

PERIODICAL (ALTERNATIVE) INFORMATION OF THE OMBUDSMAN TO THE EUROPIAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

I. PREFACE

The Ombudsman, as a body with many years of experience and practice in the protection of basic human rights and freedoms, through this Periodic Information aims to contribute to your letter / request from June 27, 2018, and in relation to the undertaken steps by the authorities of the Republic Macedonia for the implementation of the urgent recommendations of the European Commission's Report against Racism and Intolerance (ECRI) of the 5th round of observation, adopted on March 18, 2016.

The information presents the situation arising from the scope of the work of the Ombudsman, from the date of adoption of the Report until August 2018. This Periodic (Alternative) information has been prepared, according to the work area, on the complaints received and on the work of the Ombudsman in the area of protection of the rights of the citizens which suffered violation by the state administration / public sector bodies. in relation to the discriminatory acting and not implementing the principle of adequate and equitable representation, as well as on the basis of individual research carried out in certain areas.

The Ombudsman anticipates that this information shall serve for the cause of creating real image for Republic of Macedonia regarding the implementation of the recommendations from the fifth round of our state's evaluation which refers to the conditions of racism and intolerance. In relation to this matter, we inform you that you may refer to our web page www.ombudsman.mk, that is, in the Annual and Specific Reports of the Ombudsman which obtain large scope of the established recommendations in order to find more information about the work of the Ombudsman, laid down chronologically, per years and areas, in English language.

II. About the institution Ombudsman

The Ombudsman, pursuant to article 77 from the Constitution of the Republic of Macedonia, particularly puts attention on the protection of the act of non-discrimination and appropriate and rightful representation of the minorities in the state authorities, the local self-governmental units and in the public services and institutions. This constitutional provision has been operationalized within the Ombudsman Law (Official Gazette of RM no. 60/03, 114/09, 181/16, 189/16,35/18) therewith establishing the competence of the Ombudsman, through special department for monitoring the states and protection against discrimination, as well as for appropriate and rightful representation of members of the communities to undertake actions and activities for protection of the principle of non-discrimination within the state authorities and services- principles that comply with the provision in article 2 of the International Convention for Elimination of All Forms of Racial Discrimination that are strongly related to the General recommendations of ECRI.

It is necessary to be pointed out that the Ombudsman act upon a Complaint submitted by the citizens indicating the circumstances, facts and the evidence upon which the allegations for violation of the right are laid down, and he can act on its own initiative for violation of the constitutional and legal rights of the most of the citizens, minors, people with disabilities, without the need to obtain a consent from the person/people whose rights has/have been violated. Upon submission of the Complaint, the language in which the Complaint is submitted shall not present an obstacle for communication with the Ombudsman. The communication with the Ombudsman shall be realized not only in the official language, but also in the language and the alphabet of any community living in Republic of Macedonia, and the Ombudsman shall reply on Macedonian language and its Cyrillic alphabet, as well as on the official language and alphabet used by the petitioner in the Complaint.

The Complaint by which the procedure is instigated has no prescribed form and it shall be submitted in written form, verbally, with Minutes or in electronic form. The petitioner of the Complaint is free of paying any taxes for the procedure in front of the Ombudsman.

If, during the procedure, the Ombudsman becomes aware and establishes that there

is any form of discrimination with certain activities or actions, he can give recommendation and suggestion to the state authorities, the self-governmental units and to the organs and organizations with public competence. The above organs and authorities shall respect the recommendations, the suggestion and the opinion of the Ombudsman, and in the event it shall not comply with, the Ombudsman is entitled by law to inform the competent minister, the Government or the Parliament of the Republic of Macedonia and moreover to additionally publicly criticize any competent authority or official who violated the right of the citizen/citizens.

By amendments of the Law on the Ombudsman the Department for protection against discrimination and for appropriate and rightful representation, whose target is to act by law within the frames of its competence upon protection of the constitutional and legal rights of the citizens by the state authorities, the organizations that has public authorizations, the self-governmental bodies and services, for submission of complaints. This Department performs promotion of the institution Ombudsman within the sphere of non-discrimination and appropriate rightful representation through publication of brochures and leaflets, issuing special reports, as well as presenting the current states through public media or etc.

The Ombudsman realized these legal competences of the Department through cooperation and communication with the competent institutions within the State, in cooperation with the civil sector and with other domestic and foreign (partner) institutions, including the Ombudsman institutions from the region and wider who work in the area of protection of the basic freedom and rights of the citizens, as well as for protection of non-discrimination.

III. Overview of the situation

The Ombudsman actively monitors the actions of the competent bodies taken regarding the requests of the citizens, and with regards to the accomplishing and the protection of the right to non-discrimination and complying with the principle of appropriate and rightful representation of the communities, for which reason he submits his own research and reports from the performed activities in relation to the principles mentioned above, to the competent ministries and other state authorities, the self-governmental units and public institutions and services, wherein apart from the factual condition in different areas, recommendations and guidance are given for

improvement of the act of respecting the citizen equality and the prohibition against discrimination.

In this occasion, we would like to point out that the evaluation team of ECRI who performed the monitoring of the fifth round had successfully recognized the disadvantages and the weaknesses of the Macedonian society which have been continuously indicated in the Annual Reports of the Ombudsman.

REPLY PER LIST OF RECOMMENDATION

Notice: In consistency with the given recommendations in the Report on the fifth monitoring round of Republic of Macedonia, in this Alternative information we will try to give individual interpretation of the conditions as per the recommendations that we have the knowledge with, that is as per those recommendations for which we have conveyed certain procedures, based on our competences and whose realization and improvement was subject to monitoring, as well.

Considering the recommendations that shall not be included in this Alternative information, the Ombudsman has the opinion that the answer to these recommendations and their possible progress shall be required by other institutions and bodies regarding its competence or by the regulatory or auditing bodies who are obliged by law to monitor the current situation.

Recommendation, act 2:

(&10) In relation to the recommendation no. 2 from the List of Recommendations, which refers to the General recommendation no. 7, the Ombudsman informs you that the Government of the Republic of Macedonia formed wide expert work group for the purpose of elaborating new text of the Draft Law on Prevention and Protection Against Discrimination. This Draft Law indicates sexual orientation and sex inequality as a basics of discrimination, by which, apart from the 19 basis laid down herein, is extended for those two grounds, whereon the article 3 where this anticipated grounds for making discrimination are transferred to article 5 of the Proposal-Law.

The Draft Law for prevention and protection against discrimination, in article 12,

segregation is laid down, while in article 4 "Glossary" in act 1, item 8 and 9 the terms "discrimination per association" and "discrimination per perception".

The ability of the civil organizations or other associations to instigate and to be involved in civil and court proceedings is established with article 40 from the Draft Law, also referring to the additionally given ability laid down in article 35 (action popularis).

The promotion of equality and prevention against discrimination by the Commission for protection against discrimination is laid down in article 21 from this Draft Law, while the promotion of these two principles stipulated in article 9 from the Constitution of the Republic of Macedonia has not been put in question at all, and according to the Ombudsman it is about the selective interpretation of certain provisions, depending on the degree of knowledge regarding the domestic and international regulations of the key people that manage the governmental authorities and their sense for involving this matter.

Recommendation, item 3:

(& 14) Chapter III "Commission for Prevention and Protection against Discrimination" of the new Draft Law on Prevention and Protection against Discrimination completely changes the status of the Commission for Protection against Discrimination, so Article 14 provides for this body to be independent and self acting body, with the capacity of a legal entity and with separate budget. At the same time, we note that the other members participating in the Draft Law on Prevention and Protection against Discrimination are involved in establishing the budget of the Commission, the composition of the members of the Commission, the procedure of election and the status of commissioners, the dismissal and termination of their function, their competencies, and as a novelty, the introduction of an expert service that will perform the administrative matters. This amendment overcomes the current problem of the existing Commission that worked and held ad hoc meetings, that is, the commissioners were not employed as professionals and did not have any expert service for performing administrative matters.

We would like to mention that the Draft Law on Prevention and Protection against Discrimination is harmonized at the national level with all relevant bodies and organizations, and it includes the recommendations of the relevant international

organizations and the Venice Commission which gave a positive opinion. At the same time, we note that at the moment of preparation of this alternative information the Draft Law is in the course of Assembly proceeding and according to the expectations it should be adopted before the end of this year.

. Recommendation, items 4 and 5:

(& 32) and (& 33) Taking into account the growing problem of racist and homophobic / transphobic hate speech, the Ombudsman thinks that comprehensive education of the police, prosecutors and judges is needed, but fully agrees with the ECRI recommendation in relation the undertaking of measures by the competent authorities by introducing adequate penal provisions in the indicated laws, which would have a discouraging purpose, ie they would be applied inselectively and their height would cause additional financial and psychological effect to the actors causing this actions.

In the past practice, a large number of cases concerning hate speech ave not been submitted to the Ombudsman, but there are still such cases, some of which are opemn on their own initiative, and some based on applications filed by civil associations. From the proceedings, the Ombudsman concluded that the mechanisms for protection are neglected by the state, that the protection is only required through quasi-judicial bodies such as the Ombudsman and the Commission for Prevention of Discrimination that can prevent and give partial protection, but can not provide adequate compensation and satisfaction to victims or return to their original position due to full protection. The Ombudsman through announcements, appearances in the media, as well as in the Annual Reports indicates the existence of hate speech. In this context, an increasing number of hate speech has been noted in recent years, which is very worrying fact, leading to publicly urging the institutions to prevent it, pointing to a widespread dispersal of such hate speech in the performances of public figures, but also on social networks, for calculating with political opponents, but also on an ethnic basis, which, on the other hand, paves the way for the violence.

Recommendation, item 8:

(& 58) The Ombudsman notes in the Annual Reports that, for years back, there has been poor application of the constitutional principle of adequate and equitable

representation of the members of the smaller communities. There are no visible changes in the implementation of the application of this principle, especially when it comes to the members of the smaller communities that do not belong to the Macedonian and Albanian communities and their appointment on managerial positions. We think that this situation is due to the division of the power between the two blocs, that is, the parties that receive the majority of votes and that have the largest number of representatives in the parliamentary government, while the smaller communities that participate in the government are left on the margins and receive a minimum number of managerial positions. The Ombudsman believes that this arrangement contributes to the appointment of managerial functions to be carried out solely based on a party merit for all positions of the public authority, thus losing the possibility of appointing qualified and professional staff in the administration (merit system).

Given this situation, the Ombudsman constantly monitors the state and the situation of all ethnic communities in the public authorities. In this context, the Ombudsman pointed out and recommended that the institutions should undertake concrete measures and activities for obligatory compliance and actual implementation of the principle of adequate and equitable representation of the members of all communities, as well as strengthening of the activities for implementation of the principle of adequate and equitable representation of the members of the smaller communities in relation to the managerial positions. The recommendations of the Ombudsman are aimed at respecting the annual employment plans that the institutions are obligated to prepare for each subsequent year and which are approved by the competent Ministry, and aim to achieve adequate representation of all ethnicities in exercising their right to work in the public sector.

Recommendation, item 9:

(& 67) The Ombudsman fully agrees with ECRI's recommendation to address the difficult situation of Roma housing, inter alia, by providing a sufficient number of social housing/homes for the vulnerable members of the Roma community. In this sense, on its own initiative, following the situation with these families, as well as the families whose improvised dwellings were destroyed under the Skopje Kale, and

taking into account the conditions and capacities for accommodation of homeless people in Chichino Selo, the Ombudsman asked to be informed by the Ministry of Labor and Social Policy whether a long-term solution has been found regarding the issue with the homeless persons under the Skopje Kale, where are these families currently located, what assistance and support they have been provided. In that context, the Ombudsman asked to be informed whether there is free space (rooms) for accommodation of families from Gazi Baba in the Center for homeless persons Chichino Selo, how many free capacities there are at the moment and how many families can be accommodated, whether these families have been offered some sort of accommodation solution, what solution and how many families accepted it, and if they did not accept it, the reasons for their refusal. In doing so, the Ombudsman pointed out that this is a vulnerable category of citizens who are denied access to their rights in many different spheres, people who are homeless, without documents, and therefore without the possibility of using any kind of rights to social protection. This means that the case is very complex, and the problem is not only finding a suitable place for these people, but also starting a series of procedures, primarily for providing documentation for determining their identity, and consequently other procedures, which points to the need for involvement and cooperation of several bodies/institutions in order to find an adequate response to the situation.

According to the Ombudsman, the Ministry of Labor and Social Policy as a body under whose authority is the protection of the persons under social risk should take into consideration these established conditions and in accordance with the competencies, and in order to provide protection of this vulnerable group of citizens, to initiate multisectoral review of the problem(s), in order to find the most appropriate solution for them. At the same time, measures should be taken in order to review the available capacities and opportunities for an adequate long-term solution, bearing in mind that at the moment the only accommodation for homeless persons, as well as the one that is offered to these families is the Shelter Center - Chichino Selo, which, pursuant to the response of the center, is almost at full capacity. The Ombudsman also requested and instructed that the situation in the Shelter Center for homeless persons is meticulously analyzed, both with respect of the accommodation capacities, conditions, possibilities for exercising rights, according to the age structure of the persons, the security aspect, etc., as well as of the reasons for

refusal of the accommodation in this center, and consequently appropriate measures to be taken. According to the Ombudsman, the placement of a homeless person in the Center for homeless persons should be of a temporary character, and in that direction he indicated that all measures should be taken in order to provide them with a permanent solution regarding the issue related with their housing, to be given help and support, enabling them to contribute themselves in increasing their own living capacities and improving their existence.

Recommendation, item 10:

(& 69) In relation to the availability and provision of complete and regular gynecological consultations in Shuto Orizari, the Ombudsman undertook activities in the past period to indicate to the Ministry of Health the need for employment of a gynecologist in the outpatient clinic in Shuto Orizari, which resulted from our operation. After our indication in 2017, the Ministry of Health opened an outpatient clinic in this municipality where a specialist gynecologist is employed, operating to date.

Regarding the prenatal services, the Ombudsman recommended to the competent Ministry to adequately implement the Government's "Mother and Child Program" aimed for education and adequate promotion to the users. As we are informed, this matter has not yet been fully implemented as prescribed in accordance with the quoted Program, due to which the Ombudsman is still following the implementation. The Ombudsman plans to hold an educational workshop by the end of 2018 with the participation of representatives of Roma NGOs and beneficiaries, as well as representatives from health institutions.

Recommendation, item 11:

(& 72) In reference to the recommendation regarding the inappropriate referral of Roma children to educational institutions intended for students with mental disabilities, the Ombudsman has repeatedly pointed to the existence of this problem in the past years. Our information on this issue in the past period is that the relevant Ministry has taken certain steps to overcome the existing problem. The Ombudsman considers that there are still possibilities for certain abuses by the competent selection committee, given the fact that it does not include a person belonging to the community who knows the language of the community, to which he pointed out with

a recommendation to this body, considering that not knowing the language can be interpreted as a disability by the members of the Commission in the assessment and in certain cases, at the detriment of the child, referring him/her to a special instead of regular school. Consequently, we inform you that we have not received a complaint regarding this issue in the last 2½ years, and the Ombudsman will plan the consideration of the situation with the Roma children and generally the children with disabilities in the special primary schools in his activity plan and work program.

Recommendation, item 13:

(& 76) Finding a solution to the problem of non-registration in the birth register, especially of children from the Roma ethnic community, was one of the priorities of the Ombudsman in the past period, to which he pays attention continuously. It is undisputed that these children do not have access to the right to health care, education, social protection, etc. When their parents submit a request for subsequent registration in the birth register, they face obstacles since they are not able to submit the necessary documents confirming the time and place of birth, thus being exposed to social and health risks, with serious consequences for their lives. Having in mind this situation, the Ombudsman submitted to the Government of the Republic of Macedonia an initiative to amend the Law on Extrajudicial Procedure with a proposal to include a new chapter - Procedure for determining the time and place of birth by a competent court, which would determine also the deadline in which the court will enact a decision, as well as amendment of the Law on Registration, in a manner envisaging registration based on a court decision, which initiative was accepted by the Government of the Republic of Macedonia. At the same time, the Ombudsman monitors the situation of the activity of the Registration Office for the registration of unregistered children/persons in the birth register, which is conducted in cooperation with the Ministry of Labor

Recommendation, item 18:

(& 84) Unlike in the past years when the Ombudsman found violation of the rights of the Roma people in the freedom of movement across the border crossings, which was noted in the annual reports in 2014, 2015 and 2016, but no complaints were filed in 2017 in this respect. We believe that this is due to the Ombudsman's previous recommendations addressed to the competent ministry and information to the

Government of the Republic of Macedonia, several court judgments against the Ministry of Interior, as well as due to the trainings for the border police officers conducted by the Ombudsman and other relevant experts engaged by OSCE during 2016 and 2017. In this regard, we inform you that this issue was discussed at a session of the Standing Inquiry Committee for Protection of Human Rights at the Assembly of the Republic of Macedonia, where the recommendations of the Conference organized by the Ombudsman in cooperation with the Helsinki Committee and the OSCE Mission in Skopje, on the topic: Limitation of the right of movement of Roma were adopted. One of the recommendations is a systemic solution to this problem, and in that sense, the Ombudsman participated in a working group that prepared appropriate amendments to the Law on Police and the Law on Border Control, which proposals were referred to the competent Ministry, for which activities and meetings are planned in September 2018.

Recommendation, item 17:

(& 89) Regarding the given recommendation that the authorities enable the vacant positions in the Office of the Ombudsman to be filled, we inform that in the course of 2018 a public announcement was issued, after which 8 vacant places were filled in the central office in Skopje, and the number of employees at the moment, inclusive of August, is 79 employees out of 142 provided jobs according to the Rulebook on systematization of jobs. By the end of 2018, another public announcement for filling 3 more positions is projected do be realized, thus the number of employees will reach 82. We expect that this number of newly admitted executives will help the Ombudsman to act to a greater extent in accordance with the new, extended legal competences, and thus citizens will be given greater protection of the rights by the institutions of the system. Having in mind the new, expanded competencies of the Ombudsman, as well as the mandate to promote human rights and freedoms, the remark about the need for granting consent for employment of appropriate professional staff in the departments of the Ombudsman remains in accordance with the Rulebook on systematization of jobs, at the moment out of 142 envisaged posts, only 79 are filled.

III. Conclusion

Based on the above said, it can be concluded that there is some progress regarding the recommendations given by ECRI, but we believe that the authorities will also need to fully and unconditionally comply with them in the future, primarily in the direction of approximation of the domestic legislation with the international legislation envisaging a wide scope of freedoms and rights of the citizens, as well as their protection against discrimination and inequality.

The Ombudsman with this Alternative Information, which stems from its scope of operation, gives an overview of the current situation in the country that relates to the ECRI Report for the fifth round of monitoring.