

Ixhet MEMETI

THE OMBUDSPERSON AND THE PROTECTION OF THE PRINCIPLE OF EQUALITY AND NONDISCRIMINATION

Introduction

The principle of equality and non-discrimination is the fundamental principle of the human rights. It is applied at all times without exception and there is no possibility for derogation. Its significance and the severe consequences that might result from unjustified and unequal treatment can be recognized from the fact that the principle of equality and nondiscrimination is fully integrated within all international human rights documents.

Given the importance of the matter that it refers to, both the promotion and the protection of this principle are assumed by the State but are also often entrusted upon the national human rights institutions. This is done by assigning competences to a certain institution to act as an equality body whose field of action would emanate from this principle to the furthest extent, to a national human rights institution that will integrate this principle within its wider mandate or to two or

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more institutions as it is in the case of the Republic of Macedonia.

The Ombudsperson of the Republic of Macedonia is a national human rights institution, established in 1997, competent to protect the constitutional and legal rights of citizens in cases of violation on the part of the public administrative bodies. The Ombudsperson is the single institution in the country accredited by the International Coordinating Body, a body that evaluates the alignment between the national human rights institutions and the international set of relevant standards i.e. the Paris Principles. One of the competences of the Ombudsperson Institution is the protection of the principle of nondiscrimination.

This article provides an overview of the constitutional and legal basis for the work of the Ombudsperson in relation to both equality and nondiscrimination, as well as of the activities that this institution has undertaken throughout the years so as to ensure the protection of this principle, and the work vis-à-vis other institutions whose competences also include this principle. The article closes the discussion by offering short proposals on how to improve the Ombudsperson framework for action regarding this principle as well as the conditions under which this institution operates, the ultimate goal being to increase the level of its protection.

This article is based upon the legal framework data, the annual reports of the Ombudsperson Institution, the reports and other documents of international organizations related to the work of the Ombudsperson as well as upon other information available at the official website of this institution. Moreover, the article contains personal experiences and views of the author who has assumed the role of Ombudsperson in 2004.

1. The place of the protection of the principle of equality and non-discrimination within the competences of the Ombudsperson

The Ombudsperson acts in accordance to the Constitution and the body of laws of Republic of Macedonia as well as to the international legal provisions on human rights and freedoms. The legal basis is primarily provided by the Constitution but also by the ratified international agreements while the mandate and the competences of the Ombudsperson are prescribed by the Law on the Ombudsperson. Article 77 of the Constitution defines the functions of the Ombudsperson related to the protection of both constitutional and legal rights of citizens in case of their violation by national governing and administrative bodies. Amendment XI has also extended the mandate empowering the institution to protect the principles of nondiscrimination and fair and equitable representation of community members also within the

state administration bodies, the local self-government units and the public institutions and agencies.

The Ombudsperson is appointed by the Parliament with a majority vote of the total number of MPs, whereby there has to be a majority of votes from the total number of MPs who belong to the non-majority communities in the Republic of Macedonia. The Ombudsperson is elected for office term of eight years with a right to re-election. As the Ombudsperson pays particular attention to the protection of the principles of nondiscrimination and adequate and equitable representation, a special department has been established in 2009 upon the amendments to the Law on the Ombudsperson.

The protection of the principle of nondiscrimination by the Ombudsperson has been explicitly included in the Constitution following the amendments stemming from the Ohrid Framework Agreement (2011) i.e. Amendment XI. Prior to this amendment, the Ombudsperson had the competence to protect the constitutionally guaranteed principle of equality (Article 9 of the Constitution) but Amendment XI has increased both the scope and the visibility of the Ombudsperson's competences. Hence, the first case of protection of the rights of non-majority communities has been included in the 2001 Annual Report.¹ Furthermore, this amendment is exceptionally significant because it has legally allowed the Ombudsperson to monitor and report on the implementation and protection of the principle of adequate and equitable representation of community members. The latter is rather important for the subject discussed in this article because this principle is primarily considered as a measure for positive action aiming to promote material equality; in this case, it relates to ethnicity or ethnical background of individuals (more on activities related to this principle in the text further below).

The legal basis for the establishment of the institution is in accordance with the Paris Principles which prescribe that its mandate will be clearly set forth in a constitutional or legislative text.² The general provisions of the International Coordinating Body in relation to the Paris Principles indicate that by formally entrenching the mandate in such legal acts, there is a certain guarantee of the consistency and independence of the institution which will be in this way distinguished from an agency of state, a non-government organization, or an ad hoc body.³

1 Annual Report on the Ombudsperson work (2011), p. 5

2 Principles related to the Status of National Institutions (The Paris Principles), General Assembly Resolution 48/134 of 20 December 1993, Principle No. 2

3 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, ICC SCA General Observations as adopted in Geneva in May 2013, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/ICC%20SCA%20General%20Observations.pdf>, p.12

The Law on the Ombudsperson defines more specifically the competences, the work as well as the conditions for election and revocation of the Ombudsperson. Such law was first adopted in 1997. Following the above-mentioned amendments, in 2003 the Government passed a new Law on the Ombudsperson which has underwent only one amendment and one addition (in 2009, mainly due to the alignment regarding the ratification of the Optional Protocol to the Convention against Torture) whereas the Constitutional Court of the Republic of Macedonia has repealed one provision (in 2008, which has led to reduced number of grounds of complaints rejection). According to this Law, the Ombudsperson is competent to take measures and actions within the frame of its legal competences so as to “to provide protection of the constitutional and legal citizens’ rights or of the principles of nondiscrimination and adequate and equitable representation of all community members in discrimination cases [specifically indicated under this Law]”.⁴ Moreover, the 2009 amendments have prescribed the establishment of a special department for nondiscrimination and adequate and equitable representation of citizens.⁵

Also significant for the work of the Ombudsperson regarding the principle of equality and nondiscrimination is the Law on Prevention and Protection against Discrimination (LPPD). Although a special equality body was established under this Law i.e. the Commission for Protection against Discrimination (CPD), the Law is also relevant to the Ombudsperson’s work. According to this Law, “when performing the duties within its competences, the Commission should collaborate with the Ombudsperson regarding actual discrimination cases”.⁶ The main difference between the competences of the Ombudsperson and the CPD is that although this law bans discrimination in both public and private sector, the competences of the Ombudsperson remain within the constitutionally and legally determined field of action of this institution i.e. the public sector, meaning that this institution cannot act upon complaints against the private sector.

The overlapping of the competences of these two institutions (i.e. the protection of the public sector) is not legally regulated under LPPD. This legal inconsistency might be interpreted both positively and negatively. It might be considered positive as the citizens can choose themselves to which institution they would address to. It is negative because it might cause legal

4 Law on the Ombudsperson, Official Gazette of the Republic of Macedonia, No. 60/2003, 114/2009, Article 11

5 Ibid, Article 45

6 Law on Prevention and Protection against Discrimination, Official Gazette of the Republic of Macedonia, No. 50/10, 44/14, Article 33

uncertainty but also because, due to the little knowledge of protection against discrimination (more on this issue in the findings of the Ombudsperson presented further below), complaints are often submitted to the Ombudsperson upon which this institution is not competent to act.

Activities of the Ombudsperson towards protection of the principle of equality and nondiscrimination

Within the legal framework for action, the Ombudsperson is responsible for ensuring protection against discrimination as well as for monitoring the implementation of the principle of adequate and equitable representation. In practice, however, the mandate of this institution is much wider. Namely, considering the importance of education and prevention, in the past ten years the Ombudsperson has been actively working in the field of promotion although it does not explicitly fall within its competences. The openness of the institution was acknowledged by the International Coordinating Body in its report on the assessment and accreditation of this institution.⁷ Therefore, this chapter will provide an overview of the Ombudsperson's work regarding the protection and promotion of the principle of equality and nondiscrimination.

The activities that the Ombudsperson undertakes so as to ensure equality and nondiscrimination are as follows: legal protection, legislative initiatives, provision of professional opinion and suggestion, preparation of special report on particular issues related to particular groups/prohibited grounds of discrimination, campaigns and other awareness-raising events, cooperation with other actors (international and citizens organizations, national institutions, the CPD, etc.). In order to introduce the public to its activities and current issues in a regular and more comprehensive manner, this institution provides information and written accounts through the media. Hence the importance of the Annual report that the Ombudsperson itself submits to the Parliament of the Republic of Macedonia. By doing so, the institution demonstrates respect for the rule of law, accountability and transparency. The Annual report is also important tool for raising public awareness. Namely, the Ombudsperson purposefully meets with the media so as to point out the general findings regarding the situation of human rights in Macedonia for the reporting year, including both equality and nondiscrimination. This Report is also beneficial to the Parliament as it provides information on the extent to which the constitutional and legal rights of the citizens are

7 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights - Report and Recommendations of the Session of the Subcommittee on Accreditation (SCA) Geneva, 25 – 28 October 2011.

respected, promoted and protected, including the respect for the principles of nondiscrimination and adequate and equitable representation of the community members.

Legal protection

The legal process for protection against discrimination and unequal treatment before the Ombudsperson ensures protection against discrimination to the citizens in cases of unequal treatment. This procedure is free and considerably more efficient if compared with other mechanisms at citizens' disposal. Although the recommendations of the Ombudsperson are not legally binding, the institutions to which the Ombudsperson refers to generally follow them and eliminate all violation of human rights or the obstacles to their full enjoyment.

But despite the advantages that this process offers, the cases of discrimination remain to be the least represented cases considered by this institution. The overview of discrimination cases in the past five years is given in Table 1 below. In 2013 the Ombudsperson has received 51 complaints related to both nondiscrimination and adequate and equitable representation or 19 cases more compared to the previous year. The majority of complaints i.e. 26 of them referred to discrimination based on ethnicity. The number of complaints on the grounds of discrimination represents 1.35% of the total number of complaints filed with the Ombudsperson in 2013.

In comparison to the previous years, in 2013 an increasing number of citizens demanded from the Ombudsperson to investigate their cases as discrimination cases, which indicates that the citizens feel more encouraged to fight against discrimination.

Table No.1: Representation of discrimination cases in the practice of the Ombudsperson by year, number of discrimination cases and percentage of the total number of cases

Year	Number of discrimination complaints⁸	Percentage of the total number of cases
2013	51	1,35%
2012	32	0.74%
2011	42	0.99%
2010	16	0.40%
2009	20	0.55%

Source: Annual reports of the Ombudsperson for 2009-2013

⁸ The data provided for 2010 and 2009 refer to both discrimination and adequate and equitable representation.

Another tendency that was reoccurring in 2013 was that related to the grounds of discrimination referred to by citizens in the cases submitted to the Ombudsperson as well as to the areas of discrimination where protection is needed. Namely, the ethnicity remains the most common ground of discrimination while the employment is the most represented area. The majority of submitted complaints i.e. 26 complaints are about discrimination based on ethnicity.

Table No.2: Most represented grounds and areas of discrimination in cases considered by the Ombudsperson by year

Year	Ground and area
2013	Ethnicity
2012	Ethnicity; employment
2011	Ethnicity (increased number of cases based on political affiliation); employment
2010	Ethnicity; employment
2009	Ethnicity; employment

Source: Annual reports of the Ombudsperson for 2009-2013

Specific discrimination cases reported in 2013 were the cases where many Roma were not allowed to leave the country under the presumption that they were “fake asylum seekers”. A number of the complaints submitted referred to cases where Macedonian citizens, members of the Roma community, wanted to go to Serbia to visit their relatives (some of them were even born there and had dual citizenship) and were able to do so under the Agreement for border crossing with an ID between Macedonia and Serbia but were not, however, allowed to: they were turned back and asked to provide additional documentation. In part of the cases, the Ombudsperson found that the citizens had met the criteria prescribed with both the Law on Border Crossing (Official Gazette of the Republic of Macedonia, No. 171/10) and the bylaw emanating from this law as well as with the Schengen Borders Code but were not allowed to leave the country.

In this regard, the Ombudsperson has provided Information to both the Interior Minister and the Government of the Republic of Macedonia emphasizing the compulsory nature of implementation of the national and international standards in terms of guaranteeing the right to free movement and the prohibition of discrimination on any grounds. Moreover, in the Information provided to the Government, the Ombudsperson has indicated the necessity of considering this issue on a higher level and taking measures

within the governmental competences so as to overcome this phenomenon which puts solely the members of the Roma community into unequal position in comparison to other citizens when crossing the borders of Republic of Macedonia as not all Roma who want to leave the country are potential asylum seekers.

In 2013 the Ombudsperson has found that persons who are deaf or hard of hearing face challenges to the enjoyment of their rights, particularly the use of the sign language due to the low number of trained sign-language translators and interpreters. The Ombudsperson has informed the Ministry of Labor and Social Policy on this issue, stipulating that the Ministry should invest efforts towards inclusion, promotion and full enjoyment of the human rights and freedoms, respect for the dignity of this group of people without discrimination based on their disability.

Special reports

An important aspect of the Ombudsperson's work is the preparation of special reports reflecting the situation with certain human rights or with certain group/prohibited ground of discrimination. The Ombudsperson has prepared a great number of such reports⁹; this article shall only include those focused on the protection of the principle of equality and nondiscrimination: the principle of adequate and equitable representation, gender equality in public sector employment, implementation of the principle of nondiscrimination regarding the implementation of the Convention on the Rights of the Child and the education of children with disabilities (including the representation of Roma children in the special schools).

With regard to the equality and the progress of Republic of Macedonia toward material equality in relation to the representation of communities in the public sector, which is one of the most important changes introduced in the country under the Ohrid Framework Agreement, the Ombudsperson aims to monitor the implementation and to protect the principle of adequate and equitable representation. Furthermore, the Ombudsperson regularly reports on this issue not only in the annual reports but also in the special reports published every calendar year. The reports from the last five years indicate constant increase in the representation of all ethnic communities with few exceptions. Table 3 provides an overview of the representation of communities by year.

9 The special reports prepared by the Ombudsperson are available on the official website of this institution: http://www.ombudsperson.mk/MK/posebni_izveshtai.aspx

Table No.3: Adequate and equitable representation of ethnic communities

Year	Total number of employees	Macedonians (%)	Albanians (%)	Turks (%)	Roma (%)	Serbs (%)	Aromanians (%)	Bosniaks (%)	Other (%)
2013	108078	75,3	18,1	1,8	1.3	1.6	0.7	0.4	0,8
2012	107336	75.2	17.8	2	1.3	1.6	0.7	0.5	1
2011	102103	76.3	17.2	1.7	1.3	1.6	0.7	0.4	0.9
2010	82555	77.23	16.92	1.62	0.70	1.59	0.69	0.31	0.94
2009	69148	79.92	14.05	1.29	0.80	1.88	0.76	0.37	0.93

Source: Special report on monitoring the implementation of the principle of adequate and equitable representation for 2012, Annual Report of the Ombudsperson for 2013

The Ombudsperson ensures the implementation of the principle of adequate and equitable representation by sending requests to all concerned institutions to abide by this principle.

The number of requests sent by the Ombudsperson increases each year.¹⁰ The available data in 2013 have shown that a progress has been made regarding the implementation of the principle of adequate and equitable representation; however, it is still insufficiently implemented within certain institutions. The analysis of data related to the representation of members of smaller communities as well as to the managerial positions shows interesting tendencies.

Apart from the special reports on adequate and equitable representation, the Ombudsperson regularly prepares reports on other issues that fall within its competences. For instance, in 2013 the Ombudsperson has paid special attention to gender quality in public sector employment. The survey carried out by this institution focused on gender representation by type of job position.

¹⁰ In 2013 the number of institutions has reduced as per Article 16 of the Law on Territorial Organization of the Local Self-government of the Republic of Macedonia; four municipalities have joined the Municipality of Kichevo: Vranestica, Drugovo, Oslomej and Zajas. Moreover, the public enterprises and other local institutions under these four municipalities have merged with the respective institutions of the Municipality of Kichevo; however, the available data show that the registered number of employees has increased.

Table No.4: Gender representation by type of job position

	Total number of employees	Employees by gender				
		Male		Female		
		#	%	#	%	#
Employed in the institution	108 036	100	56363	52,17%	51673	47,83%
Managerial positions	9694		5353	55,22%	4341	44,78%
Non-managerial positions	98342		51010	51,87%	47332	48,13%

Source: Annual Report of the Ombudsperson for 2013

As Table 4 indicates, out of the total number of 108.036 employees in the institutions, 56.363 (52.17%) are men and 51.673 (47.83%) are women. As for the gender representation in managerial positions, women represented 44.78% (4.341 employees) whereas men represent 55.22% (5.353 employees). The ratio is nearly the same in the non-managerial positions held by 47.332 (48.13%) women and by 51.010 (51.87%) men.

As far as the nondiscrimination of children is concerned, which has been in the focus of the Ombudsperson special reports, an emphasis should be put on certain remarks included in the report on the implementation of the Convention on the Rights of the Child (CRC) in terms of nondiscrimination, as well as on the reports on education of children with disabilities which also provide information on the representation of Roma children within the special schools.

Taking into consideration the findings and experiences obtained during the five-year-long monitoring process of the rights of the child through the special department for protection of children's rights, the Ombudsperson has prepared a report on the implementation of the CPC for the period 2000-2005, published in 2007. This report has paid considerable attention to the nondiscrimination of children since it is one of the pillars of the protection of children's rights. As stated in the report, the institution underlines that despite their formal and legal equality, part of the children still face unequal treatment due to poverty and parental unemployment¹¹ which reflects on their education and healthcare. Namely, regardless of the constitutional guarantee and the general opinion that elementary education is free, the institution notes in its report, covering the period until 2005, that there are many additional

¹¹ It is evident from the annual reports that the Ombudsperson has alerted the competent institutions to the continuation of this situation.

expenses (e.g. textbooks, school materials, snacks and other expenses such as for broken windows, damaged furniture, in some cases even for school maintenance, procurement of books, and pupil or student certificates, clothing, shoes, school supplies¹²) which might be financial burden for certain families who have therefore decided not to send their children to school. Poverty and unemployment are the main factors contributing to the inability of some families to cover healthcare participation requirements and thus, depriving children of their right to healthcare. The long-lasting efforts of the Ombudsperson have finally resulted with amendment to the then-existing Law on Health Care, prescribing complete exemption of all children from any kind of contribution for health services in the primary healthcare, for on-call urgent care, orthopedic aids, prosthesis and other sanitary products made of standard materials as well as for other advantages ensuring the right to equal access to healthcare to certain groups of children.¹³ Moreover, the Ombudsperson has fought hard for many years to institutionalize the equal access to social care for children coming from multi-children families as well as to strengthen both the social care for street children and child victims of trafficking and the special measures for protection of children with disabilities. In this context, the Ombudsperson has proposed in its 2007 report to “prescribe a mandatory legal duty for all bodies, institutions and individuals to respect the principle of nondiscrimination of children in the process of decision-making or undertaking activities concerning children, expected to be achieved through adoption of a special Law on Nondiscrimination; to prescribe punitive measures for all bodies, institutions and individuals that discriminate children on any grounds.”¹⁴ There is such law in Macedonia nowadays – the LPPD; the Ombudsperson now works with the relevant actors on its consistent implementation, a necessity that has been identified in the annual reports.¹⁵

The Ombudsperson regularly monitors and puts forward recommendations related to the education of children with disabilities within special

12 Report of the Ombudsperson on the implementation of the Convention on the Rights of the Child and of the Optional Protocols to the Convention (2000-2005) (October 2007), p.4-5

13 Ibid. p.5

14 Ibid. p.8

15 E.g. Annual report on the work of the Ombudsperson (2012): “In the process of acting upon the complaints it became evident that more activities need to be taken by all actors so as to ensure the respect for the fundamental principle of nondiscrimination and that of the best interest of children and their participation in decision-making i.e. the full and consistent implementation of these principles and to provide protection of the children’s rights”, p.74

schools. In the last Report, the Ombudsperson has found that the number of pupils in these schools is in decline (compared to 2010) but that the number of Roma children is still considerable. Namely, 24.56% of the total number of enrolled children in these schools is Roma, a number which is extremely high in certain schools (see Table 5). Although no children are enrolled without the required documentation, it is evident from the documents that the majority of Roma pupils in these schools suffer from mild disabilities and educational neglect. Despite the great number of Roma pupils, there is not a single Roma employee among the school personnel.¹⁶

Table No.5: Percentage of Roma children out of the total number of students in all schools and in the schools where they are predominantly represented

School	% of Roma children out of the total number of students
All schools	24.56%
Public high school "Iskra" – Shtip	41,17%
Public high school "Saint Naum of Ohrid" –Skopje	35,94%
Special Elementary School "Maca Gjorgjieva Ovcharova" – Veles	32,81%
Special Elementary School "Dr. Zlatan Sremec"	16.67%

Source: Information on the inclusion of children with special needs in the special elementary and high schools, the Ombudsperson (2014)

Keeping children at school and their progress are not monitored, i.e. "the schools do not have data related to the number of children having attended special schools and if the children who are no longer attending these schools are included in the regular educational system."¹⁷ Moreover, the Ombudsperson has found that there is a need for special textbooks so as to meet the needs of these children, and for greater cooperation between parents, schools and healthcare institutions that are responsible for issuing certificate of diagnosis and medical opinions on children's disability. Finally, the Ombudsperson has noted the dropout phenomenon which is particularly typical for "female students of Albanian or Roma background

¹⁶ Information on the inclusion of children with special needs in special elementary and high schools, the Ombudsperson (2014), p.19

¹⁷ Ibid. p.19

due to marriage”.¹⁸

Considering the situation, the Ombudsperson has given the following recommendations:¹⁹

- **Issuance of certificate of diagnosis and medical opinion by competent body:** substantial changes are needed regarding the commission structure and the cooperation with schools not only during the enrollment process but also during the monitoring of one child’s progress and development. In order to preclude the possibility of issuing a certificate of diagnosis that does not correspond to the actual health condition of the child, the Ombudsperson has recommended changes to the Rules for assessment of the specific needs of children with physical or mental disabilities. Taking into consideration the suspicions about the issued certificates of diagnosis for children with disabilities among the Roma population and aiming to eliminate the ignorance of the Macedonian language as a reason for their categorization as children with special needs, the Ombudsperson has also recommended considering the possibility for a member of the relevant ethnical community speaking the same language as the child to be present during the diagnostic process. It is necessary to regularly update the data on children that are no longer part of this kind of education so as to identify more easily if they are included in the regular educational system.

- **Textbooks and other teaching aids:** It is necessary to provide special elementary and high schools with textbooks that would respond to the needs of these children and help them develop their potential to the fullest.

- **Cooperation:** Schools, commissions, healthcare institutions and parents should join efforts to raise the cooperation to a higher level. It is necessary to establish cooperation between schools and the commissions that issue both certificates of diagnosis and medical opinions, as well as to ensure that the special schools will follow the recommendations of the expert teams regarding the situation of children. The Ombudsperson has also suggested measures to be taken so as to improve the cooperation and the joint preventive action between the special schools and other institutions (especially the centers for social services) as well as their joint efforts towards parental sensitization (including the harmful effects of child marriages).

- **Equal institutional approach and procedures:** The institutions should request the same enrollment documents regardless of one child’s ethnicity. Moreover, it is necessary to employ teaching personnel of different ethnic backgrounds according to the ethnic backgrounds of the students.

¹⁸ Ibid.

¹⁹ All information provided in this part of the article are found in the Information on the inclusion of children with special needs in the special elementary and high schools, the Ombudsperson (2014), p. 19-20

Reports of the National Preventive Mechanism (NPM)

Following the ratification of the Optional Protocol to the Convention against Torture in 2008, the Ombudsperson has been designated National Preventive Mechanism (NPM). By paying preventive visits to the places of deprivation of liberty, providing recommendations and initiating drafting of legal documents, the Ombudsperson directly or indirectly influences the protection of the rights of persons deprived of liberty. Aiming to ensure the enjoyment of rights by the persons deprived of liberty, the report that the Ombudsperson – National Preventive Mechanism annually prepares and distributes also covered the issues of equal treatment and discrimination in places deprived of liberty. The 2012 annual report of the National Preventive Mechanism contains a special thematic section related to the treatment of vulnerable categories of persons deprived of liberty.²⁰ The report underlines, inter alia, that the persons of Roma ethnic background are not sufficiently protected against discrimination which is exercised not only by other persons deprived of liberty and institutionalized in correctional facilities but also by the institutions themselves. The possibility of discrimination was also established in the case of narcotic users that were completely segregated at one of the correctional facilities and placed in worse conditions compared to the other inmates. In the section referring to the prevention against torture and other kind of cruel or inhuman treatment, the Ombudsperson has also reported on the extremely degrading and inhuman conditions in which persons with disabilities are placed i.e. the practice of placing them in much worse conditions compared to the other inmates which can be considered ground of discrimination due to the factual unequal treatment. In this regard, the Ombudsperson has requested for the placement of prisoners with disabilities to be done with respect to the principle of “reasonable adjustment” as prescribed with the Convention on the Rights of Persons with Disabilities which requires urgent and appropriate modification and adjustment without causing disproportionate burden so as to ensure the equal enjoyment of human rights and freedoms to the persons with disabilities.

Legal initiatives

Monitoring the implementation of the principle of equality and nondiscrimination, the Ombudsperson has many times recommended modifications and has put forward propositions regarding specific amendments to the legal framework but has also requested for assessment of the constitutionality and legitimacy of certain legal acts and provisions.

²⁰ National Preventive Mechanism Annual Report for 2012.

Due to limited space²¹, this article cannot provide a comprehensive and detailed overview of all initiatives of this sort undertaken by the Ombudsperson. Therefore, I would mention the most recent legal initiative submitted in December 2013 regarding the proposition presented by this institution before the Constitutional Court of the Republic of Macedonia for assessment of the constitutionality and the legitimacy of the article of the Law on Compulsory Social Insurance prescribing the obligation of every unemployed person receiving unemployment-based social insurance benefits to submit annual financial statement for the previous year as a condition to exercise this right.²²

Namely, the Ombudsperson has initiated proceedings following the complaint submitted by the association “Roma S.O.S.” from Prilep about the consequences that the implementation of this provision has led to i.e. the loss of the insured status. The institution has found that despite the 2012 Decision of the Constitutional Court which abolishes the previous provision prescribing the obligation to submit annual financial statements, the State has passed a new provision in 2013 re-introducing the same obligation. Basing the proposition on Article 9 of the Constitution (proclaiming the principle of equality of citizens) and on Article 54 (the limitation of rights cannot be done in a discriminatory manner) in 2013 the Ombudsperson has demanded initiation of proceedings as mentioned above, and cancellation or suspension of this provision.

Opinions and suggestions

Within the frame of its legal competences, the Ombudsperson addresses opinions and suggestions related to the scope of its activities. I would mention two such activities taken in 2013, one on national and another one on international level: opinion addressed regarding the amendments to the Labor Law in relation to the protection of women with pathological pregnancies in a nondiscriminatory manner and the report on the second cycle of the Universal Periodic Review (UPR) of Republic of Macedonia presented by the Ombudsperson before the Human Rights Council.

As part of its responsibilities, the Ombudsperson has pointed out to the Ministry of Labor and Social Policy, the Ministry of Health and the Health Insurance Fund that the proposed amendments to the Labor Law regarding

21 Detailed information on all activities can be found on the official website of the Ombudsperson and in all annual reports.

22 Law on contributions for compulsory social insurance, Official Gazette of the Republic of Macedonia No. 142/2008, 64/2009, 156/2009, 166/2010, 53/2011, 185/11, 44/12 and 15/2013, Article 10-a, paragraph. 5 and Article 10-b, paragraph 1

the duration and the start of maternity leave in cases of pathological pregnancy do not provide protection against the risks to pregnancy, which is in fact the objective of defining the maternity leave period, and that the legal provisions do not take into account the special condition of the pregnant women due to which they might need to extend the maternity leave i.e. receive only 70% of the salary which would further on also reflect on their pension insurance. Namely, the Ombudsperson has underlined the inconsistency of the relevant legal acts which can be recognized from the fact that the special health condition of those pregnant women who risk giving birth to a dead child is indirectly identified by the State as a particularly difficult condition because the same law also prescribes the possibility for extended leave for recovery from a child loss. Thus, the question that the Ombudsperson addressed to these institutions was whether it was not needed to prevent the risk of losing the child i.e. maintain the pregnancy or to acknowledge the right of the pregnant woman to extend her leave so as to recover from the loss of her child?²³

The Ombudsperson has submitted a report on the second cycle of the Universal Periodic Review (UPR) of Macedonia to the UN Human Rights Council. Namely, the UPR procedure of the Human Rights Council not only enables but also encourages the national human rights institutions to send information to this body. Using this opportunity to inform on the human rights situation in the country and to also submit its own propositions for adoption by the Working Group of Macedonia that the country is supposed to adopt afterward and to report on by the next review, the Ombudsperson has contributed to this process. In this context, the Ombudsperson has informed on the ratification of the international human rights documents and their implementation on national level; the establishment/accreditation of a national human rights institution in line with the Paris Principles; the adoption of all recommendations in relation to torture and inhuman treatment and punishment as well as to the conditions in the correctional facilities, including the detention units; strengthening of the legal framework and the implementation of the antidiscrimination legislation including the situation of gender equality in practice.²⁴

23 Opinion of the Ombudsperson to the Ministry of Labor and Social Policy, the Ministry of Health and the Health Insurance Fund of the Republic of Macedonia. Available at: <http://ombudsperson.mk/upload/documents/2013/Mislenje%20za%20Patoloshka%20bremenost%2027.02.2013%20Mkd.pdf>

24 Opinion of the Ombudsperson in relation to the UN Universal Periodic Review (UPR) of Republic of Macedonia and the level of implemented recommendations until 2013. Available at: <http://www.ombudsperson.mk/upload/documents/2013/Mislenje%20UPP-ON-mk.pdf>

Raising of public awareness

Recognizing the importance of prevention and human rights education, the Ombudsperson regularly implements promotional activities within the range of its possibilities and owing to the resources at its disposal although this kind of activities is not unequivocally assigned under its mandate. Apart from the organization and participation in many conferences, round tables, workshops and trainings as well as the publication of the Journal of the Ombudsperson, this institution also undertakes other activities aiming to raise the public awareness.

In 2012, the Ombudsperson has supported the preparation of the play “Same in a different way” which was performed multiple times. The play aimed to bring the most frequent forms of discrimination closer to the audience so as to be able to recognize them – which is one of the main factors leading the low number of reported cases of discrimination. Moreover, in cooperation with one medium, a TV show was organized where the citizens could ask questions and inform themselves on different discrimination-related issues. Also presented during the show were the most common forms of discrimination and how they could be recognized.

Furthermore, the Ombudsperson has also published a flyer in seven languages and a brochure “Protection against discrimination”. The objective of the latter was to introduce the citizens to the basic notions, forms and mechanisms of protection against discrimination as well as to the international and national framework for discrimination prevention.

Simultaneously, in 2013 the Ombudsperson has continued implementing promotional activities so as to familiarize children with both their rights and the competences that this institution has in terms of their protection, including the protection against discrimination.²⁵ In 2013, these activities included 63 schools out of which 39 were elementary and 28 were high schools, and 2400 students of different ethnic background (Macedonians, Albanians, Turks and Roma) who have shown interest to participate in the educational and informative meetings with representatives of the Ombudsperson. In the ethnically mixed schools the accent was put on the right to protection against discrimination i.e. what is discrimination and how to ask for protection in case of discrimination. Also discussed was the protection of the rights of smaller ethnic groups as well as the importance of fostering cohabitation and tolerance and of overcoming misunderstandings using dialogue instead of violence among peers within one or between schools.

²⁵ Information on conducted visits and education of children in elementary and high schools (2013)

The Ombudsperson has been also actively engaged on international level. In that regard, it is important to mention the Regional Conference in September 2013 titled “Particular Challenges in Dealing with Complaints of Discrimination on Grounds of Ethnicity – A Regional Practitioners’ Exchange”, organized by OSCE/ODIHR. Attended by Ombudsperson representatives from the region (Albania, Kosovo, Serbia, Croatia, Montenegro, Bosnia and Herzegovina), the conference provided a “Comparative Overview of Anti-discrimination Laws in the Western Balkans” and a “Typology of cases of discrimination on grounds of ethnicity submitted to the competent discrimination institutions in South-Eastern Europe”.

Cooperation with other actors

Ever since its establishment, the Ombudsperson institution has made great efforts to achieve, maintain and strengthen the cooperation among all relevant actors dealing with issues related to human rights both on national and international level. The Ombudsperson is a member of the International Ombudsperson Institute (IOI), the European Ombudsperson Institute (EOI), the Association of Ombudsmen and Mediators of La Francophonie and of the Association of Mediterranean Ombudsmen.

The rights of the child were in the focus of interest of the Ombudsperson in 2013 as well. As a member of the Children’s Rights Ombudspersons’ Network (CRONSEE) and supported by the charity organization Save the Children, the Ombudsperson has participated in two regional working meetings on prevention of children against exploitation and protection of the rights of children in conflict with the law.

The Ombudsperson has expanded its activity in the field of protection of human rights and freedoms by networking with another association i.e. the European Network of National Human Rights Institutions (ENNHRI), officially founded in 2013. The meetings organized within this network incited discussions on topics such as the cooperation for the rights of vulnerable groups – the immigrants, Roma, LGBT population – as well as the manner of managing discrimination cases and of cooperation with international institutions for human rights protection. The Ombudsperson is also actively engaged in the field of antidiscrimination through the participation in the regular meeting of the European Commission against Racism and Intolerance (ECRI).

Within the range of its competences and possibilities, the Ombudsperson tends to attend and to get involved in the global processes related to human rights. In that regard, in 2013 this institution has participated in the process of UPR of Republic of Macedonia before the UN Human Rights Council.

Additionally, an integral part of the Ombudsperson's work is the cooperation with the national institutions and the CSOs. The Ombudsperson maintains a regular interaction with national institutions of importance to the work of the institution. This institution also engages with and supports the activities of civil organizations related to issues that fall within its competences. The cooperation with contributors is a source of not only technical but also financial support for the work of the Ombudsperson. Some of the most recent contributors are the Swedish International Development Agency (SIDA), the European Union (twinning projects), OSCE Mission to Skopje, the Croatian Embassy, etc.

In lieu of a conclusion: Challenges in the work of the Ombudsperson in relation to the protection, monitoring and promotion of the principle of equality and nondiscrimination

Human rights are the foundation of democracy, a precondition for tolerance, but also an investment one makes for a better future, one in which all people will be able to live a life in dignity without discrimination and to realize their full potential. The principle of equality and nondiscrimination is a pillar principle and a core precondition for securing such future. Its norming and implementation in practice show how tolerant, sensitive and receptive to differences a society is, as well as how prepared it is to respond to the needs of every individual and to create conditions for equal respect, protection and fulfillment of the rights of all people regardless of their sex, gender, ethnic affiliation, age, disability or any other personal characteristic or status.

Because of the fundamental importance of this principle, throughout the years of practice, the Ombudsperson has acted towards securing better conditions for full implementation of this principle, providing protection in discrimination cases within the frame of its legal competences, but also towards preventive acting so as to build a culture of equality, nondiscrimination and acceptance of differences. This article gives an overview of the activities which this institution has implemented throughout the years. The Ombudsperson will continue working so as to ensure the protection, implementation and promotion of this principle.

In order to improve the conditions for action on the part of the Ombudsperson, the following points are emphasized as particularly important in terms of improving the legal and institutional framework as well as the conditions for action of the institution:

- Legal recognition of the competence to implement promotional ac-

tivities that the Ombudsperson has been practicing for several years, which would allow this institution to legally act towards promoting the principle of equality and nondiscrimination;

- Provision of additional resources so as to strengthen the possibilities for action of the institution within its current competences that will need further enhancement proportionally to the scope of promotional activities;

- Alignment of the national legal framework in relation to protection against discrimination, including removal of discriminatory provisions that might directly or indirectly put citizens or other persons in unequal position;

- Improvement of the legal framework in terms of the overlapping competences between the Ombudsperson and the Commission for Protection against Discrimination towards further strengthening of the legal security in the country;

- Increase in efforts and responsibilities in terms of reporting to the Ombudsperson that should be assumed by all relevant institutions obliged to implement the principle of adequate and equitable representation as a principle that leads to material equality of all citizens regardless of their ethnic background;

- Organization of trainings for the personnel of the institutions for protection against discrimination as well as of educational campaigns aiming to raise citizens' awareness about the consistent implementation of the standards of equality, tolerance and respect for differences.

By implementing these recommendations which emanate from the practice of the Ombudsperson, this institution could considerably facilitate and improve its action in relation to the protection, the monitoring and the promotion of the principle of equality and nondiscrimination.

Ixhet MEMETI**THE OMBUDSPERSON AND
THE PROTECTION OF THE
PRINCIPLE OF EQUALITY
AND NONDISCRIMINATION****Abstract**

Human rights are the foundation of democracy, a precondition for tolerance, but also an investment one makes for a better future, one in which all people will be able to live a life in dignity without discrimination and to realize their full potential. The principle of equality and nondiscrimination is a pillar principle and a core precondition for securing such future. Its norming and implementation in practice show how tolerant, sensitive and receptive to differences a society is, as well as how prepared it is to respond to the needs of every individual and to create conditions for equal respect, protection and fulfillment of the rights of all people regardless of their sex, gender, ethnic affiliation, age, disability or any other personal characteristic or status. Because of the fundamental importance of this principle, throughout the years of practice, the Ombudsperson has acted towards securing better conditions for full implementation of this principle, providing protection in discrimination cases within the frame of its legal competences but also towards preventive acting so as to build a culture of equality, nondiscrimination and acceptance of differences. This article gives an overview of the activities which this institution has implemented throughout the years.

Резиме

Човековите права се основата на демократијата, предуслов за толеранцијата, но и влог за подобра иднина во која сите ќе можат да живеат достоинствен живот без дискриминација и да го реализираат својот полн потенцијал. Стожерниот принцип на еднаквост и недискриминација е основниот предуслов за ваква иднина. Неговото нормирање и примена во практика е показател за толерантноста, сензитивноста и рецептивноста на општеството во однос на различностите, но и за спремноста на општеството да одговори на потребите на секој поединец и да создаде услови за еднакво почитување, заштитивање и унапредување на правата на сите лица, без разлика на полот, родот, етничката припадност, возраста, попреченоста или која било друга лична карактеристика или статус. Поради фундаменталното значење на овој принцип, Народниот правобранител низ својата практика, низ годините делува во насока да обезбеди подобри услови за целосна примена на овој принцип во практика, за заштита во случаите на дискриминација во рамки на своите надлежности, но и да делува превентивно со цел градење култура на еднаквост, недискриминација и прифаќање на разликите. Овој труд дава преглед на дел од активностите кои оваа институција ги спровела низ годините.