

Ixhet MEMETI

OMBUDSMAN OF THE REPUBLIC OF MACEDONIA

Institutional character

History

The form and concept of the institution of Ombudsperson have existed for about two centuries, with beginnings in Sweden, where it was first established in 1809. In terms of its role within the democratic system of governance, it is a mechanism that substantially contributes to the functioning of the rule of law and represents a factor that illustrates the democratic processes in a society.

The establishment of the Ombudsman of Republic of Macedonia as an institution is associated with the proclamation of the independence and the introduction of democratic principles of governance in 1991.¹

¹ The official title of the institution in Macedonian is *Naroden Pravobranitel* (People's Defender). The official translation into English is Ombudsman.

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The legal basis of the institution can be found in Article 77 of the Constitution of Republic of Macedonia from 1991. The first Law on Ombudsman was passed by the Macedonian Parliament in 1997, when the first Ombudsman was elected, while the office started with its activities in 1998. Its mandate as defined by the Law is to protect the constitutional and legal rights of citizens in case of violations by bodies of state administration or other bodies and organizations with public authorizations.

In response to the constitutional and political changes after the signing of the Ohrid Framework Agreement, in 2003 a new Law on Ombudsman was enacted, by which the institution was decentralized and consequently regional offices were established. Amendment XI of the Constitution determined the procedure of electing the Ombudsman and increased the importance of this institution and its role in protection of the principles of non-discrimination and adequate and equitable representation of members of communities in the state administration and the units of local self-government. The Ombudsman is entitled to propose members of the Inter-Community Relations Commission in situations when the communities, as established by the Constitution, do not have their representatives, and the proposal is given after consulting relevant representatives of those communities.

In 2009 amendments to the Law established separate departments for protection of rights of children and persons with disabilities, protection of citizens against discrimination and appropriate and equitable representation, and protection against torture and other cruel, inhuman or degrading treatment or punishment. These amendments envision undertaking further actions arising from the law and internationally ratified agreements, among which the Optional Protocol to the Convention against Torture is particularly important.

With the ratification of the Optional Protocol in 2008, the institution was given mandate to assume the role of a National Preventive Mechanism (NPM), which became operational in 2011.

The International Coordinative Committee on National Institutions for Promotion and Protection of Human Rights (ICC) accredited the Ombudsman with status B in October 2011, which means that the institution is in partial compliance with the Paris Principles. Furthermore it was given the right to participate in the international meetings of the National Human Rights Institutions.

Since its establishment, the office of Ombudsman was assumed by two individuals – the present Ombudsman since 2004, and his predecessor Branko Naumoski in the period 1997-2004.

Legal basis

The institution of Ombudsman is based on the classical model of national parliamentary Ombudspersons in the European countries and represents a separate, independent, professional and expert institution. In performing the functions and jurisdictions it respects the principles of objectivity, impartiality, responsibility, honesty, consciousness, diligence, urgency, expediency, non-partisanship, equality in protection of rights and freedoms of citizens regardless of sex, race, religion etc.

The Ombudsman performs the duties from its competence on the basis and within the framework of the Constitution and Laws of Republic of Macedonia, as well as on the basis of international legal acts regarding human rights and freedoms.

The legal basis primarily derives from the Constitution, while the mandate and responsibilities of the Ombudsman are defined in the Law on Ombudsman and in the ratified international agreements. Article 77 of the Constitution sets the elements of functioning of the Ombudsman, which refer to the protection of constitutional and legal rights of citizens when they are violated by the state administration and other institutions with public authorizations. Amendment XI extended the mandate in the area of protection of principles of non-discrimination and adequate and equitable representation of representatives of communities in the government, units of the local self-government and the public institutions and service providers.

The Ombudsman is independent and autonomous in his/her work. A person who is a graduated lawyer with working experience of minimum nine years on legal affairs, and whose activity is proven in the field of protection of the rights of citizens can be elected Ombudsman.

The Ombudsman and his/her deputies are elected by the Parliament of the Republic of Macedonia, with a term of eight years and the right to one re-election. The Ombudsman and his/her deputies are elected by a double majority vote (of the total number of Parliamentarians and the total number of Parliamentarians belonging to the non-majority ethnic communities in the Republic of Macedonia). The function of Ombudsman is not compatible with other public function or occupation or with political party membership.

The Ombudsman can be dismissed in five cases:

1) if he/she requests it; 2) if he/she is convicted for criminal offence to unconditional imprisonment of at least six months; 3) if he/she permanently loses the psychophysical ability to perform the function of Ombudsman as determined on basis of findings and opinion of competent medical institution; 4) if he/she is eligible for retirement; 5) for unprofessional, biased and negligent performance of the function of Ombudsman.

The Ombudsman submits an annual report to the Parliament, which is required to review the report in a public session attended by representatives of the Government.

The report notes the situation regarding the respect and protection of human rights for which the Parliament is informed, while the Ombudsman, for specific matters within his/her scope, may prepare special reports.

In accordance to the international and domestic obligations the Ombudsman prepares annual report of the National Preventive Mechanism and is obliged to publish and distribute it. By performing regular preventive visits, the National Preventive Mechanism perceives the situations and the extent of respect of human rights in places where people are deprived of freedom and by preparing special reports submits suggestions and recommendations on which the competent authorities and institutions are obliged to respond within 30 days.

Organizational structure

The organizational structure of the Ombudsman is established by law and by-laws that regulate the operation of the institution.

The function of Ombudsman is an individual function, although there are ten deputies – four in the central office and one in each regional office. In order to perform the duties under the authority of the Ombudsman there are regional organizational units in Tetovo, Kichevo, Shtip, Strumica, Kumanovo and Bitola. The Head Office of the Ombudsman is in Skopje.

Besides the role as National Preventive Mechanism, the Ombudsman has two other units: for non-discrimination and equitable representation and for protection of children and persons with disabilities.

Of the deputies working in the central office, each one is responsible for separate thematic units:

- Civil freedoms and rights and rights of the members of communities;
- Rights for social protection and social security;
- Economic rights and regulating and humanization of the area;
- Right to work, environmental rights and customer's rights;

The Secretary General is responsible for the professional work and coordination and s/he manages the expert office composed of five organizational units:

- Expert and analytical work;
- International cooperation and public relations;
- Human resources and finance;
- Coordination of the work of the Ombudsman;

- Department of IPA funds.

There are 78 employees in the institution. They have status of civil servants elected by the Ombudsman through the Agency for Civil Servants. The institution pays special attention to gender equal representation of employees, and as a result has 47 women and 31 men; the multiethnic concept and the equitable representation of communities living in the Republic of Macedonia is reflected in the composition of employees with the Ombudsman (ethnic structure: 39 Macedonians, 28 Albanians, 3 Serbs, 3 Roma, 2 Vlachs and one of each Turk, Bosniak and Croat).

Funding

According to the legal provisions, the Ombudsman is financed from the Budget of the Republic of Macedonia and the Parliament votes on the section designated for the Ombudsman separately. The draft proposal of the funds necessary for the work is previously aligned by the Ombudsman with the Government through the Ministry of Finance. The Ombudsman attends the voting of the budget and he/she elaborates on the proposal.

According to the assessment given in the 2011 Annual Report of the Ombudsman, “[T]he manner of financing of the institution remains inadequate for its competences and position in the constitutional and legal system of the Republic of Macedonia. In particular, it is so because of the fact that the Ombudsman does not participate in preparation of the budget, and the Law stipulates that in the Parliament’s session s/he should explain the required funds. For the time being, this is merely a formal obligation without essential importance”.

It must be stated that, although under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the institution as National Preventive Mechanism should be a separate budgetary item, this is not the case. The Republic of Macedonia, with the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, has undertaken responsibility to guarantee functional independence of the National Preventive Mechanism. The Protocol, in Article 18, states that the country guarantees functional independence of these bodies, takes necessary actions to provide sufficient number of experts for uninterrupted functioning of the team, as well as the candidate countries undertake the obligation to put on disposal the necessary resources for the functioning of the National Preventive Mechanisms. Republic of Macedonia, with the ratification, appointed the Ombudsman as national body that will provide prevention of torture and other cruel or inhuman treatment through regular and unan-

nounced visits to the places of deprivation of freedom, but so far it has not provided budget for effective functioning of this mechanism, so it conducts its mandate through the use of funds from the budget of the Ombudsman.

Apart from the Budget of the Republic of Macedonia, other sources of funding of the Ombudsman are from donors, which are used for special projects and promotion. The Budget of the Ombudsman for 2011 was approx. 75 million MKD (1.1 million Euros). The State Budget could cover the running costs and salaries, while the activities were funded by the Swedish International Development Cooperation Agency, the OSCE Mission, and the Twining Project which the Ombudsman implements in cooperation with the Ombudsman of Spain and the French Mediator as well as with the SEE Children's Ombudsman Network. In 2012, the Royal Netherlands Embassy has also contributed some funding to the Budget of the Ombudsman..

Human Rights Mandate

The Ombudsman of the Republic of Macedonia protects the constitutional and legal rights of the citizens in case of their violation by state authorities and other bodies and organizations with public authority. The mandate does not extend to the private sector or the judiciary, except for cases of unjustified delay in judicial proceedings or irresponsible and mal-performance of the court services. In such cases the Ombudsman particularly devotes attention to avoid violation of the principles of autonomy and independence of the judiciary. The Ombudsman devotes special attention to protection of the principles of non-discrimination, appropriate and equitable representation of communities in the bodies of state authority, in the units of local self-government and in the public organizations and services. Regarding provision, respect and protection of constitutional and legal rights and principles of non-discrimination and adequate and equitable representation, the Ombudsman may initiate recommendations, opinions and criticism to the competent authorities on its own initiative.

The Ombudsman does not have legislative, judicial or executive powers, neither the authority for prosecution or inspection, so the decisions and recommendations are not legally binding. However, as part of his/her mandate, the Ombudsman has the right to submit initiatives for amendments to the laws and to contribute to the harmonization of domestic legislation with international human rights standards. Also, it can submit proposals to the Constitutional Court for review of constitutionality and legality of regulations and general acts.

The procedure for protection of constitutional and legal rights of citizens begins with submitting a complaint before the Ombudsman. The Ombuds-

man may initiate proceedings on his/her own initiative if s/he concludes that there are certain violations of the constitutional and legal rights of the citizens. To determine the conditions after initiating the proceeding, the Ombudsman may take appropriate actions including: to ask for necessary explanations, information and evidence for the allegations in the complaint; to enter official premises and make direct insight into the matter; to call an elected or appointed person for an interview, or official and other persons who can provide him/her with specific information about the procedure; to request experts opinion from scientific and expert institutions and to undertake other actions and measures stipulated by law or other regulation.

In the case when it proves violation of law, the Ombudsman can use a larger set of measures that includes: issuing recommendations, suggestions, opinions and remarks on how to remedy the violation; making proposal for reopening and implementation of a particular procedure; bringing initiative for opening disciplinary proceeding against an official and submitting a request to the competent Public Prosecutor to initiate proceeding for determining criminal responsibility.

The violations of constitutional and legal rights can occur in different areas and in various manners and forms: intentional and unintentional, bureaucratic, arbitrary, inappropriate and inhuman behavior, failure on proceeding of a citizen, non-promulgation of an act, decision, conclusion, failure to issue a certificate, document, opinion etc., postponement of a proceeding, unequal treatment of citizens, wrongly passed act, act based on wrongly determined and incomplete factual situation, act based on an incorrect material law, violated proceeding and all other intentional and unintentional behaviors and actions that violate the rights and freedoms of citizens guaranteed by the Constitution, laws and ratified international treaties and conventions.

With the Law on Ombudsman from 2003, this institution was assigned to monitor the conditions of respect and protection of constitutional and legal rights of people in institutions where the freedom of movement is limited. Special emphasis was put on the situation of arrested, detained and persons that endure imprisonment or correctional measure. Until the establishment of National Preventive Mechanism, the Ombudsman was conducting periodical visits in places where the freedom of movement is limited; those visits were conducted without prior notice and approval.

The Ombudsman, as a National Preventive Mechanism, is mandated to carry out regular visits that may be announced or unannounced. The announced visits have an objective to consider the situations in places of detention in a certain time period and to record the progress or deterioration

of living conditions and treatment of persons deprived of freedom. The unannounced visits have an objective to check the already established conditions in places where persons are or may be deprived of liberty and to reduce the risk of the existing conditions being presented in an inappropriate manner.

During the visits, the National Preventive Mechanism performs the following activities: conducts interviews with officials in order to inform them about the importance of the visit and the obligation to cooperate with the Ombudsman; monitors the situation regarding the material conditions in places where persons deprived of freedom are placed; inspects documents and other information concerning the treatment of persons deprived of liberty; conducts direct conversations with persons deprived of liberty without witnesses, personally or through a translator if deemed necessary.

The mandate of the Ombudsman as a National Preventive Mechanism is to regularly examine the treatment of persons deprived of freedom in order to prevent torture, make recommendations to relevant authorities and submit proposals and observations concerning the existing or draft-legislation.

The Ombudsman also monitors the conditions regarding the protection of children and persons with disabilities through a separate department and, if necessary, conducts special studies, analyses and reports.

The Ombudsman, his/her deputies, the employees in the professional service of the Ombudsman and the team of the National Preventive Mechanism have an official identification card.

The Ombudsman, his/her deputies and the team of the National Preventive Mechanism are granted unrestricted access to all bodies, organizations and institutions operating as places of deprivation of liberty, without prior notice, and possibility to organize meetings with and receive information from persons deprived of liberty and other elected or appointed officials who could contribute to the proceedings.

Activities

Starting with approximately a hundred cases in the first year of its existence, the Ombudsman nowadays has over 4,000 cases annually. The Ombudsman divides its activities primarily in the area of protection in cases of violation of a certain right, as well as in the field of prevention through identifying risks, analyzing the situation and making recommendations to reduce violations in future. The situation with the human rights and the cooperation that the Ombudsman establishes with the state authorities in the direction of prevention and protection of rights is shown in the annual reports prepared by the Ombudsman. The Ombudsman also publishes an annual report of the National Preventive Mechanism, which includes the as-

assessment of the conditions from visits to the places of deprivation of liberty and makes recommendations to reduce the risks of torture and to improve the level of rights that the people placed in these institutions have.

Apart from these, the institution to date has published over 30 thematic reports dedicated to some of the areas that are within the competence of the Ombudsman, and in particular non-discrimination and equitable representation, prisons, health, children, education, social welfare, pension and disability insurance and police.

The number of cases shows the confidence that citizens have in the Ombudsman, which is on the other hand an even greater motivation and responsibility for the institution in terms of realization and protection of the rights. The increased awareness and trust of citizens came as a result of a large number of campaigns and promotions that were conducted by the Ombudsman. In this direction, a campaign titled “Open Days of the Ombudsman” was conducted in 15 municipalities throughout the country; also the role of the Ombudsman as protector of human rights was promoted through theater plays, TV shows and direct contacts with citizens.

The Ombudsman regularly submits information pertaining to specific cases, and since May 2010, biannually publishes the Ombudsman’s newsletter. The official website is constantly updated with more important information from the case work, the preventive mechanism, the promotional as well as the international activities. It is set in three languages: Macedonian, Albanian and English language.

The promotion of human rights, the raising of awareness, educational and advisory work are also part of the activities, within which brochures and leaflets are issued to promote the work of the Ombudsman and to inform the citizens about the accessibility of the Ombudsman or to inform about the rights of certain social groups such as the rights of children, convicted persons, the environment etc. In the last years, the Ombudsman devoted particular attention to educating the state administration on the importance of respective the rights of the citizens. For this reason, several workshops were organized for representatives of the state agencies and civil society organizations regarding the responsibilities of the Ombudsman, round tables on the new role of the National Prevention Mechanism, and debates on anti-discrimination. At these events, despite promulgating the awareness-raising and educational component, the Ombudsman continued building trust and establishing constructive cooperation with state bodies, organizations with public authorities as well as with representatives of the civil society.

The Ombudsman, as a National Preventive Mechanism in the first year of its functioning carried out 18 preventive visits. The visits were conducted

on the basis of a previously established program and for each visit a separate report was prepared with findings and recommendations to reduce the risks of torture and/or other cruel or inhuman treatment/punishment.

As part of his activities, the Ombudsman submitted a report to the Ministry of Justice of the Republic of Macedonia about the importance of implementing the decisions of the European Court of Human Rights, with which it proactively contributes towards the improvement of the national system of human rights, and promotion and improvement of compliance with the international human rights norms and standards. The Ombudsman initiated a change in the educational system in order to promote teaching programs, contents and textbooks directed to educating children and teachers about the rights and freedoms of citizens and the mechanisms, procedures and ways of realization of human rights and freedoms. The Ombudsman, as a National Preventive Mechanism, submitted opinion on Amending the Regulation on standards in places of detention in police stations.

Additionally, the professional capacity of the institution, except through the regular mechanisms, since 2011 is improved and strengthened through the Twinning project, financed by IPA funds of the European Union, in cooperation with the National Ombudsman of Spain and the Mediator of France. A large part of the project activities implemented through cooperation with the donors, the Ombudsman devoted/devotes to internal capacity building of the professional service, and therefore a part of the undertaken activities includes study visits and participation in national and international conferences. The professional and vocational trainings strengthen the capacities of the National Preventive Mechanism, and these kinds of trainings are conducted in departments of non-discrimination and equitable representation and protection of rights of children and persons with disabilities. Namely, the need for greater consideration of children's rights and the rights of persons with disabilities are among the topics that are in constant focus of the Ombudsman.

In 2011 the Ombudsman, in collaboration with the civil society, started a campaign to raise the awareness of citizens about their right to live in a healthy environment. The campaign is conducted through the regional offices of the Ombudsman, which distribute information leaflets, and media coverage is planned with TV short informative videos.

Of particular importance is the regional and international activity of the Ombudsman. The Ombudsman as an institution is a member of the International Ombudsman Institute, the European Ombudsman Institute, the Association of Ombudsmen and Mediators of the Francophone and the Association of Ombudsmen from the Mediterranean. Also the National Pre-

ventive Mechanism is part of the Project for establishing an active network of NPMs in the Council of Europe area.

The Ombudsman as a National Human Rights Institution

A National Human Rights Institution (NHRI) is an organization funded by the state, with a constitutional or legal basis and authority to promote and protect human rights at national level. It is a mechanism through which the state fulfills its international responsibility “to undertake all appropriate actions” to ensure implementation of international human rights at national level.

The creation of a NHRI is a sign that the country takes its responsibilities for human rights seriously; the strength of this commitment can be measured by the extent to which the NHRI is fully independent and has the necessary authorities and means to be an effective institution.

NHRIs are established in line with the standards proclaimed with the so-called Paris Principles according to which the institution should have a mandate to actively promote and protect human rights in compliance with the constitutional and legal norms of the particular State.

Functional and well-founded National Human Rights Institution in a country like Republic of Macedonia, whose system of protection and promotion of human rights is in constant development, is of exceptional significance. Because of this, gaining accreditation from the International Coordination Committee of National Institutions for Promotion and Protection of Human Rights is of strategic importance, because of the international support that the institution receives, and also for the role that it has in the national framework.

The accredited institutions have the option to seek assistance from the International Coordination Committee in case of difficult conditions of work and/or changed circumstances in the country. Also, as accredited institutions they receive effective recommendations on how to improve their work and to further align with the Paris Principles. Finally, obtaining the accreditation provides larger international and domestic credibility of the institution, and it receives recognition for its independence and efficiency.

For this purpose, the Ombudsman filed an application for accreditation to the International Coordination Committee and gained the status B in October 2011, which enabled it to enter the group of institutions from Austria, Belgium, Slovakia, Slovenia, Hungary, the Netherlands and Sweden. With this accreditation (which means that the institution is partly in compliance with the Paris Principles), the institution acquired the right to act as a national institution for human rights and to participate in meetings of other

institutions, however without the right to vote.

In its evaluation, the Sub-committee on Accreditation granted the institution of Ombudsman of Republic of Macedonia a broad mandate for protection, but not a mandate for promotion of the human rights. Although it praised the Ombudsman for its activities in promoting human rights, the Sub-committee encouraged the Institution to fight for broader mandate, especially in terms of promotion. Regarding the election of deputies of the Ombudsman, the Sub-committee had a note that the Paris Principles proclaim broader representation in the organization, unlike the present one, which refers only to ethnicity and primarily of the Macedonians and Albanians. Also, it was suggested that the process of employing and election of the Ombudsman be more transparent and to ensure pluralism and wider process of consultation which would involve more stakeholders from civil society.

Eventually, a more active engagement in the international system of human rights was requested from the Ombudsman, in particular with the Council of Human Rights and its mechanisms (Special Procedures and Universal Periodical Review, UPR), as well as in the organizations of the United Nations which arise from international agreements and legal acts pertaining to the system for protection of human rights. Furthermore, the Ombudsman was encouraged to be actively involved in the International Coordination Committee, the European Group of National Human Rights Institutions and other international organizations.

The Paris Principles emphasize that the NHRIs should be empowered to promote and protect human rights on the basis of powers set in constitutional or statutory text. The principles require this institution to submit recommendations, proposals and reports to the Government, the Parliament and other competent bodies. The subject matter can be any legal or administrative provision relating to the protection of human rights, any situation of violation of human rights, preparation of reports on the human rights situation on national level or more specific issues. Also, the NHRI should incite initiatives for ratification of international instruments on human rights and their application, should contribute to the process of reporting and cooperation with the United Nations and regional institutions and NHRIs from other countries working in the field of protection and promotion of human rights.

Finally, NHRIs can help in conceptualizing and conducting lectures and education sessions on human rights and research programs and contribute to raising public awareness of human rights through informing and education.

In this manner, with the acquisition of the status of a National Human Rights Institution, the Ombudsman is obliged to act in the promotional area as well as in the protection of the rights and to provide comprehensive

support to the full compliance with the domestic and international human rights standards.

Abstract

In this review, the Ombudsman of the Republic of Macedonia gives an overview of the institutional character of his institution. The text offers an outline of the history, legal basis, organizational structure, funding, human rights mandate and activities. For the purposes of the topic of Eurodialogue 16, special attention is given to the Ombudsman of Republic of Macedonia as a National Human Rights Institution, the application process, receiving of status B and evaluation of the International Coordination Committee of National Institutions for Promotion and Protection of Human Rights.

Резиме

Во овој ревијален текст, Народниот правобранител на Република Македонија дава преглед на институционалниот карактер на својата институција. Текстот ги претставува историјатот, правната основа, организациска структура, финансирање, мандат за човекови права и активностите на Народниот правобранител. За целите на темата на Евродијалог 16, посебно внимание е посветено на Народниот Правобранител на Република Македонија како Национална институција за човекови права, процесот на аплицирање, добивање на статус Б, како и оценката на Меѓународниот координативен комитет за национални институции за унапредување и заштита на човековите права.