

# Legal Assistance and the Role of Civil Society in the Republic of Macedonia

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**Abstract**— Giving free or partially free legal assistance is considered as a part of the basic human right to a fair trial, guaranteed by the article 6 of the European Convention for human rights which represents the main component of the proper functioning of the judicial system in one state. Even though everyone has the right to access to justice some people cannot afford it financially. A number of CSO's offer free legal aid to this category. This article focuses on a project dealing with the phenomenon of police misconduct or mistreatment in the Republic of Macedonia. The general purpose of the project is the identification and offer of free legal assistance to the alleged victims of police abuse, through processing their complaints and appeals to the competent public institutions such as internal control units in the Ministry of Interior, the Ombudsperson, the Public Prosecutor, etc..

## 1 INTRODUCTION

Every natural and legal person has the right to access to court and justice and fair trial<sup>1</sup>. This means that state has positive obligations to provide effective access to them by ensuring legal provisions for free legal help.

Free legal help means offering professional legal help on volunteer basis and without or reduced compensation. In legal profession, it means to use professional specific skills in order to offer services to those who are not in a position to meet the expenses for them.

Considering the fact that people need legal help everyday, CSO's have to work strongly and closely with the institutions concerned in order to meet the citizens required and guaranteed rights. It is more than important to offer them the elementary legal informations on the procedure that they want to initiate. CSO's must strongly support the implementation of basis principles of law such as rule of law and legal stability.

In terms of the implementation of free legal assistance projects, CSO's try to find the possible answers of the following questions: who and how provides free legal aid?, which are the criteria for getting free legal aid – how to define the circle of users?, which is the way of managing the system of free legal aid?, how are provided and distributed the funds for free legal aid?.

Economic and social situation in the Republic of Macedonia has a strong impact on CSO's which provide free legal assistance and deal with human rights, in their efforts to create mechanisms of selection of the beneficiaries and providers. Vying and eminence can be related with potential speciality, forms of quality control of offered services, and the real value of major and less important legal help. Poverty should not be the only decisive factor in providing free legal advices.

The first Governmental attempts for establishing relations between the CSOs and the Government took place in 2004 with the creation of the Sector for Non Governmental Cooperation under the Sector for Plan Study and Management. This sector was in charge for: establishing initial collaboration with the

CSO's; summarizing the legal rules; analysing the new legislative proposals for the civil society sector; securing resources for financial support of the projects and involving the civil society in the state policy-making.

The strategy for Cooperation of the Government with the Civil Sector (2007-2011)<sup>2</sup> aiming to provide general national strategy for collaboration with CSOs was brought in 2007.

This strategy set the framework for mechanisms and measures aiming to: enable the state administration to develop joint partnership with civil society; increase citizens' engagement in the policy and decision-making processes; create more favourable legal and institutional environment for sustainable development of CSO's and for implementation of the standards of the European Union in this area and improve access to public information.

A Good Practice Code for Financial Support to Citizen's Association and Foundations<sup>3</sup>, a 'Programme for Financing Programme Activities of Citizen's Association and Foundations for 2009<sup>4</sup> and for 2010<sup>5</sup>, and a 'Decision for Criteria and Procedures for Allocation of Resources for Financing Programme Activities of Citizen's Association and Foundations from the Budget of the former Yugoslav Republic of Macedonia<sup>6</sup> were adopted by the Government to enable transparency and to define criteria and monitoring procedures of the financial assistance granted by the Government to CSO's.

## 2 Example from practice: Human Rights Support Project<sup>7</sup>

<sup>2</sup> The Strategy for Cooperation of the Government with the Civil Sector is available on:

[http://www.vlada.mk/files/Strategija\\_za\\_sorabotka\\_na\\_Vladata\\_so\\_gragans\\_kiot\\_sektor\\_2007-2011.pdf](http://www.vlada.mk/files/Strategija_za_sorabotka_na_Vladata_so_gragans_kiot_sektor_2007-2011.pdf)

<sup>3</sup> Published in the Official Gazette of the Republic of Macedonia, No. 130/07

<sup>4</sup> Published in the Official Gazette of the Republic of Macedonia, No. 3/09

<sup>5</sup> Published in the Official Gazette of the Republic of Macedonia, No. 8/10

<sup>6</sup> Published in the Official Gazette of the Republic of Macedonia, No. 23/09

<sup>7</sup> Petar Jordanovski, Koalicija Site za Pravico Sudenje - Proekt za Podrska na Covekovite Prava, Skopje 2005

<sup>1</sup> Article 6 of ECHR, available at: <http://www.echr.coe.int>

One of the successful CSO's initiatives was The Human Rights Support Project (HRSP) which was focused on the phenomenon of police misconduct or mistreatment. The project aimed to address the use of illegal physical and mental force by authorised Ministry of Interior officials during their official duties, and to assist in the development of an effective mechanism for the protection of the human rights of alleged victims by offering free legal help to them.

In January 2004 three CSO's started with the implementation of the project for Support of Human Rights<sup>8</sup>. Within the activities of this project and its implementation, in the start of this project and afterwards in continuity, the project officers were trained to strengthen and expand their knowledge in theoretical and practical aspects of giving free legal aid with a purpose of successful implementation of this project. The basic purpose of the project was to provide free legal assistance and counselling to the possible alleged victims of improper police behavior which requires assistance in the submission complaints through various live-available administrative and legal mechanisms.

As part of the free of charge legal counselling, legal officers participating in the project undertook the following activities: interviewing and registration of findings; photographing injuries and other evidence; assisting injured persons, in order to ensure proper documentation about the injuries; collecting additional accompanying documents; transferring informations about the particular case to international organisations; providing advices on the legal remedies that are available to the alleged victims, including filing complaints with the MoI Sector for Internal Control and Professional Standards, Ombudsman Office, Public Prosecution Office, as well as private claims and civil suits; assisting alleged victims in preparation of letters, claims and complaints, to the institutions concerned; accompanying and/or representing alleged victims during meetings with representatives from state institutions etc.

In the frame of implementing the project, local coordination meetings were organised in the offices of each CSO that implemented the HRSP. The participants at these meetings included: inspectors from the Sector for Internal Control and Professional Standards (PSU), representatives from the Ombudsman Office, representatives from the Public Prosecution Office and local self-government, as well as representatives from the international governmental and non governmental organizations. These meetings were organised on a monthly basis and provided for direct and effective monitoring of the registered cases of misconduct and mistreatment by the police. The local coordination meetings were organised and moderated by HRSP Project Officers. During the meetings, Project Officers presented new cases and opened up discussion with the present representatives of abovementioned institutions regarding actions that have been taken in relation to the registered cases of alleged victims of improper behaviour by the police within the framework of the HRSP. These meetings had significant impact on the acceleration of procedures being conducted in relation to complaints filed with the PSU and the

Ombudsman Office.

These meetings also improved the access and trust that citizens had to the state institutions and additionally reinforced the previously established link between civil society and state institutions.

Complaints for police misconduct or mistreatment to institutions concerned

### 3 Institutions

#### Ministry of Interior

The right of every citizen to file complaints to the state and other public bodies, and also to receive an appropriate response in relation to those, is a constitutional right<sup>9</sup>.

Article 10(1) of the Operation Rules of PSU, prescribed that citizens could file complaints in relation to illegal behaviour, misconduct and mistreatment by the police, and they could do that both in written and verbal form. When filing a verbal complaint, the citizen declarations to the police officer on duty, had to be done by PSU inspector, and if in case that police station did not had a detached PSU inspector, the policeman had to appoint another policemen who was obliged to prepare the report. The report was drafted in a separate room and sent to PSU immediately, or within 24 hours. The report had to be signed by both the policeman who received the complaint and the citizen.

Paragraph 3 of the same article prescribed that in the regional organisational units of MoI, which had detached inspectors from the Sector, written complaints should be delivered. Article 17(2), defined the time period within which the Sector had to complete the investigation in relation to the filed complaints. The investigations for less serious types of illegal and unprofessional behaviour were to be completed in a period of 30 days, after the complaint was filed, and for more serious types of misconduct and ill-treatment by the police, the final deadline was 90 days.

Article 24 of the Rules, provides that the Sector was obliged to inform the persons who filed the complaints, about the progress and results of the proceedings, in a written form.

The proposed Law on the Police, which as of November 2005 was undergoing a procedure for enactment, provided a deadline of 30 days from the date of the incident, within which the citizen could file a complaint with the police. The HRSP CSO's believed that the proposed period of 30 days was restrictive as far as the protection of human rights is concerned for the following reasons<sup>10</sup>:

- In a considerable number of cases, citizens launched their complaints after the period of 30 days had expired, especially in cases when citizens complained that the police did not undertake the necessary measures. As a result, the conclusion was that in future, if this deadline is adopted, a considerable number of citizens will be unable to protect their rights by filing complaints with PSU;
- The deadline for submission of complaints to the

<sup>8</sup> I was acting as legal advisor of the Center for Democratic Development in the Human Rights Support Project for the period 2004-2008

<sup>9</sup> Article 24(1) of the Constitution of the Republic of Macedonia

<sup>10</sup> Petar Jordanovski, Koalicija Site za Pravicko Sudenje - Proekt za Podrska na Covekovite Prava, Skopje 2005

Ombudsman Office was 1 (one) year. On the other hand, the deadline for filing a civil suit was 3 months. By comparing these deadlines with the 30 days period that was proposed, it can be concluded that MoI, with the proposed text, was trying to reduce the burden of the Sector i.e. to reduce the number of filed complaints, at the expense of possible restriction of human rights.

In accordance with Article 21(1) of the Sector Rules, if during the investigation it is determined that there is sufficient evidence to initiate a procedure for dismissal because of violation of job discipline, the Sector will submit a proposal for continuation of the investigation to the Dismissal Committee.

In accordance with Article 133 of the Ministry of Interior Collective Agreement, after conducting a review and deducing evidence, the Committee established the responsibility of the employee and prepared a written proposal to the Minister of internal affairs, in order it was adopted appropriate decision. If the Committee established that the employee was not responsible or if the conditions that were necessary for adoption of a decision for dismissal were not fulfilled, it was to propose to the Minister to drop the charges, i.e. to terminate the proceedings. If the Minister did not agree with the proposal, the case could be referred back for review, when the facts of the case had been irregularly established or they were incomplete, if the material regulations had been wrongly applied, or he/she could make another decision. Depending on the degree of responsibility of the employee, the conditions under which the violation of the official obligations took place, the seriousness of the violation and its consequences, the Minister could replace the dismissal of the employee with a monetary fine, which could not exceed 15% of the monthly salary of the employee, for a period of 1 to 6 months<sup>11</sup>.

Besides that, in accordance with Article 144(11) of the Law on Criminal Procedure, on the basis of evidence and information collected, against the person which there was a reasonable suspicion that he or she committed an act that would represent a criminal offence, MoI filed criminal charges and submitted them to the competent public prosecutor. Furthermore, according to Article 3 of the Sector Rules, the Head of the Sector should inform the Minister if the investigation established existence of incrimination activities, violation of working discipline or unprofessional conduct by an employee from MoI.

From the recorded cases within HRSP, for the period 2004-2005, it was noticed that the only sanction<sup>12</sup> that was imposed to authorised official persons from MoI was the monetary fine in the amount of 15% of their monthly salary.

There was not even a single dismissal of AOPs from MoI, in relation to all cases recorded by the HRSP. Even more so, the Minister of Internal Affairs had the right to replace the dismissal of the employee with a monetary fine, which could not exceed the amount of 15% of the monthly salary of the employee, for a time period of 1 to 6 months.

What was worrying was the fact that the person who filed the complaint was not informed about the sanction that was

imposed to the AOP, responsible for the violation? This was in accordance with Article 23 of the Sector Operation Rules, which stipulated that the person filing the complaint will be informed whether a disciplinary measure was imposed on the offender or not, but he/she was not be informed about the type of the measure.

The above mentioned provision was found contrary to Article 24(1) of the Constitution of the Republic of Macedonia, which stipulated that every citizen has the right to file complaints to state bodies and other public entities and to receive an appropriate answer in this regard<sup>13</sup>.

### Public Prosecutor

In accordance with Article 42 of the Law on Criminal Procedure (LCP), the Public Prosecutor had the general right and duty to criminally prosecute all perpetrators of criminal offences that were prosecuted ex officio. Additionally, for criminal offences that were prosecuted ex officio, the public prosecutor was obliged to undertake all necessary measures for detection of criminal offences and discovering of the perpetrators and for guidance of the pre-trial procedure. During the pre-trial procedure, he/she could also issue orders for application of special investigative measures, under conditions and manner as was defined by this Law, he/she could also ask for an investigation to be launched, and raise and represent the indictment, i.e. proposal for indictment before the competent court, to launch appeals to temporary court decisions and file for exceptional legal remedies against valid and applicable court decisions. According to Article 160 of LCP, an investigation was launched for a specific person, when there was reasonable doubt that he/she has committed a criminal offence. The investigation could be launched upon request by the Public Prosecutor, and the request was submitted to the investigative judge. After the investigative judge has received the request for an investigation, the judge was to review the documentation, and if he/she agrees with the request, he/she enacted a decision for launching an investigation. The decision for launching an investigation was to be submitted to the public prosecutor and the defendant as well<sup>14</sup>.

Law on Criminal Procedure stipulated that state administrative bodies, institutions with public authority and mandate and other legal entities were obliged to report criminal offences that should be prosecuted ex officio. Newness in this Law was that every single person was obliged to report a criminal offence, which would be prosecuted ex officio. This meant CSOs involved in this project were legally obliged to report criminal offences. Law on Criminal Procedure<sup>15</sup>, stipulated the obligation of the analytical judge to inform the public prosecutor about possible termination of the investigation.

<sup>11</sup> Petar Jordanovski, Koalicija Site za Pravico Sudenje - Proekt za Podrska na Covekovite Prava, Skopje 2005

<sup>12</sup> Other sanctions are: dismissal and temporary segregation from work of the AOP from MoI.

<sup>13</sup> Petar Jordanovski, Koalicija Site za Pravico Sudenje - Proekt za Podrska na Covekovite Prava, Skopje 2005

<sup>14</sup> Petar Jordanovski, Koalicija Site za Pravico Sudenje - Proekt za Podrska na Covekovite Prava, Skopje 2005

<sup>15</sup> Article 174 paragraph 2

The analytical judge was obliged to end the investigation, if, during the investigation or after its conclusion; the public prosecutor receded from criminal prosecution.

After the changes to Law on Criminal Procedure<sup>16</sup>, deadline of 8 days was replaced with 15 days, time within which the victim or individual plaintiff could file civil suit, and if they fail to do so, it was to be considered as if they have waived their right to prosecute. This change of the deadline improved the position of the victim as a prosecutor and the individual plaintiff in the criminal proceedings.

### **Ombudsman Office**

According to the national laws, the Ombudsman Office represents an entity of the Republic of Macedonia, aiming to protect constitutional and legal rights of citizens and all other people, in case they are violated by certain acts, actions or lack of action on the part of state administration bodies and other entities and organisations with public authority.

Acting upon a objection, the Ombudsman could: either not initiate a procedure or it could initiate the process and impede or end the process. Process could not be initiated if there was a pending court process in relation to the subject of the objection or if the period of 1 year had been elapsed.

Within 15 days from the date when the complaint was filed, the Ombudsman Office was obliged to inform the person who has filed the complaint, whether a procedure has been initiated in relation to the allegations contained in the complaint, or it was maybe established that there are no proper grounds to initiate a procedure. If the Ombudsman Office establishes that constitutional and legal rights and freedoms have been violated, it can apply the following measures<sup>17</sup>:

- 1) Providing recommendations, proposals, opinions and instructions on possible ways for elimination of the violations;
- 2) Proposing certain proceedings to be repeated in accordance with the law;
- 3) Launching initiatives for conducting disciplinary proceedings against an official, i.e. responsible persons;
- 4) Submitting a request to a competent public prosecutor for initiation of proceedings, in order to establish criminal responsibility.

Generally, Ombudsman Office respected the 15 days deadline by informing the alleged victim whether process will be initiated or not.

### **The Standing Inquiry Committee for protection of human rights and fundamental freedoms**

Having in mind that the Standing Inquiry Committee for protection of human rights and fundamental freedoms as one of the state institutions whose basic field of activity are the issues related to human rights, as well as the fact that this was the only Parliamentary Committee established by the Constitution of the Republic of Macedonia, the establishment of a proper relationship with this parliamentary body was of a crucial importance.

The HRSP received political support by the members of the Committee. The political support for the Project by this Parliamentary body was expressed via a statement, contained in one of the Minutes from the Committee sessions.

## **4 CONCLUSION**

Legal assistance aims to improve people's lives. Hence, CSO's dealing with human rights issues, support giving free legal assistance across and assists those who would otherwise not have access to legal services. Their support consists in conducting public legal education seminars, providing referrals to local legal resources and training lawyers and community leaders on economic and civil rights.

Furthermore, CSO's should seek and develop programs for citizens and community empowerment through awareness-raising and institutional capacity-building efforts. The program's like for example: legal aid clinics provide individuals with free legal advice and service to solve their problems and to address community needs, with the combined effect promoting a rule of law culture.

The civil society in Macedonia does not create an alternative system of free legal help, but attempts to simulate mechanisms that will test the fundamental assumptions. It directs funds to individual providers and selected target groups, but the mechanisms of allocation of resources must be provided to obtain adequate data on the basis of which the following work of participants and the quality of services. Primarily for this purpose, the CSO's are testing individual models in order to come to realistic and sustainable solutions by providing free legal help those in need. In the frame of implementing 'the Human Rights Support Project', several activities with public institutions were held. These included the Sector for Internal Control and Professional Standards (PSU), representatives

<sup>16</sup> March 2005

<sup>17</sup> Ibidem, Koalicija Site za Pravico Sudenje - Proekt za Podrska na Covekovite Prava, Skopje 2005

from the Ombudsman Office, representatives from the Public Prosecution Office and local self-government.

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