

CONDITIONS FOR EFFECTIVE INTERVENTION OF OMBUDSMEN IN ANTI-DISCRIMINATION COURT PROCEEDINGS

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ABSTRACT

It is beyond any doubt that victims of human rights violations are rarely in position to initiate court proceedings fighting systematic discrimination themselves, which makes the role of human rights institutions indispensable. This specific mandate gives rise to numerous questions, such as: to what extent state institution takes the role of the legal representative, what capacities should it possess, on what basis it selects the cases meriting court intervention, is court intervention equally suitable in all areas of human rights protection and which analyzed

model from Europe or wider has proved to be the most effective? Article offers analysis of court interventions in federal states with complex government structure and multiple institutions mandated with human rights protection, be it Ombudsmen Institution or Equality Body, court interventions in states with single human rights institution, comparative practice present in various European states, as well as interventions of human rights bodies before European tribunals. Author outlines the legal framework, human resources, and administrative structure that need to be provided, so that court interventions would have the desired effect and generate positive changes. In this process, it is of paramount importance to respect existing legal traditions and intrinsic practices, which proved their practical applicability over time, while any attempt to use legal transplants, with a goal of hastily unification of national legal orders and imposing transnational jurisdiction, can only produce confusion and countereffects.

Keywords: Discrimination; Equality bodies; Judicial protection; Third party interventions.

INTRODUCTION

Duty of human rights institutions to intervene in court proceedings stems from the obligation to provide aid to victims of human rights abuse, but also from the obligation to enforce national laws and constitutional principles that protect basic rights and freedoms of citizens. It is established belief that modern concept of court intervention originates from the concept of the friend of the court (*Amicus Curiae*), which existed in Roman law and

was frequently used in the countries belonging to Anglo-Saxon legal tradition. In countries associated with continental European law, another similar ancient concept established itself in the form of collective action (*Actio Popularis*), which, according to its original meaning, refers to the possibility of an individual to initiate a court proceeding in public interest.

Today, these institutes or their derivatives are used in different legal systems across the world and in international tribunals, but there is no unique model that would be equally applicable in each context. Also, possibilities of institutions for protection of human rights to intervene in court proceedings are not equally compatible with various legal cultures and traditions. Presented research results clearly indicate that abovementioned institutes do not exist in all legal systems, as the level of their practical use and effectiveness is also influenced by linguistic dilemmas and that decision whether any institution may intervene on behalf of the victim sometimes depends on the court and not only on the institution for protection of human rights. It is beyond any doubt that victims rarely have the capacity to initiate court proceedings themselves, which makes the role of the human rights institutions indispensable. It is however necessary to clarify what exactly this role entails, should the state institution take on the role of legal representative, what kind of capacities it should possess, how it should select cases meriting intervention, whether court intervention is equally useful in all areas of human rights protection and, finally, which touches the very essence of this modest research, which of the existing models shows the best results.

Complexity and character of this research, content of the hypothesis and declared goals determine the combination of methods used in developing this work, such as legal (dogmatic or normative) method, analytical method applied to scientific and practical literature, case study, comparative method as well as general methods of logical reasoning such as synthesis, induction, abstraction and generalization when it comes to formulation of conclusion.

Mechanisms of court interventions in countries with complex or federal form of government are taken as starting research topic, where there are usually several institutions for protection of human rights, which includes specialized equality bodies. Further, the very essence of this competence is placed under scrutiny because there are different levels of engagement, which sometimes merely involve possibility of delivering expert opinion without formally acquiring the status of the party to the proceedings, while at other times they entail initiating and participating at court proceedings which also includes procedures on legal remedies as well as authority to represent parties before the court or other competent tribunal.

Finally, this Article points to the legal, administrative and financial framework that needs to be in place in order to have effective mechanism of court interventions which can produce real change. In process of applying different models and analyzing their effectiveness it is necessary to respect inherent legal traditions and authentic legal institutes which demonstrated their practical applicability during the course of years, while any attempt to use legal transplants thorough which national legal orders are hastily being unified and promoted above the boundaries of national jurisdictions can only create confusion and counter-effects. The purpose of this analysis is, in spite of substantial differences between different legal systems, to present conclusions, best practices and recommendations that can serve as guidance to the courts, legislatures, governments and independent institutions for protection of human rights, in case they have ambition to establish or utilize judicial interventions.

United States

Intervention in the court proceedings for protection from discrimination in the United States of America is conducted through administrative disputes, most frequently in the area of realization of voting rights, through strategic litigation in discrimination cases regardless of discrimination basis, which is usually result

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of legal or by-legal act or practice of public authorities and through submissions in the form of Amicus Curiae briefs in all legal spheres, including criminal law, criminal procedure law, enforcement procedure in civil matters, conditions of execution of criminal sanctions and sentencing. Whole spectrum of government agencies is involved in court interventions, making the American system one of the most versatile and most complex, but also probably one of the most effective in terms of using this possibility.

Role of the equality body at the federal level is entrusted upon the U.S. Commission on Civil Rights with headquarters in Washington D.C. and six regional offices: Washington DC, Atlanta, Chicago, Kansas City, Denver and Los Angeles. Commission is established by the Civil Rights Act of 1957 and it reports to the U.S. Congress for its performance. Commission is established as an independent and politically neutral federal agency with mandate to conduct investigations, apply and enforce federal statutes and promote policies in the field of human rights protection, to conduct research and analysis of topics of outmost significance for the work of federal government and to present results of such analysis to the public and legislative bodies. Commission investigates allegations of voting rights infractions, allegations of discrimination based on race, color of the skin, religion, sex, age, disability, national origin and human rights abuse by the law enforcement agencies. This includes conduct of the police authorities and other security agencies, conduct of the administrative, judicial and other government institutions, as well as treatment of individuals deprived of liberty. In order to achieve its mission, the Commission is authorized to request access to the documents and databases, to question witnesses, to organize public hearings, to issue public statements, to forward citizens' complaints to the authorities competent for protection of human rights at federal and local level, to follow and enforce implementation of laws which guarantee equality of citizens and to publish reports and studies on human rights topics, which

usually contain recommendations and advice to lawmakers.

Commission intervenes in the administrative and court proceedings through the Office of General Counsel, through participation in the civil proceedings by delivering expert opinions in the capacity of interested third party. In order to collect information about cases requiring court intervention, but also to conduct thorough investigation and collect necessary evidence, Commission has established Advisory Committees in each of 50 states and in District of Columbia. Committees are composed of residents of the state in question, who do not receive compensation for their work and their duty is to report to the Commission in writing, on allegations or findings related to voting rights infractions or discrimination on any of the abovementioned grounds, to deliver opinions in cases falling under the Commission's jurisdiction that have to do with the state of human rights protection in a given state during reporting to the President or the Congress, to receive complaints from the citizens, public officials and representatives of public and private organizations, to deliver their opinions and analysis upon the request of the Commission and to attend public hearings or gatherings relevant to the work of the Commission.

Based on such investigative mechanisms, Commission most often intervened in court proceedings related to general topics significant for the country as a whole, such as the questions of gender equality (United States Court of Appeals [USCA], 2017), questions of conditions for registration of national minorities in exercising their voting rights (United States Supreme Court [USSC], 2013; Appellate Court of the Fourth Circuit, 2016), questions of realization of rights of families whose members have different nationalities (USSC, 1950), as well as questions of affirmative action in the field of education (USSC, 2013).

Having in mind complex administrative system and the need for specialization (geographical and thematic) for the specific areas which are susceptible to violation of

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principle of citizens' equality, Commission primarily has a coordinating role between institutions of different levels of government. In line with that, it has a duty to report to the central government at least once a year, on the state of human rights protection and results of undertaken activities, and, where applicable, to propose legislative change.

One of the federal institutions that most frequently uses possibility to take active role in court proceedings and to file anti-discrimination claims is the United States Department of Justice, which has specialized offices as part of its organizational structure, called Civil Rights Sections, which are divided by areas of protected rights: equal opportunities in education, workers' rights, housing, rights of immigrants, disabilities rights, rights of prisoners, persons in custody and minors deprived of liberty, and citizens' voting rights (United States Department of Justice [USDJ], 2018). The highest number of court interventions Department had in the field of education and particularly related to question of school desegregation, where the annual budget for these purposes was earmarked in the range of two to six million dollars (United State Commission on Civil Rights [USCCR], 2018), while the number of permanently employed staff was around 30 (USCCR, 2018), in the field of housing, where between 20 and 40 cases are opened on annual basis with one half resulting in strategic litigation or out of court settlement¹, as well as in the field of equal opportunities in employment where 229 court cases have been initiated between years 1998 and 2017 (USDJ, 2018).

It is worth noting that Civil Rights Sections takes active role in the court processes through organizing expert discussions and trainings for judges, related

to the questions that bear direct significance on realization of fundamental human rights, such as conversion of monetary fine into prison sentence for the low-income defendants.

It is equally symptomatic that the term used to describe the tool which allows intervention in the court proceedings is "enforcement" of law, statute or any other act, which leads to the conclusion that the court intervention is daily, understood and regular activity and therefore at the very heart of the functioning of the national institutions for protection of human rights.

Complex federal system, with virtually unlimited number and types of practical needs for court intervention for the purpose of ensuring equality of citizens, in a country where the power of court ruling has a status not only of the source of law but also of the corrective of the legislative power, requires not only comprehensive, but also flexible and decentralized mechanism, which is adequately equipped and financed at the same time, and whose reactions are performed in timely manner. In context of globalization and close international cooperation, this system, regardless of its particularities, had profound effect on formation of best legal practices beyond its borders, together with another representative system of Anglo-Saxon legal tradition, where many of the mentioned institutes originate from.

England

Although for several decades equality protection in Great Britain was under mandate of several specialized bodies, Equality Act of 2006 established single Equality and Human Rights Commission as central and independent public institution with authority to promote and enforce equality and anti-discrimination legislation on the territory of England, Scotland and Wales (The Equality and Human Rights Commission [EHRC], 2018). Commission was established by overtaking and merging of Commission for racial equality, Commission on equal opportunities and Commission for protection of persons with disabilities. Commission also covers other

¹For example, during 2016, there were 18 cases opened to address lack of equal opportunities to raise housing loans for the members coming from minorities' communities. Out of that number, seven cases resulted in strategic litigation and the total damages awarded amounted to 37 million dollars. United States Department of Justice, The Attorney General's 2016 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976, last accessed on 11.01.2018. at: <https://www.justice.gov/crt/page/file/996791/download>

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grounds of discrimination, such as age, sexual orientation, religion or belief. Seat of the Commission is in London, branch offices are located in Manchester, Glasgow and Cardiff and it is financed from public budget through Ministry of Education.

In its dealings with the courts, Commission has a mandate to provide legal aid to the victims of discrimination, to intervene in ongoing court proceedings or to initiate new ones, including the use of legal remedies and proceedings questioning constitutionality of legislation and to request issuing temporary measures from the courts (Equality Act, 2006).

These possibilities are most frequently used in cases referring to equal opportunity in employment, equal access to goods, institutions and services and in the field of housing and education (EHRC, 2018). Average annual budget of the Commission in the period between 2007 and 2017 ranges from 20 to 60 million Euros (EHRC, 2018), there are between 200 and 400 staff employed in the field of equality protection (EQUINET, Equality and Human Rights, 2018), small number of cases of general importance are selected annually for strategic litigation (EHRC, 2019), in accordance with adopted Strategic Litigation Policy (Equality and Human Rights Commission, 2015), with rate of success in the range of 60% to 80% (EHRC, 2018).

Out of large number of cases brought to the attention of the Commission, authority for court intervention is used when it is necessary to effectuate positive change of practice, when there is a need to clarify specific legal regulation, when it is desired to nominate the questions of significant importance for priority resolution or to challenge policies or practices which can result in significant inequalities within commercial or other public activity.

Work of the Commission attracted international attention in case where respondent was British National Party (BNP), which adopted a Statute defining that membership in party is open to individuals of "originally white and related ethnic groups." Commission sought revision of the Statute after which the respondent offered to

reinterpret the term "white" on its official web page. Convinced that even after interpretation, the Statute would leave a possibility for discrimination of potential members based on race, Commission initiated the process for protection from discrimination against the president of the Party and two high ranking officials before the Central District Court in London. The Court accepted the Commission's stand and ordered that Statute be changed in accordance with Clause 4 of the Equality Act, which was duly implemented (The Guardian, 2018).

Europe

Although national institutions for protection of equality are performing their duties based on the same legal framework of the European Union, their work is organized differently, they have different mandate and their mission is fulfilled within different legal systems. European Union directives (Council Directive, 2000/78/EC; Council Directive, 2004/113/EC) request from the states to establish body or bodies for protection and promotion of the principle of equality, that these bodies have mandate to assist victims of discrimination, that they are authorized to conduct independent investigations, to issue recommendations and publish reports on discrimination. Nature and the scope of assistance that should be offered to victims of discrimination are not, however, specified. Recommendations of the European Commission against Racism and Intolerance (ECRI), although not binding, are an attempt of codification of the best practices of the equality bodies and interpretation of the aforementioned Directives. In ECRI General Policy Recommendation on specialized bodies for combating racism, xenophobia, anti-Semitism and intolerance at the national level, states are requested to allow equality bodies to „bring cases of individual and structural discrimination or intolerance in the equality body's own name before institutions, adjudicatory bodies and the courts“, (ERCI, 1997), in accordance with national legal system.

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In interpretation of EU Directives, European Court of Justice stated in the case *Rewe-Zentral finanz*:

“In absence of the rules to the [European] Community on this question, it is up to domestic legal system of each member state to establish court jurisdiction and prescribe procedural requirements for initiation and participation in proceedings with a goal of protecting rights of citizens, which directly originate from the Community law.” (European Court of Justice, 1976).

Using possibility of court intervention or *Amicus Curiae* briefs is not, however, widely spread phenomenon, for which there are several explanations. Some of the legal systems do not recognize this kind of competence in any form. Some equality bodies were only recently established and parameters of their mandates or the governing laws are not tested in practice. Generally, it appears that the concept of court intervention more strongly resonates in member states which are following common law system, although it is not exclusively reserved for those countries.

At the level of European Union, equality bodies may forward cases for decision to specialized tribunals² or initiate court proceedings in cases of discrimination.³ Austrian Ombudsmen for Equality can ask the court to issue declaratory judgment in labor disputes or in civil cases when it disagrees with the decision of the Commission for Equal Treatment or when the responsible party does not agree with the findings of the Commission. Danish Institute for Human Rights as well as Public Attorney of Estonia (who also performs the role of Ombudsmen since 1999) provide support to victims of discrimination in the process of receiving legal aid, when they deem it necessary. In administrative and civil disputes in France, parties to the dispute or the court itself may

request that Commission for Equality and Elimination of Discrimination intervenes by delivering the files containing results of the investigation and its findings on the subject matter of the complaint, or, if the case was not the subject of deliberation before the Commission, to deliver its own views on the factual basis and interpretation of law to the court. In criminal matters, French Commission may intervene on its own initiative. Other equality bodies issue legally binding decisions⁴, impose fines that can be challenged at the court⁵ or have explicitly defined advisory role in the capacity of *Amicus Curiae*.⁶ Certain equality bodies that may initiate court proceedings also may represent victims of discrimination at the court.⁷ When equality body initiates court proceeding on behalf of the victim, that turns him from neutral to interested party which undoubtedly represents the interests of only one side of the dispute i.e. victim of the alleged discrimination. This change is usually followed by reassignment of the case to the different official or different department within same equality body.

Although many equality bodies have authority to intervene in court proceedings in cases of discrimination, only few⁸ adopted detailed criteria used to decide which cases require intervention. Some of the most quoted reasons are: potential benefit to the future victims of discrimination, enforcement of statute or other act, ensuring practical equality, interpretation of existing legal provisions, interests of the victim or

⁴Bulgaria (Commission for protection from discrimination); Cyprus (Ombudsmen); Estonia (Public Attorney and Commission for equality and equal treatment); Finland (National Tribunal for Discrimination); Hungary (Equal Treatment Body); Iceland (Committee for Appeals on gender equality); Ireland (Equality Tribunal); Norway (Tribunal for equality and anti-discrimination) and Romania (National Council for elimination of discrimination).

⁵Latvia, Romania, Slovenia, Bulgaria, Estonia, Ireland, Norway

⁶Bulgaria, Finland, France, Ireland, Latvia, Lithuania, Norway, Romania, Slovakia, Slovenia and United Kingdom

⁷Ireland (Equality Body), Portugal (High Commissioner for Immigration and Intercultural Dialogue), Slovakia, Sweden and United Kingdom

⁸ Belgium, Ireland (Equality Body), Sweden and United Kingdom

²This is the case with Austrian Ombudsman for Equality, Ombudsman for Equality and Ombudsman for Minorities of Finland, Center for Gender Equality of Iceland and Equality Body of Ireland

³Belgium, Finland, France, Ireland, Malta, Slovakia, Sweden and United Kingdom

the grieving party and potentially corrective influence on their situation, striking adequate balance between different forms of discrimination and resources which are at disposal of equality bodies for such purposes and cooperation with other actors that represent victims of discrimination in the court. In applying these criteria an estimate is made what is the individual benefit for the victim, such as material compensation and on the other hand what is the general interest for improving legal certainty and preventing discrimination in particularly susceptible areas. These cases play a key role in the process of implementation of laws; they contribute to the positive developments concerning discriminatory practices and raise awareness about seriousness, damaging effect and the need for sanction. Those bodies that adopted guidelines for selection of cases meriting court intervention are usually the ones that most often engage in such activity.

It seems, however, that there is a substantial overlap or even confusion between concepts of intervening party, interested third party and friend of the court, depending on the legal culture, tradition and accepted legal terminology.⁹ Due to different interpretations and ambiguities in applying mentioned concepts, but also not fully defined role of national institutions for protection of human rights, it is necessary to analyze practice of European courts in cases for protection from discrimination where those bodies have intervened.

INTERVENTION OF OMBUDSMEN BEFORE EUROPEAN COURT OF JUSTICE

Court of Justice of European Union (CJEU) is the highest judicial body mandated with interpretation of the agreements of the European Union and assessing legality of the acts of the European institutions. Court plays a key role in legal

integration of European Union, through deliberating and deciding on limitations of the authorities of the Union, and in formation and interpretation of its core principles. By virtue of that, Court frequently addressed the question of the interpretation of Directives that treat the question of citizens' equality and indirectly the question of role and limitations of authority of the equality bodies in court proceedings.

In *Webb v Emo Air Cargo* case, while determining the obligation of state authorities, Court decided that Directive on gender equality should be interpreted with a goal of achieving practical and not only formal equality (CJEU, 1995), while in *Kalanke v Freie Hansestadt Bremen* case Court determined that system of positive obligations on the part of equality bodies is necessary step towards implementation of principle of equal opportunities, required by the Directive on gender equality (CJEU, 1993). Court therefore places duty on states to undertake positive measures towards implementation of the Directives, which undoubtedly encompasses possibility of court intervention before national courts. This, however, does not apply to the right of equality bodies to initiate procedure before the Court of Justice of the European Union.

Article 267 of the Treaty of the functioning of the European Union provides for the right of national courts or tribunals to seek interpretation of the agreement or acts of the institutions, bodies, services or agencies of the Union from the European Court, when the resolution of such question is needed in order to reach a decision. It is however clear that rules regulating the functioning of the Court do not leave the same possibility for the national equality bodies, even concerning questions of interpretation or implementation of the equality directives. Such reasoning is confirmed by the case law of the European Court in *Valeri Hariev Belov v CHEZ Elektro Bulgaria AD and Others* (CJEU, 2013), where the request of Commission for protection from discrimination of Bulgaria for preliminary opinion was deemed unacceptable by the Court. In explanation,

⁹For example, National Center for Human Rights of Slovakia can submit "expert opinion" to the court on the matters of equality. Judging by the content of this authority, it is strikingly similar to the concept of *Amicus Curiae* from common law jurisdictions.

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the Court reasoned that one of the key principles guiding the acceptability assessment is that the right of certain body to forward the case to the European Court of Justice for preliminary opinion is solely the question of European and not national law.

In that context, Court examines whether the body was established by law, whether it is permanent, whether it has compulsory jurisdiction, whether there is adversary procedure (*inter partes*), whether it applies laws in reaching the final decision and whether such body is independent. Besides all of the above-mentioned, it is necessary to determine whether there is ongoing court proceeding and that the raised question is the subject of the judicial deliberation (CJEU, 2013).

Situation is somewhat different when it comes to right to make submissions in the capacity of interested expert party, without participating in the process itself. Although existing rules of the Court do not explicitly allow this possibility for the equality bodies or any other third side for that matter, member states as well as European Commission have the right to submit written observations in ongoing proceedings. Intervention in the proceedings before the European Court can therefore be indirectly achieved in the cases where the national equality body previously participated at the national level. This opportunity was used by several European equality bodies (Belgium Center for Equal Opportunities and Combat against Racism, 2007; Equality and Human Rights Commission for Great Britain, 2006, 2007; Commission for Equality of Northern Ireland, 1984, 1993; Ombudsmen of Sweden, 1998), while some of these cases had profound effect on the development of the European anti-discrimination law.¹⁰

¹⁰In case C-222/84 (*Marguerite Johnston v. Chief Constable of the Royal Ulster Constabulary*), European Court of Justice determined that „depriving the appellant of the possibility to claim that he is the victim of discrimination because of the unequal treatment by the court represents violation of the law of the European Union“; in case C-303/06 (*Coleman v. Attridge Law*), Court has established that prohibition of discrimination includes discrimination on the bases of the perceived association with a group, while in the case C-54/07 (*Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v. Firma Feryn NV*), Court has

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INTERVENTION OF OMBUDSMEN BEFORE EUROPEAN COURT OF HUMAN RIGHTS IN STRASBOURG

Unlike Court of Justice of the European Union, European Court of Human Rights (ECHR) in Strasbourg not only allows participation of the institutions for protection of human rights in the capacity of interested third party, but also calls for such intervention when it can be beneficial for reaching the decision.

Before all, it should be noted that national institutions for protection of human rights cannot initiate the process before the European Court of Human Rights on behalf of the victim, because they are prevented from doing so by the condition set in Article 34 of the European Convention of Human Rights. Although some authors advocate for such possibility (De Beco, 2009), recent meetings of the Council of Europe state representatives at the highest level indicate that there is no support for such changes in system of human rights protection set by the Convention (Buyse, 2012).

Furthermore, national institutions for protection of human rights, although established by the state and independent from other branches of government, cannot address the Court on their own behalf for the alleged violation of rights guaranteed by the Convention, that are committed by the state. Finally, practice of the Court is unambiguous with regard to acceptability of collective suits (*Actio Popularis*) where the appellant is organization or association whose interests are infringed, but who are not direct victims of the state action. In case *Aksu v. Turkey*, Court underlined that „therefore, existing of the victim who is directly affected by the alleged violation of the right from the Convention is necessary condition for setting the Convention protection mechanism in motion, although this condition should not be interpreted in rigid and inflexible way“, (European Court of Human Rights [ECHR], 2012).

Unlike mentioned limitations, Article 36 of the European Convention of Human

established that the act of discrimination without witnesses can still represent discrimination according to the principles that regulate proving of discrimination.

Rights allows participation of third parties in several ways:

1. High Contracting Party whose citizen appealed to the Court may submit written observations and take part in the deliberation of the cases before the Chamber or Grand Chamber.
2. In the interest of reaching the most informed decision, President of the Court may invite High Contracting Party which is not party to the dispute or any other interested party which is not the appellant, to make written submissions or to take part in the discussion.
3. Council of Europe Commissioner for Human Rights may send a written submission and take part in the discussion of cases.

Cited provision therefore allows interventions of Ombudsmen upon request from the Court or through delivering submissions to the High Commissioner for Human Rights of the Council of Europe. The advantage of the second option is that the Commissioner has a right to intervene in any case, while participation of Ombudsmen can be highly beneficial in order to have better understanding of the situation in the responding state. For that reason, Commissioner established liaison office with national institutions for protection of human rights, with the exact goal of strengthening cooperation and coordinating exchange of information (De Beco, 2009). First option, according to which national institutions seek permission from to Court to intervene, entails the risk that such request is denied having in mind that the Court receives more demands for intervention that it can approve and it makes selection based on their relevance for decision making in the case. In reality, however, national institutions for protection of human rights are usually granted permission to intervene, not only because the Court is generally open for interventions but also because the fact that national institutions are deeply involved in domestic system for protection of human rights whose functioning the Court is examining (Harris, O'Boyle, Beats &

Buckley, 2009). Furthermore, it can be argued that the legitimacy of their interventions is greater due to their independence, when compared to non-governmental organizations which are usually guided by very specific interests.

Interventions of national institutions for protection of human rights before the European Court in Strasbourg in last few decades have not been numerous, but their number is greater every year and they certainly represent positive development of the practice in application of the Convention. These interventions helped the Court to reach some important decisions, such as the judgment related to the right of expression of confession in the context of wearing appropriate uniform for flight attendants employed by the private British carrier (ECHR, 2013), judgment establishing that the sexual molestation of the child amounts to torture, inhumane and degrading treatment or punishment, prohibited by Article 3 of the Convention (ECHR, 2014), judgment concerning the right of Iraqi citizens who were deported from one of the member states to Iraq, where they can be subjected to capital punishment (ECHR, 2010), judgment addressing the issue of sterilization without consent (ECHR, 2012), or judgment dealing with question of involuntary admission to psychiatric institution and unjust procedure of appointment of custodian (ECHR, 2012).

From the perspective of the Court, national institutions for protection of human rights are valuable source of evidence and information, while from the perspective of the states signatories of the Convention, activities of these institutions make significant contribution to raising awareness of importance and effectiveness of the human rights protection mechanisms in general. Described practice follows Paris principles which require that the national institutions for protection of human rights cooperate with regional mechanisms for protection of human rights. Supporting the work of the Court from the level of national jurisdiction, national institutions contribute to the effectiveness of the European system for protection of human rights and increase legitimacy of the Court decisions, while

offered assistance helps with reduction of backlog of cases at the same time.

CONCLUSION

Judicial proceedings generally represent one of the most important and most effective ways to promote and ensure application of legal norms, because court decision in particular case can have far-reaching legal and social consequences. Having in mind the fact that institutions mandated with human rights protection also have a duty to promote and enforce human rights law it is beyond any doubt that they should engage in activities that ensure full implementation of these laws, which includes possibility for judicial intervention. There is internationally recognized duty of national courts to interpret domestic legislation in light of international standards formulated in the conventions, directives and case law. On the other hand, it would hard to imagine that one institution which promotes protection of citizens' rights does not have an authority to seek implementation of the core human rights principles by judicial intervention. Intention of High Contracting Parties, presented comparative practice of the national human rights institutions and interpretation of international conventions and European directives by regional courts, unequivocally lead to such conclusion.

In order for institutions for protection of human rights to perform this function at all, it is necessary for the state not only to abstain from erecting barriers or administrative burdens that would limit such possibility, but to take proactive role including securing adequate capacities for the stated purpose. This primarily refers to financial and human resources, that need to be secured taking into account many factors such as the caseload, level of implementation and realization of citizens' rights even without intervention of competent bodies, state of human rights in specified fields which are particularly susceptible to discrimination or status of especially vulnerable groups in any given society or in particular period of time, possibilities of courts to influence positive

changes in society through its decisions on selected topics, as well as neutral factors such as population size, budget and existing capacities for protection of human rights. Further, internal structure of human rights bodies must be modified to accommodate the mandate for judicial intervention since analyzed models point towards conclusion that it is usually necessary to establish separate department whose functioning is separated from functioning of the departments that investigate citizens' complaints. Such separate department should be primarily focused on monitoring state of human rights in selected fields, litigation, filing appeals and cooperation with other relevant institutions, mainly judicial and non-governmental organizations. Such division and specialization of functions is especially important because of the fact that institutions for protection of human rights by default act in neutral manner when investigating citizens' complaints, by according due attention to the arguments coming from both sides and reaching final decision in accordance with applicable laws, while judicial intervention entails completely different operation modality, representing the interests and arguments of only one side and having favorable outcome of the process as the only goal. Equally, judicial interventions of the bodies without adequate capacities can only cause counter-effects, not only because of the increased possibility for unfavorable outcome of judicial proceedings but also because of potentially aiding general culture of impunity, allowing for lack of sanctions for the responsible party and dissuading victims of human rights abuse from seeking material and moral satisfaction.

Finally, for efficient participation of bodies mandated with human rights protection in judicial proceedings, it is necessary for the courts to be open and informed to acknowledge this type of competence and to give due regard to such interventions insofar as they represent findings of competent authority on the questions of their expertise. Guiding rationale for all responsible branches of government is the fact that citizens rarely

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decide to initiate court proceedings themselves, since they are time consuming, exhausting and financially demanding, while strategic focusing of resources on individual court case can effectuate substantial changes in general public interest.

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