



British Embassy
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OPERATIONALISATION
OF HUMAN RIGHTS



THE ROLE AND IMPACT OF INDEPENDENT INSTITUTIONS IN PROTECTING HUMAN RIGHTS

The realisation and full application of human rights to a large degree depends upon the level of protection one can receive when violations of these rights occur. When a large number of human rights violations do not reach court due to obstacles in the realisation of the right to access to justice for the most vulnerable population, the role and importance of independent institutions stands out as a key topic, especially in relation to operationalisation of human rights.

Independent institutions are *sui generis* state bodies, and their primary function can be defined as to be a control mechanism, both in regard to the implementation of concrete laws, as well as actions of other state bodies and institutions. It is that very function that separates them from other types of independent bodies such as regulatory bodies. It is clear, and also explicitly stated in the Paris Principles¹, that the precondition for independent institutions to perform their control function is that they are truly independent, namely from executive and legislative authorities, as well as from political influence. Of course, these conditions also need to be supplemented by a financial independence of national institutions for the protection of human rights.

Committee on the Rights of the Child in their General Comment no. 2 state that

National human rights institutions should be accorded such powers as are necessary to enable them to discharge their mandate effectively,²

as well as that

It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs.³

It is of crucial importance that the independence be perceived as a special degree of autonomy that independent institutions enjoy in comparison to other state bodies. When looking at independent institutions of the Republic of Serbia, it can be said that, beside providing protection from unlawful actions, they are also charged with taking measures aimed at preventing rights violations. As a result, the scope of their authority does not only amount to providing protection and investigating whether laws were violated; they also have an educational-preventive function.

Regardless of which independent institution we talk about, it is unquestionable that the authority of the independent body that ensures that decisions are being processed without repressive measures must prevail in each individual case. The degree of trust in independent institutions and their authority is directly related to the society's human rights culture.

On the other hand, in order to gain and maintain authority, independent institutions must base their work on the principle of transparency, and have a standardized legal practice, and a base of experts from the field they operate in. Their focus must be on citizens, especially those citizens coming from particularly vulnerable groups.

Considering these circumstances, it is clear that there has to be not only a proclaimed political will, but a real one, that will provide guarantees for the independent working of independent institutions, if they are to work at all. In that sense, the independence of institutions for the protection of human rights is conditioned by the actions of the executive and legislative government. That is the reason why these two branches of government are always considered most responsible in cases of violations of the independence of institutions in charge of human rights protection.

1 Paris Principles, Principles that are concerned with the status of national institutions, available at: <<https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>>

2 UN Committee on the Rights of the Child (CRC), General comment No. 2 (2002): *The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, paragraph 9, 15 November 2002, CRC/GC/2002/2, available at: <https://www.refworld.org/docid/4538834e4.html>

3 Ibid, paragraph 26