

THE ROLE OF THE OMBUDSMAN IN THE PROMOTION AND PROTECTION AGAINST DISCRIMINATION

Ixhet Memeti

Abstract

The functioning of a multi-ethnic society in which the diversity of all citizens regardless of their ethnicity will be consistently respected is a challenge for building a society without discrimination. In this regard, the role of the Ombudsman is of a particular importance, they strengthen their role even more when coming up with recommendations and agenda in tacking concrete steps in promoting and protecting marginalised groups.

Given that discrimination is a socially negative phenomenon it is also contrary to the democratic trends of modern society, international organizations and NGOs, so in this respect these institutions and organizations pay special attention in the agenda for the promotion and protection of human rights, and especially the right to equality and non-discrimination, which is also a fundamental element of international human rights law.

Discrimination in general, and discrimination on ethnic grounds in particular, is one of the most serious forms of violation of human rights and freedoms. The aim of this paper is to show the role of the ombudsman in the promotion and protection against discrimination of any kind.

Keywords: Obdusman, NGO, marginalised groups

Introduction

Human rights have been always at the core of the international organisations and the responsibility to respect, protect and fulfil human rights lies with States. They ratify international human rights instruments and are required to create mechanisms to safeguard and to protect people from discrimination to this regard, international organizations and institutions have adopted numerous conventions and if we look at their trajectory of their history and development, they have also taken affirmative steps on this issue. The main instruments provided by these international organizations are resolutions and recommendations that oblige member states to create preconditions in respecting the equality principle of all ethnic communities without discrimination of any kind, to promote and tolerate the cultural diversity of all ethnic groups while respecting their identities and cultural backgrounds in order to create conditions for the development of ethnic cohesion by promoting peace and stability in the country and in the region as a whole.

At the same time, international standards highlight the point that each member state that has signed the convention is obliged to establish or create institutions to oblige each country to work extensively on the promotion and protection of human rights and freedoms.

Having in mind that discrimination is one of the most serious forms of violation of human rights and freedoms, the Republic of North Macedonia has incorporated in its legislation the right to equality and the principles of non-discrimination and adequate and equitable representation which represents a fundamental value of the constitutional order in the country.

In addition to the normative framework of these issues, promotion and protection of citizens' rights as part of the system of respect for the fundamental freedoms and rights of citizens is the establishment of institutions responsible for preventing violations and protection of those rights and freedoms. One of those institutions in the national legal system of North Macedonia is the institution of the Ombudsman, which somehow serves as a safeguard and bulwark of marginalised groups and stands at the core in promoting and respecting the principle of equality.

The role of the ombudsman

The role of ombudsman is crucial in a democratic society, able to offer free and flexible solutions to people's complaints of maladministration by the authorities or of human rights abuses. Even though the institutional structure is well established in Western Europe, newer democracies are experiencing a dynamic period of development and growth of these institutions, in different forms.¹

As stated in Council of Europe it is of a particular importance to mention the fact that the prohibition of discrimination is considered as one of the fundamental freedoms that needs protection. It is guaranteed by Article 14 of the European Convention on Human Rights, which pledges equal treatment in the enjoyment of the other rights set down in the Convention without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Protocol No. 12 to the Convention expands the scope of the prohibition of discrimination by guaranteeing equal treatment in the enjoyment of any right (including rights under national law).

The European Commission against Racism and Intolerance in its General Policy Recommendation No. 74 urges countries to provide for a prohibition of discrimination in all areas.² The Ombudsman is an institution established for being responsible for the protection of citizens' rights, but also as a body responsible for monitoring the implementation of the principles of non-discrimination and adequate and equitable representation of members of the communities.

To put it differently for the sake of transparency and correctness, with the amendments added to the Constitution of the Republic of North Macedonia in 2001 and with the new Law on

¹ See M. Lloyd: 'Ombudsman Institutions and Minority Issues: A guide to good practice', 2005.

European Centre for Minority Issues

Accessed on 09.11.2021

² See Council of Europe: 'Support to Ombudsperson and anti-discrimination institutions (National Human Rights Institutions)' Human Rights National Implementation

Accessed on 12.11.2021 <https://www.coe.int/en/web/national-implementation/thematic-work/ombudsperson-anti-discrimination>

the Ombudsman, this institution, in addition to the basic function of being the protector of the freedoms and rights of the citizens, it is also authorised to take actions for implementation of the mentioned constitutional principles, it also supervises how institutions comply with their obligations arising from the Constitutions of Republic of North Macedonia.

During the past period, having in mind the fact that discrimination is a phenomenon that erodes the democratic development of society and is an obstacle to the functioning of the right to equality, the Ombudsman focused his activity on this issue in the direction of acting on specific complaints and promoting fundamental human rights and freedoms, and in that direction the principles of non-discrimination and adequate and equitable representation.

When you look at the data from the case in question, there is an impression that the number of cases in the field of protection against discrimination is increasing from year to year. This situation is due to the greater awareness of the citizens about this phenomenon and its manifestations and forms, the possibility for the citizens for out-of-court protection of the violated rights from discriminatory behaviour and of course the increased trust of the citizens in the Ombudsman institution. However, it should also be noted that the situation is still present according to which citizens are not ready to publicly present the problems and clearly and unequivocally point out discrimination, so certain cases of discrimination remain ignored and at a certain extent neglected, and there are cases when a subject in the field of protection against discrimination at the request of the applicant is transferred to another field in which further action is taken.

As the former Commissioner for Human Rights of the Council of Europe, Alvaro Gil Robles stated: *“Through their independence, flexibility and non-conflictual approach to the relations between individuals and the public administration, Ombudsmen have a key role to play in the protection of individual rights. (...) Whilst explicit reference to human rights protection may be absent from the mandate of certain ombudsmen, it is clear that human rights violations by state authorities constitute, at the same time, serious cases of maladministration, and as such fall within the concerns of even the most narrowly defined institutions”*.³

The occurrence of discriminatory behaviour is present in all areas of society is a conclusion from the actions of the Ombudsman. It is characteristic that the complaints are mostly related to the exercise of employment rights on the grounds of discrimination by ethnicity. When handling complaints, the Ombudsman, using his legal possibilities, points out to the institutions the prohibition of all forms of discrimination, including discrimination on ethnic grounds. In this context, it should be noted that in most cases the interventions of the Ombudsman were accepted, and in some cases the procedure was stopped due to the filing of a lawsuit by the applicants.

In order to approximate the work of the Ombudsman after the subject action for protection against discrimination on ethnic grounds, let us refer to some characteristic cases.

³ See European Ombudsman Speech: ‘The Ombudsman as human rights protection mechanisms’ Vienna, 07.05.2010 Accessed on 12.11.2021 <https://www.ombudsman.europa.eu/en/speech/en/4926>

The first refers to acting on a complaint filed by a group of police officers, where in addition to mobbing and discriminatory behaviour on several grounds, discrimination on ethnic grounds by the immediate superior was singled out.

In this case, it was a matter of constant reassignment of certain police officers outside their home office, conducting unfounded disciplinary proceedings, directing employees in other areas to perform various tasks, without acting in accordance with the prescribed legal acts and standards of the police.

After the initially provided data from the immediate superior and the person whom the applicants pointed out as discriminatory, the Ombudsman addressed the Sector for Internal Control and Professional Standards at the Ministry of Interior, pointing out the identified violations. Acting upon the intervention of the Ombudsman, the Sector inspected the entire documentation in the police station and after the control was informed that certain omissions and irregularities in the work of the responsible person in the police station were ascertained. Thus, accepting the ombudsman's suggestion, it was ordered to remove all the observed irregularities and to consistently implement the Law on Internal Affairs and the Collective Agreement. This exercised the violated right of the police officers, and at the same time the ombudsman's suggestion was accepted.

The second characteristic case of discriminatory behaviour on ethnic grounds, which we consider useful to note is the non-implementation of an annex to the employment contract of a journalist employed by the Macedonian Television, due to her ethnicity.

Namely, the journalist who filed a complaint for discrimination on the grounds of ethnicity stated that the responsible persons in the public service refuse to implement the annex to the employment contract with which she was promoted. The non-implementation of the annex was explained by the fact that the act was adopted during the non-campaign period for the parliamentary elections. Although from the beginning the responsible persons on television justified the non-implementation of the annex to the agreement with a letter received from the State Commission for Prevention of Corruption for banning the engagement of budget funds during the election process, after the actions taken by the Ombudsman and the wrong application. On substantive law, the recommendation was accepted by the television management and the applicant exercised her right. Also, characteristic is the case filed by a person employed in the Army who submitted a complaint to the Ombudsman for discrimination on ethnic grounds.

The complainant stated in the complaint that because he is a member of an ethnic community, he did not receive incentive measures, provided by the Law on Service in the ARM and the Rulebook on closer criteria for awarding monetary rewards to military and civilians in the service of the ARM. Acting on the complaint, the Ombudsman pointed out the prohibition of discrimination on any grounds, including the prohibition of discrimination on the grounds of nationality, emphasizing that the right to equality of all citizens in the Republic of North Macedonia is guaranteed.

In the action after the indication, the Ombudsman was informed that the above-mentioned regulations were applied to the submitter and he received a seven-day leave as a stimulating measure as a reward for the hard work and the achieved results in the work.

In addition to dealing with cases in the field of discrimination, the ombudsman's activity in monitoring the implementation of the principle of adequate and equitable representation is also noteworthy. Namely, emphasizing that this constitutional postulate as a form of positive discrimination aims to provide a real ratio between the number of employees and the representation of members of all communities and in that direction to contribute to building multi-ethnic trust in the country, the Ombudsman conducts analysis every year. of the data received from the institutions against which it competently acts. The monitoring of the implementation of this constitutional principle, in addition to the realistic presentation of the situation in this plan of representation, also aims to monitor the balance of the realisation of the rights of the members of the communities and their sense of belonging in the institutions of the system.

The implementation of the principle of adequate and equitable representation is characterised by year after year improvement of the application of the general plan, but the level of implementation of the principle of adequate and equitable representation of members of all communities in managerial positions is still unsatisfactory. the representation in certain institutions of the members of the smaller communities.

On the other hand, in the past period, in addition to the Ombudsman's actions in protecting citizens in the field of non-discrimination, the role of the Institution in the prevention of discrimination was emphasized, through the promotion of non-discrimination principles and adequate and equitable representation of community members. For that purpose, was the establishment of the department for protection and prevention of discrimination, which in addition to dealing with cases in the area in the coming period will undertake activities in the field of prevention of discrimination.

In order to prevent discrimination, during the last year the Ombudsman issued a brochure entitled: "In protection against discrimination", prepared in Macedonian, Albanian and English, as well as flyers with content dedicated to the right to equality and protection against discrimination, which were prepared in Macedonian, Albanian, Romani, Turkish, Vlach, Serbian and Bosnians. At the same time, during the past year, campaigns and presentations were organised and implemented in several cities in the country with the direct participation of representatives of the institution.

Some years ago, the Ombudsman was invited as a guest at a television show dedicated to the importance of consistent implementation of the principles of non-discrimination and adequate and equitable representation. Regarding the promotional role of the Ombudsman, the theatrical performance "*Same and yet different*" is worth mentioning, which was for a long time in the repertoires of theatres in the country.

All these activities aimed at promoting the right to equality and the principle of non-discrimination, emphasizing that any discrimination of citizens in the enjoyment of their rights and unequal treatment and application of laws constitutes discrimination.

Conclusion

Discrimination in general, and discrimination on ethnic grounds in particular, is one of the most serious forms of violation of human rights and freedoms. Unequal treatment and differentiation between individuals on several grounds, as well as the differentiation and division of citizens in terms of possession or enjoyment of rights is a negative indicator of a fragile democracy in a society. That is why the Ombudsman continuously reminds that in addition to the creation of appropriate legislation by incorporating international standards in the field, it is necessary for the competent institutions and organizations for prevention and protection against discrimination to function smoothly and to consistently implement their recommendations provided by international standards.

Thus, the assessment is that in addition to the constant updating of legislation by incorporating international standards and norms in the field of human rights and freedoms and their consistent implementation in practice, it is necessary to follow international practice, especially the decisions of the European Court of Human Rights are of a particular importance in this respect.

On the other hand, for the functioning of a multicultural and multi-ethnic society, it is necessary to raise the awareness of everyone to respect minority rights, to understand and tolerate diversity, because if we follow this route, we can eliminate all the obstacles that impede a democratic society to further develop democratic practises.

In this regard, in order to improve the situation in terms of combating discrimination, it is necessary to strengthen the capacities of the institutions and educate the employees in the application and implementation of the law, as well as cooperation of the competent institutions in terms of promotion and protection of the rights of ethnic communities.

In this context, no less important is the need to raise citizens' awareness of the principle of equality by organising appropriate campaigns on the importance of equality, multiculturalism and tolerance as basic standards for ethnic cohesion in society, because only then can the existing ones be demolished, in this regard only by educating and raising awareness we can break down prejudices and stereotypes.

The laws and mechanisms needed to protect people from discrimination are important but the Ombudsman will always be a major player in this larger scheme of human rights protection and it will be an important impetus in raising awareness in this area.

References:

- [1]. M. Lloyd: ‘Ombudsman Institutions and Minority Issues: A guide to good practice’, 2005. European Centre for Minority Issues Accessed on 09.11.2021 https://www.files.ethz.ch/isn/30173/2005_March.pdf
- [2]. Council of Europe: ‘Support to Ombudsperson and anti-discrimination institutions (National Human Rights Institutions)’ Human Rights National Implementation Accessed on 12.11.2021 <https://www.coe.int/en/web/national-implementation/thematic-work/ombudsperson-anti-discrimination>
- [3]. European Ombudsman Speech: ‘The Ombudsman as human rights protection mechanisms’ Vienna, 07.05.2010 Accessed on 12.11.2021 <https://www.ombudsman.europa.eu/en/speech/en/4926>
- [4]. Special report on monitoring the application of the principle of appropriate and legal representation for 2010 (2011), www.ombudsman.mk
- [5]. Special report on monitoring the application of the principle of appropriate and legal representation for 2011 (2012), www.ombudsman.mk
- [6]. Information for monitoring the application of the principles of adequate and legal representation and non-discrimination for 2009 (2010), www.ombudsman.mk
- [7]. Annual report on the level of security, respect, promotion and protection of human freedoms and rights (2012), www.ombudsman.mk
- [8]. Annual report on the level of security, respect, promotion and protection of human freedoms and rights (2011), www.ombudsman.mk
- [9]. Annual report on the level of security, respect, promotion and protection of human freedoms and rights (2010), www.ombudsman.mk
- [10]. Annual report of the National Preventive Mechanism (NPM) for 2012, 2011, 2010, www.ombudsman.mk