

The Committee concluded that VBA had broken not a single law and that the Ombudsman had failed to submit convincing evidence that trade unionists, certain party leaders, judges and prosecutors had been bugged. All this belittled the significance of the control over security services and cut short the investigation into serious indications of bugging. Momir Stojanović, the chairman of the Committee, practically channeled the session toward such conclusions saying that it was all about different interpretations of law and that "every public statement unnecessarily disturbs citizens and undermines the reputation of institutions."<sup>10</sup>

SNS ministers and officials continued spreading allegations against Janković. President of the party's Novi Sad branch Miloš Vučević suggested a rally to demonstrate "whether citizens of Serbia support Aleksandar Vučić's policy and the policy of the modern, decent, sovereign Serbia or want to have their lives in the hands of people like Pajtić, Janković and Kandić."<sup>11</sup>

Though the Premier pulled the plug on the rallies his party had been calling for, he did nothing to protect the integrity of the independent institution of the Ombudsman.

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govog-brata.

10 *Tanjug, RTV*, January 29, 2015, <http://www.nuns.rs/info/news/23224/jankovic-stavili-mi-krst-izdajnika-na-celo.html>.

11 *Blic online*, January 29, 2015, <http://www.blic.rs/Vesti/Politika/530498/Naprednjaci-traze-od-Vucica-hitnu-sednicu-zbog-napada-na-suverenost-Srbije>.

It is hard not to feel uneasy by the fact that the parliament – founder of independent agencies – fully participates in assaults against them. At the session in June 2014 a SNS MP refused to give the floor to Commissioner for Information of Public Importance Rodoljub Šabić. Representatives of the independent agencies walked out of the session in protest. The same evening the speaker extended her apologies to them, and the session was resumed next day.<sup>12</sup> Nevertheless, Speaker Maja Gojković did nothing to prevent MP Marjan Rističević from hurling insults at Ombudsman Janković and Commissioner Nevena Petrušić.

## THE OMBUDSMAN'S REPORT

The campaign continued through April 2015 after the Ombudsman's report for the year 2014 submitted to the parliamentary Committee for the Judiciary (April 14, 2015).

The debate in the Committee boiled down to spiteful defamation of the Ombudsman. MPs were calling him a drunkard, telling that he pees in entryways, and, above all undermining the national security.<sup>13</sup> Media campaign culminated when Saša Janković presented his report, which coincided with the announced opening of the trial of gendarmes for the incident with the Premier's brother.

On April 20, 2015 *Informer*, one of leading pro-governmental tabloids, run a story about student Predrag Gojković, who committed suicide in 1993 with a gun in the ownership of Saša Janković who had no license for carrying it.<sup>14</sup> The police, claimed *Informer*, closed the case as "a possible suicide" but never thoroughly investigated it.

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12 "Human Rights in Serbia in 2014," Belgrade Center for Human Rights .

13 *Blic online*, January 21, 2015, <http://www.blic.rs/Vesti/Drustvo/528162/>

*Jankovic-Prete-mi-ne-osecam-se-bezbedno.*

14 "Citizens' Ombudsman's Dark Secret," *Informer*, April 20, 2015.

TV Pink, the clearly pro-governmental station with national coverage and high ratings, is in the forefront of the media campaign against the Ombudsman along with its owner Željko Mitrović.<sup>15</sup>

Janković released that the said gun was properly registered in his name and that all relevant data were available at the Ministry of the Interior. Therefore, he added, Minister Nebojša Stefanović “should or could have known” that the claim about illegal gun was false and it was his duty to go public with it. Instead, Minister Stefanović said he would consult the Prosecution whether or not the suicide case was statute barred thus suggesting “that there was a case and the gun was illegal,” Janković commented on Twitter.

On April 21, 2015 the Police Minister said there would be no further investigation since the case was absolutely statute barred. And then – by coincidence or on purpose – he stammered while reading aloud the police file on the incident dated in 1993.<sup>16</sup>

## REACTIONS BY THE INTERNATIONAL COMMUNITY

Aware of assaults and pressure on the Ombudsman, EU officials are closely observing the developments. According to sources from EU, assaults at the Ombudsman will adversely affect dissection of chapters 23 and 24, the toughest two for Serbia. No doubt that these assaults

15 Mitrović accused Janković of exerting pressure on institutions to ban the show “DNA” aired by TV Pink. The said show has demonstrated a high level of tolerance for family violence culminating in a former participant murdering his wife in real life. Only a couple of days before the murder the couple appeared as guests in the show. The wife was all in bruises. No authority, editor or journalist for the TV station reacted at this evident case of family violence.

16 *Radio Free Europe*, April 21, 2015, <http://www.slobodnaevropa.org/content/brisel-informisan-o-napadimana-sasu-jankovica/26969732.html>.

will be also reflected in EC’s next progress report on Serbia.<sup>17</sup>

During his visit to Belgrade US Deputy Assistant Secretary of State Thomas Melia stressed that Serbia should be commended for having independent control agencies such as the Citizens’ Ombudsman. He made a point of Ombudsman Saša Janković who, as he put it, has built a reputation of a qualified professional with a good team of associates. The fact that the parliament reelected him only testifies of his reputation.<sup>18</sup>

The OSCE Mission to Serbia released it was troubled with the campaign against the institution of the Citizens’ Ombudsman. Deputy Head of the Mission Michael Ujehara reminded Serbian authorities of the fact that independent institutions, transparent governance and responsible police services were fundamental for functioning of every democracy.<sup>19</sup>

Serbia’s Foreign Ministry issued a release saying that in its capacity as the chair of the OSCE it was not consulted about the Mission’s release.<sup>20</sup> Foreign Minister Ivica Dačić said, “I am the international community. I am the chairman of the OSCE. The OSCE Mission to Serbia reports to me and to the OSCE Standing Council. I do not report to it. Therefore, I’ve convened a meeting with them for next week to have all those issues on the table.”<sup>21</sup>

17 *Radio Free Europe*, April 21, 2015, <http://www.slobodnaevropa.org/content/brisel-informisan-o-napadimana-sasu-jankovica/26969732.html>.

18 *N1*, February 4, 2015, <http://rs.n1info.com/a32621/Vesti/Melia-Srbija-srecna-sto-ima-BIRN-FHP-i-Sasu-Jankovica.html>.

19 *Danas*, April 22, 2015.

20 *Ibid*.

21 [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=04&dd=22&nav\\_category=11&nav\\_id=983642](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=04&dd=22&nav_category=11&nav_id=983642).

## CONCLUSION

The campaign against the Ombudsman is meant to exert pressure on him and his institution. The campaign mirrors a hookup between the ruling SNS and pro-governmental media. Consequences of these assaults can be very dangerous.

Governmental officials including the Premier did nothing to protect the Ombudsman. Their attempt at maintaining “neutrality” about the campaign – they refuse to initiate the procedure for his dismissal on the one hand, and say nothing about allegations against him on the other – only testify of the seriousness of the problem.

Statements made by SNS high officials (such as Đukanović or Martinović) about the Ombudsman’s political ambitions and his report being a political pamphlet are ungrounded. The report is well-documented and raises the questions the ruling party and state institutions would not have in the open. SNS officials have politicized the report and misused institutions, the parliament in the first place, for that purpose.

The allegations about the Ombudsman undermining national sovereignty are also ungrounded. The fact remains that he his resume has been thoroughly checked prior to his appointment. Allegations that disqualify the Ombudsman might easily provoke physical assaults at him.

The campaign against the Ombudsman is after undermining citizens’ trust in the institution he stands for. As it seems, the regime wants to provoke his resignation. That would put across a dangerous message about the institution’s future.

The fact that in the period of 12 hours only 1,500 persons petitioned for the Ombudsman testifies of his reputation and respect people have for him.

The campaign indicates that the government plans not to pursue the reform of security services. Their thorough reform and establishment of civilian control over them implies probing in the war dossier of military and police topnotch that oppose any change.

The campaign puts across a message to human rights defenders, civil society organizations and individuals: it is not allowed to raise the question of civilian control over security services and their reform. This is meant to eliminate any public debate on the issue.

Executive and legislative branches have the duty to support independent institutions by recognizing and implementing their recommendations. Draft laws and bylaws put forward by independent agencies have been on the parliament’s waiting list for long. The draft known as “14 systemic measures” submitted by the Citizens’ Ombudsman and the Commissioner for Information of Public Importance (2012), dealing with promotion of the citizens’ rights in the functioning of the security sector, has not been approved in full or implemented. This set of measures includes protection of citizens against tapping.

Selective acceptance of recommendations in the cases of administration’s violation of human rights veils fundamental problems given that systemic recommendations are being swept under the carpet while passing of new laws and regulations is protracted.