

Summary of the report
of the work of the

Ombudsman

with a focus on **prevention and
protection against discrimination**

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Summary of the report of the work of the **Ombudsman** with a **focus on** **prevention and** **protection against** **discrimination** **(2020–2022)**

Equal treatment is the basis of human rights. The right to equal treatment demands that all persons be treated equally before the law, without any discrimination. The principles of equality and non-discrimination are included in the Universal Declaration of Human Rights, the European Convention on Human Rights, the UN conventions, and other international documents, whose object of protection and promotion is human rights. Protection against discrimination is a constitutionally guaranteed right, and the Ombudsman is an established institution that protects the constitutional and legal rights of citizens. Hence, it can be noted that the Ombudsman has a central role in protecting the citizens in fulfilling their rights and freedoms.

The goal of the “Summary report from the work of the Ombudsman with a focus on prevention and protection against discrimination (2020 - 2022)” is to conduct an analysis of the application of the legal framework for protection against discrimination by the Ombudsman from several aspects, namely: acting

on petitions against discrimination, conducting campaigns to raise public awareness of citizens against discrimination, conducting research, as well as initiating law amendments. At the same time, the report will present the cooperation between the Ombudsman and civil society organizations that are working on protection against discrimination.

The Ombudsman in the Republic of North Macedonia has the status of a national institution for human rights and has been accredited by the European Network of National Human Rights Institutions since 2014. NHRI are state bodies, independent from the government, with a broad constitutional or legal mandate for the protection and promotion of human rights at a national level. The NIHR addresses the full range of human rights, including civil, political, economic, social, and cultural rights. However, the Ombudsman in RNM has no legislative, judicial, or executive entitlements, nor it is a prosecuting body or inspection body. The scope of the Ombudsman does not include the decision-making with which the citizens' rights are meritoriously decided upon, as is the case with the courts, the state administration bodies, and other bodies, and organizations, to which the legal-political system has provided coercive instruments. Even though the Law has undergone several changes in the area of competencies with the aim of greater effectiveness of the Ombudsman's actions, as well as greater protection against discrimination, a new legal solution is needed that will provide the Ombudsman with provisions that will enable them to initiate criminal offences in cases where their requests are not acted upon, and when their opinions and recommendations are not taken into consideration. Within the Institution, there is the Department for protection against discrimination and fair representation. Even though there have been 4 workplaces planned for the protection of citizens

against discrimination and fair and appropriate representation, the Department functions with only one employee, who is in the role of state advisor. Hence, it can be concluded that not enough attention is paid to the protection against discrimination because the whole Department cannot be functional and perform its function effectively with only one employee.

Generally, the Ombudsman respects the legal deadlines on the submitted petitions for protection against discrimination. According to the statistical data, in the last few years, there has been a decrease in the number of petitions for protection against discrimination, and their number was the lowest in 2021. In parallel with this data, the overall number of submitted petitions has decreased in the last two years. Regarding the total number of petitions for discrimination received during the research period from November 2020 to August 2022, the number of petitions in which discrimination has been detected is 7.9%. This percentage is too low and may indicate non-recognition of discrimination by the Institution. One gets the impression that the Ombudsman is more efficient in acting upon petitions in other areas, such as the protection for children's rights and asylum seekers, in contrast to discrimination cases. There is a lack of protection of other marginalized groups, especially persons using drugs, sex workers, and the LGBTI community. The Ombudsman is not sensitive to working with these communities, and proof of that is the fact that there has not been a single positive opinion received by the Institution and no discrimination against these communities has been detected after the submitted petitions. The problem is the selectivity of the Ombudsman's conduct, i.e. they recognize, react, and sometimes publicly specify the problem, i.e. the violation of rights, but in cases related to children's protection or Roma people. It is

important to stress that when acting upon petitions for the protection of children's rights which include an element of discrimination, the Ombudsman completely ignores the discrimination element and focuses on the protection of other rights.

The institutions do not take complete actions to resolve the indicated recommendations, they rarely respond within the legally stipulated period, and they only send partially written responses that do not resolve the violation of citizens' rights. The fault for the prolongation of the procedures in cases where the period is longer than the legally provided period lies with the authorities that are obliged to act upon the requests. The Ombudsman acknowledges that the Government does not implement the measures mentioned in their recommendations and that in the past two years, it has not once submitted a report on the implementation of the measures, and demanded that the conditions for the Ombudsman's activity be met. This only causes greater disrespect and failure of the state institutions to follow the Ombudsman's measures and directions and indicates that there is no consistent system for sanctioning them.

The Ombudsman should use their authority and should always inform the higher authorities and the Government when their work is hindered and their recommendations are not respected. The Ombudsman has not fully used their competencies and, in the period in question, did not instigate initiatives for initiating disciplinary proceedings against an official person in charge, and has not submitted a request to the competent prosecutor's office to initiate a criminal procedure. Also, no proposal has been made to re-implement a certain procedure. In addition, no actions have been taken regarding the prolongation of court proceedings or the negligence and irresponsible performance of judicial services in discrimination cases. The Ombudsman acted upon

discrimination cases on professional duty where the institution opened a case for the protection of certain rights on its own initiative. However, the Ombudsman has not participated in court proceedings as a friend of the court in the protection against discrimination.

The main shortcomings in the Ombudsman's handling of petitions for protection against discrimination are the non-existence of a mechanism that enables the consistent application of the recommendations of the Ombudsman, the fact that the Ombudsman cannot impose fines or other penalties, the burden of proof usually falls on the victim, and the Ombudsman does not engage in the additional provision of evidence and does not take additional actions. These are some of the reasons why a portion of the associations, after the establishment of the Commission on Prevention and Protection Against Discrimination (KZSD), are less likely to address petitions for protection against discrimination to the Ombudsman, because they presume that they have greater opportunities to get protection by the Commission for prevention and protection against discrimination. In order to improve the Ombudsman's handling of petitions, there should be greater sensibility among the staff working with marginalized groups, greater effort must be put into using all the measures the law provides, there should be opening more regional units opened, that will enable greater education and training of the staff on the latest trends in the anti-discrimination international law, especially on the ECHR's practices which are legally binding for RNM.

Regarding the activities of the Ombudsman related to raising awareness in the area of discrimination in the reporting period, there are almost none. During this period, the Ombudsman has not conducted any campaigns in order to

prevent discrimination. The Ombudsman has not prepared any reports on discrimination, nor have such reports been submitted to international bodies. It is necessary to organize comprehensive campaigns for equality and non-discrimination, with the involvement of civil society organizations and the competent authorities, and there should be continuous education to strengthen the knowledge and the skills of the professionals working in this institution, increasing its budget and prioritizing and intensifying the preventive activities it implements, greater expertise and dedication, as well as direct field activities for the purpose of changing attitudes and opinions. The Institution is constantly understaffed, and in 2021 it operated with less than half of the required staff. The institution must become more transparent and publish annual reports on the state of discrimination, as well as comprehensive data on the cases and the decisions it works on. The need to hold regular conferences for the public should not be ruled out, in order to raise awareness of the work of the institution and the discrimination situation. The cooperation of the Ombudsman with civil society organizations is partial, due to the fact that certain civil society organizations do not cooperate with the Ombudsman at all. Successful cooperation between the Ombudsman and civil society organizations does not only require the signing of memorandums of cooperation, direct meetings are also needed to express mutual expectations. Changes are needed in the Law on the Ombudsman, regarding their selection and the selection of their deputies, especially regarding the criteria. Systemic changes in the institution which will bring personal and functional independence are also needed. Henceforth, it is necessary to

provide a transparent and inclusive procedure in the Law for the election of the Ombudsman and their deputies, with the active participation of all interested relevant parties, as well as educating and strengthening the capacities for work with marginalized groups of citizens.

In order to improve the efficiency and effectiveness of the Ombudsman in preventing and protecting against discrimination, it is necessary to improve the legal framework, including the improvement of the practices. Although in the previous Report¹ specific recommendations were given for improving the legal framework, they were not implemented. Also, we have no improvement concerning the practices of the Ombudsman, which consequently indicates that a large part of the recommendations is repeated in this report. Such are:

- Amending the Law on the Ombudsman and harmonizing the legal regulations with the legislation of the European Union through an inclusive process;
- Increasing the number of employees in the Department for discrimination;
- Greater sensitization of the staff for work with marginalized groups, especially with people who use drugs, sex workers, and the LGBT community;
- More active participation of the Ombudsman in the court proceedings as a friend of the court for protection against discrimination;

¹ Monitoring report on the work of the Ombudsman with a focus on prevention and protection from discrimination (2010-2019), Misev S., and others. Available at: <<http://coalition.org.mk/wp-content/uploads/2020/10/Koalicija-Margini-lzvestaj-Naroden-pravobranitel-ZA-WEB.pdf>>

- Continuous education and training for professional qualification and specialization of the Ombudsman, their deputies and the expert service on the latest trends in anti-discrimination international law, especially ECHR's practices;
- Increasing the number of regional units, especially in the municipalities with a larger population due to greater accessibility, especially the marginalized groups;
- Ensuring the financial independence of the Ombudsman in accordance with the competencies;
- Prioritizing and intensifying the preventive activities in the area of discrimination;
- Creation of a monitoring system for implementation of the recommendations and opinions of the Ombudsman;
- Increasing the cooperation with civil society organizations through the organization of forums, debates and round tables in order to exchange experiences and opinions for the advancement of the Ombudsman's handling of discrimination cases;
- The Ombudsman should announce public calls for cooperation with civil society organizations on certain topics important in specific periods;
- Greater transparency of the Institution, especially in which major violations of rights were committed;
- Introduction of an electronic system through which citizens will express their (dis)satisfaction with the adopted solution and the actions of the Ombudsman.

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