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SECTION 32. Jurisprudence.

THE INTERNATIONAL AND NATIONAL HUMAN RIGHTS BODIES: COOPERATION PRACTICE AND IMPLEMENTATION OF THE INTERNATIONAL HUMAN RIGHTS LAW

Abstract: *The article examines areas of cooperation between United Nations human rights treaty bodies and national human rights institutions. A review of a broad range of options for complementary activities between monitoring institutions at the national and the international level shows an enormous potential for improved implementation of international human rights law. While implementation is foremost the responsibility of the states signing and ratifying or acceding to a human rights treaty, the nine UN human rights treaty bodies that are in operation today and national human rights institutions play a key role in supporting and monitoring implementation.*

Key words: *human rights; international human rights law; national human rights institutions; treaty bodies; conventions; Sustainable Development Goal.*

Language: *English*

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Introduction

At the 1993 Vienna World Conference on Human Rights, states recognised once and for all that all human rights are universal, indivisible, interdependent and interrelated. States also accepted the establishment of international institutions to supervise their compliance with international human rights law. Thus, the protection of human rights has become a legitimate concern of the international community. In accordance with the recommendations of the United Nations and other international organizations, an increased attention is paid both at international and national levels to the development of national human rights institutions.

The issue of national human rights institutions was first raised by the United Nations back in 1946, at the second session of the Economic and Social Council (ECOSOC), where the member States were invited to consider establishing local human rights committees in order to co-operate with the United Nations Human Rights Commission [1]. France was

the first country to establish such an institution in 1947.

National human rights institutions (NHRIs) are globally recognized as independent actors in the protection and promotion of human rights. As the concept of national human rights institutions saw further development across the world, the international community designed certain principles and foundations governing the establishment and functioning of such institutions.

International human rights law and NHRIs

Nowadays, the international legal foundation for activities of national human rights institutions is represented by the Paris Principles, or **Principles relating to the status of national institutions for the promotion and protection of human rights**. They were adopted in 1991 and later approved by the UN General Assembly in its Resolution 48/134 on 20 December 1993. Paris Principles define the functions

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of national human rights institutions, procedures for their establishment, funding and other criteria in ensuring their independence and operation [2].

Since the adoption of the Paris Principles, over 100 National Human Rights Institutions in different forms and models have been established worldwide. In establishing their human rights institutions, the majority of countries consider the provisions of the Paris Principles, while each individual country may adapt those to their national specifics without altering the main principles.

The Paris Principles envisage the following for national human rights institutions:

Firstly, a national institution shall be given a mandate clearly outlined in the legislation, ensuring its independence from state bodies, as well as providing for the pluralism in the institution's membership;

Secondly, a national institution may submit to the Government, Parliament or any other competent body its recommendations, proposals and reports on any matters concerning the promotion and protection of human rights, including draft legislation;

Thirdly, a national institution may prepare reports on the national situation with regard to human rights in general, and on more specific matters;

Fourthly, a national institution may encourage ratification of international instruments or accession to those instruments, and to ensure their implementation;

Fifthly, a national institution may contribute to the reports which States are required to submit to United Nations bodies and committees;

Sixthly, a national institution may be authorized to hear and consider complaints and make recommendations thereon.

It should be emphasized that the adoption of the Paris Principles laid the foundation for an active legislative work on developing international standards relating to national human rights institutions. Subsequently, a number of international treaties and declarations, resolutions of the United Nations General Assembly and the Human Rights Council, general comments and final observations of the UN committees set forth the provisions for effective functioning of national human rights institutions.

As such, the Resolution of the UN General Assembly recognizes **“the important role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies”** [3].

All international instruments relating to national human rights institutions fall into one of the following three groups:

First group: international treaties and declarations, adopted in the framework of the United Nations. They include the following:

Firstly, Optional Protocol to the United Nations Convention against Torture, adopted on 18 December 2002, which provides framework for establishing international and national torture prevention mechanisms. According to the article 18 of the Protocol, States Parties shall give due consideration to the Paris Principles, which serve as an important source of guidance in establishing national prevention mechanisms;

Secondly, the Convention on the Rights of Persons with Disabilities, and its article 33, which calls for the States Parties to maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the Convention, with due consideration of the Paris Principles;

Thirdly, the Vienna Declaration and Programme of Action also encouraged “the establishment and strengthening of national institutions, having regard to the “Principles relating to the status of national institutions” and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level”;

Fourthly, the Declaration on Human Rights Education and Training, and its article 14 emphasized that “ States should promote the establishment, development and strengthening of effective and independent national human rights institutions, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”), recognizing that national human rights institutions can play an important role, including, where necessary, a coordinating role, in promoting human rights education and training by, inter alia, raising awareness and mobilizing relevant public and private actors”;

Fifthly, Declaration and Programme of Action on a Culture of Peace, emphasized that in order to promote the observance of all human rights it is necessary to “strengthen national institutions and human rights capacity”;

Sixthly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Its article 14 sets forth that “the State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution”;

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Seventhly, the Durban Declaration and Programme of Action on the Elimination of all Forms of Racial Discrimination urged the States to establish, strengthen, review and reinforce the effectiveness of independent national human rights institutions, in conformity with the Paris Principles, and to provide them with adequate financial resources, competence and capacity for investigation, research, education and public awareness activities to combat racism, racial discrimination, xenophobia and related intolerance.

Second group: Resolutions and decisions of the statutory and treaty bodies of the United Nations. They include the following:

Firstly, every year the UN Secretary-General presents a report to the General Assembly on national institutions for the promotion and protection of human rights, which is followed by the adoption of resolutions (over 20 resolutions were adopted). In 2008-2016 the United Nations General Assembly adopted Resolutions on the Role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights [4];

Secondly, the United Nations Human Rights Council (referred to as the Human Rights Commission before 2006) actively engages the capacities of such institutions. National human rights institutions take part at the sessions of the Human Rights Council, have the right to distribute documents, and make suggestions upon the drafts of international treaties. Furthermore, they may present an independent report within the framework of the Universal Periodic Review. National institutions also cooperate with the Special Rapporteurs, independent experts and working groups of the Human Rights Council, as well as with the Special Representatives of the Secretary-General [5];

Thirdly, it is worthwhile to emphasize a special role of the United Nations High Commissioner for Human Rights - the principal human rights official of the United Nations. The National Institutions and Regional Mechanisms Section of the Office of the High Commissioner for Human Rights provides consultations to the national institutions;

Fourthly, activities of the United Nations treaty bodies and national human rights institutions were greatly expanded in recent years. Currently there are three General Comments adopted by the UN committees: UN Committee on the Elimination of Racial Discrimination adopted its General Recommendation XVII (42) on the Establishment of national institutions to facilitate the implementation of the Convention on 19 March 1993. The UN Committee on Economic, Social and Cultural Rights adopted its General Comment No. 10 on the Role of national human rights institutions in the protection of economic, social and cultural rights (1 December 1998). The UN Committee on the Rights of the Child adopted its General Comment

No.2 on the Role of independent national human rights institutions in the promotion and protection of the rights of the child (15 November 2002). Moreover, the UN Committee on the Elimination of Discrimination against Women adopted a Statement on Its Expectant Working Relationship with National Human Rights Institutions (11 February 2008), and the Human Rights Committee adopted a document on the interaction with national human rights institutions at its 106th session held in 2012. Furthermore, in their recommendations to States Parties to relevant treaties, the UN treaty bodies encouraged the establishment of national institutions for the promotion and protection of human rights.

Third group: regional documents. It should be noted that relevant instruments relating to activities of national human rights institutions were also adopted at a regional level.

Over 10 recommendations were adopted within the framework of the Council of Europe, including the Parliamentary Assembly and the Committee of Ministers of the Council of Europe. One of them is the Recommendation No.1615 (2003) of the Parliamentary Assembly on the institution of ombudsman, which reaffirmed the importance of the institution of ombudsman within the state system in order to protect human rights and ensure the rule of law. The Council of Europe has its own Commissioner for Human Rights, which provides assistance to the national human rights institutions of European countries.

The Model Law on the Status of the Human Rights Commissioner was adopted at the 24th Plenary Session of the Inter-parliamentary Assembly of the CIS member-states on 4 December 2004. This law sets basic provisions governing the status of the Human Rights Commissioner, procedures for his appointment and dismissal, principles and guarantees of his activity, his competence and powers.

A special emphasis needs to be made on the role of the OSCE, which provides assistance to the establishment of national human rights institutions. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE states that “the participating States will also facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law” (paragraph 27). Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE sets forth that “the participating States, recognizing their common interest in promoting contacts and the exchange of information amongst Ombudsmen and other institutions... suggest that the appropriate CSCE forums consider expanding the functions of the Office for Free Elections to enable it to assist in strengthening democratic institutions within the participating States” [6].

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In order to discuss best practices and exchange experiences, the OSCE organized a number of international forums. In particular, in May 1992 the Conference on Extrajudicial Remedies for Protection of Fundamental Human Rights was held in Madrid and resulted in the adoption of recommendations for institutions of ombudsman. In May 1998 the OSCE Office for Democratic Institutions and Human Rights in association with the Ombudsperson of Poland organized a seminar on activities of national human rights institutions. Furthermore, the matters relating to activities of national institutions are discussed at the sessions of annual human dimension meetings held in Warsaw and Vienna.

OSCE also provided substantial assistance in establishing national human rights institutions in Uzbekistan. A seminar on national human rights institutions was held on 11-13 September 1996 in Tashkent upon the initiative and with the support of the OSCE ODIHR. This seminar gave an opportunity for experts representing 21 countries of the Central Asia, Europe and Americas, as well as for representatives of 29 international and non-governmental organizations to take active part in a dialogue on the issues of development of human rights institutions in Central and Eastern Europe, as well as on legislation in the field of human rights.

Establishment of national human rights institutions in countries undergoing democratic transformations, those obstacles that they face in combating legal nihilism in their society, in the area of material, technical, staffing and information support of the activities of NHRIs altogether require attention of and comprehensive assistance from international organizations. Therefore international intergovernmental organizations (UN, OSCE, Council of Europe etc.) and international non-governmental organizations (Amnesty International, International Council of Human Rights Policy) developed and published guidelines and comments on effective activities of national human rights institutions [7-11].

Substantial assistance in establishing and strengthening the national human rights institutions is provided in the framework of technical assistance programmes, implemented by various bodies of the UN (UNDP, OHCHR, and UNICEF), OSCE, and other donor organizations.

A widespread distribution of national human rights institutions across the world required establishing international and regional bodies to support their activities, to provide those NHRIs with legal and technical assistance.

At the Second International Conference on National Human Rights Institutions held in Tunis on 13-17 December 1993 the NHRIs established the **International Coordinating Committee of the National Human Rights Institutions** (now Global Alliance of National Human Rights Institutions -

GANHRI) with the aim to maintain regular contacts with the UN, and to facilitate bilateral contacts.

The GANHRI was incorporated under the Swiss law in July 2008, and its constituent document was approved at the general meeting of the Committee, which was held in Nairobi in October 2008. The working group dealing with issues of management, which was established by the GANHRI in 2007, decided to maintain its current management structure with minor changes in its Statute.

There are currently three levels of accreditation by the GANHRI: "A" - Voting member, complies fully with the Paris Principles; "B" - Observer member, does not fully comply with the Paris Principles; "C" - Non-member: does not comply with the Paris Principles.

By 2016, 117 NHRIs were accredited by the GANHRI:

- (A status) - 75 as being in full compliance with the Paris Principles;
- (B status) - 32 as being not fully in compliance with the Paris Principles;
- (C status) - 10 as being non-compliance with the Paris Principles.

The GANHRI holds regular conferences of national institutions at international and regional levels. The GANHRI in association with the Office of the United Nations High Commissioner for Human Rights held 12 international conferences of national institutions.

Coordinating bodies of national human rights institutions were created at regional level:

Asia Pacific Forum of the National Human Rights Institutions (created in 1996);

Network of the National Human Rights Institutions of the Americas (created in 2000);

Network of African National Human Rights Institutions (created in 2002);

European Network of the National Human Rights Institutions (created in 2005).

A widespread distribution of ombudsman institutions across the world required establishing international and regional ombudsman institutions to support their activities, to provide them with legal and technical assistance. The following international ombudsman institutions were established to date: **International Ombudsman Institute, European Ombudsman Institute, Asian Ombudsman Association, Association of Ombudsmen and Mediators of La Francophonie, Iberoamerican Federation of Ombudsman** etc.

In addition, the institute of ombudsman successfully operates at the international level. In 1995, the Maastricht Treaty on European Union created the post of **Ombudsman of the European Union**. In recent years the concept of ombudsman institute was supported in the activities of international intergovernmental and financial

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institutions (ombudsmen were established within UN, UNDP, and EBRD).

National Institutions can be instrumental in consolidating national calls for the ratification of international human rights treaties by States. As a bridge between civil society and Government national institutions can encourage State ratification and also sensitise the public of the need for such ratification to bring further pressure on the State. Where there is a lack of institutional capacity within State Party administrations National Institutions may consider assisting the Government in the preparation of its reports to the relevant Treaty Bodies.

Where a State Party is able to undertake its reporting commitments a National Institution may either: provide its views for input into the State Party report; independently prepare a parallel report for the relevant Treaty Body; prepare a parallel report in co-ordination with the local civil society for the relevant Treaty Body.

NHRIs should be encouraged to attend the various meetings of the Treaty Bodies, as appropriate, and in particular: contribute to the information utilised in the drafting of the list of issues; participate in the informal briefings with Members during the Session (similar to those held with NGOs); be granted a right of reply similar to that of NGOs, following a State Party presentation; follow up on the Concluding Observations (the Concluding Observations are now systematically sent to NIs through a staff member within the National Institutions Unit whose main area of work relates to national institutions and treaty bodies).

Uzbek model of NHRI

Uzbekistan was the first Central Asian country to establish the system of national human rights institutions: in 1995 was introduced Parliamentary Ombudsman for Human Rights, in 1996 – National Human Rights Center. Experience of Uzbekistan in the area of national human rights institutions is celebrated within international community and academia, as well as it is studied in other countries.

During the reporting period the UNPD Project on Democratization, Human Rights and Good Governance in Uzbekistan was implemented. The Memorandum of Understanding between the Republic of Uzbekistan and the OSCE ODIHR was carried out. Multiple projects of the OSCE Project Co-ordinator in Uzbekistan were executed. Altogether those projects and activities facilitated the development of national human rights institutions in Uzbekistan.

In recent years the representatives of Uzbekistan took part in the work of international conferences and workshops on national human rights institutions, including those held in Copenhagen (1997), Warsaw (1998, 2008), Prague (2004-2006),

Vilnius (2004, 2011), Ulan-Bator (2005), Berlin (2006, 2011), Vienna (2010, 2012), Stockholm (2009) etc. Furthermore, the representatives of Uzbekistan took part in three international conferences of the GANHRI, including in Seoul (2004), Nairobi (2008), and Edinburgh (2010).

In 2008, welcoming the UN Secretary-General's Message on the celebration of the 60th Anniversary of the Universal Declaration of Human Rights, as well as in order to further improve the framework of organizational and legislative measures aimed at ensuring effective protection of human rights and freedoms, on 1 May 2008 the President of the Republic of Uzbekistan issued a Decree "On the programme of measures dedicated to the 60th Anniversary of the Universal Declaration of Human Rights".

This Decree established a comprehensive programme of measures to improve legislation in the field of human rights and fundamental freedoms, to facilitate accession of Uzbekistan to other international human rights treaties, to strengthen the monitoring over observance of adopted regulations in the field of human rights by state authorities and officials, to improve awareness-raising activities, as well as to foster international cooperation in the field of human rights and freedoms. Furthermore, the Government adopted special resolutions to support the activities of the Human Rights Commissioner of the Oliy Majlis of the Republic of Uzbekistan (2008) and the National Human Rights Centre of the Republic of Uzbekistan (2013).

From the time of their establishment, the national human rights institutions of Uzbekistan carried out far-reaching activities in promoting the generally accepted principles and norms in the area of human rights and freedoms, in implementing the national programmes dedicated to the well-being of children, protection of women's rights, and combating human trafficking.

The national human rights institution engages in international cooperation on urgent issues pertaining to the observance and protection of human rights on a regular basis. In particular, 32 national reports on the execution of six major international treaties by the Republic of Uzbekistan, as well as reports pertaining to the Universal Periodic Review, were prepared and submitted to the United Nations treaty bodies.

Also, the national human rights institutions of Uzbekistan regularly engage at the sessions of different human rights bodies within the UN and the OSCE (UN Human Rights Council, United Nations High Commissioner for Human Rights, UN treaty bodies, UNICEF, International Labour Organization, OSCE ODIHR), the tribunes of which are used to inform on the situation in the field of human rights.

The representatives of national human rights institutions of Uzbekistan systematically participate in the work of the following:

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Firstly, Interdepartmental Working Group to study the situation with observance of human rights and freedoms by law enforcement and other state bodies;

Secondly, Republican Interdepartmental Commission to combat trafficking in human beings;

Thirdly, Interdepartmental Council for coordinating activities of the state bodies on legal awareness and education;

Fourthly, Interdepartmental Working Group for compiling and presenting information on the implementation of the International Labour Organization's Conventions ratified by Uzbekistan;

Fifthly, the Commission on Affairs of Minors under the Cabinet of Ministers of the Republic of Uzbekistan.

NHRIs of Uzbekistan protect and promote human rights by handling individual complaints of human rights violations, identifying protection gaps in national human rights systems and providing recommendations on how to address them, conducting human rights education, and engaging with international human rights mechanisms.

Sustainable Development Goals and NHRIs

On September 25th 2015, countries adopted a set of goals to end poverty, protect the planet, and ensure prosperity for all as part of a new sustainable development agenda, and each goal has specific targets to be achieved over the next 15 years [12].

The 2030 Agenda for Sustainable Development universally apply to all, countries will mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind. At the global level, the 17 **Sustainable Development Goals** (SDGs) and 169 targets of the new agenda will be monitored and reviewed using a set of global indicators. Governments will also develop their own national indicators to assist in monitoring progress made on the goals and targets.

The SDGs build on the success of the Millennium Development Goals (MDGs) and aim to go further to end all forms of poverty. While the SDGs are not legally binding, governments are expected to take ownership and establish national frameworks for the achievement of the 17 Goals. Countries have the primary responsibility for follow-up and review of the progress made in implementing the Goals, which will require quality, accessible and timely data collection. The follow-up and review process will be informed by an annual SDG Progress Report to be prepared by the Secretary-General.

National human rights institutions are uniquely placed to act as a bridge between stakeholders and ensure that national sustainable development processes and outcomes are planned, implemented

and monitored in a participatory, transparent and accountable manner based on disaggregated human rights data. NHRIs can influence the national process of implementation and accountability to ensure human rights are integrated in the process of tailoring and tracking goals, targets and indicators nationally.

In addition they can provide advice to government on a human rights-centered approach to implementation of the SDGs paying particular attention to ensuring that the principles of equality and non-discrimination are given effect to. NHRIs as independent institutions of accountability were engaged in many different activities to promote and protect human rights in the implementation of the MDGs within the context of promoting greater understanding, awareness and respect for human rights in these goals.

There are also some specific Goals where NHRIs are uniquely placed to contribute and assist in their achievement. For example, Goal 10 speaks directly to reducing inequality thereby ensuring that the principles of equality and non-discrimination are inextricably infused into the Agenda. Also, for NHRIs, Goal 16 is one of the most important goals that speaks directly to the role that they play in promoting peaceful and inclusive societies, promoting access to information and advocating for accountable and inclusive institutions.

The Merida Declaration on The Role of NHRIs in the 2030 Agenda for Sustainable Development serve as a clear reference point and guide for NHRIs, and shared with governments, UN agencies, civil society and other stakeholders. The Declaration will set out 7 NHRIs' position, role, strategy and actions in the implementation and follow up and review process of the 2030 Agenda for Sustainable Development.

The civil society and business have a major role to play in contributing to the realisation of the Agenda. This opens opportunities for collaboration, partnership and synergies, and highlights the need to ensure full civil society and business participation in monitoring and implementation.

Human rights instruments and mechanisms will provide an important framework for the implementation of the SDGs, and the implementation of the SDGs will contribute to the realization of human rights. This points to the potential of using international and regional human rights mechanisms, including the Human Rights Council, Special Procedures, the Universal Periodic Review, and treaty bodies, as well as the International Labour Organization's supervisory bodies, to assess and guide SDG implementation. The need for the SDG monitoring and review mechanisms to consider human rights and to take into account the recommendations of international, regional and national human rights mechanisms.

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