

High level Seminar on Freedom of expression - role and powers of National Human Rights Institutions (NHRIs) and other national mechanisms

Session 3 - NHRIs and the Council of Europe – mutual engagement for the benefit of all

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Presentation – outline

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1. First of all – thank you very much for inviting me to take the floor during this seminar. I will speak here on behalf of the Commissioner for Human Rights of Poland – dr Adam Bodnar.
2. Let me first share some general remarks. I will talk obviously from our Polish perspective which at the moment is not very optimistic regarding the level of human rights protection, including freedom of speech and media freedom.
General remark: 35 years ago – I was 5 then - on 13th Dec 1981 the authoritarian communist government of Poland drastically restricted normal life by introducing martial law in an attempt to crush political opposition. Obviously freedom of expression, freedom of speech and freedom of assemblies were drastically limited if not abolished at all.
Some people, some politicians are of the opinion that the present situation in Poland is similar – that the present government is going in the same direction. I am absolutely far from such claims, however, the situation regarding fundamental freedoms in Poland is alarming – this is the result of the general situation. It is clear that the rule of law is under serious threat at the moment in Poland (just refer to the yesterday's debate in the European Parliament about Poland).
As the example let me mention the amendment to the law on assemblies which was finally adopted two days ago (on the anniversary of the martial law by the way – very symbolic) and which introduces far-reaching restrictions regarding the right to counter-demonstration which also affects the freedom of expression.
3. The Polish Commissioner for Human Rights (in order to distinguish it from the CoE Commissioner for Human Rights I will use the name Ombudsman) is visibly involved at the various arenas of international cooperation in the field of human rights protection, also in the field of freedom of expression.
This obligation is included in the law on the Ombudsman. This is also the general necessity at the moment – since the Ombudsman cannot count on internal, national

institutions, such as the Constitutional Court (which has been in fact finally destroyed in Dec 2016), he must turn to the international organs. At the European level, the involvement of the Ombudsman takes place inter alia in the form of:

- personal contacts with the CoE officials, including the Secretary General of the Council of Europe and naturally the Commissioner for Human Rights;
- taking part in seminars, conferences, cooperation via ENNHRI,
- information provided to the Council of Europe – in the form of reports and interventions.

This is what we do on the daily basis.

Moreover, in the reverse direction, the Ombudsman is responsible for:

- dissemination of information on the Council of Europe standards – during informal meetings (for example two weeks ago we organised the debate with all interested stakeholders about Facebook and hate speech on Facebook),
- applying to public authorities reminding about obligations stemming from the CoE standards – every day some official papers are directed to the public institutions and in most of them European standards are invoked;
- promoting soft-law and other documents prepared by the various CoE bodies not only in official statements, but also very informally during meetings, lectures, interviews etc.

4. To illustrate some ideas for cooperation, as well as possible support by the Council of Europe, several examples of cases from the latest practice of the Ombudsman can be presented here.

Due to limited time I will concentrate on the media freedom and the latest developments. The fight for free expression concentrates on the relationship between the citizens and political powers: so that the media should be able to openly criticise political powers and the latter should not interfere.

Just few background information:

- On 30 Dec 2015 an Act amending the Polish Radio and Television Broadcasting Act was rushed through both houses of the parliament – 3 days for both houses, no public consultation, no expertise, just technical voting, published in the official journal and then the law entered into force.
- It introduced major changes to the governance framework of the public radio and television companies and it created the possibility to change all the managers of public radio and TV and then – as the result - the process of dismissals of journalists started – unjustified, with no reasoning at all or accusing of lobbying against present managers (at the moment the Ombudsman has the meeting with some fired journalists). This law also started process of

making public media only pro-governmental (just to mention that the Ombudsman is not invited to public media at all and the public is not informed about any actions by Ombudsman or even if – than he is portrayed in the negative light (long to talk about it)

The adoption of this act has raised many concerns within several European institutions, as well as the Ombudsman, since it could (and in fact it did) adversely affect the independence of public media service in Poland.

The Ombudsman decided to lodge the application to the Constitutional Tribunal regarding the law of 30 Dec 2015. Just to close the story – the final judgment was issued two days ago (again – 13 December) and some of the provisions, regarding the freedom of speech, were found unconstitutional.

I don't want to go into details of this particular law, but on the basis of this some remarks can be given regarding the framework of cooperation/engagement between CoE and the Ombudsman.

First of all:

- CoE standards served as the basis of the criticism and the application to the Constitutional Court - not only ECHR jurisprudence, but also recommendations by the Committee of Ministers (of 1996 (10) or 2002 (10) and many others or reports by the Secretary General of the Council of Europe – all possible sources were used for the analyses and were also referred to in the motion to the Constitutional Court and during the hearing in the Court;
- Ombudsman and the experts from the Office cooperated with international bodies, including exchange of views with the Committee on Culture, Science, Education and Media of the CoE Parliamentary Assembly (for example I was interviewed via Skype by the members of the committee, giving evidence for the report);
- some other instruments can be used – such as alert system – CoE Platform to promote the protection of journalism and safety of journalists, which serves us also as the source of collected statements...
- formal steps taken by the officials of the Council of Europe are more than welcomed - Letter from the CoE Secretary General to the President of Poland inviting to reconsider the media law (with no result), but also

expert panels inviting members of government to inform and explain their position

- Obviously Ombudsman exchanges information with the Commissioner for Human Rights Niels Muiznieks – and the support is given in the form of statements addressed to the Polish authorities;
- and finally – this is connected with the general situation around the Constitutional Court. Final judgment was issued by the Court on 13th Dec.

5. Major points in the cooperation:

- all kind of support from the CoE is necessary;
- cooperation with the Council of Europe further progressed through the good cooperation with the Commissioner for Human Rights. Strong relationship is to the advantage of both Ombudsman and the Commissioner. The role of this support – the possibility to act quickly, to come to Poland, cannot be underestimated and is very much welcomed;
- what we really need at the moment is the strong support – not only in the form of another expertise or opinion, but the real presence in Poland – coming to Poland, presenting those analyses, defending them – so more active role in this field. The problem is that opinions are not taken very seriously by the government and the public is not informed about the statements of the international bodies. International bodies should change their actions from necessary expertise to more active and more visible support;
- The Ombudsman is well informed and aware of the recent European developments and monitoring procedures concerning Poland and reacts to the findings and results of the European institutions competent in the area of human rights. However, support from the international institutions is more than necessary and welcomed in the present situation.