

Periodical (Alternative) Information of the Ombudsman to the Committee for Elimination of Racial Discrimination at the United Nations

To: Human Rights Treaties Division Committee
Office of the United Nations High Commissioner for Human Rights
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Switzerland

I. Introductory remarks

The Ombudsman competences and the right to protection of the victims from discrimination are determined in accordance with the Ohrid Framework Agreement and the amendment of the Constitution of the Republic of Macedonia from 2001 further implemented in the Law on Ombudsman from 2003. Through the amendment of the above mentioned law from 2009, it was envisaged a possibility for establishing a separate department working on protection from discrimination and monitoring the respect of the constitutional principle for adequate and equitable representation of all communities in the state institutions of the Republic of Macedonia.

The Ombudsman institution has a multiyear practice in the field of human rights and freedoms' protection, thus, in this way shall contribute towards the Eight, Ninth and Tenth Periodical Reports of the Republic of Macedonia for implementation of the International convention for elimination of all forms of racial discrimination. In this information we present the situations from 2013 and 2014 as per our statistics, received complaints and work on complaints in the field of human rights protection when infringed by the bodies of the state administration, in particular referring to the discriminatory treatment and non implementation of the principle for adequate and equitable representation.

With this information the Ombudsman will provide brief insights of his work, handling complaints in the domain of protection, and will give the number of citizens complaining for discrimination and adequate and equitable representation, as reflected in his annual reports for 2013 and 2014.

The Ombudsman of the Republic of Macedonia hopes that this information shall help in preparation of the final report for Republic of Macedonia in terms of implementation of the International convention for elimination of all forms of racial discrimination. Also, we inform you that additional information about the work of the Ombudsman is available at www.ombudsman.mk

At the same time we inform you that the Annual Report for 2014, obligatorily submitted to the Parliament of the Republic of Macedonia at the end of each March, has not yet passed the procedure in the responsible parliamentary commissions.

II. About the Ombudsman institution

In accordance with the Constitution of the Republic of Macedonia, the Ombudsman has obligation to pay particular attention to protection of the principle of non-discrimination in the bodies where it acts. This constitutional provision is operationalized in the Law on Ombudsman through the Department for protection from discrimination and adequate and equitable representation in the bodies of the state on a central and local level, as well as protection of the principle for adequate and equitable representation, principles that are in accordance with the provisions of the article 2 of the International convention for elimination of all forms of racial discrimination.

It is important to be stressed that the Ombudsman acts free of charge. The complaint should be supported by evidences proving the breach of right. The Ombudsman can also act ex officio. The language of the complaint does not represent a problem or an obstacle. Apart of the official language, the communication with the Ombudsman can be done in any other language spoken in the Republic of Macedonia. The Ombudsman replies in Macedonian language and its Cyrillic alphabet and in the official language and alphabet which the complainant uses when submitting the complaint. The complaint can be submitted in writing (in a specialized form), orally (noted in minutes), or electronically.

When concluding discrimination, the Ombudsman can issue recommendation, indication, opinion and proposal to the bodies of the state administration, the units of the local self-government and the bodies and organization with public authorizations. The bodies should respect the recommendations, indications, opinions and proposals of the Ombudsman. In case they do not respect them, the Ombudsman has legal obligation to inform the responsible Minister, the Government or the Assembly of the Republic of Macedonia. The body or the official who has committed a breach of civil right can be also exposed to public criticism.

With the legislative changes of 2009 the Department for protection from discrimination and adequate and equitable representation was established with aim to act in accordance with the legislative competences in terms of protection of the constitutional and legal rights of citizens by the bodies of the state administration, the organizations with public competences, the bodies of the local self-government and the public institutions and services. This is in correlation to the article 4, paragraph 1, point c) from the International convention for elimination of all forms of racial discrimination.

Also, the Department could do promotion of the Ombudsman in the sphere of non-discrimination and adequate and equitable representation by publishing brochures, leaflets, separate reports, and by means for public information.

The legislative competences are implemented by the Department through cooperation and communication with the responsible authorities in the country, with the civil society and other

national and foreign (partner) institutions who work in the field of protection of the fundamental freedoms and rights.

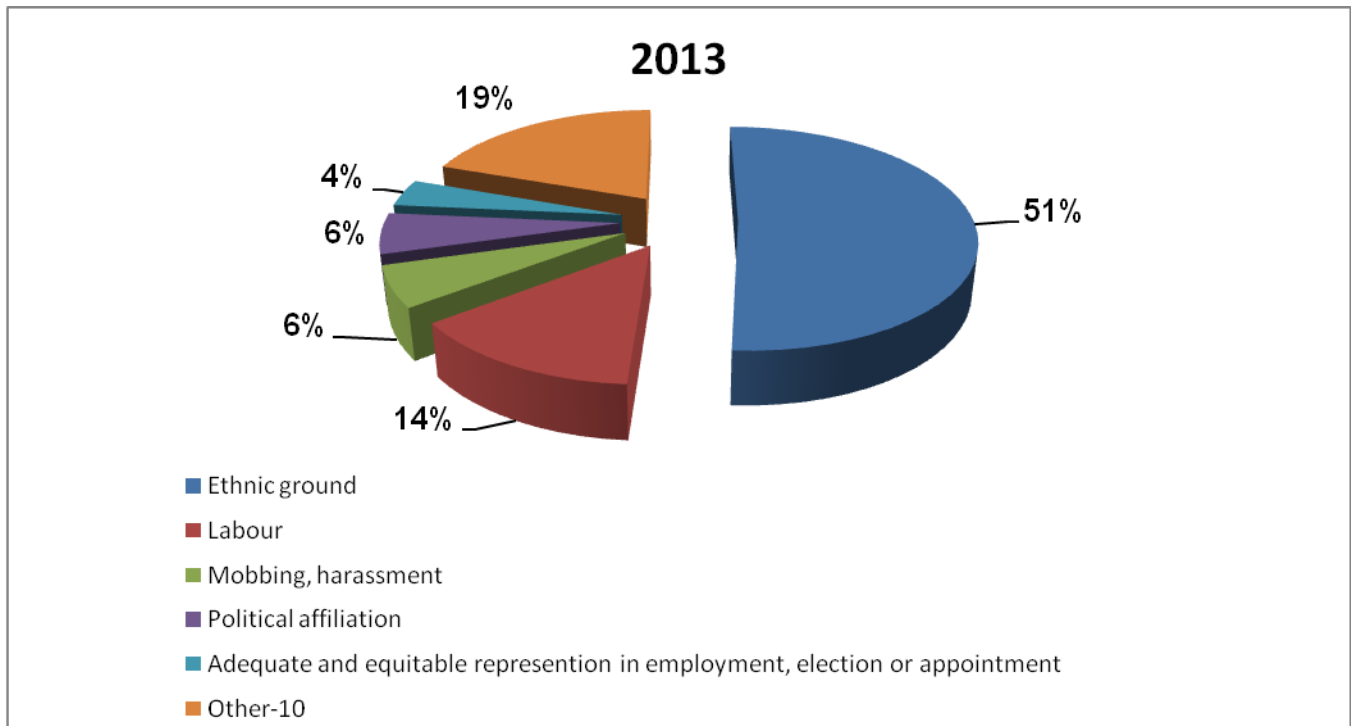
III. Description of the situation

As stated above, since 2011 the Department for protection from discrimination and adequate and equitable representation was established within the Ombudsman institution with mandate to act upon submitted complaints for protection of citizens' rights from discrimination which is in correlation with article 6 from the International convention for elimination of all forms of racial discrimination, but also with a possibility to initiate procedures on its own initiative if there is information or data for infringed discrimination over a citizen or a group of citizens.

1. During 2013 there was a mild increase of cases in the field of discrimination. The conclusion is the same as the previous year, the citizens mainly complain about discrimination on ethnic ground, but they also claim discrimination on racial ground which in fact presents multiple discrimination. The Ombudsman concluded that citizens do not have sufficient information about discrimination, nor they know the manners and mechanisms for their protection. Also, the Ombudsman concluded that citizens do not use to the maximum the instruments and mechanisms for protection from discrimination or do not report the cases of discrimination.

By working with the institutions within its mandate, the Ombudsman constantly points at prevention of all kinds of discrimination, calling upon the national and international regulation. In most of the cases, the Ombudsman' interventions were accepted, but in some cases the procedure was terminated due to initialization of a judicial procedure by the submitters or due to a withdrawal of the complaints.

During 2013 the Ombudsman acted upon 63 requests for protection from discrimination out of which 30 related to protection from discrimination on ethnic grounds. In 15 cases he concluded breach of citizens' rights, i.e. discrimination upon which he submitted recommendations to the relevant bodies. The recommendations of the Ombudsman in 8 cases were accepted, a fact that proves infringement of human right by the state bodies, in 7 cases the recommendations were not accepted-as a result of which the Ombudsman submitted a recommendation to the Government of the Republic of Macedonia.



The concluded findings for discrimination on ethnic and racial grounds are typical for those complaints that refer to the Ministry of Internal Affairs, however, the Ministry does not accept the Ombudsman's recommendations. The complaints were submitted by citizens of Roma community who were not allowed to travel out of the country. In these cases, the Ombudsman asked for information by the responsible services of the border police, pointing at prevention from discrimination on any ground as well as prevention or limitation of the freedom of movement.

For the purpose of adequate application of the proceedings in this field, the Ombudsman submitted information to the Minister for Internal Affairs and the Government of the Republic of Macedonia. In this information he emphasized the obligatory application of the national and international standards in terms of guaranteeing the right to free movement and prohibition of discrimination on any ground.

During 2013, upon received information by an NGO, the Ombudsman opened a procedure on its own initiative about the problem with enrollment of Roma children in the elementary schools in Bitola. Namely, in the Municipality of Bitola majority of the population did not want to enroll their children in the same school with children of Roma community. The Ombudsman undertook activities and conducted a research for collection of information by all elementary schools in this municipality. The data of the survey proved the submitted complaints for discrimination and segregation of children who belong to Roma community.

For overcoming this situation, the Ombudsman submitted recommendation to the Council and the Mayor of the Municipality of Bitola with concrete directions for undertaking measures and activities for protection from discrimination and segregation of pupils from Roma community. When accepting the given recommendation, the Municipality reported that a separate report on “Multiethnic integration in the education” was prepared, together with separate trainings for teachers and expert’ service, but also workshops for consistent respect of re-organization when enrolling children in the elementary education.

The Ombudsman informed that in May 2013 a separate Law on protection from harassment at work was adopted, which represents a respect of the Ombudsman indication given in the previous annual reports. The Ombudsman is of opinion that this Law can contribute towards improvement of protection of citizens’ rights in this sphere.

During 2013 the Ombudsman requested information from the units of the local self-government to give him data about the local elections in accordance with the provisions of the Law on local self-government. They have established Commission for equal possibilities among men and women and Commission for inter-communities relations. From the received data, we concluded that some municipalities are still lacking such commissions, but we have also concluded that even in those municipalities where they officially exist, in practice they do not work or the commissions had few sessions only. In this context, the Ombudsman pointed to the obligation of the legal framework and recommended establishment and active functioning of the Commissions for equal opportunities among women and men and Commissions for inter-communities relations, since they function for the purpose of improving the system of human rights, tolerance and respect of differences among the citizens of the Republic of Macedonia.

The Ombudsman in 2013 participated in the project “Development of the capacities of the Ministry of Labor and Social Policy for implementation of the strategy for equality and non-discrimination”, implemented by the Ministry of Labor and Social Policy and the British Council. Also the Ombudsman participated in the national team of trainers which resulted in preparation of the “Guide for implementation of the Strategy for equality and non-discrimination”.

In accordance with its competences and actions, during 2013 in the Annual Report the Ombudsman pointed at the following conclusions:

- In the Republic of Macedonia there is discrimination noted especially on ethnic and political grounds. The citizens do not recognize the shapes and forms of this phenomena, as well as the instruments and mechanisms for protection.
- There is a lack of efficient trainings for strengthening of the institutional capacities for discrimination as well as informative-educational campaigns for strengthening of citizens’ awareness for recognizing discrimination in all its shapes and forms.

- Increased number of complaints for discrimination on ethnic grounds from the members of Roma community due to their return from the border crossing of the Republic of Macedonia.

In accordance with these conclusions, the Ombudsman issued the following recommendations:

- There is a need for undertaking activities by the responsible institutions for more efficient prevention and protection from discrimination with a proper application of the regulations in this field.

- Implementation of trainings for the personnel of the institutions for protection from discrimination as well as educative campaigns for strengthening of citizens' consciousness for an adequate implementation of the standards for equality, tolerance and respect of differences.

- Compulsory application of the national and international standards in terms of guaranteeing the right to free movement.

In terms of monitoring situation with respect to **the principle for adequate and equitable representation of the members of the communities**, as an affirmative measure, in 2013 the Ombudsman secured data from the institutions within its jurisdiction.

Namely, the Ombudsman prepared survey sheets and asked for feedback the bodies of the state administration, independent bodies and organizations, the units of the local self-government, the medical, cultural and educational institutions, the courts and the prosecution offices and other institutions and services towards whom he acts. In 2013 written requests with prepared survey sheets were submitted to 1084 institutions i.e. 17 institutions less than the previous year. Feedback was received by 1049 institutions, 35 institutions did not submit information besides Ombudsman' written interventions and telephone contacts.

In relation to the survey, the Ombudsman concluded the following:

- There is a small progress made in terms of implementation of the principle for adequate and equitable representation of the members of all communities. Still in some institutions the application of this principle is not on a satisfactory level, especially when it comes to the representation of the members of the smaller ethnic communities.

- Absence of adequate implementation of the principle for adequate and equitable representation in terms of distribution of leading (managerial) working position to the members of the communities who are not majority, in particular of those who belong to smaller ethnic communities.

From the listed findings the Ombudsman issued the following recommendations:

- Compulsory respect and application of the principle for adequate and equitable representation of members of all communities in particular the members of those less represented.

- Strengthening of the activities for implementation of the principle for adequate and equitable representation in respect to the managerial working positions of the members of the communities that are not in majority.

In 2013 the Ombudsman carried out a research on the gender representation and the educational structure of the employees in 1084 institutions. By answering a list of questions, we asked the institutions to give us data in terms of gender (total number of employees by gender and number of managerial and non-managerial working positions), the level of education of the employees by gender and their distribution in managerial i.e. non-managerial working positions. The outcome of this research can be seen in this table.

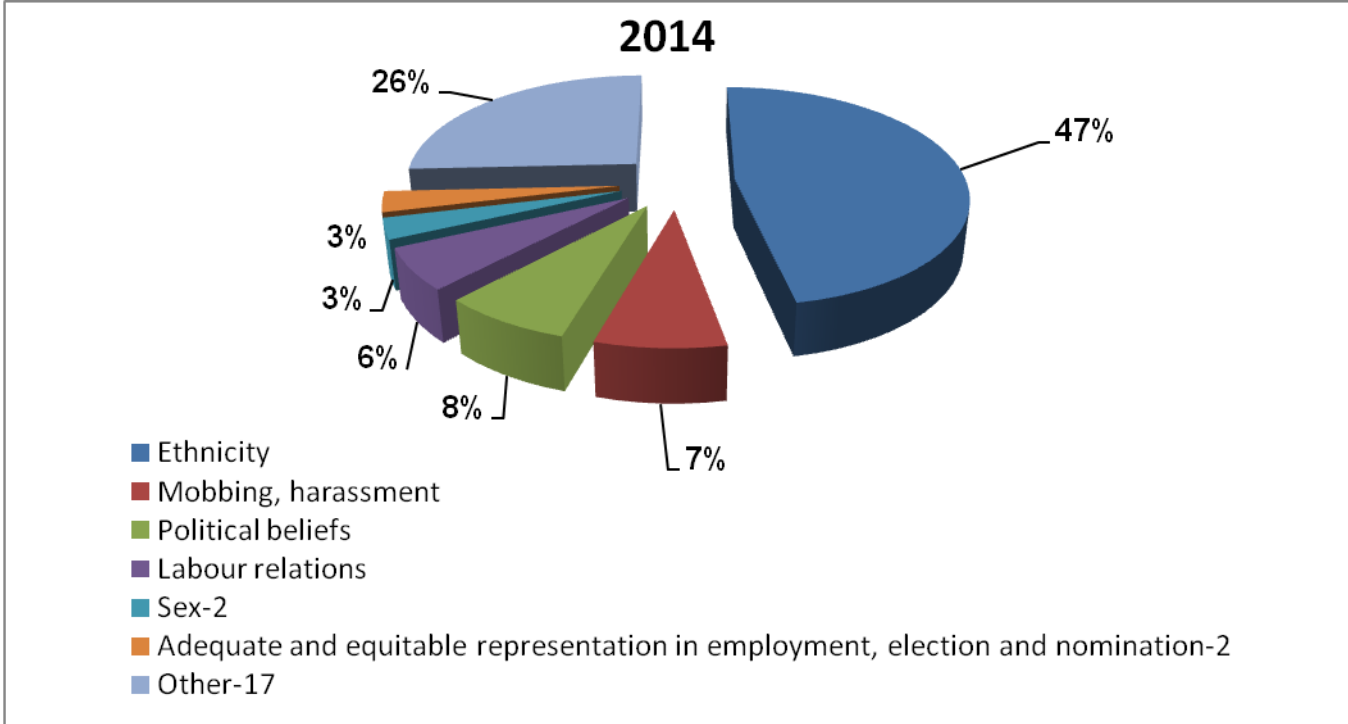
	Total number of employees	Employed by gender				LEVEL OF EDUCATION											
						High education				Higher education				Secondary education			
		M	%	F	%	M	%	F	%	M	%	F	%	M	%	F	
Managing working positions	9694	5353	55,22	4341	44,78	4515	46,6	3653	37,7	198	2,04	146	1,51	578	5,96	519	
	98342	51010	51,87	47332	48,13	16620	16,90	23452	23,9	2795	2,84	3525	3,58	24540	25	16834	
Employed in Institution/body	108036	56363	52,17	51673	47,83	21135	19,6	27105	25,1	2993	2,77	3671	3,40	25118	23,3	17373	
TOTAL NUMBER		108036				48240				6664				42491			

From the total number of employed in the institutions-108.036, 56.363 (52.17%) are men while as 51.673 (47.83) are women. In terms of managerial working positions from the table above one can conclude that the presence of women in leading working positions is 4.341 (44.78%), while as the presence of men is 5.353 (66,22%). Similar is the situation with other, non managerial positions where the presence of women is 47.332 (48.13%), while as that one of men is 51.010 (51.87%).

Having this in mind, the Ombudsman publically pointed at the need for respect of the principle for equality between men and women i.e. adequate division of working positions on the grounds of gender and level of education.

2. During 2014 the number of cases in the domain of anti-discrimination is closely to that one from 2013. Last year there were mainly cases for discrimination on the ground of ethnicity.

As it was the case last year, The Ombudsman continued to indicate to the institutions about the prevention from discrimination on all grounds, calling upon the national and international regulation for prevention from discrimination. In most of the cases the interventions of the Ombudsman were accepted. But, in the cases where the citizens complained about discrimination on ethnic ground due to the limitation of the freedom of movement and the return from the state borders, as it was the case in 2013, in 2014 too no recommendation of the Ombudsman was accepted.



In respect to the discrimination on ethnic ground, it is worth saying that even in 2014 numerous complaints were submitted by citizens of Roma and Albanian community who asked for protection from the Ombudsman for being returned from the state borders. The citizens are of opinion that they are returned due to their ethnicity only. By acting upon these cases, the Ombudsman asked for information the responsible services in the Ministry of Internal Affairs for each case separately, pointing at the prevention from discrimination on any ground, as well as prevention and limitation of the freedom of movement of the citizens, especially calling upon the European Convention for Human Freedoms and Rights and Article 2 from the Protocol 12.

The Ministry of Internal Affairs in no case did not confirm that it is about unfounded return of citizens, but it did not convince the Ombudsman that by doing this, it does not discriminate.

In this direction we would like to stress that the Ombudsman' deputy who is a member of the Roma ethnic community during a duty trip faced the same problem, the passport control at the Airport "Alexander the Great" in Skopje questioned her for the reasons of her travel outside the

Republic of Macedonia. That was not the case with her collaborator who was allowed to leave the country without problems.

Thus, through this example we can conclude that the Ministry of Internal Affairs of the Republic of Macedonia prevents the freedom of movement to citizens only because they belong to Roma or Albanian community i.e. it discriminates them and puts them in a non-equal position in comparison to the community which is in majority in the country.

In 2014 the Ombudsman submitted a separate information to the Ministry of Internal Affairs and the Government of the Republic of Macedonia where he pointed to the obligation of applying the national and international standards in respect to the guaranty of the right to free movement and prevention from discrimination in any ground with efforts to upgrade the legislation which will prevent from arbitrary adoption of decisions with oral prohibition for travel, and will ensure greater legal security of citizens in protection of their rights.

In terms of the Ombudsman activities that do not include work on complaints, representatives of the Ombudsman participated in a working group for preparation of the National action plan for implementation of the Law on protection and prevention from discrimination towards which there were active contributions with concrete remarks for its institutional adjustment and application of the activities that arise from it. Also, during 2014 the representatives of the Ombudsman participated in the preparation of the Analysis of Shortcomings in the Law on prevention and protection of discrimination prepared by the Institute for Human Rights.

Among other, it is significant to be mentioned the participation of Ombudsman representatives in several debates, seminars and workshops where the improvement of human rights and freedoms were discussed on a national level, as well as adjustment of the national regulation with the international acts which regulate this area.

In accordance with its competences and acts, during 2014 in its Annual Report the Ombudsman indicated the following conclusions:

- Unequal treatment towards citizens, members of different ethnic community in the society, signaling the existence of discrimination on ethnic ground;
- Mostly Roma and Albanians are not allowed to leave the Republic of Macedonia and they are returned from the border crossings, an act that violates their right to free movement;
- The needed level of tolerance is still missing, prejudices and barriers in the society are still present, in terms of complete functioning of the principle of non discrimination;
- The present normative for border control does not secure legal security and possibility for legal protection of citizens in case the border officer with his/her oral decision does not allow them to cross the border and leave the country.

In accordance with the stated conclusions, the Ombudsman issued the following recommendations:

- The differences among citizens, including the one on ethnic ground, should be nourished. Measures for adequate application of the standards for equality, tolerance and prevention from discrimination should be taken;
- The right to freedom of movement of all citizens should be equally respected, while as the limitation should be in accordance with the envisaged by the Constitution and the international agreements;
- Undertaking of activities for strengthening the consciousness-through educative contents and workshops;
- Upgrade of the normative for the purpose of creation of legal rules for adoption of an elaborated decision, in written form, for impermissible exit from the state which will secure legal security and further protection of citizens' rights.

In respect to the monitoring and implementation of the principle for adequate and equitable representation which is significant for the development of a democratic society, the Ombudsman as per its constitutionally guaranteed competences, in 2014 conducted a research on the level of implementation of this principle. Written requests with prepared table sheets were submitted to 1077 institutions, out of which 1062 returned their data, while as 15 institutions did not responded. For those institutions who did not respond to the Ombudsman questionnaire, the same responses as the ones from the previous year were taken into consideration.

Years	Total number of employed	Macedonians		Albanians		Turks		Roma		Serbians		Vlahs		Bosnians		Others	
		Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%
2014	108848	81387	74,8	20197	18,6	2045	1,9	1497	1,4	1689	1,6	716	0,7	482	0,4	835	0,8
2013	108078	81406	75,3	19565	18,1	1976	1,8	1365	1,3	1700	1,6	710	0,7	447	0,4	909	0,8

The data received conclude that the number of employed people is insignificantly increased in comparison to the previous year. This mainly refers to the units of the local self-government, the independent state bodies and public institutions. On the other side, in some institutions like the Ministry of Economy, Ministry of Agriculture, Forestry and Water Economy, Ministry of Labor and Social Policy, the number of employees has decreased which is due to the fact that the inspectorates are presented separately from the Ministries and represent independent state bodies.

By analyzing the data, the Ombudsman concluded that there has been an apparent progress but not qualitative and real one in terms of the principle for adequate and equitable

representation. Also, many institutions have not reached the satisfactory level of adequate and equitable representation. This conclusion is especially typical when it comes to representation of members of the communities on a managerial level, but also in representation of the members of the smaller communities in general.

The analysis led to the following Ombudsman' conclusions for 2014:

- Adequate and equitable representation of the members of all communities is not implemented with quality and in a proper manner.
- This principle is not respected especially when it comes to members of less numerous ethnic communities, as well as the managerial working positions.
- The level of representation of the members of the communities in the public prosecution offices, penitentiary correctional facilities and the public health institutions is not satisfactory.
- The Ministry of Health, the Basic Public Prosecutor's Office for Organized Crime and Corruption, the State Inspectorate for Construction and Urban Planning, the Clinique for Digestive Surgery, Faculty of Electrical Engineering and Information Technology, School of Information Science and Computer Engineering, Faculty of Medicine, the Faculty of Arts at the State University of Tetovo continue to obstruct the work of the Ombudsman by not submitting the requested data.

In accordance with the given conclusions, the Annual Report of the Ombudsman has issued the following recommendations:

- The institutions should undertake concrete measures and activities for quality and proper affirmation and implementation of the principle for adequate and equitable representation.
- Undertaking measures and activities for appropriate application of the principle for adequate and equitable representation in managerial posts, in particular referring to the smaller communities.
- With no delay the principle for adequate and equitable representation should be implemented by the institutions in respect to the members of less numerous communities
- For the purpose of monitoring the situation with the implementation of the principle for adequate and equitable representation, the practice of non delivery of data and obstruction of the Ombudsman' work should stop.

The principle of equality among men and women is guaranteed by the Constitution and the laws of the Republic of Macedonia, meaning that the country is obliged to establish politics for equal opportunities and non discrimination on grounds of gender, for which the Ombudsman in 2014 conducted a parallel survey for gender and educational structure of the employees in 1077 institutions, out of which 1060 responded. They were asked to respond in a table about

the situation on grounds of gender in their respective institutions (total number of elected and appointed persons, total number of managerial and non-managerial working posts), and a detailed information about the level of education of the employees on the grounds of gender (university education, higher education, secondary, elementary education).

	number of employed persons	LEVEL OF EDUCATION																			
		Employed by gender				University education				Higher education				Secondary education				Elementary education			
		M	%	F	%	M	%	F	%	M	%	F	%	M	%	F	%	M	%	F	%
Elected or appointed persons	2388	1318	55,2	1070	44,8	1300	54,44	1070	44,81	10	0,42			8	0,34						
Managing working posts	8766	4949	56,5	3817	43,5	4033	46,01	3098	35,34	171	1,95	147	1,68	736	8,40	561	6,4	18	0,2	2	0
Non managing working posts	97694	50572	51,8	47122	48,2	16526	16,92	23860	24,42	2738	2,8	3429	3,51	24166	24,7	16290	16,7	7259	7,4	3426	3,5
Employed in the body	108848	56839	52,2	52009	47,8	21859	20,08	28028	25,75	2919	2,68	3576	3,29	24910	22,9	16851	15,5	7277	6,7	3428	3,2
TOTAL		108848				49887				6495				41761				10705			

From the total number of 108.848 employed in the institutions, the analyses prove 56.839 men (52.22%), and 52.009 (47.78%) women. In terms of elected and appointed persons, the female population is present with 1.070 (0.98%), while as the male population 1.318 (1.21%). The ratio between men and women in the managerial positions is 4.949 (4.55%). Similar is the ratio in the non managerial positions where the presence of women is 47.122 (43.29%), while as the presence of male population is 50.572 (46.46%).

The Ombudsman concluded that in 2014 the number of employed women is lower in comparison to that one of men. Similar was the case with the previous year. Their number is also lower in the managerial working positions. Greater number of women with university degree is in administration in comparison to men, but still men outnumber women in the elected and appointed positions and in the managerial working positions.

Having in mind this situation, the Ombudsman in 2014 concluded gender inequality, pointing at the need for undertaking measures and activities for respect of the principle for equality between men and women, adequate division of the working positions on grounds of gender and level of education, especially of the managerial working positions.