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NHRI IN REPUBLIC OF MACEDONIA: CURRENT CONDITION, CHALLENGES AND POSSIBLE DEVELOPMENT

Human rights are not a minor issue resolved along the way, but rather the essence of democracy

Introduction

The development of a modern democratic system and accepting the rule of law as principles of functioning of the state are directly related to the level of understanding of the human rights and freedoms, the representation of the perspective of human rights and freedoms in legislation and the creation of appropriate mechanisms for the protection of human rights and freedoms.

The promotion of the concept of human rights and fundamental freedoms as basis in the structuring of the modern state involves appropriate legislation, developed policies and strategies for implementation and institutional support in the operationalization.

The institutional support must be understood as multidimensional, i.e. the institutions should

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have the ability to promote, educate, implement and protect.

The process of building institutional support for promotion and implementation of the concept of human rights and fundamental freedoms is run on national and international level simultaneously. The practice of establishing separate bodies that will have a mandate related to the promotion and practice of human rights gradually pierces since the early 1950s, so at the end of the 1980s and the early 1990s it got the status of *conditio sine quae non* (National Human Rights Institutions, 2010).

Especially significant is the moment when the international community actively involves itself in encouraging and supporting processes that stimulate the institutionalization of promotion and protection of human rights and initiate precise normative solutions which will facilitate the active role of individuals in these processes.

The establishment of such institutions becomes part of the development of democracy¹, and every state that works on implementation of international standards for human rights and freedoms, and in particular on equality and against discrimination, should establish separate body/ies on the level of NHRI.

NHRI can be defined in various ways. Maybe one of the simplest definitions is: NHRI are state structures (agencies) whose basic goal is implementation of the international norms on human rights at national level – a tool for promotion, protection and control (Cardenas, 2001, p.1). These are organizations sponsored and funded by the state, with constitutionally or legally defined structure and mandate, and powers, which enable them to promote and protect human rights at national level. NHRI is a mechanism through which the state fulfills its duties to “take all appropriate action” in ensuring that all recognized international human rights are implemented at national level (Andersen, 2002, p.4).

The formal international frame is outlined by the UN with the adoption of the Paris Principles (1993)² and emphasized in 2002 Report of the UN Secretary General which states: “the building of strong national human rights institutions is something to ensure long term protection and promotion of these rights. Strengthening of the national system of protection [...] should be the primary objective of the Organization” (Anan, 2002).

1 Most of the bodies for promotion and protection of human rights are established in the last two decades, but also there are those which have long tradition of existence and functioning (for example, the Commission for Racial Equality in Great Britain has existed since 1976).

2 Available at <http://www.nhri.net/pdf/ParisPrinciples.english.pdf>

The creation of a NHRI and its accreditation³ under the Paris Principles, by itself is a sign that the country takes seriously its responsibilities related to human rights, and the strength of this commitment is measured by the level of independence of the NHRI that is ensured in the state and the range of powers and funds which are given in order to achieve maximum efficiency in its activities.

In practice, these institutions have adopted many different forms and functions that depend on the national context in which they develop and act (Kjaerum, 2003, p.16)⁴. As an example of the complex approach of separate countries towards establishment of national institutions we can pinpoint the model developed in Northern Ireland⁵.

In 1991, Republic of Macedonia adopted a vision for the development of the country as democratic, social and based on the concept of human rights and fundamental freedoms. Having this vision as a starting point, human rights and freedoms became part of the constitutionally guaranteed values and have the initial, primary place in text of the Constitution (Chapter II of the Constitution of Republic of Macedonia). They are defined as rights that have judicial protection based upon the principles of priority and urgency (Article 50 of the Constitution). This is reinforced by Article 118 and the provision: “the international treaties that are ratified in compliance with the Constitution are part of the internal legal system and cannot be changed by law”.

At present, in Republic of Macedonia there are three constitutionally and one legally defined body for protection of human rights:

- Ombudsman (whose mandate is protection of constitutional and legal rights of all citizens and other people when they are violated by the

3 More information on accreditation can be accessed at: <http://nhri.ohchr.org/EN/ICC/ICCAccreditation/Pages/SCA-Reports.aspx>

4 For different kinds of NHRI see: M.Kjærø, (2003), National human rights institutions Implementing human rights, e Danish Institute for Human Rights, ISBN: 87-90744-72-1 (stregkode EAN 9788790744724), http://www.humanrights.dk/files/Importerede%20filer/hr/pdf/n_h_r_i_h_fte_eng.pdf

5 Currently, on the territory of Northern Ireland there are more independent institutions that have different mandate, but there are obvious areas of overlaps in terms of functional aspect and aspect of target groups to which their action is directed: Commission for Human Rights (<http://www.nihrc.org>), Northern Ireland’s Ombudsman (<http://www.ni-Ombudsman.org.uk>), Police Ombudsman (<http://www.policeOmbudsman.org>), Prison Ombudsman (<http://www.niprisonerOmbudsman.gov.uk>), Independent Monitoring Board for Prisons (<http://www.imb-ni.org.uk>), Commission for Equality (<http://www.equalityni.org/site/default.asp?secid=home>), Commission for Review of Criminal Cases (<http://www.crc.gov.uk/>).

state administration and other authorities and organizations with public authorizations);⁶

- Commission for Protection against Discrimination;⁷
- Parliament's Standing Inquiry Committee for Protection of Civil Freedoms and Rights (whose mandate is related to determining the liability of the public servants);⁸
- Inter-Community Relations Commission.⁹

Also, several other bodies are formed by law that has a specific (mostly intermediate) role in protection of human rights (for example the State Commission for Prevention of Corruption).¹⁰

Parliament's Standing Inquiry Committee for Protection of Civil Freedoms and Rights, Anti-corruption Commission and the Council on Interethnic Relations are specialized structures that cover certain areas of promotion and protection of human rights, but they lack the complexity of NHRI (in terms of the procedures of establishing and the necessary independence as well as in terms of the contents subject to their interest/mandate).

Currently, institutions in closest compliance to the principles on which NHRI are formed, are the Ombudsman and the Commission for Protection against Discrimination although neither of these institutions is accredited on the basis of the Paris Principles.¹¹

The history of the establishment of these two institutions is largely identical. The establishment of both institutions is initiated by the nongovernmental sector (with a very clear commitment to establish a human rights institution with broad mandate and promotional role), the ideas are not accepted by the authorities, and the formation is initiated as a result of initiatives and pressure from the international community.¹²

6 As stipulated by the Law on Ombudsman, "Official Gazette of R. Macedonia" No. 60/03 from 22.09.2003

7 More information on the Commission at the official website: <http://www.kzd.mk/mk/>

8 More information on the Parliament's Standing Inquiry Committee on the website of the Parliament of R. Macedonia: <http://www.sobranie.mk/?ItemID=B029F595A44B0049B80C38372A2CEF54>

9 As stipulated in the Constitution of Republic of Macedonia (Articles 76, 77 and 78)

10 According to the Law on Prevention of Corruption, "Official Gazette of R. Macedonia" No. 28/02 from 18.04.2002

11 In fact, the Ombudsman has received accreditation "B" which means that it is labeled as "not fully compliant with the Paris Principles."

12 The establishment of the institution of Ombudsman can be followed since the beginning of 1991. In November 1991, in the Constitution of Republic of Macedonia, in Article 77 paragraph (1) is written that "the Parliament elects the Ombudsman" and further in

The first problem regarding the establishment and work of the institutions that can be identified as NHRI is the lack of awareness of their necessity in construction of the system of democracy and rule of law, both by the citizens and even more by the political structures. The initiatives for establishment of these institutions, the debates organized in function of their profiling and the support they receive, are interrelated with a very narrow range of organizations/experts and at no point do they receive broader support. Perhaps, here we can find the sources of further inconsistencies that characterize these institutions (in terms of their structure, as well as in terms of the aspect of the content of their action).

Despite this, Macedonia was in a very favorable position in terms of conditions for establishment of such institutions. Namely, in absence of previous existence of such institutions (which should be adjusted according to the new standards and values) a consistent procedure could be conducted for identifying the needs and requirements, analysis of possibilities and review of the already applied standards and experiences of other countries in order to use all positive achievements and avoiding negative experiences.

For this purpose, several expert analyses were made to familiarize the general public and also to be practically usable for the Members of the Parliament in their discussions related to the relevant issues.¹³ At the very beginning and at the time of the first initiatives, but also in the subsequent analyzes and discussions, it was concluded that the establishment of NHRI in compliance with the Paris Principles can have multiple positive significance for Republic of Macedonia:

paragraph (2) that “the terms of appointment and dismissal, the mandate and the manner of action of the Ombudsman are regulated by law”. In 1994 a draft-law on the Ombudsman was submitted, and in 1995 several debates were initiated which did not arise greater public interest and in which the scientific and expert public were not included. After this there was a 2 years’ period of slowdown when no actions were taken despite the efforts of civil society to revive the procedure, there was no response from the authorities. In 1998, under pressure from the international community (the visit of Elisabeth Rehn - United Nations Special Reporter on the situation of Human Rights in the Republic of Croatia, FRY, Bosnia and Herzegovina and FYR Macedonia, 27.9.1995 – 15.1.1998) this process is reopened and in record time the law regulations are adopted. The Law on Prevention and Protection against Discrimination (on basis of which the Commission for Protection against Discrimination is formed) was initiated in 2004 by the Helsinki Committee. A draft-law was submitted to the parliamentarians as a working version in order to open the process of discussion and formally setting the agenda. The initiative was supported by 30 members of the Parliament, but at no point it is placed on agenda before the Assembly. In 2010, under pressure of the international community (recommendations set within the EU accession process) the Law was prepared in record time and at the end of 2010 the Commission for Protection against Discrimination was established.

1. To be a new reinforcing element in implementing the principles of human rights that will provide a clear perspective on the development of democracy and sustainability of the ongoing institutional and normative changes.

2. To appear as additional positive reference in the ongoing integration processes.

3. To provide appropriate implementation of the ratified international treaties and proper performance of the contractual and reporting obligations of the country.

At the time of establishment and at present moment undoubtedly there is need for institutions that can be accredited according to the Paris Principles, and which in their mandate will include:

1. Collecting data on the human rights situation in Republic of Macedonia that will have such a quality to provide appropriate information to the relevant political factors and will improve the process of decision-making in the field of human rights;

2. Monitoring the situation of human rights in all areas of social life (the work of authorities, public services and private sector), in order to identify relevant priority areas of action;

3. Continuous promotion of human rights, dissemination of knowledge (formal and informal education) and appropriate informing of the citizens about the rights and mechanisms that are available for their protection;

4. Coordination of activities with related institutions at regional and international level and establishing strong channels of cooperation and influence in the international organizations (UN, the European Council, EU);

5. Compliance with the regional and international organizations and harmonization with the EU standards.

In this context we can formulate the possible objectives for establishing of one or more institutions of this kind:

13 For example: Томшиќ-Стојковска А., Бошковски Д., (2011), Национални механизми за заштита на Човековите права, Коалиција „Сите за правично судење“, Скопје; Najchevska M., Tasevska A., (2010) Analyze of international standards and best practices, national laws, policies and plans of anti discriminatory legislation, MCMS, Skopje; Najchevska M., (2009), Development of the equality body in Republic of Macedonia, Network – Macedonia without discrimination, EU; Najchevska M. (2009). Challenges and possible solutions in defining the national institution for human rights in the Republic of Macedonia according to Paris principles, European standards for human rights and their implementation in the legal system of the Republic of Macedonia, Macedonian Academy of science and Arts, Skopje.

1. Improvement of definitions, realization and comparison of data on human rights at national level, and within same (similar) data at regional and international level;
2. Preparation of objective analyses and reports, studies, assessments and other records related to human rights;
3. Development of analytical capacities to ensure appropriate implementation of international standards, improvement of conditions on national level for their practice and promotion of initiatives and ideas for further improvement and development (at national and international level);
4. Locating the problems and positive practices in implementation of human rights and their practice at national and international level;
5. Developing programs for human rights education (formal and informal) in primary, secondary and higher education and within the nongovernmental organization.

Despite these initiatives, explanations and attempts to comply the institutionalization of human rights protection with the already established international standards and the experiences of states that have this kind of institutions for longer period, in practice, the legal decisions and in particular the selection and functioning of the newly created institutions show visible and substantial deviations and deformations. As a result, Republic of Macedonia currently does not have an institution that can be accredited as human rights institution in compliance with the Paris Principles.

As an example we will indicate the two institutions that mostly can be identified as human rights institutions: the Ombudsman and the Commission for Protection against Discrimination.

From formally legal aspect both institutions have great potential to be profiled as NHRI. However, the inconsistencies of the legislative body on basis of which they are formed and especially the practice of their functioning are not in compliance with the desired objectives formulated in the conclusions of the analysis, discussions and recommendations that come from the national and international expert public.

WHAT DO THE INSTITUTIONS ESTABLISHED IN REPUBLIC OF MACEDONIA LACK TO BECOME A NHRI?

According to the Paris Principles, in order a NHRI to be accredited within the UN, that is, in the regional structures of NHRI, it should have certain characteristics, i.e., to have appropriate structure, capacities and framework in which it can perform the desired function.

If we compare these standards and requirements (Yesilkagit, 2008) to the

normative and practical solutions that are applied in the establishment and functioning of relevant institutions in Republic of Macedonia, undoubtedly the conclusion is that the required standards are not met and as a result of that the institutions cannot fulfill the function of NHRI.

1. One of the basic preconditions for appropriate and substantial work of these institutions is independence guaranteed by Constitution and/or law, which not only implies establishment of these institutions in the Constitution or specialized law, but also clear definition of competences that should ensure promotion and protection of human rights. A special aspect of independence is the independence of staff, which comprises this institution, which is achieved by defining such procedures of election/appointment to provide competence, non-partisan affiliation and acting in personal capacity.

The independence is the first obstacle in the perception of existing institutions in Republic of Macedonia as national human rights bodies. Formally and legally both institutions (the Ombudsman and the Commission for Protection against Discrimination) have the highest form of legally guaranteed independence by being elected by the Parliament of Republic of Macedonia and report on their work is submitted to the Parliament. However, the practice of election of members of institutions, the functional structure and the actual relations with the governing structures do not correspond to the declared independence. It is not a secret that the Ombudsman is proposed by one of the political parties that are currently in power and there was not even a debate about his election. Prior to the establishment of the Commission for Protection against Discrimination, there was formal announcement and debate related to the applicants. However, from the materials related to the discussion of the parliamentary bodies and the Assembly of Republic of Macedonia for appointment of the Commission members it can be concluded that all the members of the Commission are undoubtedly related to political parties currently in power (Stenographic notes from the 113th meeting of the Parliament of Republic of Macedonia, 27. 12.2010). This impression is confirmed by the performances/involvement of part of the Commission members during 2011 (Dusko Minovski, KumanovoNews, 19. 05. 2011). In fact, since the election of the members of the Commission there is relevant doubt expressed in terms of the future structural independence of the Commission.

2. Second important standard of functioning of these institutions is the autonomy in action, which is achieved by establishing a relationship of responsibility and accountability to the highest legislative body of the state (Parliament, Assembly).

Formally and legally both relevant institutions have this obligation, but

in practice this is only realized by submitting annual report to the Parliament, which is not even subjected to separate discussion.

3. An important element of NHRI (especially in multi-ethnic and multi-religious countries such as Republic of Macedonia) is the pluralism in structuring which, inter alia, involves establishment of collective management body. The work of the institution should provide relevant participation of representatives of the social structures engaged in promotion and protection of human rights (NGOs, professional organizations, leading representatives of philosophical and religious thought, universities, and individual experts from different fields). Representatives of the Parliament and of governmental structures can be included in the work of these institutions, but only in advisory/consultative role.

The Ombudsman is profiled as individual body, unlike the Commission for Protection against Discrimination, which is defined through collective governance of 7 Commissioners. However, both institutions show great rigidity in terms of internal structure. In fact there is no account for appropriate representation of smaller ethnic communities, people with disabilities, or greater participation of the nongovernmental sector and the civil society. Contrary to this in the newer institution (the Commission for Protection against Discrimination) three members of the governing body are employed in the state structures.

4. NHRI should have broad mandate based of the universal human rights standards – the mandate of these institutions should be as broad as possible (in terms of the fields they cover, and in the form of their own action especially activities related to promotion and advocacy of human rights). The work on individual cases and complaints procedures is essential but not exclusive or dominant part of the work of these institutions.

Both institutions have legally defined a very broad mandate that covers both preventative and reactive action (in concrete cases of human rights violations), but also large space of possible research and analytical activities, as well as participation in initiation and amendments of the legislation from the perspective of human rights and freedoms.

In the last period, the Ombudsman has made efforts to realize this part of the mandate by preparing special reports and analyses,¹⁴ but he used very little, or not at all, the opportunity for initiating substantial legislative amendments, nor actively participated in the substantial changes of legislation.¹⁵

14 Available at the website of the Ombudsman: http://www.Ombudsman.mk/Ombudsman/MK/posebni_izveshtai.aspx

15 During 2011, the Ombudsman submitted initiative to amend the Law on Identity Cards

The Commission for Protection against Discrimination, during the first year of its existence, was working only on individual complaints and has not submitted any initiative to amend a law, has not participated in discussions related to amendments of laws and has not made specific analysis in the area of its action.

5. The national institutions for human rights should have appropriate recourses – providing material independence (by defining separate budget line for their functioning and ability independently to dispose the allocated funds).

The financial independence is formally provided to both institutions in terms that they have separate budget allocations for their work. Despite this, the institutions do not participate in defining the necessary funds and during the regular budget rebalancing usually the funds for these institutions were first to tackle¹⁶. The situation in the case of the Commission for Protection against Discrimination is even more drastic. According to the Law for Prevention and Protection against Discrimination legally there are only allocated funds for compensation for the engagement of the Commissioners, while the remaining assets are determined without actual criteria. In several minutes of the meetings of the Commission, financial inability for the functioning of the Commission was established and suggestions were given for achieving communication with the relevant authorities to overcome this situation.¹⁷ The rebalance of the budget for 2011 provided further allocation of funds to the Commission and their reduction, which endangers the functioning of the Commission to a great extent.¹⁸

with a proposal to extend the deadline for replacement of the personal identity cards; to amend the Law on Execution of Sanctions (related to the weekend absences for the prisoners) and initiative to amend the Law on Civil Servants (Article 35, paragraph 3) by which the employees in the state administration were placed in unequal position in relation to employees and in the economy and non-economy sector with regards to calculation of the past employment duration.

16 Detailed information on: <http://www.sobranie.mk/default.asp?ItemID=381D76236C897E4591EA00FA7235A3F0> ; <http://utrinski.com.mk/?ItemID=0DFBFF733C88DD41ACFB9DCA68B75BB6>

17 Only as example: the Minutes from 9 June 2011 establishes that “the Commission has difficulties in its functioning (paying the bills for electricity, phone, internet)...”

18 In Section 02011 – Commission for Protection against Discrimination, in sub-program 20 – Protection against Discrimination, item 401 – Basic salaries are reduced by 1,324,000 MKD, item 402 – Contributions for social insurance are reduced by 492,000 MKD, item 420 – Travel and daily expenditures are reduced by 85,000 MKD, item 421 –Utilities, heating, communication and transport is reduced by 115,000 MKD, item

6. In order to function properly and to exercise their mandates NHRI should have appropriate authorization that will allow them access to documents, bodies and people.

Both institutions have this authorization and the only question is if it is used appropriately.

The brief review of the sustainability of practice of functioning of NHRI in Republic of Macedonia with the desired internationally established standards and the good practices of functioning of these institutions in other states, shows large and significant deviations that may influence negatively the exercise of their mandates and attempts for accreditation on bases on the Paris Principles.

Also, it should be taken into consideration that the Paris Principles are promoted as minimum standards that should be respected in the structuring of a NHRI (Pohjolainen, 2006), that is, as orientation framework within which states can establish their own institutions. In this regard, the Paris Principles can be seen as compromise solutions that should accommodate the various governments (in many different political, economic, historical and cultural surroundings) and not as rules that would frighten and de-stimulate the states in the process of establishing such institutions.

Based on the analysis and experiences from the work of the existing human rights institutions, Republic of Macedonia need to form/adjust NHRI that will comply with the requirements for:

1. Promotion and protection of human rights, within which to pay special attention to the visibility of NHRI and actions and reactions related to the current development of major violations of human rights;
2. Reinforced advisory and consultative status which includes delivering opinions, recommendations, proposals and reports related to promotion and protection of human rights to the Government, Parliament and other stakeholders;
3. Analytical and research activity, i.e., reinforcement of the activities related to establishing databases for human rights and violations of human rights in Republic of Macedonia and analyses of the existing laws and proposals for new laws or amendments of laws, bylaws and other documents

423 - Materials and petty inventory is reduced by 50,000 MKD, item 424 – Repairs and maintenance is reduced by 60,000 MKD, item 425 – Contractual services is increased for 2,290,000 MKD, item 426 – Other current expenditures is reduced by 20,000 MKD, item 480 – Purchase of equipment and machinery is reduced by 80,000 MKD, PROPOSAL DECISION on reallocation of funds among budget users of central government and funds of the Budget of Republic of Macedonia in 2011.

(especially in the judiciary) from human rights perspective;

4. Preparation of strategies, formulating policies and developing procedures for implementation of the concept of human rights in all fields of work of state bodies, public and private sector;

5. Active involvement with their own attitudes, reactions, opinions and suggestions in situations of human rights violations and preparation of special reports on global human rights situation in the state and for the situations in certain areas of special interest;

6. Cooperation on regional and broader international level; participation in promotion of human rights education and preparation of strategies and training programs on human rights in formal and informal education;

7. Affirmation of human rights and activities related to raising awareness of the general public and the mobilization of media.

Taking into account the above-mentioned requirements regarding the work of NHRI in Republic of Macedonia, the basic drawbacks of the current human rights institutions in Republic of Macedonia can be identified in:

1. Limited independence (structural as well as personal, financial and functional);

2. Low capacities related to the staff composition and their level of knowledge of the subject in question;

3. Low visibility and recognition of these institutions;

4. Their absence from current happenings and absence of appropriate reactions and provision of attitudes and opinions that would help both in their perception by the general public and in realization of their educational role.

CONCLUSION

The promotion of the idea for a National Human Rights Institution and promotion of the capacities for accepting, promotion, implementation and practice of human rights through the establishment and provision of sustainable mechanisms, structures and procedures is part of the democratic development of a country and it should be supported by all relevant political actors in the country.

Republic of Macedonia has started the process of establishing such institutions, but that process faces many inconsistencies and challenges.

It is necessary to create separate national institutions for human rights according to the Paris Principles or using of any of the already existing and its further development and strengthening which can be accredited by the

International Coordinative Committee for NHRI.

In order this to accomplish this task, it is necessary to:

- Raise awareness for the need of existence of such institution (on the level of civil society, academia, state structures);
- Create a group of parliamentarians and senior officials in the Government of Republic of Macedonia who would support the idea and would contribute to the formation of political will to establish such institution;
- Initiate the process of implementing the idea on the governmental level in Republic of Macedonia (drafting of the possible structure, mandate and composition of NHRI).

Abstract

The National human rights institutions symbolize a new factor of democratic development on the international scene. In Macedonia there is need for establishment of such an institution, which would be accredited in accordance with the Paris Principles, and its formation would be a big step towards the proper implementation of the international human rights standards at national level, and way to connect with the international networks of these institutions.

The existing human rights institutions in Republic of Macedonia do not meet the required standards.

Резиме

Националните институции за човекови права претставуваат нов фактор на демократскиот развој на меѓународната сцена. Во Република Македонија постои потреба од формирање на институција за човекови права која би била акредитирана согласно Париските принципи, а нејзиното формирање би претставувало голем исчекор во насока на соодветна имплементација на меѓународните стандарди за човековите права на национално ниво, и начин за поврзување со меѓународните мрежи на овие институции. Постоечките институции за човекови права во Република Македонија не ги исполнуваат бараните стандарди.

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