



NATIONAL HUMAN RIGHTS INSTITUTIONS IN MACEDONIA: NORMATIVE MODELS AND CHALLENGES



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AND CHALLENGES**

IMPRESSUM

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ABBREVIATIONS

Anti-discrimination Law	Law on Prevention and Protection against Discrimination
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CMCoE	Committee of Ministers of the Council of Europe
CoE	Council of Europe
CPAD	Commission for Protection Against Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
ECRI	European Commission against Racism and Intolerance
EU	European Union
HRC	Human Rights Council of the United Nations
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
MLSP	Ministry of Labour and Social Policy of the Republic of Macedonia
NHRIs	National Human Rights Institutions
NPM	National Preventive Mechanism for Prevention of Torture
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SCA	The Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
The Parliament	The Assembly of the Republic of Macedonia
The Constitution	Constitution of the Republic of Macedonia, 1991 (and its thirty two amendments)
The Ombudsperson	Ombudsperson of the Republic of Macedonia
UN	United Nations
UPR	Universal Periodic Review

I. INTRODUCTION



The idea of National Human Rights Institutions (NHRIs) goes hand in hand with the idea of building or strengthening of democratic institutions.¹ Although discussed in the United Nations (UN) already in the first years of its existence, the momentum was reached only in the 1990s. Thus, organisations on universal and European regional level have been working on promoting NHRIs ever since. Although there is no single legally binding document on either level, certain standards have emerged and have been used by states as guidance in the building of their own NHRI.

In Macedonia, following the independence, the idea of a NHRI was promoted by civil society organisations (CSOs).² The discussions on what model would best fit the needs of the country were terminated with the establishment of the Ombudsperson of the Republic of Macedonia (the Ombudsperson) in 1997. These were partially revived in the consultation process on the first comprehensive anti-discrimination law adopted in 2010 – Law on Prevention and Protection against Discrimination (Anti-discrimination Law), which established the Commission for Protection against Discrimination (CPAD). However, the two institutions were established not as a result of the CSOs initiatives, but under the pressure of the international community.³

No body from Macedonia has been accredited with an ‘A’ status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), meaning there is no NHRI fully in compliance with the international standards. The International Human Rights monitoring bodies have been observing the later for several years now. In 2008, the Committee against Torture called upon the country to strengthen the Ombudsperson institution in order to have the capacity to

1 Reif, Linda C. Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection. 13 Harvard Human Rights Journal 1, 2000. p.1

2 Najcevska, Mirjana. “NHRI in Republic of Macedonia: Current Condition, Challenges and Possible Development” Journal for European Issues ‘Evrodijalog’, No.16. [25-40]. 29

3 *Ibid.*

investigate the acts committed by police officers.⁴ That same year, the Human Rights Committee pointed out that while the Ombudsperson should be strengthened, the country should introduce a NHRI with a wider mandate.⁵ Similar concerns were shared by the Special Representative of the Secretary-General on the situation of human rights defenders in the country.⁶ Furthermore, the conclusions and recommendations in the 2009 Universal Periodic Review on Macedonia note that the country should consider taking appropriate measures to ensure that the Ombudsperson is in conformity with the Paris Principles or envisaging the establishment of a NHRI in conformity with the Principles and accredited by the ICC.⁷ The Committee on the Rights of the Child's findings from 2010 are along the similar lines.⁸ Following a visit to Macedonia, the former Commissioner for Human Rights of the Council of Europe Thomas Hammarberg, recommended that the country should generally review the role and mandate of the Ombudsperson, and particularly in the area of non-discrimination and police misconduct, and should take necessary action to guarantee that the institution has sufficient resources to fulfil its mission adequately.⁹ In 2010, the European Commission against Racism and Intolerance (ECRI) signalled that the Ombudsperson did not fulfil the criteria of an independent specialised body to combat racism and discrimination at a national

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- 4 United Nations Committee Against Torture. Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations - The former Yugoslav Republic of Macedonia, 21 May 2008. *United Nations Website*. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/421/49/PDF/G0842149.pdf?OpenElement>>. Last accessed: 20 November 2012. para.7
 - 5 United Nations Human Rights Committee. Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations - The former Yugoslav Republic of Macedonia, 17 April 2008. *United Nations Website*. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/411/69/PDF/G0841169.pdf?OpenElement>>. Last accessed: 20 November 2012. para.7
 - 6 United Nations Human Rights Council. Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani: Addendum - Mission to The former Yugoslav Republic of Macedonia, 3 March, 2008'. *United Nations Website*. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/114/55/PDF/G0811455.pdf?OpenElement>>. Last accessed: 20 November 2012. para.82
 - 7 United Nations Human Rights Council. Universal Periodic Review: Report of the Working Group on the Universal Periodic Review - The former Yugoslav Republic of Macedonia. *United Nations Website*. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/139/80/PDF/G0913980.pdf?OpenElement>>. Last accessed: 22 March 2012.
 - 8 United Nations Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - The former Yugoslav Republic of Macedonia, 23 June, 2010'. *United Nations Website*. <[http://www2.ohchr.org/english/bodies/treaty/CD_Concl_Obs_2010/CRC/54th%20session/CRC-C-MKD-CO-2%20\(e\).pdf](http://www2.ohchr.org/english/bodies/treaty/CD_Concl_Obs_2010/CRC/54th%20session/CRC-C-MKD-CO-2%20(e).pdf)>. Last accessed: 20 November 2012. para.15
 - 9 Commissioner for Human Rights, Thomas Hammarberg. Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to "the former Yugoslav Republic of Macedonia" 25 - 29 February 2008. *Council of Europe Website*. <<https://wcd.coe.int/ViewDoc.jsp?id=1341983>>. Last accessed: 20 March 2012.

level, and consequently such a body is necessary.¹⁰ Equally relevant for the discussion is the non-compliance with the core requirements contained in the Copenhagen criteria for membership in the European Union (EU). The membership criteria, among other, demand “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”.¹¹ The European Commission, in several subsequent reports, including the last 2012 progress report,¹² notes that the institutional framework on Human Rights and the protection of minorities is not completed.¹³

Taking the above in consideration, the Centre for Regional Policy Research and Cooperation “Studiorum” considered that it was of outmost importance to initiate a debate on the reforms of the Human Rights related institutional framework, through the assessment of the national Human Rights institutional framework against the international standards, and the subsequent provision of recommendations. The analysis looks at the Ombudsperson and the CPAD. It focuses on the relevant legal and policy aspects for the NHRIs in Macedonia and gives conclusions and recommendations for reforming the current framework in line with the relevant international standards, including the obligations of Macedonia under international Human Rights law. For better informed recommendations, a comparative analysis of five NHRIs and an assessment of the use of effectiveness of resources allocated to the NHRIs in Macedonia, were conducted and are annexed to this study. Hopefully, the study will serve as a ground for initiating debate on institutional framework reforms in line with the NHRI international standards.

The study is structured in three parts. The brief general introduction to NHRIs at the beginning has no intentions to provide a full and comprehensive overview on all issues re NHRIs or the on-going debates, but to introduce the subject of the study. The second part of the study lays out both universal and European NHRI international standards.

10 European Commission Against Racism and Intolerance. Report on “The Former Yugoslav Republic of Macedonia” 15 June, 2010’. *Council of Europe Website*. <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/former_yugoslav_republic_macedonia/MKD-CbC-IV-2010-019-ENG.pdf>. Last accessed: 20 November 2012. paras.28-31.

11 European Council. European Council in Copenhagen 21-22 June 1993 Conclusions of the Presidency. *EUROPA Website*. <http://ec.europa.eu/bulgaria/documents/abc/72921_en.pdf>. Last accessed: 20 March 2012.

12 European Commission. Commission Staff Working Document - The Former Yugoslav Republic of Macedonia; 2012 Progress Report. *EUROPA Website*. <http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf>. Last accessed: 16.11.2012. Information after the cut-off date for the study.

13 For example, please see: European Commission. Commission Staff Working Document - The Former Yugoslav Republic of Macedonia; 2010 Progress Report. *EUROPA Website*. <http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mk_rapport_2010_en.pdf>. Last accessed: 20 March 2012. p12.

The third part gives an overview of the institutional setup of the country, focusing on the assessment of the compliance of the Ombudsperson and the CPAD with the international standards. Last but not least are the conclusions and recommendations. The economic analysis and the matrix of the summary findings of the five NHRIs comparative study are annexed as well.

The study has been built upon international and domestic laws, documents produced by the institutions under consideration, and IGOs and CSOs reports. Although scarce, domestic policy documents were also considered (see the “Recommendations” section for recommendations on Human Rights public policies in Macedonia). Academic sources were used insofar as they assisted clarifying NHRI standards. Materials not available online and/or in print, but prepared as part of earlier efforts of CSOs to raise the issue of NHRIs in Macedonia, and shared with the research team working on the study, were also included. Cut-off date for this study was 01 March 2012. All relevant developments following this date are included in footnotes. Highly relevant information after this date is included in the text, with a note that this is a development after the cut-off date. The data was gathered through desk research, and analysed through text analysis.

Aside from the sources included in the bibliography list, the text of the study benefited greatly from the discussions on its first draft by an expert group in September 2012, and the discussions of panellists and participants at an international conference held in Skopje in October 2012, where the initial findings of the study were presented. The author and the consulting team are grateful to everyone who helped the realization of the study through comments, suggestions, or written materials. Special gratitude is extended to the two reviewers of the study, Prof. Richard Carver and Uranija Pirovska, for their insightful and extremely valuable comments.

II. GENERAL NOTE ON NATIONAL HUMAN RIGHTS INSTITUTIONS



NHRIs are defined as bodies “established by a Government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights”.¹⁴ The protection of Human Rights at national level depends on the existence of effective and accessible state institutions for addressing Human Rights violations, including NHRIs.¹⁵ As noted in the beginning of the study, the process of democratic institution-building is closely tied to the building of strong NHRIs. This is especially important within the context of transition, as it can strengthen the Human Rights culture.¹⁶

Overall, NHRIs are a rather new phenomenon in international relations and law.¹⁷ The first relevant resolutions were adopted in 1946 by the Economic and Social Council, calling upon states to consider the establishment of information groups or local Human Rights committees to assist the communication and cooperation with the Commission on Human Rights¹⁸ (on international law and NHRIs see Chapter III). The initial idea behind what later became NHRIs was the creation of entities at national level that would contribute to the adherence to United Nations standards and strengthen the communication between the UN and its member states. The commemorative conference on the occasion of the 30th anniversary of the Universal Declaration on Human Rights, in 1978 furthered the efforts of the UN to promote the idea of NHRIs through a seminar on the topic of NHRIs.

14 United Nations Office of the High Commissioner for Human Rights. National Human Rights Institutions. A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, 1995, HR/P/PT4. *UNHCR Website*, <<http://www.unhcr.org/refworld/docid/4ae9acb7289.html>>. Last accessed: 23 November 2012.

15 Reif, Linda C. Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection. 13 *Harvard Human Rights Journal* 1, 2000. p.3

16 *Ibid.* p.2

17 Cardenas, Sonia. National Human Rights Institutions. Carr Center for Human Rights Policy Working Paper T-01-04. p.2

18 Carver, Richard. A new answer to an old question: national human rights institutions and the domestication of international law. *Human Rights Law Review*, 2010. p.4

The final outcome of it were a set of guidelines on NHRIs, listing a number of competences which could be vested to, as well as (almost all) the criteria which were later further elaborated in the Paris Principles¹⁹ (for the Paris Principles, and later developments re NHRIs within the frame of the UN, and the regional systems, please see Chapter III).

However, this early initiative by the UN was followed by only few states. It was not until the end of the Cold War that the climate and political will for establishing NHRIs changed. There are authors that analyse the NHRIs' expansion in the 1990s.²⁰ Sonja Cardenas argues that "highly diverse governments around the world are creating similar NHRIs largely for international reasons: international norms provide standards for national institution building, concrete forms of international assistance facilitate this process, and more diffuse international pressures [...] make nominal human rights improvements highly desirable."²¹ Further in her argument, Cardenas asserts that the "international origins of these national institutions leave an unintended and overlooked legacy [...] The ensuing institutional dynamics are far more uncertain than either unbridled optimism or cynical scepticism would suggest."²²

The past two decades NHRIs have been flourishing, with many different types developed, making it close to impossible, or at least difficult, to attempt to compile a typology of NHRIs that will be complete or that can do justice to the diversity. Moreover, a typology can be done with regards to membership, mandate, political tradition, etc.²³ Use of a typology with an emphasis on the main functions can be, however, helpful to get an overview of the NHRIs variety, although it will inevitably involve a caution on simplification. For the purposes of this study few possible types of typologies can be mentioned:

- Single-member institutions and multiple-member institutions;
- Institutions with a primary task to advise the governments and institutions handling individual complaints;

19 Fundamental Rights Agency. National Human Rights Institutions in the EU. *EUROPA Website*. <http://fra.europa.eu/fraWebsite/attachments/NHRI_en.pdf>. Last accessed: 05 September 2012. p.16

20 *Ibid.*

21 Cardenas, Sonia. National Human Rights Institutions. Carr Center for Human Rights Policy Working Paper T-01-04. p.3

22 *Ibid.* p.3

23 International Council on Human Rights Policy. Performance and Legitimacy: National Human Rights Institutions (2nd ed). *ICHRP Website*. <http://www.ichrp.org/files/reports/17/102_report_en.pdf>. Last accessed: 15 November 2012. p.3

- **Institutions working on Human rights and those working on a specific topic (for example, discrimination); etc.**²⁴

According to some, there are two main types of NHRIs, ombudspersons and commissions.²⁵ The International Council on Human Rights Policy clusters NHRIs as ombudsperson, national Human Rights commission, national advisory commission on Human Rights, national anti-discrimination commission, and defensor del pueblo.²⁶

Ombudsperson is the oldest type of an institution, originating in the XIX century.²⁷ This institution used to have its main focus on the conduct of the public administration.²⁸ Usually, it is a single-headed institution with a very specifically defined mandate such as maladministration, discrimination, children's rights, etc,²⁹ and handles individual complaints. They can sometimes have a "specifically defined mandates in a system of interrelated institutions, for example in the areas of discrimination, children's rights, and data protection."³⁰

Human Rights commissions' key mandate is usually on investigation,³¹ but they can also provide education and review of potential legislation,³² as their mandate can

24 International Council on Human Rights Policy. Assessing the effectiveness of National Human Rights Institutions. *ICHRP Website*. <http://www.ichrp.org/files/reports/18/125_report.pdf>. Last accessed: 15 November, 2012. p.5-6

25 United Nations Office of the High Commissioner for Human Rights. National Human Rights Institutions. A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, 1995, HR/P/PT4. *UNHCR Website*, <<http://www.unhcr.org/refworld/docid/4ae9acb7289.html>>. Last accessed: 23 November 2012.

26 International Council on Human Rights Policy. Performance and Legitimacy: National Human Rights Institutions (2nd ed). *ICHRP Website*. <http://www.ichrp.org/files/reports/17/102_report_en.pdf>. Last accessed: 15 November 2012. p.4

27 Reif, Linda C. Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection. 13 Harvard Human Rights Journal 1, 2000. p.7

28 *Ibid.* p.8

29 International Council on Human Rights Policy. Performance and Legitimacy: National Human Rights Institutions (2nd ed). *ICHRP Website*. <http://www.ichrp.org/files/reports/17/102_report_en.pdf>. Last accessed: 15 November 2012. p.4

30 Fundamental Rights Agency. National Human Rights Institutions in the EU. *EUROPA Website*. <http://fra.europa.eu/fraWebsite/attachments/NHRI_en.pdf>. Last accessed: 05 September 2012. p.28

31 United Nations Office of the United Nations High Commissioner for Human Rights. National Human Rights Institutions: History, Principles, Roles and Responsibilities. *Office of the United Nations High Commissioner for Human Rights Website*. <http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf>. Last accessed: 15 November 2012. p.16

32 International Council on Human Rights Policy. Performance and Legitimacy: National Human Rights Institutions (2nd ed). *ICHRP Website*. <http://www.ichrp.org/files/reports/17/102_report_en.pdf>. Last accessed: 15 November 2012. p.4

include protection and promotion.³³ These are usually composed of several members with a specific Human Rights expertise.³⁴ Many of the commissions have a focus on equality and non-discrimination, and function as equality bodies.³⁵

Human Rights institutes or centres are another type of an institution usually with a broad membership bringing together diverse representatives of the society, setting the general policy framework within which these operate.³⁶ This type of NHRIs usually do not deal with individual complaints, but focus on human rights research.³⁷

The structure and the number of NHRIs are very dependent on the context – it can be a result of multiple factors, such as political, historical, cultural, or economic.³⁸ Moreover, it is recommendable NHRIs to be developed by taking into consideration the political and institutional traditions of the country.³⁹ Organisational issues, such as whether an institution has only one or several offices on the territory of a country, are dependent on the needs of the country, though local offices generally assist its accessibility and so it is recommendable to establish ones if possible. However, there are few basic pre-conditions for the functioning of any NHRI, as further elaborated in the Paris Principles, including: formal establishment through the Constitution or other legislative act, pluralism in the composition, suitable infrastructure and stable mandate of the NHRIs members⁴⁰ (please see Chapter III for detailed elaboration of the Paris Principles and other relevant international standards).

These are a few brief, general notes which by no means aim to be exhaustive of the general discussions on NHRIs. Their purpose is to point out the multiple options which a country has when it comes to choosing a model of NHRI.

33 Reif, Linda C. Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection. 13 Harvard Human Rights Journal 1, 2000. p.10

34 *Ibid.* p.10

35 United Nations Office of the United Nations High Commissioner for Human Rights. National Human Rights Institutions: History, Principles, Roles and Responsibilities. *Office of the United Nations High Commissioner for Human Rights Website*. <http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf>. Last accessed: 15 November 2012. p.16

36 *Ibid.* p.16

37 *Ibid.* P.16

38 Reif, Linda C. Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection. 13 Harvard Human Rights Journal 1, 2000. p.6

39 International Council on Human Rights Policy. Performance and Legitimacy: National Human Rights Institutions (2nd ed). *ICHRP Website*. <http://www.ichrp.org/files/reports/17/102_report_en.pdf>. Last accessed: 15 November 2012. p.4

40 Fundamental Rights Agency. National Human Rights Institutions in the EU. *EUROPA Website*. <http://fra.europa.eu/fraWebsite/attachments/NHRI_en.pdf>. Last accessed: 05 September 2012. p.30

III. NATIONAL HUMAN RIGHTS INSTITUTIONS IN INTERNATIONAL HUMAN RIGHTS LAW



NHRIs are not regulated in great detail in Human Rights law at either universal or regional level. However, certain recommended standards and guidelines do exist. This section gives an overview of the standards prescribed at universal level, within the frame of the UN, and at the European regional level, within the Council of Europe (CoE) and the EU. All these standards stand as relevant in the case of Macedonia, as a member of the UN and the CoE, and an EU candidate country.

A. Universal Level – United Nations

Right after the UN was established, discussions on the idea of NHRIs and on the possible standards for the latter started. As noted above, the first relevant resolutions were adopted already in 1946 by the Economic and Social Council, calling upon states to consider the establishment of information groups or local Human Rights committees to assist the communication and cooperation with the Commission on Human Rights.⁴¹ Since then, different types of documents have been adopted at the universal or UN level, containing standards and clarifications related to the establishment (character and positioning) and functioning (mandate and accountability) of NHRI. These include:

- **standards contained in hard law:** Convention on the Rights of Persons with Disability (Art.33), Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (Part IV – Art.17–23);
- **standards contained in soft law:** General Assembly Resolution 48/134 adopting the Principles relating to the status of national institutions – or Paris Principles, Vienna Declaration and Programme of Action; and

41 Carver, Richard. A new answer to an old question: national human rights institutions and the domestication of international law. *Human Rights Law Review*, 2010. p.4

- **authoritative interpretations assisting the reading of the law:** General Comment No.2 of the Committee of the Rights of the Child, General Comment No.10 of the Committee on Economic, Social and Cultural Rights, General Recommendation XVII of the Committee on Elimination of Racial Discrimination, and CEDAW Statement on the Elimination of Discrimination against Women on its relationship with national human rights institutions.

Out of these, only the standards contained in hard law are legally binding for the states that have ratified the instruments.⁴² Both the CRPD and the OPCAT foresee the establishment of new, or the designation of an existing national mechanism/focal point with competences tied to the implementation of the two conventions, in the course of which States Parties should take into account the Paris Principles, as directly prescribed by both.⁴³ Thus, it can be argued that the Paris Principles, although soft law, have been read into these two documents, and have thus acquired legal force.

The Paris Principles, compiled at an International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in 1991, remain the most elaborate set of standards on NHRIs at the UN level up to this date.⁴⁴ Formally adopted with the 1992 Resolution by the UN Commission on Human Rights 1992/54, and the 1993 General Assembly Resolution 48/134 on National institutions for the promotion and protection of human rights,⁴⁵ they contain four sections of standards – competences and responsibilities, composition and guarantees of independence and pluralism, methods of operation, and other principles arising from the possible quasi-judicial status of these institutions.

According to the Paris Principles, a NHRI should be vested with the competence to promote and protect Human Rights,⁴⁶ and should have as broad mandate as possible,

42 Macedonia is a state party to both OPCAT and CRPD.

43 Article 33(2) of the ICRPD and the Article 18(4) of the OPCAT.

44 Office of the United Nations High Commissioner for Human Rights. Principles relating to the Status of National Institutions (The Paris Principles). *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www2.ohchr.org/english/law/parisprinciples.htm>>. Last accessed: 15 November 2012.

45 United Nations General Assembly. 1993 General Assembly Resolution 48/134. *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www.un.org/documents/ga/res/48/a48r134.htm>>. Last accessed: 20 March 2012.

46 Office of the United Nations High Commissioner for Human Rights. Principles relating to the Status of National Institutions (The Paris Principles). *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www2.ohchr.org/english/law/parisprinciples.htm>>. Last accessed: 15 November 2012. Competence and Responsibilities, para.1

clearly set out in a constitutional or legislative text.⁴⁷ According to the General Observations⁴⁸ of the ICC, an establishment with an act of the executive “is not adequate to ensure permanency and independence”.⁴⁹

A NHRI should be tasked with the following responsibilities:⁵⁰

- **advisory role on Human Rights legislation and policy standard-setting and advancement; the ICC general observations add to this the competence of issuing recommendations which need to be discussed by the Government and the competent parliamentary committees;**⁵¹
- **monitoring the situation and alerting the authorities and the public on the Human Rights situation in the country or in one part of the country, in general, or on specific issues and/or violations;**
- **promote and ensure harmonization of domestic legislation, policies and practices with international Human Rights standards, including encouragement of ratification of instruments**⁵² **and enhancement of the cooperation with the UN and its agencies, as well as regional organisations;**⁵³
- **initiate or assist Human Rights education efforts in formal education or vocational training; and**
- **raising awareness on all forms of discrimination (in particular racial discrimination), including through information and education, and making use of the press organs.**

47 *Ibid.* Competence and Responsibilities, para.2

48 The General Observations of the ICC serve to detail, update, and serve as interpretative tools to the Paris Principles. The last report of the ICC announced the preparation of ‘General Observations on NHRIs serving as National Monitoring/Preventive Mechanisms; the quasi-judicial competency of NHRIs; and assessing the performance of NHRIs’. Source: ICC. Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA) Geneva, 25 - 28 October 2011. *OHCHR NHRI Website*. <[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>. Last accessed: 08 July 2012. 5

49 General Observations of the ICC, Sub-Committee on Accreditation (2009).

50 Unless stated otherwise, the responsibilities numbered here are taken from the Paris Principles. Source: Office of the United Nations High Commissioner for Human Rights. Principles relating to the Status of National Institutions (The Paris Principles). *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www2.ohchr.org/english/law/parisprinciples.htm>>. Last accessed: 15 November 2012. Competence and Responsibilities, para.3

51 General Observations of the ICC, Sub-Committee on Accreditation (2009). 1.6

52 Also: General Observations of the ICC, Sub-Committee on Accreditation (2009). 1.3

53 *Ibid.* 1.4

The composition of a NHRI and the appointment of its members should ensure a pluralist representation of all social groups involved in the protection and promotion of Human Rights, especially of the CSOs, trends in philosophical and religious thought, universities and other qualified experts, and the parliament.⁵⁴ Representatives of the government can participate in the deliberations, but only in an advisory capacity⁵⁵ or as representatives in the governing bodies of the institutions and without a decision making/voting capacity.⁵⁶ According to the ICC general observations, during the accreditation process a NHRI needs to demonstrate the maintenance of a consistent relationship with the civil society.⁵⁷

The procedure for appointment, under the Paris Principles, should be done with an official act establishing the duration of the mandate, and regulating the possibility for a renewal, provided that the pluralism criterion is satisfied.⁵⁸ Infrastructure and funding should be sufficient⁵⁹ in the sense that these enable the NHRI to have its own staff and premises, guaranteeing independence from the Government, both in its actions as well as in its financial working.⁶⁰ Such a NHRI should be able to: freely consider any

54 Office of the United Nations High Commissioner for Human Rights. Principles relating to the Status of National Institutions (The Paris Principles). *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www2.ohchr.org/english/law/parisprinciples.htm>>. Last accessed: 15 November 2012. Composition and guarantees of independence and pluralism, para.1 (a-d)

55 *Ibid.* Composition and guarantees of independence and pluralism, para.1 (e)

56 General Observations of the ICC, Sub-Committee on Accreditation (2009). 2.3

57 *Ibid.* 2.1

58 Office of the United Nations High Commissioner for Human Rights. Principles relating to the Status of National Institutions (The Paris Principles). *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www2.ohchr.org/english/law/parisprinciples.htm>>. Last accessed: 15 November 2012. Composition and guarantees of independence and pluralism, para.3

59 Meaning of 'sufficient' is clarified further in the ICC general observations as: 'the allocation of funds for adequate accommodation, at least its head office; salaries and benefits awarded to its staff comparable to public service salaries and conditions; remuneration of Commissioners (where appropriate); and the establishment of communications systems including telephone and internet. Adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the organization's operations and the fulfilment of their mandate. Funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI's minimum activity budget in order to allow it to operate towards fulfilling its mandate. Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.' Source: General Observations of the ICC, Sub-Committee on Accreditation (2009). 2.6

60 Office of the United Nations High Commissioner for Human Rights. Principles relating to the Status of National Institutions (The Paris Principles). *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www2.ohchr.org/english/law/parisprinciples.htm>>. Last accessed: 15 November 2012. Composition and guarantees of independence and pluralism, para.2

question within its competence, including the access to any information/document; address public opinion, meet on regular basis, establish working groups as it finds fit-
ted, maintain consultations with other bodies, cooperate with CSOs as needed.⁶¹ Individuals, as well as associations and trade unions or other representative organi-
sations may have access to the NHRI and may be able to bring cases to it; if this is the
case, the NHRI should be able to pursue amicable settlements, inform petitioners of
their rights and possible remedies.⁶² The NHRI should also be able to make recom-
mendations to the authorities about amendments and reforming laws, regulations
and administrative practices especially if such recommendations arise from the cases
which have been brought in front of it.⁶³

The ICC was established to manage the coordination and activities of NHRIs at the inter-
national level, but also to serve as an evaluating body for the progress and efficiency of
the individual NHRIs on national level.⁶⁴ It mandated the Sub-Committee on
Accreditation (SCA) to carry out the accreditation process.⁶⁵ SCA reviews and analyses
accreditation applications consisting of an application to the ICC Chairperson, a
detailed statement of compliance with the Paris Principles and further documentation
to the ICC Secretariat at the OHCHR (National Institutions Unit), and consequently
awards one of the three statuses to a national institution. The accreditation can be an 'A'
accreditation – full compliance with each of the Paris Principles and a voting member,
'B' – not fully in compliance or insufficient information and a non-voting member, and
'C' – non-compliance, not a member of the ICC or observer only.⁶⁶ In addition, NHRIs
may be un-accredited, as they may not have applied for accreditation or may have lost

61 *Ibid.* Methods of Operation, para.1(a-g)

62 *Ibid.* Additional Principles, para.1(a-c)

63 *Ibid.* Additional Principles, para.1(d)

64 Established in 1993 at the International Conference held in Tunis, while the rules of procedures are developed in 1998 among 16 members - four from each region (Africa, the Americas, the Asia Pacific, and Europe). The General Meetings of the ICC, meetings of the ICC Bureau and of the Sub-Committee on Accreditation, as well as International Conferences of the ICC are held under the auspices of, and in cooperation with, OHCHR. Source: United Nations Office of the High Commissioner on Human Rights. Office of the High Commissioner on Human Rights and NHRIs. *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>>. Last accessed: 06 November 2012.

65 Statute of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights. International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights, 2008. <<http://nhri.ohchr.org/EN/AboutUs/Documents/ICC%20Statute%20as%20amended%20at%20ICC%2025.pdf>>. Last accessed: 14 November 2012. Art.1(1)

66 *Ibid.*

accreditation, as each NHRI is re-assessed by the ICC every five years.⁶⁷ Furthermore, NHRIs or similar bodies may choose not to take part in ICC activities.

The Paris Principles were also referred to in the Vienna Declaration and Programme of Action, by reaffirming the important and constructive role played by NHRIs, and recognizing the “right of each State to choose the framework which is best suited to its particular needs at the national level”.⁶⁸ It calls upon governments to allocate sufficient resources for building a NHRI.⁶⁹ Furthermore, it also calls upon the UN and its units to support the efforts of the countries willing to establish or further develop their NHRIs,⁷⁰ including education and training through its technical assistance programmes.⁷¹

Other documents serving as authoritative interpretations can assist the reading of the law. These include the general comments and recommendations as well as statements issued by Human Rights monitoring bodies. Relevant for the present analysis are the CRC General Comment No.2, CESCR General Comment No.10, CERD General Recommendation XVII and the CEDAW Statement from its 40 Session on discrimination against women and NHRI.

The CRC General Comment No.2 on the role of independent NHRIs in the promotion and protection of the rights of the child has the aim to encourage States Parties to establish new or review existing institutions in order to facilitate the implementation of the Convention on the Rights of the Child. Such an institution should assist the reporting under the convention, and should be able to independently and effectively monitor, promote and protect children’s rights, including mainstreaming children’s rights in the work of all mentioned institutions.⁷² While prescribing in greater detail the mandate and powers, and establishing the process, resources, pluralistic representation, accountability and participation, relations and positioning of the institution vis-à-vis the state and

67 *Ibid.*, Art.15

68 United Nations General Assembly. Vienna Declaration and Programme of Action. *Office of the United Nations High Commissioner for Human Rights Website*. <<http://www2.ohchr.org/english/law/vienna.htm>>. Last accessed: 13 November 2012. Part I, Para.36

69 *Ibid.* C. Cooperation and Development. para.74

70 *Ibid.* Part E: Implementation and Monitoring Mechanisms, paras. 84-86.

71 *Ibid.* Part D: Human rights Education. para.82

72 United Nations Committee on the Rights of the Child. General comment No. 2: The role of independent national Human Rights institutions in the promotion and protection of the rights of the child. *Office of the United Nations High Commissioner for Human Rights Website*. <www2.ohchr.org/english/bodies/crc/docs/GC2_en.doc>. Last accessed: 13 November 2012.

CSOs – these standards are mostly a repetition of the Paris Principles. However, in addition to this, it also states that a NHRI “must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children”⁷³ and includes a section on providing remedies for breaches of children’s rights, as well as formulates the recommended activities.⁷⁴

CERD General Recommendation XVII and the CEDAW Statement from its 40 Session on discrimination against women and NHRI directly call upon states to consider the Paris Principles when establishing a NHRI. The CESCR General Comment No. 10 is motivated by the “proliferation of [. . .] [NHRI, a trend that] has been strongly encouraged by the General Assembly and the Commission on Human Rights”.⁷⁵ The CESCR issued this comment in order to call upon countries to include economic, social and cultural rights (ESCR) as part of the NHRI mandate. Thus, it will further assist the promotion of the indivisibility and interdependence of rights⁷⁶ and lists a number of activities with which such NHRIs can be tasked, in the context of ESCR.⁷⁷

Richard Carver raises an important point in relation to the views which the treaty bodies have on the role of NHRIs when it comes to the reports which governments submit. He notes the diametrical opposite positions of the CERD on one side, and the CRC and the CESCR, on the other. Carver highlights the fact that CERD considers it recommendable for NHRIs to be included in the reporting to the treaty bodies which is completely opposite from the CRC, according to which it is not appropriate for a NHRI to be included in these processes, or to the CESCR which makes no mentioning of NHRIs in relation to this type of reporting. He explains such opposite positions with the fact that the Paris Principles do not offer a specific guidance on this issue.⁷⁸

73 *Ibid.*

74 *Ibid.*

75 United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 10: The role of national Human Rights institutions in the protection of economic, social and cultural rights. *Office of the United Nations High Commissioner for Human Rights Website*. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/148/41/PDF/G9814841.pdf?OpenElement>>. Last accessed: 13 November 2012. para.1

76 *Ibid.* para.3

77 United Nations Committee on the Elimination of Racial Discrimination General Recommendation No. 17: Establishment of national institutions to facilitate implementation of the Convention. *Office of the United Nations High Commissioner for Human Rights Website*. <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4872085cc3178e3bc12563ee004beb99?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4872085cc3178e3bc12563ee004beb99?OpenDocument)>. Last accessed: 13 November 2012. para.3 (a-g)

78 Carver, Richard. A new answer to an old question: national human rights institutions and the domestication of international law. *Human Rights Law Review*, 2010. p.21-22

In sum, the standards on NHRIs at UN level, as described above, are consisted within the Paris Principles. Although not legally binding, they provide the core framework that has been referred to as a body of standards in legally binding instruments, tying them to hard law. They have already been adopted with a GA resolution, which makes them soft law. All this, together with the authoritative interpretations of law make the bulk of international law NHRI standards at UN level.

B. European Regional Level

Standards on NHRI exist on the European regional level, both within the frame of the Council of Europe and the European Union. As Macedonia is a member of the former, and a candidate country for the latter, it needs to align its domestic institutional framework with the requirements set for NHRIs by both the CoE and the EU. This section gives an overview of the existing standards at European level.

1. Council of Europe

Within the framework of the CoE, standards related to NHRIs are set out in the recommendations of the Committee of Ministers (CMCoE) and by the ECRI general policy recommendations. Both are addressed to the CoE member states and are legally non-binding. However, both can be indirectly enforced, as the recommendations of the CMCoE are on matters for which the Committee has agreed “a common policy”,⁷⁹ and it “may request the governments of members to inform it of the action taken by them with regard to such recommendations.”⁸⁰ ECRI can also recommend through its country monitoring work that member states align domestic legislation, policies and practices, including recommendations on the member state’s institutional framework, with its general policy recommendations.⁸¹

Of relevance for the present study are the Committee of Ministers’ recommendations 85–13 (on the institution Ombudsperson)⁸² and 97–14 (on establishment of independ–

79 Council of Europe Committee of Ministers. *Council of Europe Website*. <http://www.coe.int/t/cm/adoptedTexts_en.asp#P46_2532>. Last accessed: 20 July 2012.

80 Council of Europe. Statute of the Council of Europe. *Council of Europe Website*. <<http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>>. Last accessed: 20 July 2012. Art.15(b)

81 For more on ECRI monitoring work, please see: Council of Europe – ECRI website. <http://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp>. Last accessed: 20 July 2012.

ent national institutions for the promotion and protection of Human Rights).⁸³ The former recommends the CoE member states to consider the possibility of appointing an Ombudsperson and empowering it with a mandate to consider Human Rights matters. Thus, the Ombudspersons should initiate investigations or give opinions when questions of Human Rights are involved, as well as consider other options for extending its powers so to put it in a position to “encourage effective observance of Human Rights and fundamental freedoms in the functioning of the administration.”⁸⁴ The later recommendation calls upon CoE member states to consider the establishment of an effective NHRI in accordance with the country context, and having in mind the Paris Principles (General Assembly Resolution 48/135, VDPA) and the Recommendation 85-13, to promote cooperation and exchange of information between the NHRIs, as well as to distribute the text of the recommendation to civil society.⁸⁵

An important part of the CoE NHRIs standards are the ECRI’s general policy recommendations. ECRI has issued two general policy recommendations of relevance for the present analysis – General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level (ECRI Recommendation No.2), and the General Policy Recommendation No. 7 on National legislation to combat racism and racial discrimination (ECRI Recommendation No.7).

ECRI Recommendation No.2 suggests that NHRIs should be set out in constitutional or legal texts, and should include clear terms of reference for their composition, areas of competence, statutory powers, accountability and funding.⁸⁶ They should be established in accordance with the country context, and they need not to be specialised bod-

82 Council of Europe. 1985 Recommendation 85-13. *Council of Europe Website*. <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605500&SecMode=1&DocId=687290&Usage=2>>. Last accessed: 20 July 2012.

83 Council of Europe. 1997 Recommendation 97-14. *Council of Europe Website*. <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&%20InstranetImage=567349%20%20&SecMode=1&DocId=578706&Usage=2>>. Last accessed: 20 July 2012.

84 Council of Europe. 1985 Recommendation 85-13. *Council of Europe Website*. <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605500&SecMode=1&DocId=687290&Usage=2>>. Last accessed: 20 July 2012. Recommendation (c)

85 Council of Europe. 1997 Recommendation 97-14. *Council of Europe Website*. <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&%20InstranetImage=567349%20%20&SecMode=1&DocId=578706&Usage=2>>. Last accessed: 20 July 2012. Recommendations (a-d)

86 ECRI General policy recommendation No. 2 on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level. *Council of Europe Website*. <http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n2/Rec02en.pdf>. Last accessed: 20 March 2012. Principle 1

ies focusing on racial equality or ethnic discrimination, as stated in this recommendation, as they can also be bodies with wider objectives in the field of Human Rights generally.⁸⁷ They should be politically independent, but still have access to the governments,⁸⁸ and should strive to maximise the quality of their research and advisory roles in order to build and enhance their credibility with the national authorities and with the wider public.⁸⁹ The composition of the NHRIs should reflect the diversity of the society.⁹⁰ They should be easily accessible, and have local offices, where appropriate,⁹¹ and should be in a position to exercise their mandate without interference from the state.⁹²

Such a body would have the following functions and responsibilities:⁹³

- work towards the elimination of the various forms of discrimination, promote equality of opportunity and good relations between persons belonging to all different groups in society;
- monitor the content and effect of legislation and executive acts with respect to their relevance to the aim of combating racism, xenophobia, anti-Semitism and intolerance;
- make proposals for possible modifications to such legislation, as needed;
- advise the legislative and executive authorities on improving regulations and practice in the relevant fields;
- provide aid and assistance to victims, including legal aid;
- have recourse to the courts or other judicial authorities as appropriate and when necessary;
- hear and consider complaints and petitions and, in relation to this, have appropriate powers to obtain evidence and information;
- seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions;

87 *Ibid.* Principle 2

88 *Ibid.* Principle 7

89 *Ibid.* Principle 7

90 *Ibid.* Principle 4

91 *Ibid.* Principle 6

92 *Ibid.* Principle 5

93 *Ibid.* Principle 3

- provide information and advice to relevant state and other bodies and institutions on standards of anti-discriminatory practice;
- promote and contribute to the training of certain key groups without prejudice to the primary training role of the professional organisations involved;
- raise awareness on issues of discrimination;
- produce and publish pertinent information and documents;
- support and encourage organisations with similar objectives to those of the specialised body; and
- take account of and reflect as appropriate the concerns of such organisations.⁹⁴

ECRI Recommendation No.7 repeats some of the standards prescribed with ECRI Recommendation No.2, adding that national legislation should contain provisions for legal standing of organisations, trade unions and other concerned entities, etc, in civil, administrative and criminal cases. The law should guarantee a court-appointed lawyer if needed, as well as an interpreter. Persons seeking protection in front of these institutions, including persons which assist the reporting and the providing of evidence, need to be protected under domestic legislation. Alleged acts committed by police, border control officials, members of army or prison personnel, etc, need to be also placed under the competence of the NHRI.⁹⁵

As the above-outlined standards show, the ECRI Recommendation No.2 is the main and most detailed instrument on NHRI within the CoE. This is supplemented by the ECRI Recommendation No.7, and the CMCoE recommendations. All of these, although legally non-binding, can be indirectly enforced, and are relevant for Macedonia as a CoE member.

2. European Union

Two directives are relevant when it comes to the NHRI at the EU level. These are the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespectively of racial or ethnic origin (Race Equality Directive)

⁹⁴ *Ibid.*

⁹⁵ ECRI General policy recommendation No. 7 on national legislation to combat racism and racial discrimination. *Council of Europe Website*. <http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecri03-8%20recommendation%20nr%207.pdf>. Last accessed: 29 March 2012. paras.24-28

and the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation – recast (RECAST Directive).

The Race Equality Directive prescribes the obligation of states to “designate a body for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of Human Rights or the safeguard of individuals’ rights.”⁹⁶ The competences of such a body should include: provision of independent assistance to victims of discrimination in pursuing their complaints about discrimination, conduct of independent surveys concerning discrimination, and publication of independent reports and recommendations on any issues relating to such discrimination.⁹⁷

This directive does not require the set up of a new body, as it may be an existing one with a mandate vested under this directive. Although this directive binds the EU Member States to create a body only related to the grounds of racial and ethnic origin, research shows that most EU member states have decided to establish bodies that deal with multiple grounds of discrimination.⁹⁸ As the directive itself does not give more specific guidelines when it comes to the implementation, authors argue that the Paris Principles as well as the ECRI recommendations can be taken as guidelines since all EU member states are members of both the UN and the CoE, regardless of the fact that the documents coming from these two organisations are soft law.⁹⁹

Under the RECAST Directive, the “Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex”¹⁰⁰

96 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. *Eur-lex*. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:EN:HTML>>. Last accessed: 28 March 2010. Art.13(1)

97 *Ibid*. Art.13(2)

98 Niessen, Jan and Janet Cormack. “National specialised equality bodies in the wake of the EC antidiscrimination directives”. In Cormack, Janet (Eds), *Considerations for establishing single equality bodies and integrated equality legislation*, 2004.

99 See: Holtmaat, Rikki. Catalysts for Change? Equality bodies according to the directive 2000/43/EC - existence, independence and effectiveness. European Commission, March 2006.

100 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). *Eur-lex*. <<http://eur-lex.europa.eu/Notice.do?checktexts=checkbox&val=430497>>. Last accessed: 22 March 2012. Art.20(1)

which may be part of a wider NHRI. Its competences shall include: provision of independent assistance to victims of discrimination in pursuing their complaints about discrimination; conduct of independent surveys concerning discrimination; publication of independent reports and recommendations on any issues relating to such discrimination; and at the appropriate level exchange of available information with corresponding European bodies such as (any) future European Institute for Gender Equality.¹⁰¹

In sum, the EU has to a greater extent dealt with regulating the obligation for establishing bodies mandated as equality and anti-discrimination bodies, than with NHRIs with general Human Rights mandate. It does not require that a special body is created with the mandate as prescribed within the directives, but rather that an institution is mandated with the competences, meaning that it can also be an existing institution, or an institution with a general Human Rights mandate. In addition, since all EU Member States are both UN and CoE members, all the standards generated by the last two organisations, are relevant for the EU members as well.

★ ★ ★

The text above contains details on the relevant international Human Rights law standards related to the NHRIs at both universal and European level. As Macedonia is a member of the UN, State Party to all international documents containing NHRI standards within the UN, as well as a member state of the CoE, and an EU candidate country, all standards described above are relevant for the study. Standards which are specific to OPCAT or CRPD were not considered herein, so a note that a NHRI should be vested with competences under these two treaties will suffice the present discussion.¹⁰²

In accordance with the standards elaborated above, the consideration of the institutions in the next section focuses on the following: formal establishment of the NHRI, functions, competences and responsibilities, membership, operating principles, and resources. Also, as States are encouraged to consider the local context when establishing a NHRI, the present study includes a special emphasis on minority rights, although the mentioned universal and regional standards do not mention minorities' rights.¹⁰³

¹⁰¹ *Ibid.* Art.20(2)

¹⁰² It is worth noting here that the Ombudsperson performs the mandate under the OPCAT. It serves as a National Preventive Mechanism. It also has a special unit for child protection.

¹⁰³ This addition is made taking into consideration that Macedonia is still a recent post-conflict society and especially considering the importance attributed to the Ohrid Framework Agreement and its implementation.

On a general note, it needs to be emphasised that there is no requirement for setting a special institution under any of the NHRI standards considered herein. This means that, a state will be in compliance with its CRPD obligations, if it assigns an existing institution/body with the competences as required by this convention, without establishing a special institution/body to this end, for example. There is also no requirement on the type of the institution (whether it should be an Ombudsperson, a Human Rights Institute, Human Rights Commission, etc).

IV. NATIONAL HUMAN RIGHTS INSTITUTIONS IN MACEDONIA



Part of the institutional structure in Macedonia is consisted of institutions mandated with protection and promotion of Human Rights. There was no institution accredited by the ICC until October 2011 when the Ombudsperson was accredited with a 'B' status. There is still no NHRI accredited with an 'A' status.¹⁰⁴

This part gives an overview of the institutions in Macedonia that are mandated with Human Rights promotion and protection functions. These are the Ombudsperson and the CPAD. Although there are other institutions which, because of their mandate, could have been considered as well, such as those tasked with minorities and minority rights (the Agency for Realisation of the Rights of the Communities, or the Sector for Implementation of the Ohrid Framework Agreement), working bodies within the Parliament (the Commission for Equal Opportunities of Women and Men, or the Standing Inquiry Committee for Protection of Civil Freedoms and Rights), or coordinators within the government (such as coordinators for equal opportunities, or for the Decade of Roma Inclusion), they will not be considered as they aren't vested with a 'classic' NHRI mandate and competences. Each section gives an overview of the current framework per institution, identifies gaps compared to the international standards (please see part two above), and closes with recommendations.

A. Ombudsperson of the Republic of Macedonia

The Ombudsperson of the Republic of Macedonia is the oldest Human Rights institution in the country, functioning since 1997. It was also appointed as the National Preventive Mechanism as per OPCAT (NPM) for Macedonia in 2009. As of October 2011, the Ombudsperson is accredited with a 'B' status by the ICC.

104 "Accreditation Status as of December 2011". *OHCHR NHRI Website*. <[http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NHRIs%20\(DIC%202011\).pdf](http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NHRIs%20(DIC%202011).pdf)>. Last accessed: 04 July 2012.

1. Formal Establishment of the Ombudsperson

The establishment of the Ombudsperson¹⁰⁵ has a legal basis in the Constitution of the Republic of Macedonia (the Constitution). Precisely, Article 77, as amended with Amendment XI, foresees its establishment. Under this article, the Ombudsperson is elected by a majority vote of the total number of Representatives in the Parliament, within which there must be a majority of the votes of the total number of Representatives who belong to communities not in the majority in the population of Macedonia. This institution is mandated with protection of the constitutional and legal rights of the citizens in case of violation by bodies of state administration and/or other bodies and organizations with public mandates.¹⁰⁶ It shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.¹⁰⁷

The Ombudsperson is, according to the Law on the Ombudsperson (adopted in 2003 and replacing the 1997 Law on Ombudsperson), an independent and autonomous organ.¹⁰⁸ Under the law, it does not need an authorisation from the Government to undertake actions falling within its competences. It contains provisions on the selection of the Ombudsperson and her/his deputies, its competences and statutory powers, transparency, accountability as well as positioning within the system. Under this law, the Ombudsperson adopts its own acts for internal organisation, and has its own administrative as well as expert services.¹⁰⁹ There is a provision on pluralism, in relation to ethnic background and the selection of the Deputy-Ombudspersons.¹¹⁰

The Ombudsperson is funded from the state budget through a separate budget-line. According to the law, it is in a position to negotiate its funds with the government. At the parliamentary session during which the budget is adopted, there should be separate voting for the budget allocated to it.¹¹¹

105 Literal translation of the name of the institution would be 'Public Attorney'.

106 Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <<http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>>. Last accessed: 27 March 2012. Amendment XI

107 *Ibid.*

108 Law on the Ombudsperson [Закон за народен правобранител]. Official Gazette of the Republic of Macedonia, No. 60/2003, 114/2009. Arts. 2, 3

109 *Ibid.* Art. 43

110 *Ibid.* Art. 6(3)

111 *Ibid.* Art. 48

The Ombudsperson submits its report once a year to the Parliament, during a session where government representatives are present. Furthermore, the report should be publicised in the media. The reporting (both domestically, and to the United Nations) goes separately for the activities conducted as part of the function of the Ombudsperson as a NPM. The Ombudsperson can also submit special reports to the units of local self-government in which it has local offices, related to the work of the latter.¹¹²

From this section one can note that there is room for improvements in the area. Notably, the SCA in the accreditation report underlines that the current process of selection, as provided by the law “does not provide a clear, transparent and participatory selection process that promotes the independence of, and public confidence in, the Ombudsman, for example, the SCA notes that vacancies for the position of ORM are not advertised publicly and that the selection process of candidates does not involve a broad consultation with civil society.”¹¹³

In addition, pluralism is limited to ethnicity only. Provisions do not secure that the institution should mirror the society as a whole, which is the essence of the pluralism as a principle. This was also underlined by the SCA, stating that “pluralism, in the context of Paris Principles, refers to broader representation of Macedonian society, not just ethnicity.”¹¹⁴

2. Functions, Competences and Responsibilities of the Ombudsperson

The Ombudsperson is tasked to protect “the constitutional rights and legal rights of citizens when these are violated by bodies of state administration and by other bodies and organizations with public mandates [...] [and it] shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.”¹¹⁵ As of 2009, the institution also acts as NPM.

¹¹² *Ibid.* Arts. 36, 37

¹¹³ ICC Sub-Committee on Accreditation (SCA). ICC Sub-Committee on Accreditation Report - October 2011. *OHCHR Website*. <[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>. Last accessed: 08 July 2012.

¹¹⁴ *Ibid.*

¹¹⁵ Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <<http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>>. Last accessed: 27 March 2012. Art. 77 as amended with Amendment XI

The Ombudsperson can propose legislative amendments, including harmonization of domestic legislation with international Human Rights law obligations to persons competent to make law proposals to the Parliament. It can also initiate proceedings before the Constitutional Court for assessing the constitutionality of legal acts.¹¹⁶

Within the frame of its protective mandate, the Ombudsperson can give recommendations, proposals, opinions and indications on the manner of removal of the determined infringements, propose implementation of procedure pursuant to law, raise an initiative for commencing disciplinary proceedings against an official, i.e. a responsible person, and submit a request to the competent Public Prosecutor for initiation of a procedure in order to determine a criminal responsibility. It can initiate a procedure on the grounds of a complaint filed to it, or on its own initiative. The state administration bodies and other bodies and organisations that have public authorisations are obliged to co-operate with the Ombudsperson and upon his/hers request to provide him/her with all the evidence, data and information, notwithstanding the degree of confidentiality, and to enable him/her to enforce the procedure. Moreover, the presidents of the Republic, the Parliament, and the Government, as well as all other public officials heading bodies supervised under its mandate, have to admit personally without any delay to the Ombudsperson, should he/she demand this. The Ombudsperson is obliged to keep a state and official secret in a manner, and under the conditions, stipulated by law and other regulation.¹¹⁷

The Ombudsperson should monitor the situation by safeguarding, protecting and respecting the constitutional and legal rights of the citizens, protecting from discrimination, as well as safeguarding the principles of equality and adequate and equitable representation. This can include visiting and getting an insight into the work of the public bodies.¹¹⁸

From the above, one can conclude that the Ombudsperson is vested with a very clear mandate when it comes to protection. However, there is an evident need for strengthening and expanding the list of competences with ones in the area of promotion and advancement of Human Rights. In view of this, the institution would benefit from

116 Law on the Ombudsperson [*Закон за народен правобранител*]. Official Gazette of the Republic of Macedonia, No. 60/2003, 114/2009. Art.30

117 *Ibid.* Arts. 26, 27, 28, 31-a, 31-b

118 *Ibid.* Art.29

expanding its mandate in the Law when it comes to assisting Human Rights formal education and vocational training, as well as Human Rights information and awareness raising, even though in practice the Ombudsman is already undertaking such activities for which it was commended by the SCA.¹¹⁹ Promoting excellence in Human Rights standards through these activities, as well as through its own work, can also assist in further raising the credibility and accessibility of the institution.¹²⁰ The monitoring function can be further expanded with additional research competences, including the publication of specialised studies so to assist Human Rights education, information and awareness raising.

Moreover, if awarded sufficient resources, this institution can consume a larger mandate. Expanding its mandate beyond the public sector should be seriously considered. Additionally, although international law treaties ratified by law in accordance with the Constitution are considered part of domestic law, considering the low direct use of these documents, it seems that the article on the mandate of the Ombudsperson in the Constitution and in the law would be improved by adding an explicit mentioning of these treaties. Similar to this, in the accreditation report, the SCA encourages the Ombudsperson “to advocate for a wider mandate that includes all rights set out in international, regional and domestic instruments, covers all areas of human rights, and gives it explicit functions in the area of both protection and promotion of all human rights.”¹²¹

3. Members of the Ombudsperson

The Ombudsperson is both elected and dismissed by the Parliament (with a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to communities not in the

119 ICC Sub-Committee on Accreditation (SCA). ICC Sub-Committee on Accreditation Report - October 2011. *OHCHR Website*. <[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>. Last accessed: 08 July 2012.

120 As recommended by ECRI's General policy recommendation No.2. Source: ECRI General policy recommendation No. 2 on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level. *Council of Europe Website*. <http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n2/Rec02en.pdf>. Last accessed: 20 March 2012. Principle 7

121 ICC Sub-Committee on Accreditation (SCA). ICC Sub-Committee on Accreditation Report - October 2011. *OHCHR Website*. <[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>. Last accessed: 08 July 2012.

majority of the population of Macedonia), on a proposal by the competent working body within the Parliament. He/she is elected for a term of eight years, with a possibility for one re-election. The Ombudsperson has deputies which are appointed for a period of eight years and entitled to one re-election. The positions of the Ombudsperson and the deputy-Ombudspersons are not compatible with performing another public function and profession or with political party membership.¹²²

The Law on Ombudsperson foresees a list of criteria which a person must satisfy in order to be elected as Ombudsperson/Deputy-Ombudsperson. Namely, the candidates need to: fulfil the general terms stipulated by the Law on Employment in the State Administration Bodies; be graduated lawyers with working experience in legal affairs of over nine years for Ombudsperson and seven years for deputy-Ombudsperson, including proven activities in the sphere of protection of citizens' rights and good reputation for performing the duties of the Ombudsperson/Deputy-Ombudsperson.¹²³

The list of criteria for dismissal of the Ombudsperson/Deputy-Ombudsperson includes: dismissal on one's own request; in case of criminal conviction by an unconditional sentence of imprisonment to at least six months; permanent loss of psycho-physical ability to perform the Ombudsperson function, determined by a competent health centre; retirement according to age; incompetent, biased and unconscientiously performance.¹²⁴ The Ombudsperson and the Deputy-Ombudspersons are not civil servants, unlike the administration working in the Ombudsperson office.¹²⁵

It seems that certain improvements can be done when it comes to the election procedure of the Ombudsperson, in view of securing the principle of pluralism. As noted above, the only guarantee with regards to pluralism is only in terms of ethnic origin in relation to the process of selection of the Deputy-Ombudspersons. The election procedure of the Ombudsperson and his/her deputies prescribes that the candidates cannot be elected without the votes of the MPs with ethnic background other than ethnic Macedonian. Such a guarantee does not enable full pluralism, as it only mirrors the ethnic diversity in the society.

122 Law on the Ombudsperson [*Закон за народен правобранител*]. Official Gazette of the Republic of Macedonia, No. 60/2003, 114/2009. Arts. 5, 6, 8, 10

123 *Ibid.* Art. 6(1),(2)

124 *Ibid.* Arts. 9, 10

125 *Ibid.* Art. 43

4. Operating Principles of the Ombudsperson

The Ombudsperson Institution is an independent and self-governing body. The Ombudsperson and the Deputy-Ombudspersons should abide by the principles of consciousness, responsibility,¹²⁶ competence, and impartiality.¹²⁷ They cannot be members of a political party, and cannot be performing another public function.¹²⁸

The Ombudsperson and her/his deputies enjoy certain protection when it comes to their actions as well as to expressing their opinion. They cannot be called to account for given opinions and actions, measures and activities undertaken in the performance of their function.¹²⁹

The Ombudsperson Institution is accountable for the performance of its function. It submits an annual report to the Parliament which is further considered in a session in the presence of a Government representative. In addition, it also produces an annual report as a NPM, and both reports are published in the media. The Ombudsperson can also prepare reports on the work of its local offices for the authorities in these units of local self-government, and can publish these reports in the media.¹³⁰

The Ombudsperson is obliged by law to cooperate with actors that are relevant for its competences. It can join networks of interest, as well as cooperate with international organisations, which has been the case in Macedonia. Cooperation with universal and regional bodies related to torture and inhuman and degrading treatment stand out as especially important (because of the NPM mandate). As noted above, in October 2011 the Ombudsperson was accredited by the ICC with a 'B' status. This means that the Ombudsperson can participate as an observer in the NHRIs international and regional work and meetings, but it cannot vote or hold office with the Bureau or its sub-committees. It also means that it cannot participate in the sessions of the Human Rights Council under a NHRI badge, nor can it take the floor under any agenda item, or submit documentation and take up separate seating.¹³¹

126 *Ibid.* Art. 7(2)

127 *Ibid.* Art. 9 (1-5)

128 *Ibid.* Art. 8

129 *Ibid.* Art. 38

130 *Ibid.* Arts. 36, 37

131 ICC Sub-Committee on Accreditation (SCA). ICC Sub-Committee on Accreditation Report - October 2011. OHCHR Website. <[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>. Last accessed: 08 July 2012.

In terms of accessibility, the Ombudsperson has offices in a clearly marked building in the centre of the capital, as well as local offices with addresses published on the internet. In terms of language accessibility, the institution accepts complaints in any of the official languages.

In terms of operating principles, the institution is well positioned. A recommendation was made, however, by SCA that the cooperation with the international Human Rights system should be enhanced.¹³² In its evaluation, the SCA “encourages the [...] [Ombudsperson] to actively engage with the ICC, the European Group of NHRIs, as well as international and national CSOs and civil society organizations.”¹³³

5. Resources of the Ombudsperson

The Ombudsperson¹³⁴ has one main office in Skopje, and six regional offices in Tetovo, Kicevo, Stip, Strumica, Kumanovo, and Bitola.¹³⁵ All offices have administrative service at their disposal. The law provides that in order to execute its mandate more effectively and successfully, the Ombudsperson can organise its work in units. It has separate units for protection of the rights of the children and the persons with disabilities, against non-discrimination, adequate and equitable representation of the citizens, and torture and other cruel, inhuman and degrading treatment or punishment. The activities mandated to the Ombudsperson with OPCAT – prevention of torture and other cruel, inhuman or degrading treatment or punishment, are undertaken by the employees of the Organizational Unit for prevention of torture and other cruel, inhuman or degrading treatment of punishment – the National Preventive Mechanism.¹³⁶

As mentioned above, the Ombudsperson is funded from the state budget under a separate budget line. According to the law, it is in a position to negotiate its funds with the government during a parliamentary session within which the state budget is adopted.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ See also Annex II ‘Assessment of the use effectiveness of the resources allocated to the NHRIs in Macedonia’.

¹³⁵ Law on the Ombudsperson [Закон за народен правобранител]. Official Gazette of the Republic of Macedonia, No. 60/2003, 114/2009. Arts. 4, 44.

¹³⁶ As stated in the opening of the study, it is beyond the focus of the present analysis to enter into discussions on the specific competences re torture and children of a NHRI. Thus, issues such as positioning of a NPM when including it in a wider existing institution are not discussed here.

Thus, the parliament should schedule a special discussion on the budget of the Ombudsperson, including a separate voting for it.¹³⁷

Although the formulation of the law with regards to the funding is in line with the established standards, that is not the case with the practice. The last few annual reports claim lack of funds not only to exercise the vested competences, but also for institutional and human rights promotion. Specifically, its 2010 annual report notes lack of funds designated for the functioning of the NPM,¹³⁸ also highlighted by the SCA in the accreditation report.¹³⁹

6. Recommendations

Recommendations for upgrading the work of the Ombudsperson institution in line with the Paris Principles were already made by the ICC, and are contained in the SCA accreditation report. The present analysis includes both these recommendations, as well as additional ones made on the basis of the conducted research:

- **Members:** amend the election procedure for the Ombudsperson to include a public call, as well as to enhance the participativeness of the procedure, including possible consultations with CSOs. Attention should also be given to the appointment of the Ombudsperson for a single non-renewable term, as a mode to reduce susceptibility to political pressure.
- **Pluralism:** enter guarantees to enhance the pluralism of the Ombudsperson in a manner that will reflect the society as a whole and not just the ethnicity marker.
- **Competences:**
 - o Consider the expansion of the Ombudsperson's mandate beyond the public sector.
 - o Expand the mandate with a possibility to assist Human Rights formal educa-

137 Law on the Ombudsperson [*Закон за народен правобранител*]. Official Gazette of the Republic of Macedonia, No. 60/2003, 114/2009. Art.48

138 Annual Report of the Ombudsperson of the Republic of Macedonia [*Годишен извештај за работата на народниот правобранител на Република Македонија*]. Ombudsperson Website. <<http://ombudsman.mk/upload/documents/Izvestaj%202010-MK.pdf>>. Last accessed: 08 July 2012.

139 "ICC Sub-Committee on Accreditation Report - October 2011". OHCHR Website. <[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>. Last accessed: 08 July 2012.

tion and vocational training, as well as Human Rights information and awareness-raising, through more active engagement in such activities.

- o Enhance research competences, including the publication of specialised studies to assist Human Rights education, information and awareness-raising.
- o The Constitution and the law should include, as part of the provision on the mandate of the Ombudsperson, guaranteeing the rights of persons under international law treaties ratified by law in accordance with the Constitution and considered part of domestic law.
- Cooperation: enhance cooperation with the international Human Rights system.
- Resources: allocation of sufficient funds for the Ombudsperson to exercise its full mandate.

B. Commission for Protection against Discrimination

The CPAD is the other identified NHRI in the case of Macedonia. Although operating for a little over a year, its establishing and functioning has offered valuable lessons for the present analysis.

1. Formal Establishment of the Commission for Protection against Discrimination

CPAD was established with the Law on Prevention and Protection against Discrimination (Anti-discrimination Law) adopted in April 2010, as an independent specialised state body¹⁴⁰ (legal person, based in the capital – Skopje). The first CPAD members were appointed in December 2010, and the CPAD itself started to operate formally¹⁴¹ with the implementation of the Anti-discrimination Law, on 01 January 2011.

The Anti-discrimination Law contains provisions on the CPAD's composition, competences, statutory powers, and accountability. It also contains a provision on the funding¹⁴² and a provision on pluralism¹⁴³ of the body (all these aspects are discussed in details below).

140 Law on Prevention and Protection Against Discrimination [*Закон за спречување и заштита од дискриминација*]. Official Gazette of the Republic of Macedonia. No. 50/2010. Art. 16

141 The CPAD started to function with its premises and to hold meetings only in later spring.

142 Law on Prevention and Protection Against Discrimination [*Закон за спречување и заштита од дискриминација*]. Official Gazette of the Republic of Macedonia. No. 50/2010. Art. 16(3)

143 *Ibid.* Art. 19(3)

Under law, the CPAD is free to exercise its mandate independently, without requesting a prior authorisation from the Government. It is funded through the state budget.¹⁴⁴ However, it is independent, as it is tasked with the adoption of the internal operating acts.¹⁴⁵ The law does not foresee any administrative support for it, as it prescribes that the administrative and technical tasks of it will be undertaken by the Commission itself.¹⁴⁶

According to the Anti-discrimination Law, CPAD is obliged to report on its activities annually to the Parliament.¹⁴⁷

There are several inconsistencies of the CPAD in respect to its formal establishment, both as a consequence of the legal provisions and their implementation. The inconsistencies related to the resources, independence and pluralism guarantees are the most notable ones (for the ones focusing on resources and independence please see below). The guarantees for pluralism of the CPAD cannot be considered as sufficient. The Anti-discrimination Law provides for pluralism only in terms of ethnicity,¹⁴⁸ however fails to introduce any guarantees for a pluralism of the composition of the CPAD ensuring reflection of all societal groups and society as a whole.

With regards to accountability, and in relation to the reporting of the CPAD to the Parliament, the Parliament has no legal obligation to discuss the CPAD annual report, nor has the Executive to be present in case such a discussion is held. This might result in just formal submission of the report to the Parliament without discussing and/or ignoring any possible issues that CPAD might have raised in the report. And indeed, the Parliament has not held a discussion on the first annual report submitted.

2. Functions, Competences and Responsibilities of the Commission for Protection against Discrimination

CPAD was established “for protection against discrimination”¹⁴⁹ of all natural and legal persons,¹⁵⁰ in the public and private sector (the law illustratively numbers several

144 *Ibid.* Art. 16(1,3)

145 *Ibid.* Art. 24(1-12)

146 *Ibid.* Art. 30

147 *Ibid.* Art. 24(1-4)

148 *Ibid.* Art. 19(3)

149 *Ibid.* Art.1(2)

150 *Ibid.* Art. 2

fields¹⁵¹).¹⁵² The provision on the protected grounds explicitly includes the following ones: sex, race, colour of skin, gender, marginalised group belonging, ethnic origin, language, citizenship, social origin, religion or religious belief, other types of belief, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, and property status.¹⁵³ This is an open-ended provision, closing with “any other grounds foreseen by law or a ratified international treaty.”¹⁵⁴ Furthermore, CPAD is tasked to follow the implementation of the Anti-discrimination Law, propose needed amendments of acts,¹⁵⁵ and give opinion on draft-laws of relevance for the protection against discrimination.¹⁵⁶ It can also recommend actions for the implementation of the principle of equality to state bodies.¹⁵⁷

Another CPAD competence is to deal with individual cases, and to give opinions and recommendations. It should also provide information on the procedures at disposal to persons who have filed a case, including the possibilities for seeking judicial protection, and possible procedural outcomes.¹⁵⁸

CPAD can undertake activities on promotion of, and education about equality, Human Rights and non-discrimination,¹⁵⁹ including informing the public about discrimination cases.¹⁶⁰ It can also undertake research, prepare studies, and conduct training related to discrimination, as well as collect statistical and other data, and establish databases of relevance to its mandate.¹⁶¹

151 These fields are: work and labour relations; education, science and sport; social security, including the field of social protection, pension and disability insurance, health insurance and health protection; judiciary and administration; housing; public informing and media; access to goods and services; participating and acting in syndicate, political parties, associations of citizens and foundations or any other organizations based upon participation; culture; and other areas determined by law. Source: Law on Prevention and Protection Against Discrimination [Закон за спречување и заштита од дискриминација]. Official Gazette of the Republic of Macedonia. No. 50/2010. Art. 4

152 *Ibid.* Art.4

153 *Ibid.* Art.3

154 *Ibid.*

155 *Ibid.* Art. 24(1-6)

156 *Ibid.* Art. 24 (1-9)

157 *Ibid.* Art. 24 (1-8)

158 *Ibid.* Art. 24 (1,2)

159 *Ibid.* Art. 24 (1-5)

160 *Ibid.* Art. 24(1-5)

161 *Ibid.* Art. 24 (1-10)

The above shows that the competences vested in the CPAD by the Anti-discrimination Law do not cover all the competences a NHRI should have. With regards to domestic Human Rights legislation, the mandate should be extended and clarified so to explicitly include monitoring of all legislation, executive acts and practices of relevance for its mandate, including a special focus on the impact they might have on ethnic communities and on marginalised groups.

In the case of minorities and marginalised groups, the CPAD needs to adjust the procedure on an individual bases, in accordance to the needs of the applicant. Namely, the Anti-discrimination Law does not leave room for CPAD to pay special attention when dealing with cases involving persons from ethnic communities or any marginalised groups. The only provision for adjustment is in terms of language. However, the Anti-discrimination Law, although in line with the Law on Languages, can be read as discriminatory upon applicants with different mother tongue than the official one of the unit of local self-government of residence, as opposed to those with same mother tongue as the official language. Such a claim is supported by the fact that the CPAD does not have local offices, nor its procedure is in any way directly connected to the working of the units of local self-government. When one takes into consideration the nature of the body, the difference in treatment does not seem to be both legitimate and proportional.

When it comes to international Human Rights law, the CPAD's competences are under-developed, as it lacks to: promote and ensure harmonization of domestic legislation with international Human Rights standards; encourage ratification of instruments; promote and contribute to training of key groups (without prejudice to primary training role of professional organisations); and promote and ensure harmonization of domestic legislation with minority standards laid out in universal or regional documents.

CPAD's competences could also be widened with respect to Human Rights education, capacity building, and information and awareness-raising, especially in terms of a more clear obligation to initiate or assist Human Rights research, formal education and vocational trainings, provide information and advice to all relevant actors on the topic of its mandate. It is also recommendable to clearly spell out monitoring of the Human Rights situation in the country in its mandate. This will be complementary to the already existing obligation to collect statistical and other data, create databases and conduct studies.

The first year of implementation of the Anti-discrimination Law showed that the CPAD exercised only its competences tied to its protection mandate. This can be seen both

from the first annual report submitted to the Parliament,¹⁶² as well as from the conclusion of a comprehensive CSO shadow report on the first year of its functioning.¹⁶³

3. Members of the Commission for Protection against Discrimination

The CPAD is composed of seven members appointed by the Parliament from a list of candidates proposed by the Commission for elections and appointments (working body of the Parliament) on the basis of the applications to the public add for members of the CPAD. The only two requirements for standing as a candidate for the CPAD are having citizenship of the country, and education and experience in Human Rights or social sciences.¹⁶⁴

The only requirement for plurality of this body is adequate and equitable representation¹⁶⁵ (i.e. representation of the ethnic groups). Drawing from other laws, one might argue that equal representation of sexes is also mandatory for this body.¹⁶⁶ The members' engagement in the CPAD is not a full-time job and is not primary employment. They are, however, remunerated for the engagement. The mandate is for five years, with a possibility for re-election. The President is elected by the CPAD itself, amongst its members, for a mandate of one year.¹⁶⁷ About its activities, CPAD submits annual reports to the Parliament.¹⁶⁸

The selection of the first composition of the CPAD showed that the membership criteria do not provide enough guarantees for the appointment of competent persons able to

162 Commission for Protection against Discrimination. Annual Report of the Commission for Protection against Discrimination [Годишен извештај за работа на Комисија за заштита од дискриминација]. *Parliament of the Republic of Macedonia Website*. <<http://www.sobranie.mk/ext/exporteddocumentdownloadwindow.aspx?ld=f45c2520-330f-4f50-8b77-5d42a4714b0d&t=pdf>>. Last accessed: 29 June 2012.

163 Najcevska, Mirjana. Извештај во сенка за комисија во сенка [Shadow Report for a Commission in Shades]. *FOSIM Website*. <<http://soros.org.mk/dokumenti/izvestaj-vo-senka-za-komisija-vo-senka-MKD.pdf>>. Last accessed: 28 June 2012.

164 Law on Prevention and Protection Against Discrimination [Закон за спречување и заштита од дискриминација]. Official Gazette of the Republic of Macedonia. No. 50/2010. Arts. 17(1), 18

165 *Ibid.* Art. 19(3)

166 See: Law on Equal Opportunities of Women and Men [Закон за еднакви можности на мажите и жените]. Official Gazette of the Republic of Macedonia, No.06/2012.Art. 3

167 Law on Prevention and Protection Against Discrimination [Закон за спречување и заштита од дискриминација]. Official Gazette of the Republic of Macedonia. No. 50/2010. Art. 17

168 *Ibid.* Art. 19(3); Commission for Protection against Discrimination. Rules of Procedure of the Commission for Protection against Discrimination [Деловник за работа на Комисијата за заштита од дискриминација]. *Commission for Protection against Discrimination Website*. <<http://www.kzd.mk/phocadownload/delovnik-za-rabota-kzd.pdf>>. Last accessed: 11 November 2012.

deal with such a complex area as discrimination. The formulation of the condition for education and experience as “education and experience in Human Rights or social sciences” rather than only Human Rights is already problematic, as it opens the possibility for persons with social sciences experience or education and without specific experience or education in Human Rights to become members (too general for a sensitive and specific area such as equality and non-discrimination). This was already the case, as in the appointment of the first composition of the CPAD persons who had no education, experience or expertise on equality and non-discrimination, or even on Human Rights in general, were elected as its members.¹⁶⁹

Moreover, this body does not abide by the plurality principle, as mentioned above, as it provides only for pluralism in relation to ethnic background,¹⁷⁰ which does not ensure that its composition fully mirrors the society. On the first call for members of the CPAD there were applicants representing marginalised groups (people with disability, LGB-TIQ), which although well known for their knowledge and experience in the area of equality and non-discrimination (including an expert engaged with the UN), were not appointed as members. On the contrary, several of the elected members had no Human Rights related experiences.¹⁷¹ In addition, the discussions at the parliamentary session devoted to the appointment on members, prove the whole process of the establishment of the first composition of the first equality body in the country as a highly politicised one.¹⁷²

4. Operating Principles of the Commission for Protection against Discrimination

According to the law, CPAD should cooperate with various actors. These include the Ombudsperson on cases of discrimination, bodies competent for implementation of the

169 For more on this, please see: The Assembly of the Republic of Macedonia appointed the members of the first Commission for Protection against Discrimination. *Non-discrimination Network Website*. <http://www.non-discrimination.net/content/media/MK-7-Members_of_first_equality_body_appointed.pdf>. Last accessed: 28 June 2012.

170 Law on Prevention and Protection Against Discrimination [*Закон за спречување и заштита од дискриминација*]. Official Gazette of the Republic of Macedonia. No. 50/2010. Art. 19(3)

171 One of the CPAD members has almost no experience what-so-ever, let alone an experience that can be considered as even social sciences experience.

172 The Assembly of the Republic of Macedonia appointed the members of the first Commission for Protection against Discrimination. *Non-discrimination Network Website*. <http://www.non-discrimination.net/content/media/MK-7-Members_of_first_equality_body_appointed.pdf>. Last accessed: 28 June 2012.

principle of equality in the local self-government, as well as national bodies dealing with equality from other countries, and international organisations working with Human Rights.¹⁷³ When it comes to dealing with individual cases, the CPAD should cooperate with all natural and legal persons, state bodies, units of local self-government, organisations with public authorisations, etc.¹⁷⁴

The legal framework leaves a lot of space for the CPAD to exercise its competences in the field of cooperation. It could benefit, however, from an additional provision with an accent on cooperation with CSOs, alike the one present in the EU equality directives.

If one distances from the legal framework, and looks at the 2011 annual report of the CPAD, can easily see that it has barely exercised its cooperation competences. One would expect that the CPAD would first initiate and/or enter into cooperation with the Ombudsperson, as an institution with overlapping competences. However, the 2011 annual reports of the CPAD¹⁷⁵ and of the Ombudsperson,¹⁷⁶ show that their cooperation remains at the level of meetings, and is not yet even formalised with a Memorandum for Understanding or a similar act that would further facilitate it.

The cooperation with CSOs seems to be very limited too, as is the one with international organisations. The annual report of the CPAD¹⁷⁷ shows that it has requested funds for 2012 for joining the European Network of Equality Bodies 'EQUINET'. However, the shadow report on the work of the CPAD reveals that the motivation behind seeking membership in EQUINET is tied to the use of EU funds (through the IPA programme), and rightfully notes that there seems to be a lack of a deeper understanding among the CPAD members of the purpose and possible benefits of gaining an observer status in this network.¹⁷⁸

173 Law on Prevention and Protection Against Discrimination [Закон за спречување и заштита од дискриминација]. Official Gazette of the Republic of Macedonia. No. 50/2010. Art. 24 (1-7, 1-11), 33

174 *Ibid.* Art. 31

175 Commission for Protection against Discrimination. Annual Report of the Commission for Protection against Discrimination [Годишен извештај за работа на Комисија за заштита од дискриминација]. *Parliament of the Republic of Macedonia Website*. <<http://www.sobranie.mk/ext/exporteddocumentdownloadwindow.aspx?id=f45c2520-330f-4f50-8b77-5d42a4714b0d&t=pdf>>. Last accessed: 29 June 2012.

176 Annual Report of the Ombudsperson of the Republic of Macedonia [Годишен извештај за работата на народниот правобранител на Република Македонија]. *Ombudsperson Website*. <<http://ombudsman.mk/upload/documents/Izvestaj%202010-MK.pdf>>. Last accessed: 08 July 2012.

177 *Ibid.*

178 Najcevska, Mirjana. Извештај во сенка за комисија во сенка [Shadow Report for a Commission in Shades]. *FOSIM Website*. <<http://soros.org.mk/dokumenti/izvestaj-vo-senka-za-komisija-vo-senka-MKD.pdf>>. Last accessed: 28 June 2012.

Accessibility, as both an operating and a founding principle, seems to be a problem for CPAD. This body remains highly inaccessible due to its infrastructure, language, and psychological barriers. Its premises are in the same building where part of the Ministry of Interior's offices are. Moreover, the physical accessibility of these premises is questionable.¹⁷⁹ CPAD has no local offices. The language barrier was elaborated above, in the section on the functions, competences and responsibilities. Finally, the politicisation process which marked the appointment procedure, including the fact that some of the CPAD members are working in the executive and legislative authorities, could adversely affect the willingness of (potential) victims to approach the CPAD. A survey shows low level of trust and familiarity with the CPAD.¹⁸⁰

5. Resources of the Commission for Protection against Discrimination

Under the Anti-discrimination Law, CPAD¹⁸¹ is funded from the state budget however it can also acquire funds from other sources.¹⁸² This law neither foresees establishment of a secretariat (or any other kind of administrative support for the CPAD),¹⁸³ nor establishment of local offices. Such legal framing of the potential for resources seems to be problematic.

In its first year the CPAD relied on administrative support from the Ministry of Labour and Social Policy (MLSP), which is highly problematic in terms of independence and efficiency, and especially since the complaints filled in the first months were submitted to the MLSP. Later on volunteers were hired (including a jurist volunteer) to assist with the receipt of the complaints. This is highly non-recommendable, as it is any outsourcing of the protection mandate, due to its sensitive nature. But, even beyond the protection mandate, one cannot expect all the competences prescribed with the Anti-discrimination Law to be undertaken without administrative support, even if some of the tasks (for example studies, research) are outsourced. Thus, having in mind the provisions on the competences of CPAD and the expert and administrative support, one cannot expect

179 See: *Ibid.* Annex II.

180 *Ibid.*

181 On resources, see also Annex II 'Assessment of the use effectiveness of the resources allocated to the NHRIs in Macedonia'.

182 Law on Prevention and Protection Against Discrimination [Закон за спречување и заштита од дискриминација]. Official Gazette of the Republic of Macedonia. No. 50/2010. Art. 16(3)

183 *Ibid.* Art. 30

exercise of the mandate to its full extent. Moreover, the current expert and administrative support provision does not allow for the creation of institutional memory.

Financial resources can also be an issue, as the funds for CPAD's functioning come from the Government, while it is not in a position to negotiate it, which was already a problem. In the first year of its functioning, the allocated funds were not enough to cover only the honoraria of the members in the amount provided for by law (monthly honoraria equals two average monthly salaries in the country),¹⁸⁴ let alone to provide funds for equipping offices, etc.

The premises of the CPAD further hinder its independence, as are currently in the building of the national radio and television broadcasting company, where state administration sections are also based, including the Ministry of Interior. As mentioned above, this renders the accessibility of the premises. CPAD does not have local offices.

According to the Anti-discrimination Law, as noted above, the administrative and technical support of the CPAD falls upon its members. At first, administrative support was provided by civil servants from the MLSP, and later by volunteers.¹⁸⁵ Thus, human resources seem to challenge the work of the CPAD.

The accessibility of the CPAD is also hindered by the language barrier, elaborated above, in the section on the functions, competences and responsibilities of CPAD.

6. Recommendations

The following recommendations can be made with regards to CPAD, and in relation to the current legal framework. Most of them would entail amendments to the Anti-discrimination Law:

- **Pluralism:** enter a guarantee for pluralism of CPAD beyond ethnicity, one that will enable CPAD composition to mirror the society as a whole.
- **Accountability:** enter an obligation for the Parliament to debate the CPAD annual report. This should be accompanied with an obligation for representatives from the Government to be present at the session where this report will be discussed.

184 Law on Prevention and Protection Against Discrimination [Закон за спречување и заштита од дискриминација]. Official Gazette of the Republic of Macedonia. No. 50/2010. Art. 21(2)

185 Commission for Protection against Discrimination. Annual Report of the Commission for Protection against Discrimination [Годишен извештај за работа на Комисија за заштита од дискриминација]. *Parliament of the Republic of Macedonia Website*. <<http://www.sobranie.mk/ext/exporteddocumentdownloadwindow.aspx?Id=f45c2520-330f-4f50-8b77-5d42a4714b0d&t=pdf>>. Last accessed: 29 June 2012.

- **Competences: expand CPAD competences to include:**
 - o **Monitoring of all legislation relevant to its mandate including executive acts and practices. It is recommendable such a monitoring to focus on the impact these acts and practices might have on the ethnic communities and marginalised groups.**
 - o **Promote and ensure harmonization of domestic legislation with international Human Rights standards; encourage ratification of instruments; and promote and ensure harmonization of domestic legislation with minority standards laid out in universal or regional documents.**
 - o **Initiate or assist Human Rights research, formal education and vocational trainings, provide information and advice to all relevant actors on the topic of its mandate.**
 - o **Monitor the Human Rights situation in the country. This should be formulated in a way to complement the already existing obligation to collect statistical and other data, create databases and conduct studies.**
- **Accessibility:**
 - o **Language accessibility: amend the provision which regulates the use of languages re the complaints procedure, so that it allows for complaints to be filed in any of the languages of the communities mentioned in the Preamble of the Constitution.**
 - o **Physical accessibility: change of premises to a place where it will be truly accessible to all, and especially to people with disabilities.**
 - o **Public credibility:**
 - **Distance the CPAD from the government, which would include receiving no administrative support from MLSP or any other section of the government.**
 - **Increase the professionalism in the public appearances of the members of the CPAD, in a manner that will leave no doubt about the apolitical nature of this body.**
- **Members: social sciences should not be included in the provision, so to allow only people with specific equality and non-discrimination or Human Rights education and experience to be able to stand as candidates for members of the CPAD.**

- **Cooperation:** enter special provision for cooperation with the civil society and CSOs.
- **Resources:**
 - o Allow under law the creation of a secretariat, or any form of administrative support for the CPAD. Following this, CPAD might consider establishing working groups from amongst its members to work on specific issues which will be identified as the most burning issues, or to work on specific grounds of discrimination. Such working groups can be assisted by internal or external experts. Under CPAD's internal acts, there is a possibility for establishing such working groups.¹⁸⁶
 - o Due consideration should be given to the possibility for professionalization of the members of the CPAD, by making this their full time job and position.
 - o CPAD needs to be in a position, alike the Ombudsperson, to agree upon its annual budget with the Government. These funds need to be sufficient for CPAD to be able to exercise its full mandate.
 - o Consider establishing formal links with the regional offices of the Ombudsperson, in order to expand the reach of the CPAD.

★ ★ ★

The analysis on the Ombudsperson and the CPAD above shows that there is a need for reforming the framework, as it highlights shortcomings in relation to the formal establishment, functions, competences and responsibilities, membership, operating principles as well as resources of these institutions. It shows that both the mandate of the NHRIs will benefit from their alignment with the international standards, and the overlaps will be resolved in a manner that will enhance legal certainty.

As pointed out above, such a reform must be done in a wide public participative consultation process that will reconsider every pillar of the institutional framework and relevant aspect, and only then will arrive at an institutional framework and a NHRI model that will be in line with international standards and will fit the local context.

¹⁸⁶ Commission for Protection against Discrimination. Rules of Procedure of the Commission for Protection against Discrimination [Деловник за работа на Комисијата за заштита од дискриминација]. *Commission for Protection against Discrimination Website*. <<http://www.kzd.mk/phocadownload/delovnik-za-rabota-kzd.pdf>>. Last accessed: 11 November 2012. Art.33(4)

V. CONCLUSION: APPROACHING POSSIBLE REFORMS



This study identified the need for reforms of the institutional framework regulating the work of the NHRIs, and highlighted the reforms' points, as a way to encourage the opening of a public nationwide consultation process.

The study gave a general introduction on NHRIs, followed by an overview of international standards on NHRIs, and an assessment of the institutions in Macedonia, focusing on their legal and policy aspects, and highlighting the incompatibilities with the international standards. A matrix summarising the findings of a comparative study of five NHRIs and an assessment of the use effectiveness of the resources allocated to the NHRIs in Macedonia are annexed to this study.

Two main problems stood out in relation to NHRIs, which are also problems when it comes to the way the country is dealing with Human Rights in general: lack of serious consideration and strategic approach to Human Rights, and lack of resources.

The lack of strategic approach can be seen from the fact that Macedonia does not have a National Action Plan for Human Rights or any other strategic or policy document on Human Rights.¹⁸⁷ Most of the Human Rights related reforms in the past decade were driven by the EU integration of the country; the most recent case being the adoption of the Anti-discrimination Law and the establishment of one of the institutions considered in this study, CPAD. However, even when this is the case, these reforms are approached to as a patchwork, and are not based on the findings and recommendations grounded in serious evidence-based research and a public participatory consultation process. The second problem, the lack of resources, does not purport that the country lacks funds for such processes, but rather that not enough resources are allocated to allow for a serious approach to Human Rights. There are many examples of campaigns and recent projects

¹⁸⁷ Recently, a Strategy on Equality and Non-discrimination on grounds of Gender, Ethnicity, Age and Disability was adopted. This document only confirms the above statement about not having a serious approach to Human Rights. See: 'First Equality Strategy Adopted'. *Non-discrimination Network Website*. <<http://www.non-discrimination.net/content/media/MK-22-Equality-strategy-adopted.pdf>>. Last accessed: 12 July 2012.

which have been done in the country which show that when it comes to fulfilling its Human Rights obligations, the country has not been using its maximum available resources.

The recommendations sections on the two NHRIs suggest that there are many options at disposal if a possible approaching to reforms of the institutional framework is discussed. Some of the advocated reforms are more burning, especially re the CPAD, while others can be done only once a wide public consultation process of all stakeholders is opened, with wide and meaningful participation of the CSOs, and backed with political will and sufficient funds to implement the envisaged reforms (please see assessment of the use effectiveness of the resources annexed to this study). When discussing the challenges and possible solutions related to the establishment of a NHRI in accordance with the Paris Principles, Mirjana Najcevska, author of several academic articles, reports and policy documents on NHRIs in Macedonia, also refers to the importance of the political will for the opening of such a process to be possible. She further suggests formation of a group of parliamentarians and high Government officials supporting the NHRI idea. In order to open a consultative process, she underlines the importance of reaching a certain level of awareness on the importance of having such an institution, while the very process of implementation needs to start from the Government.¹⁸⁸

A detailed consideration of all possible models for reforming the institutional framework is beyond the scope of this study. This should be the task of the consultative process. Najcevska highlights that the NHRI idea, including possible model, structure, mandate, membership, etc. of this institution needs to grow as an idea inside the Government too.¹⁸⁹ A note can be added here that many options for designing a NHRI model are at disposal. All options revolve around the two institutions assessed here,¹⁹⁰ the Ombudsperson and the CPAD, such as: both the Ombudsperson and CPAD to continue to function with the recommendations as given in sections III-A-6, and III-B-6

188 Najcevska, Mirjana. "NHRI in Republic of Macedonia: Current Condition, Challenges and Possible Development" Journal for European Issues 'Evrodijalog', No.16 [25-40]. 38

189 *Ibid.*

190 An early work by Najcevska proposes that the NHRI model should consist of: the Ombudsperson (with its present mandate and function), a Commission for Human Rights (to be designed fully in compliance with the Paris Principles, and to act as a proactive institution), and a Police Ombudsperson (tasked to monitor, investigate and initiate proceedings). Source: Najcevska, Mirjana. Alternatives for Protection of the Human Rights in the Republic of Macedonia [Алтернативи во заштитата на човековите права во Република Македонија]. Powerpoint presentation on file with author.

implemented; both the Ombudsperson and CPAD to continue to exist, and the recommendations as given in sections III-A-6, and III-B-6 to be implemented, and additionally a new centre that will be concerned with Human Rights research to be established; discontinue the CPAD and transfer in full its competences to the Ombudsperson; merge the Ombudsperson and the CPAD into one Human Rights Centre.

The consultations done within the frame of the process of compiling this study (the expert group and the international conference) pointed to a prevailing option among the participants. This is that both the CPAD and the Ombudsperson should continue to exist, but their mandate, membership, independence, and other aspects discussed above, should be improved. This model was mostly favoured based on two arguments. The first argument is that the Ombudsperson should continue to exist as it is already an institution with a tradition and institutional capacity. The second argument is that the CPAD should not be discarded yet regardless of the many deficiencies of the act establishing it, and the problems its functioning in practice thus far shows, as it is still a very new institution.

Regardless of the fact which model would be the best option from today's perspective, there must be an open public participatory consultation process on possible Human Rights National Action Plan, including discussions on reforming the institutional framework. Thus, the model should be a product of this kind of consultation. However, since such a process is a long-term engagement, and some of the points made above are urgent for the two institutions, a priority should be given. In the course of this, due focus should be placed on the efforts to up-grade the functioning of the Ombudsperson in line with the Paris Principles and the recommendations of the ICC, in order to assist it in getting 'A' status accreditation.

Last, but certainly not least, is the political will which is essential when initiating and undertaking an institutional reform process such as the one discussed in the study. This is even more so in the context of Macedonia, as such a process would by default mean discussion of the amendments to the Constitution, which has already proven to be a hot political issue for all political actors.

ANNEX I: COMPARATIVE ANALYSIS OF MODELS OF NHRI INSTITUTIONS

Matrix of summary findings from “Comparative Study of Five NHRIs”¹⁹¹

NHRI ¹⁹² CASE / CRITERIA	OMBUDSPERSON OF CROATIA [Pučki Pravobranitelj]	GERMAN INSTITUTE FOR HUMAN RIGHTS [Deutschen Instituts für Menschenrechte]
Formal Establishment		
Legal Grounds	<ul style="list-style-type: none"> - Constitution of the Republic of Croatia (1990; consolidated text 2010) (Art.93) - People's Ombudsperson Act (2012) 	<ul style="list-style-type: none"> - Decision of the German Federal Parliament (2000; revised version 2009)
Internal Organisation	<ul style="list-style-type: none"> - 1 Ombudsperson - (at least) 3 Deputy Ombudspersons (division according to service) 	<ul style="list-style-type: none"> - General Assembly (22 members) - Board of Trustees (13 plus 5 members) - Board of Directors (Chair and deputy-Chair)
Independence	<ul style="list-style-type: none"> - Autonomous and independent - Appointed with act of the Parliament - 8-year term with one possibility for re-election - Immunity mirroring the one of the MPs - Financial independence (see: Resources) 	<ul style="list-style-type: none"> - Politically independent and independent from the Government - Board of Trustees members: civil society, government (no voting rights), parliamentary-human Rights Committee - Financial independence (see: Resources)
Accountability	<ul style="list-style-type: none"> - Submit annual report and other reports when needed - Parliament conclusions on the annual report oblige the government to report on measures taken to remove the causes of violations 	<ul style="list-style-type: none"> - Submit a report to the Board of Trustees - Publish an annual public activities report

¹⁹¹ This matrix is based on a larger comparative study, entitled “Comparative Study of Five NHRIs”. The findings presented herein are largely based on the formal characteristics of the five selected cases.

¹⁹² The criteria for the selection of the five cases were ones which were expected to yield most useful comparison findings when discussing the case of Macedonia. These are: accreditation status of the NHRI, membership in international organizations, international legal obligations, local or regional context, political system and legal system of the country where the NHRI is based, and composition of NHRI.



DANISH INSTITUTE FOR HUMAN RIGHTS [Institut for Menneskerettigheder]	OMBUDSPERSON OF SPAIN [Defensor Del Pueblo]	OMBUDSPERSON OF GEORGIA [საქართველოს სახალხო დამცველი]
Formal Establishment		
<ul style="list-style-type: none"> - Act no.411 Governing the Establishment of the Danish Centre for International Studies and Human Rights (2002) 	<ul style="list-style-type: none"> - Spanish Constitution (1978) (Art.54) - Organic Act 3/1981, April 6th, regarding the Ombudsperson (1981) 	<ul style="list-style-type: none"> - Constitution of Georgia (1995) (Art.43) - Organic Law of Georgia on the Public Defender of Georgia (1996)
<ul style="list-style-type: none"> - Board (13 members) - Executive Director 	<ul style="list-style-type: none"> - 1 Ombudsperson - 2 Deputy Ombudspersons (division according to topic/theme) - General Secretary 	<ul style="list-style-type: none"> - 1 Ombudsperson - 1 Deputy-Ombudsperson (chief of staff)
<ul style="list-style-type: none"> - Independent self-governing institution - Board members: appointed by Universities (no member is appointed by the Government) - 4-year term a possibility for one re-appointment - Financial independence (see: Resources) 	<ul style="list-style-type: none"> - Autonomous and independent - Appointed with an act of the Parliament - Appointed with a three/fifths majority for a five year term - Financial independence (see: Resources) 	<ul style="list-style-type: none"> - Independent - Appointed with act of the Parliament - 5-year term with one possibility for re-election - Enjoys immunity (waived by the Parliament only if caught flagrante delicto) - Financial independence (see: Resources)
<ul style="list-style-type: none"> - Present annual report to the Parliament Standing Committee on Legal Affairs on Human Rights in Demark - Audited once a year - Publish annual public activities report 	<ul style="list-style-type: none"> - Report discussed in parliament 	<ul style="list-style-type: none"> - Submit an annual report to the Parliament; this report is published in the official journal of the parliament - Give a speech during spring session on the situation with Human Rights in the country

NHRI ¹⁹² CASE / CRITERIA	OMBUDSPERSON OF CROATIA [Pučki Pravobranitelj]	GERMAN INSTITUTE FOR HUMAN RIGHTS [Deutschen Instituts für Menschenrechte]
Membership		
Pluralism	<ul style="list-style-type: none"> - Centre for Human Rights: civil society and academia - Council for Human Rights: civil society, national minorities, academia, media - NPM: 2 from CSOs and 2 from academia 	<ul style="list-style-type: none"> - General Assembly: civil service, civil society, academia, political parties, legal profession - Board of Trustees: representatives of government institutions, CSOs
Selection process	<ul style="list-style-type: none"> - Criteria: lawyer with min. 15 years experience in the field - Procedure: elected and relieved by the Parliament with a simple majority - Employees: open and transparent procedure; civil servant status 	<ul style="list-style-type: none"> - Management boards under appointment procedure for governmental offices, universities and CSOs - Employees and top management: employed by the institute following public calls
Decision making	<ul style="list-style-type: none"> - Collegium (Ombudsperson and deputy-Ombudspersons), however final decisions made by the Ombudsperson her/himself 	<ul style="list-style-type: none"> - Managerial decisions: Board of Directors - General Assembly approves Board of Trustees' decisions and substantial decisions of the Board of Directors
Functions, competences and responsibilities		
Domestic Human Rights Legislation and Policies	<ul style="list-style-type: none"> - Legislative changes re rights enshrined in the Constitution and the Law 	<ul style="list-style-type: none"> - Provide expertise to the representatives of the Federal Parliament, government and governmental departments
International Human Rights Standards	<ul style="list-style-type: none"> - Protect and promote Human Rights enshrined in ratified treaties - Follow domestic laws alignment with ratified international treaties - Participate in reporting to the monitoring bodies and for the UPR - NPM for Croatia 	<ul style="list-style-type: none"> - Proposals for alignment with international standards - Act as National Monitoring Body for the CRPD
Individual cases	<ul style="list-style-type: none"> - Competence to consider individual cases 	<ul style="list-style-type: none"> - No competence re individual cases - Can advise victims

DANISH INSTITUTE FOR HUMAN RIGHTS [Institut for Menneskerettigheder]	OMBUDSPERSON OF SPAIN [Defensor Del Pueblo]	OMBUDSPERSON OF GEORGIA [საქართველოს სახალხო დამცველი]
Membership		
<ul style="list-style-type: none"> - Board: representatives elected by the Council of Human Rights, universities, Danish Rector's Office, employees of the Institute 	<ul style="list-style-type: none"> - NPM: civil society, legal profession, medical and psychological associations 	<ul style="list-style-type: none"> - NPM (Special Preventive Group): respective educational background, professional experience and ability to carry out functions of the NPM due to her/his professional and moral qualities
<ul style="list-style-type: none"> - Management boards under appointment procedure for governmental offices, universities and CSOs - Employees and top management: employed by the institute following public calls 	<ul style="list-style-type: none"> - Criteria: any person of age - Procedure: elected and relieved by the Parliament with a simple majority - Employees: status of civil servants or temporary civil servants 	<ul style="list-style-type: none"> - Criteria: citizen of Georgia - Procedure: nominated by the President of Georgia, parliamentary faction or a group of at least 6 MPs not belonging to any faction; elected, appointed and relieved by the Parliament with simple majority (secret ballot for each candidate separately)
<ul style="list-style-type: none"> - Managerial decisions: Institute Director 	<ul style="list-style-type: none"> - Coordination and Internal Regime Board (Ombudsperson and her/his deputies, Secretary General); final decisions made by the Ombudsperson or the competent deputies 	<ul style="list-style-type: none"> - Deputy-Ombudsperson: appointed and discharged by the Ombudsperson
Functions, competences and responsibilities		
<ul style="list-style-type: none"> - Advise the Parliament and Government - Contribute to domestic implementation of Human Rights 	<ul style="list-style-type: none"> - Can file cases to the Constitutional Tribunal - Can initiate habeas corpus proceedings 	<ul style="list-style-type: none"> - Can file cases to the Constitutional Court - Amicus Curiae function - Propose NPM-related legislative changes
<ul style="list-style-type: none"> - Central equality body (as per Directive 2000/43) - Very active on international level in promoting international Human Rights standards 	<ul style="list-style-type: none"> - NPM for Spain 	<ul style="list-style-type: none"> - Protect and promote Human Rights enshrined in ratified international treaties - NPM for Georgia
<ul style="list-style-type: none"> - No competence re individual cases - Can advise victims 	<ul style="list-style-type: none"> - Competence to consider individual cases 	<ul style="list-style-type: none"> - Competence to consider individual cases - Amicus Curiae function

NHRI¹⁹² CASE / CRITERIA	OMBUDSPERSON OF CROATIA [Pučki Pravobranitelj]	GERMAN INSTITUTE FOR HUMAN RIGHTS [Deutschen Instituts für Menschenrechte]
Human Rights Situation Monitoring	<ul style="list-style-type: none"> - Has Human Rights monitoring competence - Issue warnings, give notices, make recommendations, publish opinions - Conduct surveys, collect and analyse statistical data, and inform the Parliament on discrimination 	<ul style="list-style-type: none"> - Has Human Rights monitoring competence - Active participation in the national UPR process
Human Rights Education, Capacity Building, and Awareness Raising	<ul style="list-style-type: none"> - Proactive in education, capacity building and informing on equality and non-discrimination - Meetings, awareness raising and informative sessions with victims of discrimination, and with local authorities on local/regional level 	<ul style="list-style-type: none"> - Human Rights education (including training curricula for teachers and rights-based approach for practitioners in development cooperation) - Research and policy advice - Develop training materials and conduct trainings
Networking and Cooperation		
Domestic Level	<ul style="list-style-type: none"> - Cooperate with the Parliament, and with officials and bodies with public powers - Strong cooperation with CSOs re work on equality 	<ul style="list-style-type: none"> - Link between the government and the CSOs - Forum for exchange of ideas and information between the government and the CSOs
International Level	<ul style="list-style-type: none"> - Participate in reporting to the monitoring bodies and for the UPR - Member in several associations of NHRIs 	<ul style="list-style-type: none"> - Member in several associations of NHRIs - Active participation in national UPR process
Resources		
Infrastructure	<ul style="list-style-type: none"> - Offices in the capital 	<ul style="list-style-type: none"> - Offices in the capital - Human Rights library
Funding	<ul style="list-style-type: none"> - State budget funding (special budget line) 	<ul style="list-style-type: none"> - Non-earmarked funding from several federal ministries

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<ul style="list-style-type: none"> - Has Human Rights monitoring competence - Publish annual reports on Human Rights in the country and on specific subjects - Prepare and submit alternative reports to the monitoring bodies - Active participation in national UPR processes 	<ul style="list-style-type: none"> - Has Human Rights monitoring competence - Report to the Parliament, inter alia, on the Human Rights situation - Conduct studies and surveys 	<ul style="list-style-type: none"> - Has Human Rights monitoring competence - Report to the Parliament on the Human Rights situation - NPM monitoring and investigation competences - Publish special Human Rights issues reports
<ul style="list-style-type: none"> - Human Rights education - Human Rights research and (policy) advice - Information on Human Rights issues - Promote equal treatment (re race and ethnic origin) - Assist discrimination victims - Run library and documentation facilities - Promote coordination re Human Rights activities 	<ul style="list-style-type: none"> - Low activity re promotion and training 	<ul style="list-style-type: none"> - Human Rights and freedoms education activities - Maintain a Library on relevant sources - Inform the public on Human Rights issues - Publish special reports - Meetings with victims re its NPM competences
Networking and Cooperation		
<ul style="list-style-type: none"> - Link between the government and the CSOs - Award annual prize on equal opportunities and diversity in the workplace to companies 	<ul style="list-style-type: none"> - Cooperate with the Parliament, and with officials and bodies with public powers - Strong cooperation with CSOs re work of the NPM 	<ul style="list-style-type: none"> - Cooperate with the Parliament and with officials and bodies with public powers - Cooperate with CSOs
<ul style="list-style-type: none"> - Very active at international level (over 75% of its activities) - Reporting to the monitoring bodies 	<ul style="list-style-type: none"> - Member in several associations of NHRIs 	<ul style="list-style-type: none"> - Member in several associations of NHRIs
Resources		
<ul style="list-style-type: none"> - Offices in the capital - Human Rights library 	<ul style="list-style-type: none"> - Offices in the capital 	<ul style="list-style-type: none"> - Office in the capital - Six regional offices
<ul style="list-style-type: none"> - Funding from the state - Can generate funding from grants, donations, subsidised research, consultancies, counselling 	<ul style="list-style-type: none"> - State budget funding (special budget line) 	<ul style="list-style-type: none"> - State budget funding (as needed for appropriate exercise of its functions; budget cuts permitted only with Ombudsperson's prior consent)

ANNEX II: ASSESSMENT OF THE USE EFFECTIVENESS OF THE RESOURCES ALLOCATED TO THE NHRIs IN MACEDONIA

A. Rationale

This part of the study provides an overview and assessment of the effectiveness of the use of resources allocated to the two institutions analyzed in the study – namely the Ombudsperson Institution and the Commission for Protection against Discrimination, with no intentions to serve as an in-depth financial analysis. More specifically, it is by no means exhaustive as it seeks to assess the functional and technical capacities of the respective institutions and their performance through an assessment incorporating quantitative elements that are based on publicly available data, and is to be considered as an added value to the legal and policy analysis only.

Institutional performance, likewise organizational performance, sheds light on the structures' successful goals and objectives realization, while measuring performance is crucial in understanding which policies and practices are working. Assessing performance has therefore the function of an alert if corrective measures are needed, and thus pushes management in the direction of results-based accountability, contributing to the effective management and stability of the organizations.¹⁹³

B. The Context

Whether a policy is well planned and implemented or an institution is properly set up in terms of human and material resources to fulfill its mission and their effectiveness are the key issues of concern of the decision makers in the process of allocation of scarce resources at their optimal use. This is especially important in addressing issues that are

193 UNESCO. Results-Based Programming, Management and Monitoring (RBM) Guiding Principles. *UNESCO Website*. <http://www.unesco.kz/publications/ed/RBM_guide_en.pdf>. Last accessed: 13 November 2012.

constitutionally guaranteed, such as the protection and promotion of individual rights and freedoms, as often the line between the declarative and actual availability of sufficient resources for implementation, is a very fine one.

In the context of the human rights protection and promotion, it is very difficult – without bringing the complex social and cultural arguments in the discussion – to judge, assess or even estimate what is an optimal resource allocation, and further more the optimal proportion of allocated funds for protection as opposed to promotion, balancing between the curative and preventive aspects of the mechanisms.

In the light of the above, and given the fact that this assessment follows the lines of the previously presented thorough legal and policy analysis, the major focus is on the effectiveness of the use of resources allocated to the two institutions in question and their performance. Thus, the study takes into consideration both the accessible efforts as well as the additional resources needed to further align the individual work and activities resting upon cooperation mechanisms of the two bodies under focus, in the tendency to secure implementation of the individual rights and freedoms to the highest achievable level.

C. Methodology

The present analysis rests upon publicly available data measuring diverse set of organizational performance indicators of the two institutions in focus. The analysis employs basic statistic tools and descriptive statistical approach, so to provide a closer look at the effectiveness at a level of complexity necessary only for this very purpose and relevant to the overall analysis provided within this study, as described above. Thus, the performance is evaluated through an estimation of the values of quantitative performance indicators (available financial resources, number of cases, costs), comparing the performance of the institutions against their budgets and human resources, without developing formal modeling framework. Whereby, a performance indicator is a quantitative or qualitative indicator that reflects the state/progress of the company, unit or individual.¹⁹⁴

194 Popova, V., Sharpanskykh, A. 'Modeling Organizational Performance Indicators'. *35 Information Systems Journal* 4, 2010.

Qualitative research was also applied in order to analyze the aims and objectives of the institutions, their needs, mission and strategies, as well as to understand and present the results.

The analyzed data is of secondary nature, due to time and resource constraints. It gives information on the actual execution of institutional process – in our case number of closed cases, as well as human resources. In order to perform an in-depth organizational performance analysis, the execution indicators need to take into consideration also starting and finishing time points for each case, as well as resources used/produced for each case which at this instance is not available. Furthermore, due to the limitations of the available data, the agents (human resources) are analyzed in two categories only – total staff and counselors (employees which work on human rights cases), while the diversity of capabilities of each person (knowledge and skills) is not taken into consideration.

It should be acknowledged that an in-depth performance measurement and analysis is crucial for directing the organizations to realization of both their strategic and operational goals, and for the latter to be undertaken a complex set of indicators, relationships (both within the institutions and the environment) and processes (flow of processes, resources and information) need to be analyzed. Once again, in order to ease the complexity of a possible modeling process and to shed light solely on the essential aspects of the functioning and performance of the two institutions relevant for this purpose only, the analysis focuses on simple performance-oriented and agent-oriented views.

D. Assessment of organizational performance of the NHRIs in Macedonia

1. Ombudsman of the Republic of Macedonia

History of Financial and Human Resources Growth

Financial Resources

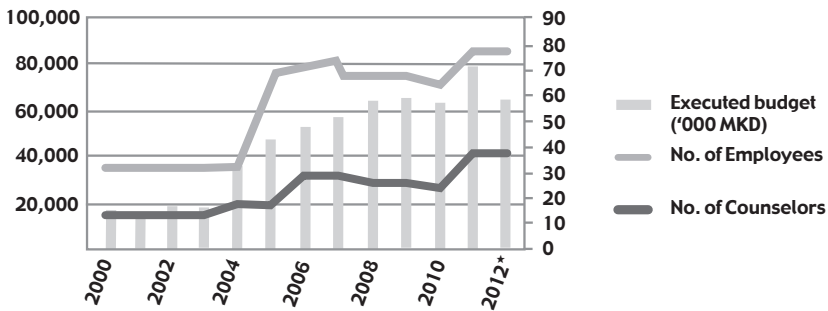
Although the Ombudsperson¹⁹⁵ institution has been established in 1997 as an independent body, in the first years it has been receiving funding from the State Budget

195 Official name of the institution is Ombudsman of the Republic of Macedonia. Due to gender sensitivity, hereinafter this study uses the term 'Ombudsperson'.

through the Court Administration. In 2005, the first steps towards financial independence have been made, when the State Budget has been adopted with a separate budget line for the income and expenditure structure of the body.

Since 2000, it can be noticed that the budget of the Ombudsperson Institution has a steadily increasing trend, which allows for building its professional and institutional capacities.

Figure 1. Financial and human resources trends – Ombudsman Institution, 2002–2012



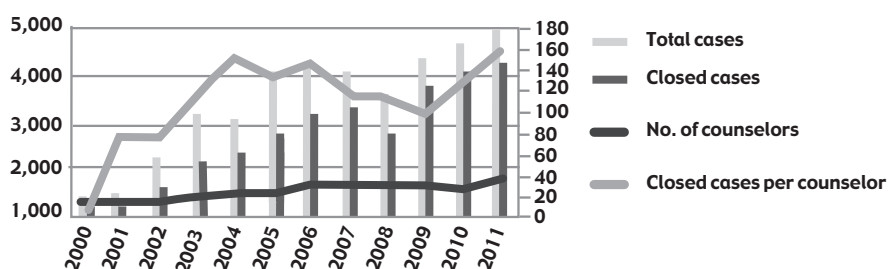
* For 2012 the planned budget from the State Budget 2012 is presented.

Human Resources

In the past decade, the human capacity of the Ombudsperson Institution has increased from 32 to 80; of those, the number of counselors independently working on cases has increased from 13 to 35, showing 2.5 times increase in available expertise. Currently, the counselors represent approximately 50% of the human infrastructure of the institution. Thus, a more detailed data with indicators on skills and knowledge of the human resources will be only able to provide possibilities for in-depth analysis of this institutional segment.

Efficiency of processes execution. The efficiency at which the resources are used, presented as number of total and number of closed cases per counselor are presented in the chart below.

Figure 2. Submitted and closed cases – Ombudsman Institution, 2000–2011

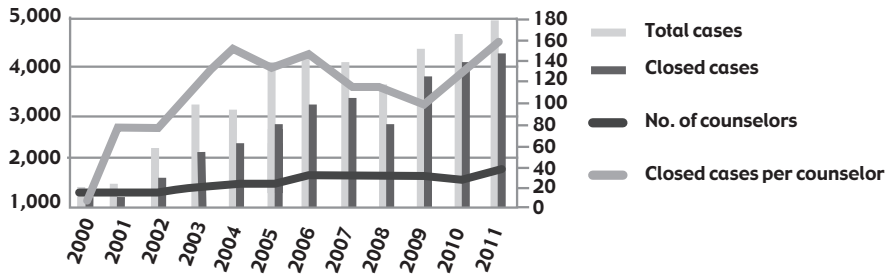


As can be noted, the organization has been in steady growth ('Employee' trend line), concomitant with the growth of the number of cases; further, the number of cases closed per counselor has been increasing, which reflects the growing experience and institutional capacity to receive, process and address cases that are in its mandate.

The performance indicator measuring closed cases per counselor is activity-oriented (individual practice), and therefore assessing past efficiency of an institution, so called backward looking measurement. Hence, the total number of closed cases is a more useful performance indicator when discussing institutional performance, as it is an impact oriented measurement, focusing on the entire human resources system, and therefore forward looking. From the chart, it can be concluded that the Ombudsperson Institution exhibits steady growth of resolved cases, most probably as a result of its institutional development (Note: the measurement takes into consideration growth in personnel as opposed to increase in number of cases completed).

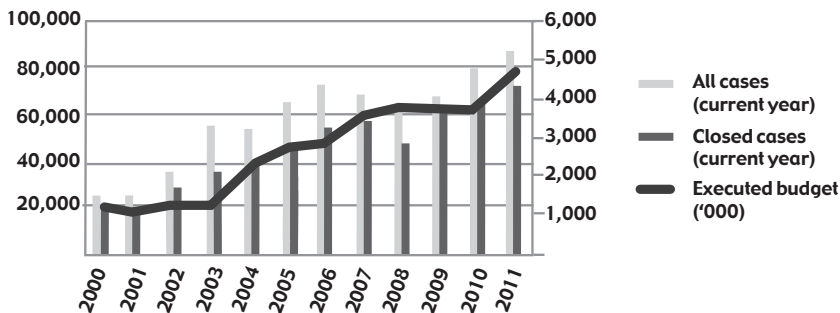
Agents' efficiency (professional workforce). The efficiency of resource use can also be presented as relationship between the professional workforce available and the number of closed cases per counselor on annual level, as shown in the chart below.

Figure 3. Submitted and closed cases – Ombudsman institution, 2000–2011



As shown in the chart above, there is a steadier growth of closed cases in the last three years (2009 to 2011), most probably corresponding to the higher number of professional workforce involved. It is worth noting that the more counselors involved, the higher efficiency per counselor – thus probably an outcome of the professional development of the institution as a whole (professional development herein refers to attempts to improve an individual’s effectiveness in practice).¹⁹⁶ In addition, the latter needs to be taken into consideration when discussing the institutional establishment of the Ombudsperson as a relevant human rights body in the society, addressing the raised human rights violations within its mandate.

Figure 4. Trends of submitted and closed cases – Ombudsman institution, 2000–2011

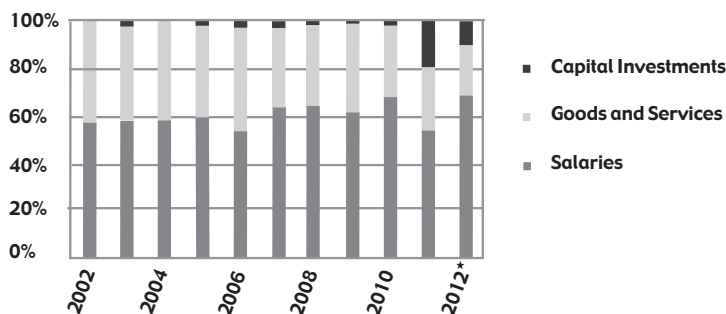


196 Cummings, T.G., and Huse, E.F. *Organizational development and change* (4th ed.) St.Paul, MN: West Publishing, 1989.

Budget structure

As for the budget structure, nearly 60% is expended for salaries of employees, and the remaining 40% are predominantly spent on goods and services.

Figure 5. Budget structure – Ombudsman institution, 2002–2012

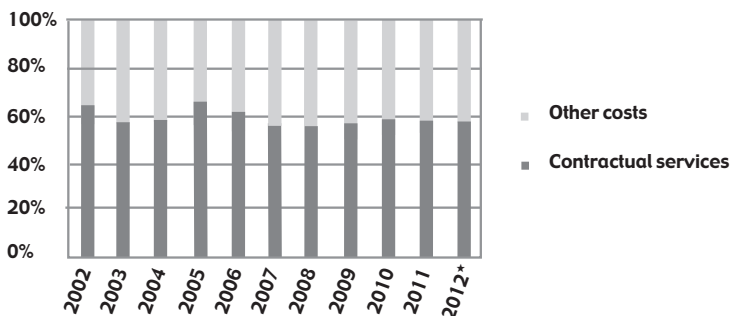


N.B. In 2011, Ombudsperson Institution received 15.4 million MKD (250,400 EUR) representing 19.9% of 2011 Ombudsperson annual budget, from the State budget line for EU integration, which were spent under the Capital investments.

* For 2012 the planned budget from the State Budget 2012 is presented.

The structure of the 'Goods and services' budget line shows that about 60% of the funds are spend on contractual services, from which most likely some of the costs for Human Rights promotion (events and materials) are covered.

Figure 6. Distribution of 'Goods&Services' budget line – Ombudsman Institution, 2002–2012



* For 2012 the planned amount from the State Budget 2012 is presented.

**Table 1. Share of contractual services
in the 'Goods and Services' budget line,
Annual Budget of Ombudsperson Institution, 2002–2012**

Year	Goods and Services Budget Line (in MKD)	Contractual services		Other	
		(in MKD)	(% of G&S)	(in MKD)	(% of G&S)
2002	8,487,823	5,419,000	64%	3,068,823	36%
2003	8,612,000	5,000,000	58%	3,612,000	42%
2004	18,612,000	10,900,000	59%	7,712,000	41%
2005	17,472,000	11,550,000	66%	5,922,000	34%
2006	20,568,000	12,654,000	62%	7,914,000	38%
2007	21,560,000	12,000,000	56%	9,560,000	44%
2008	22,000,000	12,300,000	56%	9,700,000	44%
2009	23,504,000	14,000,000	60%	9,504,000	40%
2010	19,836,000	11,595,000	58%	8,241,000	42%
2011	20,932,000	12,000,000	57%	8,932,000	43%
2012	21,400,000	12,500,000	58%	8,900,000	42%

Human Rights Promotion Activities

The Ombudsperson Institution is regularly undertaking activities for promotion of human rights in the country – most of which are described in Ombudsperson's Annual reports. These activities range from TV and radio campaigns, outreach visits to marginalized communities, educational workshops and lectures, roundtables, etc.

Some of the funding for these activities has been provided through foreign donor assistance programs, such as EU Twinning programs, OSCE, Dutch Embassy, to name a few.

The table below is giving an overview of such activities on annual basis, for the period 2005–2011, as provided by the Ombudsperson Institution.

Year	Human Rights Promotion Activities
2011	Activities for promotion of human rights and freedoms and possibilities for their protection have been implemented with financial support from the Swedish International Development Agency (SIDA), Organization for Security and Cooperation in Europe (OCSE) Mission in Skopje, and the Network of Children's Ombudspersons of South East Europe (CRONSEE).
2010	Activities for promotion of human rights and freedoms and possibilities for their protection have been implemented with financial support from the Swedish International Development Agency (SIDA) and Organization for Security and Cooperation in Europe (OCSE) Mission in Skopje.
2009	Activities for promotion of human rights and freedoms and possibilities for their protection have been implemented with financial support from the Swedish International Development Agency (SIDA) and Organization for Security and Cooperation in Europe (OCSE) Mission in Skopje.
2008	Activities for promotion of human rights and freedoms and possibilities for their protection have been implemented with financial support from the Swedish International Development Agency (SIDA) and Organization for Security and Cooperation in Europe (OCSE) Mission in Skopje.
2007	As a result of the lack of funding secured from the State Budget for implementing activities for promotion of human rights and freedoms, the activities have been implemented with financial support from the Swedish International Development Agency (SIDA) and Organization for Security and Cooperation in Europe (OCSE) Mission in Skopje.
2006	As a result of the lack of funding secured from the State Budget for implementing activities for promotion of human rights and freedoms, the activities have been implemented with financial support from the Organization for Security and Cooperation in Europe (OCSE) Mission in Skopje and the Foundation Open Society Macedonia (FOOM).
2005	As a result of the lack of funding secured from the State Budget for implementing activities for promotion of human rights and freedoms, the activities have been implemented with financial support from the Organization for Security and Cooperation in Europe (OCSE) Mission in Skopje and the Foundation Open Society Macedonia (FOOM).

2. Commission for Protection against Discrimination

History of Financial and Human Resources Growth

Financial Resources

The Commission for Protection against Discrimination (CPAD) has been established under the Law for Protection from and Prevention of Discrimination in 2010, and was officially introduced as a budget user in 2011 State Budget.

It is hard to draw any statistics from a 2-year period; however, the charts and tables below are presenting the available data, with respect to the financial indicators and execution of processes relevant to the analysis.

Both from the tables and the charts can be concluded that the increase in the available resources (financial only in this case) is proportional to the execution of processes (closed cases).

Table 2. Budget and Closed cases of CPAD, 2011–2012

Year	Total implemented budget (in MKD)	Number of closed cases
2011	3,630,000	25
2012*	4,665,000	32

* For 2012, the planned budget is used from the State Budget for 2012; the number of closed cases in 2012 refers to the number of cases from previous year, as the data is not yet available.

Figure 7. Trends of budget and closed cases – Commission for protection against discrimination, 2011–2012

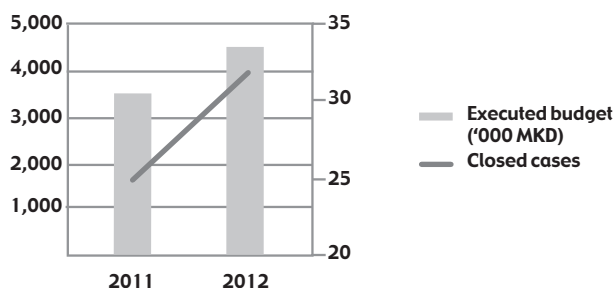
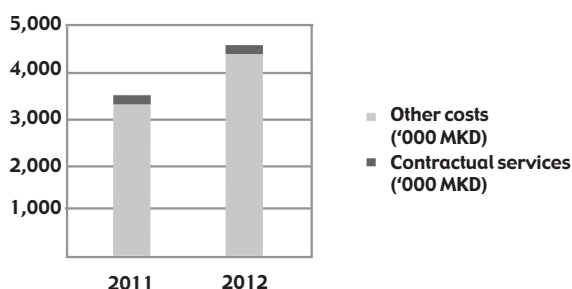


Table 3. Structure of the Budget of CPAD, 2011–2012

Year	Total implemented budget (in MKD)	Salaries	Goods and Services	Capital Investments
2011	3,630,000	0	3,630,000	0
2012	4,665,000	0	4,665,000	0

Table 4. Distribution of resources within budget line, CPAD, 2011–2012

Year	Goods and Services Budget Line	
	Contractual services (in MKD)	Other costs (in MKD)
2011	3,400,000	230,000
2012	4,500,000	165,000

Figure 8. Distribution of ‘Goods&Services’ budget line – Commission for protection against discrimination, 2011–2012

Human Resources

In order to develop both functional and technical capacities necessary for the achievement of the institutional goals and objectives, and to ensure continued success, an institution needs to ensure appropriate staff structure with adequate number of qualified, competent, skilled and professional staff.¹⁹⁷

The Law defines the number of members of the CPAD, which is seven (7) persons. Although the law itself does not stipulate that, in addition to the 7 members, the Book of Rules for the Operation of the CPAD defines that the CPAD can establish an Administrative & Expert Office for its administrative and technical purposes. However, to date that office has not been established, and the funds have not been spent on any human resources thereof.¹⁹⁸

¹⁹⁷ Popova, V., Sharpanykh, A. 'Modeling Organizational Performance Indicators'. 35 *Information Systems Journal* 4, 2010.

¹⁹⁸ Information obtained from the CPAD member, October 2012.

Human Rights Promotion Activities

As CPAD has been established recently, there has not been a very long track record of human rights promotion activities. However, even in this short period, CPAD has managed to prepare, publish and distribute a brochure and other promotion materials. The funding for the activities so far has come from the foreign donor assistance, i.e. through one project CPAD had with OSCE in the country.

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