



Strasbourg, 6 February 2006

T-02-2006



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

CDL-UDT(2005)005
Eng. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

UNIDEM
Campus Trieste Seminar

**“POSITIVE DISCRIMINATION
AND ACCESS TO CIVIL SERVICE”**

Trieste, Italy

*Palazzo del Ferdinando,
MIB School of Management
Largo Caduti di Nasirya n° 1
tel: +39 040 918 8111*

6 – 9 February

REPORT

**“CONSTITUTIONAL, LEGAL AND OTHER MEASURES
AIMED AT PROMOTING THE EQUITABLE REPRESENTATION
OF COMMUNITIES IN THE CIVIL SERVICE
AND THE EXPERIENCE FROM THE OMBUDSMAN OFFICE”**

by

Ms Snezana TEODOSIEVSKA JORDANOSKA
State Advisor
Ombudsman Office
The “Former Yugoslav Republic of Macedonia”

Republic of Macedonia is a multiethnic society in which apart from the Macedonian population live number of Albanians, Turks, Vlachs, Serbians, Roma, Bosnians and representatives of other nations characterized with different ethnical, cultural, religious and other features. According to the data of the Census of the population and households in the Republic of Macedonia in 2002 there are 2.022547 citizens, among which most numerous are the Macedonians with 64,18% of the total population, Albanian's ethnical community with 25,17%; Turks with 3,85%; Roma with 2,66%; Bosnians with 1,78%; Vlachs with 1,04%; Serbs 0,48% and other communities with 0,84%.

The strategic determination of the Republic of Macedonia is the full exercise of the constitutionally guaranteed rights of the members of communities. At same time, the Republic of Macedonia is determined to adhere to all principles, values and standards contained in the relevant international documents in this field, particular in: the Framework Convention on the Protection of National Minorities; the Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol 12); the International Pact on Civil and Political Rights; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities; the Helsinki Final Act of CSCE, the Copenhagen Final Act and the Charter of Paris; the International Convention on the Elimination of all Forms of Racial Discrimination; the European Charter for Regional or Minority Languages

Constitution from 1991

According to the Constitution from 1991 and the legal system the **protection of the basic freedom and rights** of the citizens of the Republic of Macedonia shall be implemented in front of the regular courts, the Constitutional Court of the Republic of Macedonia, the Permanent Survey Commission for protection of the freedom and rights of the citizens within the Parliament of the Republic of Macedonia and in front of the Ombudsman.

The principle of non-discrimination is incorporated in the legal order of the Republic of Macedonia. The equality of the members of the communities arises from Article 9 of the Constitution of the Republic of Macedonia, which establishes the principle of non-discrimination stipulating that: citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, ethnic and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law. The Constitution provides for equal protection of all citizens, through a procedure based upon the principles of priority and urgency. Furthermore, restriction of freedoms and rights cannot discriminate on grounds of gender, race, color of skin, language, religion, national or social origin, property or social status.

Also, the Constitution consists some provisions, which provides some special rights to the citizens belong to all communities (minorities) in the field of education culture, religious, exercising their language in the state a local self-government bodies etc.

Violent conflict in 2001

In the spring 2001 a violent conflict erupted in Republic of Macedonia because paramilitary Albanian groups joined in the UCK and started military activities in the Northern and Western parts of the country. Several reasons laded to this conflict.

At first, the Constitution from 1991 stated that Macedonia is a nation-state of the Macedonian people, therefore according to Albanians not referring to the Albanian people, Second according to the Constitution there was centralization of the power, as a result of which local authorities had limited administrative competences. Another reason was the increase of the Albanian population in the Republic of Macedonia, the status of Kosovo, and some other reasons.

With the support of the international community the conflict was stopped and as a result of the negotiations, on 13 August 2001 was adoption the Ohrid Framework Agreement. The Agreement was signed from the four political parties and the President of the Republic of Macedonia. The benefit of the Ohrid Agreement was promoting of the peaceful and harmonically development of the civil society with the respect of the identity and interests of the Macedonian citizens.

Amendments of the Constitution from 2001

Aiming to implement the achievements of the Ohrid Agreement during the 2001 the Assembly of the Republic of Macedonia has adopted several amendments to the Constitution.

With the constitutional amendments in 2001 the appropriate and lawful representation (equitable representation) of citizens belonging to all communities in the departments of the public administration and other public institutions become a new fundamental value of the Constitutional order of the Republic of Macedonia.

Also, there were some changes in the exceseing the rights of minorities in using their language, their alphabet, their symbols, in establishing their institutions for culture and education, religion and some other rights.

The very important Amendment for non-majority communities was the adoption of Amendment VI of the Constitution. This Amendment prescribes the equitable representation of persons belonging to all communities **in public bodies and at all levels and other areas of public life.**

Legal system

The fundamental value of equitable representation became a part of the content in several laws, which were amended as a result of the changes of the Constitution. There were changes in the Law on Courts, the Law on the Public Prosecutor the Law on Labor Relations, the Law on Public Enterprises the Law on Primary Education, the Law on Secondary Education the Law on Pupils' and Students' Standards, the Law on the Public Attorney, and the Law on Civil Servants.

The anti-discriminatory principle upon appointment of judges is contained in the Law on Courts, as well as in the amendments of this Law adopted in 2003, implementing the provisions of the Ohrid Framework Agreement. Law stipulates that selection of judges and lay judges without violating the legally prescribed criteria will ensure equitable representation of the citizens who belong to all communities.

A similar provision is also contained in the Law on the Public Prosecutor's Office, which specifies that when appointing public prosecutors and deputy public prosecutors, without violating the criteria established with this Law, the principle of equitable

representation of citizens belonging to all communities in the Republic of Macedonia will be applied.

In addition to the constitutional principle of equal access to jobs and the merit principle, The Law on civil Servants prescribes the principle of equitable representation of citizens belonging to all communities, at all positions in the recruitment of civil servants, without violating to the criteria of expertise and competence. The public announcements for employment of civil servants are published by the Civil Servant Agency (CSA) in at least two daily newspapers, one of which published in the language spoken by at least 20% of the citizens who speak an official language other than the Macedonian.

On the other side, the Law on Primary Education, and the Law on Secondary Education prescribes that when electing the associates, teachers and other employs in the public primary and secondary schools the principle of equitable representation of citizens belonging to all communities will be applied without violating the criteria established with this laws.

Coordinating and monitoring bodies

Aiming at more efficient implementation of the Framework Agreement, and the Amendments of the Constitution the Government of the Republic of Macedonia established special bodies for coordination and monitoring of the activities and the achieved specific objectives. In relation to the point *Non-Discrimination and Equitable Representation of Members of Non-Majority* the Government of the Republic of Macedonia, established bodies entrusted with coordination and monitoring of the improvement of equitable representation of members of underrepresented non-majority communities in the public administration and public enterprises. These are the following:

- *Committee of Ministers in charge of monitoring and coordination of the activities aimed at the improvement of equitable representation of members of non-majority communities in the public administration and public enterprises.*

The Committee is chaired by the Deputy Prime Minister responsible for the implementation of the Framework Agreement and it comprises of the Minister of Justice, Minister of the Interior, Minister of Finance and the Minister of Labor and Social Policy.

- *Coordination Body for the Preparation of an Operational Programmed for Improvement of Equitable Representation of Members of Non-majority Communities in Public Administration and Public Enterprises.*

The Director of the Civil Servants Agency chairs the Coordination Body, while its members are the Deputy Director of the Civil Servants Agency, the Deputy Secretary General of the Government of the Republic of Macedonia and state counselors from the following 11 ministries: Ministry of Economy, Ministry of Finance, Ministry of Justice, Ministry of Local Self-government, Ministry of Transport and Communications, Ministry of the Interior, Ministry of Defense, Ministry of Education and Science, Ministry of Culture, Ministry of Labor and Social Policy and Ministry of Health.

Implementing the principle equitable representation

In the first period of the implementation of the Framework Agreement, the **main** focus was placed on improving the equitable representation in the police and the Army of the Republic of Macedonia.

Following the improvement of the equitable representation in the security forces, the focus was placed on equitable representation in the administration and public enterprises. In February 2003 the Government of the Republic of Macedonia adopted a Basis for Preparation of a Programmed for Improvement of Equitable Representation of Communities in the Public Administration and in Public Enterprises. In April 2003 additional measures were adopted for the improvement of equitable representation of communities in the public administration and public enterprises concerning the strengthening of translation capacities, the opening of bilingual jobs, the analysis of the vacant jobs within the administration and the preparatory training program for work in the public administration, as well as public communication activities.

As a part of the additional measures, a training program for 600 candidates belonging to the communities for jobs in the state administrative bodies (PACE program) was set up. The first group of candidates was employed in December 2004 and January 2005, and the second group was employed by February 2005.

In addition of these measures was the training of 100 translators/interpreters belonging to the non-majority communities in the Republic of Macedonia began on 1 March 2005.

Upon completion of the training program, carried out within the framework of a 2004 CARDS project, the chosen candidates were employed in the state administrative bodies and courts and are obliged to work in those bodies for at least two years.

The Law Amending the Law on Civil Servants establishes an obligation for adoption of Annual Plans for Equitable Representation of Communities. The annual plans elaborate the current situation in the bodies (number and percentage of the members of communities in the total number of employees, presented for both the employees with status of civil servants and other employees in the said bodies), the employment plans, professional development and training program, as well as an assessment of the fiscal implications concerning the aforementioned activities. This means that, in addition to the constitutional principle of equal access to jobs and the merit principle, the principle of equitable representation of citizens belonging to all communities, at all positions defined by the Law on Civil Servants, is applied in the recruitment of civil servants, without prejudice to the criteria of expertise and competence.

Equitable representation in the public administration

In 2002 from a total number of 58,927 employees in the public administration 14,7 % were Albanians, 1,4% were Turks, 0,5% Vlach, 2,1% Serbians, 0,6% Roma, 0,3% Bosnian. According to the statistic in December 2004 a total number of employees in public Administration was 56.871, of witch 18,1% are Albanians, 1,6% Turks, 0,6% Vlach, 2,1% Serbians, 0,7% Roma, 0,3% Bosnian and others are represented with 1,2%.

When we are analyzing of the equitable representation into the courts and the public prosecutor office the figures are the following:

From a total number of 631 judges in the courts in republic of Macedonia 73 are Albanians or 6,2%, Turks are 5 or 0,8%, Serbians are 7 or 1,1%, Vlach are 12 or 1,9%, Macedonian Muslims are 2, or 0,3%, and the others are from other nationalities.

Into the Public Prosecutor Office 7 Deputy public prosecutors are Macedonians and 3 are Albanians.

Equitable representation in the police

In the Ministry of the Interior, the basis for the improvement of equitable representation of members belonging to communities are the Constitutional Amendments, the existing legislation in the area of internal affairs: the Law on Internal Affairs the Law on Civil Servants, and the adequate provisions of the Framework Agreement.

To achieve the full implementation of the provisions of the Ohrid Framework Agreement and to comply with the constitutional amendments and the constitutional principle of equitable representation of non-majority communities in state administrative bodies, the Ministry of the Interior has accelerated the process of employment of members belonging to non-majority communities in the Republic of Macedonia, principally through the use of public announcements for the admission of trainee police officers and for the admission of persons with the status of civil servants belonging to communities, as well as through the employment of persons for operational positions within the departments of the Ministry of the Interior.

The admission process for trainee police officers has been supported and implemented with the assistance of the international community, particularly through the testing, selection and training of candidates at the Skopje Police Academy. The Ministry of the Interior has made modifications to its Rulebook on Systematization of Posts, introducing bilingual positions.

Statistic shows that in 2001 in the Ministry of interior were employed 8805 of which 92,1% were Macedonians, 3,6 %Albanians, 0,3 %Turks, 1,9 %Serbians, 0,36 % Roma, people, and the others were 1,48%. In 2004 the figures are different. Total number of employees was 11.354, of which 82,28% are Macedonians, 13,31% are Albanians, 0,59% were Turkeyes, 1,74% were Serbians and 0,63% are from Roma population.

Also there was a plan for transferring of employees from the Ministry of Defense into Border Police In accordance with the government project for equitable representation (PACE) financed by CARDS 2002. The plan for 2005 was a total of 574 persons to be transferred from the Ministry of Defense, of which 165 are members of the Albanian community. Together with the new employment and transfers, in 2005 the Ministry of the Interior has got a plan to consist of a 13.120 employees, of which 1.908 members of the Albanian community, i.e. the Albanian community to be represented with 14,5%. These features are not conformed, so they are not officially yet.

The Public Attorney-Ombudsman of the Republic of Macedonia

The Republic of Macedonia has introduced the institution of an Ombudsman on 03.07.1997 when the Assembly appointed the first Ombudsman.

The competencies of the Ombudsman are set out in the Constitution of the Republic of Macedonia and the Law on the Ombudsman.

According to Article 77 (Amendment XI) of the Constitution, *the Ombudsman protects the constitutional and legal rights of citizens when bodies of the state administration and by other bodies and organizations with public mandates violate their rights. The Ombudsman shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies, bodies of the units of local self-government and public institutions and services.*

Therefore, in accordance with the Law on the Ombudsman, the Ombudsman protects the constitutional and legal rights of citizens and also **implements actions and measures for the protection** of the principles of non-discrimination and equitable representation of members belonging to communities in state administrative bodies and in the bodies of the units of local self-government as well as in public institutions and agencies.

This general position concerning the protection of minority rights is elaborated in further provisions of the Law, which stipulate the following:

- A request to the Ombudsman can be submitted by any person who believes that his constitutional or legal rights have been violated, or believes that there is a violation of the principles of non-discrimination and equitable representation of members belonging to communities in state administrative bodies and other bodies and organizations with public competencies has occurred

- The Ombudsman *can give his opinion with regard to the protection of constitutional and legal rights* and also to the protection of the principles of non-discrimination and equitable representation of members belonging to communities concerning a case which is in process, regardless of the type and stage of the process instituted before state administrative bodies and other bodies and organizations with public competencies

- It is within the competency of the Ombudsman to monitor situations with regard to the safeguarding of the respect for and the protection of constitutional and legal rights of citizens as well as the principles of non-discrimination and equitable representation of members belonging to communities. The Ombudsman may visit and carry out inspections on state administrative bodies and other bodies and organizations with public competencies. The Law on the Ombudsman allows for the possibility of the establishment and organization of departments that are to provide for a higher level of efficiency and success regarding the protection of the constitutional and legal rights of citizens in particular fields.

In addition, Article 78 of the Constitution (Amendment XII) states that the Assembly establishes a Committee on Inter-Community Relations. The Committee consists of nineteen members, of whom seven members each appointed from the Macedonian and Albanian Representatives in the Assembly and one member from among the Turks, Vlachs, Roma, Serbs and Bosnians in the Assembly. If a community has no Representatives in the Assembly, after the consultations with relevant representatives from the particular community, the Ombudsman proposes the remaining member of the Committee. The Assembly appoints the members of the Committee.

During the previous years in a context of the new legal provisions for the non-majority communities into the Ombudsman office there was a possibility to submit the complains in their language and alphabet and to receive and to reply in their language. This solution made the institution Ombudsman more accessible to the representatives of the non-majority communities. When the Ombudsman receives complains in which the citizens stress the problem of discrimination and the equitable representation he starts an investigation and if he states that the rights of the complainant were violated he takes relevant measures.

For receiving a general estimation of the representation of the non-majority communities in the departments of the public administration, in the local self-government and the public enterprises and services in the Republic of Macedonia in 2005 the Ombudsman started to collect information referring the representation in the relevant departments and institutions. According to the information, which was submitted, the principal of equitable representation into the public administration is improving.

On the other hand the Ombudsman has faced with problem in obtaining the asked information. It means that some departments, or institutions did not give the mentioned information. In this preview there are some of the bodies and institutions that did not submit the asked information. Among them we can enumerate: the first instance courts in Kratovo, Kumanovo, Negotino, Skopje no. 2, the investigation prison in Skopje, and the prisons in Bitola and Gevgelija some other funds and public enterprises, and the health organizations. The following bodies did not submit the informations about equitable representation too:

<i>Did not submit the information</i>
<i>President of the Republic of Macedonia</i>
Ministry of interior
Ministry of Transport and Communications,
Agency for development and investments in the R.M
-Agency for privatization
- Agency for electronically communication

The information from the other bodies and institutions that were received, shows that the most of them are respecting the Constitutional and legal principles for Equitable representation in the public administration. The features that are represented in the following table shows the number or the equitable representation of the non majority communities into the public administration, although we can not say that the numbers are correct, because as it was mentioned before, some bodies and institutions did not submit the relevant information.

Area\Nationality	Macedonians	Albanians	Turks	Roma	Vlachs	Serbians	Bosnians	Others	TOTAL
Assembly	148	24	3	2	0	3	1	1	182
Government	406	46	9	7	7	10	5	2	492
Ministries	2507	259	48	21	27	52	10	18	2942
Independent body	8572	469	56	53	64	212	33	86	9545
Funds	616	25	2	1	5	2	0	0	651
Public enterprises	5597	473	49	68	54	212	25	68	6546
Judiciary	1741	182	26	25	37	12	5	9	2037
Prisons	188	35	0	1	2	2	0	3	231
Total:	19775	1513	193	178	196	505	79	187	22626

