

Solving an Institutional Puzzle: What National Human Rights Institution Model for Macedonia?

This position paper is prepared on the basis of the findings of two studies prepared within the frame of the project "Solving an Institutional Puzzle: What National Human Rights Institution Model for Macedonia?" implemented by CRPRC Studiorum during 2011/2012: legal and policy analysis, which looked at the current institutional setup against international Human Rights law standards; and a comparative study which looked at NHRIs from Croatia, Denmark, Germany and Spain.

The findings have been discussed by an expert group, and will be published as one study including the recommendations from the expert group and the conclusions from the final conference focusing on the NHRIs in the region and specifically in Macedonia.

Rationale

International law offers a set of principles aiming to assist states in the establishment, positioning and functioning of the National Human Rights Institutions (NHRIs), which include the Principles relating to the Status of National Institutions - Paris Principles (at the UN level) and the ECRI recommendations (CoE). The standards address NHRI's composition, competences, statutory powers, accountability, funding, and guarantees for pluralism. The Paris Principles are used as a framework against which the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) assesses NHRIs, accrediting the latter in accordance with their compliance with the Principles, entitling them to a set of certain rights and privileges (for example, to actively participate in the Human Rights Council sessions).

By October 2011, there was no NHRI in Macedonia accredited by the ICC. Recently, the Ombudsperson of the Republic of Macedonia has been accredited with a 'B' status, i.e. it is 'not fully in compliance' with the Paris Principles. The 'B' accreditation came as no surprise, considering the previous conclusions and recommendations on Macedonia adopted by the Human Rights monitoring bodies which included recommendations that the country needs to engage in a process of reforms of the institutional set up in order to comply with the international standards (see for example, the conclusions of the 2009 UN Universal Periodic Review on Macedonia or the 2008 Council of Europe's Commissioner for Human Rights report on Human Rights in Macedonia). The other institution that qualifies as a NHRI in Macedonia is the Commission for Protection against Discrimination. The comparison of the two against the existing international standards identifies possibilities for improvement.

The Way Forward

Many of the pressing issues the two NHRIs are facing within the current set up are similar - issues in relation to promotion, education and awareness raising, pluralism and standards for election, insufficient resources, etc. Though the Ombudsperson seems to be more advanced in terms of compliance with the international standards, one of the basic conventional wisdoms in the field of human rights protection and promotion is that a state could never have a sufficient

number of mechanisms and institutions for protection and promotion of human rights. Several options for reforming the current institutional framework can be considered, so to bring the two NHRIs in line with the international standards, including expanding their current mandates, transfer of competences in whole or in part (from one institution to another), or merging current institutions (for example into a Human Rights Centre). In order to address the iden-

tified issues strategically, a wide public consultation process on reforming the institutional framework on Human Rights needs to take place, alongside the necessary strong political will and sufficient guarantees against regression, for example. Such a consultation might be a long process, thus short- and intermediate-term changes of the current framework should be considered, especially with regards to the resources, independence and pluralism.

Commission for Protection against Discrimination

The Commission for Protection against Discrimination (CPAD), established under the Law on prevention and protection against discrimination (2010) started functioning in January 2011 as the first equality body in Macedonia. When compared against the international set of standards, the main points for improvement are identified as follows:

Guarantees for pluralism: insufficient, as they exist only in terms of ethnic pluralism, but do not ensure that CPAD's composition mirrors the diversity of the society as a whole.

Membership: the formulation of the staffing qualifications as 'education and experience in Human Rights or social sciences' allows for appointment of members without sufficient professional skills or knowledge in the area of Human Rights, equality and protection against discrimination.

Competences: no explicit mandate to promote harmonization of domestic legislation with international Human Rights standards, to encourage ratification of instruments, or follow the implementation of recommendations by Human Rights monitoring bodies relevant for equality and non-discrimination; no explicit mandate on initiating or assisting formal education and vocational trainings; providing information and advice to all relevant actors on topics of its mandate; as well as monitoring the Human Rights situation in the country.

Cooperation: no explicit mandate on cooperation with civil society.

Accessibility: besides being both an operating, and a founding principle, accessibility seems to be still an issue for CPAD, in terms of infrastructure, language, etc.

Accountability and reporting: there is no obligation for the Parliament to discuss the CPAD annual reports, or for participation of the Executive in the event of such discussions.

Resources: CPAD does not seem to be in a position to negotiate its funds as these are allocated through the state budget, so financial independence is still not achieved.

The above pointed issues stand as an obstacle to the full independence of the CPAD.

Ombudsperson of the Republic of Macedonia

The Ombudsperson of the Republic of Macedonia (Ombudsperson) is established under the Constitution of the Republic of Macedonia (1991) and the Law on Ombudsperson (2003). It was established under the previous Law in 1997, currently holding 'B' accreditation status from the ICC. The following main points for improvement are identified:

Guarantees for pluralism: does not allow for pluralism guarantees going beyond ethnic grounds.

Membership: the election procedure of the Ombudsperson and his/her deputies needs a revision, both by exploring the possibilities for a public announcement of the post as well as for opening a channel for wider consultation with the civil society and all other relevant constituencies.

Competences: there is a need for strengthening and expanding the list of competences especially in the area of Human Rights promotion, including formal education and vocational training, as well as information and awareness raising. Expanding the mandate beyond the public sector and domestic law, towards international Human Rights law (monitoring the implementation of recommendations given by the Human Rights bodies) needs to be seriously considered, however only if accompanied with sufficient additional resources.

Cooperation: there is a need for intensification of the cooperation at international level, especially with the Human Rights bodies.

Resources: in the past few years, insufficient resources have been reported, especially in the case of the National Preventive Mechanism.