



**CIVIC DEFENDER  
AND LOCAL CIVIC  
MEDIATORS:  
CONCEPT PAPER  
AND DRAFT LAW**

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AND DRAFT LAW**

Center for the Study of Democracy  
Sofia, 2002

This publication consist of both a concept paper and a proposal for a draft law for the establishment of the institutions of the Civic Defender and Local Civic Mediator in Bulgaria. It is the result of the extended research work carried out by the Law Program of the Center for the Study of Democracy during the period 1998 - 2002. The concept paper and the Draft law reflect the opinions and recommendations of Bulgarian and foreign experts, politicians, representatives of state institutions and non-governmental organizations provided at the numerous public discussions, meetings and consultations during this time.



This publication was produced with the financial support of the Open Society Foundation - Sofia.

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# OPPORTUNITIES FOR ESTABLISHMENT OF THE OMBUDSMAN INSTITUTION IN BULGARIA

The present concept paper on the possibilities for establishment of the Ombudsman institution in Bulgaria<sup>1</sup> aims at initiating a broader and more profound discussion resulting in the adoption of the most appropriate solution for the specific conditions in Bulgaria.

## A. Civic Defender

The viewpoint in favor of the introduction of the Civic Defender (Ombudsman) institution in Bulgaria primarily takes into account the country's existing needs, the public attitudes and the current political and constitutional realities. Also, it is based on the comparative study and the comprehension of foreign experience. Although the best means of establishing such an institution in Bulgaria would have been its explicit provision in the Constitution, which would have ensured the necessary prestige and efficiency, the prevailing opinion is that at this stage a procedure for amending the Constitution will involve unjustifiable time and effort to discuss an unknown and unpopular concept with no prior tradition in the country. For this reason it is proposed to have the institution based on a special law. This viewpoint is supported by the following arguments:

- The past experience has been that the Ombudsman in the European states was established either on the basis of a special law or a constitutional provision. It is possible (as in the Polish case) that an institution can first be created by a special law and then incorporated in the Constitution as well;
- According to the proposed viewpoint, the Ombudsman should not have any government powers and so does not affect the principle of separation of powers; therefore, its incorporation in the Constitution is not mandatory, according to the Constitution's general principles (Article 1, Paragraph 2);

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<sup>1</sup> The concept paper was elaborated in 1998 by an expert group to the Center of the Study of Democracy and up to now its initial version was constantly being improved. The expert group included experts in constitutional law, lawyers, representatives of state institutions and municipalities, media, and non-governmental organizations. A Draft Law was developed on the basis of the concept paper, which was publicly discussed many times jointly with the respective Parliamentary Committees members, Bulgarian and foreign experts, the Ombudsmen of Sweden, Spain, Greece, etc. Based on the discussions held and the recommendations and comments made, in the last two years the Draft Law was further revised and improved. The improved version of the Draft Law on the Civic Defender and the Local Civic Mediators is now highly appreciated by the European Ombudsman, the Ombudsmen of Greece and Belgium, the former People's Defender of Spain and other Ombudsmen as well as by Council of Europe experts [www.csd.bg](http://www.csd.bg).

- the general principles of a special law for the introduction of the Ombudsman will be supported by general constitutional principles and concepts such as the rights of the individual and the individual's dignity and security (proclaimed as a supreme constitutional principle in the Preamble); the principle of the rule-of-law state governed by the Constitution and the laws of the country and obliged to protect the individual's life, dignity and rights and to create favorable conditions for the free development of the individual and the civil society (Article 4); the principle of the free market economy based on the requirement that law must secure and guarantee to all physical and juridical persons equal legal conditions for constructing business activities (Article 19, Paragraphs 1 and 2).
- This approach, if adopted, will require detailed legislative regulation of the objectives, scope of activity, status, competence, functions, procedures and organization of the work of the institution. Special attention must be given to the relationship between the institution and the constitutional institutions exercising the powers of state.

The future law should be in conformity with the Constitution and the other relevant legislation in order to provide for the broadest possible and most effective legitimate scope for the institution's activities.

The present version of the draft law proposes the inauguration of the institution called Civic Defender, which will combine the characteristics of the classical Scandinavian ombudsman model with some of the new features of its modern versions existing in the European countries, and with some adjustments according to the conditions in Bulgaria.

## **1. Basic functions, subject and scope of activities**

The establishment of the ombudsman institution is aimed at creating a new type of guarantee for the basic rights and freedoms of individuals and their organizations. The institution would add to the traditional mechanisms for protection such as the classical parliamentary mechanisms (primarily the parliamentary committees), the constitutional justice, the judicial and administrative control, the media and non-governmental organizations. The formation of this new institution reveals the reasons which made it necessary in the first place, placing it among but distinguishing it from the existing mechanisms.

In the modern world the influence and range of activities of the administration at all levels is increasing. More and more central or local governmental authorities with their actions, visible or invisible, affect the private persons -

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individuals and legal entities - on a daily basis. The existing mechanisms are not always in a position to secure a quick, timely, efficient and easily accessible protection of the parties affected by the actions of the administration. This creates the need for a new mechanism, which will not duplicate the functions of the existing mechanisms but, rather, will operate parallel to them, add to their work, initiate directly or indirectly their interference, and under some circumstances, be their alternative.

The most essential function of the Civic Defender institution will be to guarantee more efficiently the rights and freedoms of private persons. If the former are abused by the public authorities, the Civic Defender shall be entitled to propose measures for terminating the acts of abuse, compensating the incurred damages and creating conditions for their smooth and efficient exercise in the future. The functions of the Civic Defender will be carried out by observing the regulation of public processes and monitoring the work of the public authorities.

The basic functions of the institution predetermine the subject and the scope of its activities. In general, the scope of its activities is concentrated in the point of intersection between the State and the civil society. Thus, the subject matter of its authority will cover all cases in which the border between private and public, inherent to the rule-of-law-state, was breached, or in other words, all cases in which the public authorities, or private persons vested in public functions, when performing their activities and services abuse the private rights and freedoms proclaimed by national and international law or do not provide conditions for their free exercise.

Its functions, therefore, are geared toward monitoring and specific control within a comparatively broad scope which includes the regulation of society in general: 1) the operation of the executive power or the administration in its narrow meaning, 2) the organization and regulation of the administration of the Judiciary and 3) any other exercise of public activities.

For self-explanatory reasons, the subject and scope of the activities of the Civic Defender shall not include certain institutions and relationships between the private and public sectors, as follows:

- Firstly, the supreme state bodies: the National Assembly, the President, the Constitutional Court and the Supreme Judicial Council. A sufficient ground for excluding the first two institutions is their immediate democratic legitimacy. The Constitutional Court may be excluded by reason of its status as an independent supreme constitutional body, functionally and organizationally separated from the other branches of government. It is designed to safeguard the constitutional consensus, to protect the Constitution, and to balance the power of the public authorities „at the top“ of the governmental pyramid. The constitutional principle of independence of the Judiciary requires the exclusion of its constituent body.



- Secondly, the activities related to the exercising of judicial power by the courts, the prosecution office and the investigation office, or to national security and the country's foreign policy.

## **2. Status**

### ***Personality Driven Institution***

Notwithstanding the name of the institution - ombudsman, parliamentary commissioner, civic rights commissioner, public advocate, civic defender, intermediary, etc. - the effectiveness of the institution will always depend on the person of the Ombudsman. As foreign experience shows, the number of individuals who carry out this function may vary, and is possible allocation among them based on various criteria, for example general or specific authority, national or local scope of activity, etc.

In Bulgaria, during the initial stage of the establishment of the institution, it would be appropriate to have one individual who meets certain requirements outlined by law: Bulgarian citizenship, political neutrality, high professional achievement, between a certain minimum and maximum of age, knowledge in the areas of domestic, international and European law, holding a university degree, and not occupying any other public position or function during the term of office. It is desirable that the individual is supported by broad social circles and has certain qualities which will enable him to gain and extend the public confidence, such as high civil ethics and commitment to the ideas of humanity, democracy and justice.

### ***Parliamentary Institution***

The successful performance of the tasks vested in the institution and the prestige it obviously needs require that its powers follow directly from the supreme representative body. This is the most common practice in those countries where the institution is already in place. It is logical that in Bulgaria, a parliamentary republic, the appointment should be made directly by the Parliament in accordance with its authority to elect the heads of the institutions, specified by law (Article 84, Item 8 of the Constitution of the Republic of Bulgaria).

Because of its parliamentary origin, the Civic Defender will report to the National Assembly once a year which would secure a high level of publicity and transparency for its activities and the results thereof. This will have a positive influence on those public institutions which do not fully respect the rights and freedoms of private persons.

To ensure that the nomination of candidates is done in a responsible manner, and that there is a sufficient pool of qualified candidates, it should be allowed

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proposals for Civic Defender to be made by the President, the Supreme Judicial Council and the Chairperson of the Constitutional Court, as well as by predetermined number of citizens who have come of age - 20,000.

It is suggested that the Council of Ministers (specifically, the prime minister) should not be included in the list of the constitutional bodies who are entitled to make a proposal for Civic Defender because in the conditions of a parliamentary governance the Council of Ministers is anyway supported by the parliamentary majority which, on its part, will always have the decisive vote when the candidates are selected and the eventual choice is made.

The suggested mechanism for proposing candidates for Civic Defender will soften the politicization of the parliamentary debate and the election process, and will prevent the transformation of the parliamentary institution into a governmental one. At the same time, it aims at creating conditions for proposing competitive candidates, for selectivity and alternativity of the choice and for the recruitment of the best one.

### ***Appointment and Term of Office***

The Civic Defender must be elected directly by the National Assembly with a simple majority vote, as the present Constitution does not provide for any other alternative. If the institution gains the public confidence and performs, amendments to the Constitution can be considered, including the introduction of a qualified majority for election and dismissal of the Civic Defender. This would mean a larger consensus between the political forces represented in parliament, and therefore a larger guarantee for the independence of the institution, for the confidence in it, and for the effective performance of its functions.

The Civic Defender should be appointed for a specific term (5 years), which in order to guarantee the independence of the institution must not coincide with the term of office of the body which elects him. The number of possible terms is limited to two.

In order to ensure the democratic character of the institution and to guarantee the diligent performance of the full scope of its powers, the dismissal of the Civic Defender for failure to carry out his duties should be possible following the same procedure as for his election.

The other grounds for termination of the authorities of the ombudsman, besides his dismissal, are to be similar to the ones applicable to the termination of an MP's term of office as listed in Article 72, Paragraph 1 of the Constitution - namely resignation, effective sentence for an intentional crime prosecuted on indictment, death, or loss of legal capacity. In case of removal of the Civic Defender from office because of expiration of the term for which he was elected,

he shall continue to carry out his powers until the newly appointed Civic Defender takes office.

### ***Independence and Immunity***

While performing its main functions, the Civic Defender should adhere strictly to the Constitution and the laws, international treaties and agreements and should be guided by his own conscience and morality. For this reason it is necessary to legislatively guarantee his autonomy and full independence from any and all bodies in the performance of his assigned functions.

One of the conditions for securing the independence of the institution is to grant its representative immunity equal to the immunity of MP's.

### ***Budget and Organization of the Activities. Administrative Office of the Civic Defender***

The budget of the institution should be determined by the National Assembly in two ways - either as a part of the budget of the National Assembly itself, or as a separate part of the state budget. In all cases the executive power bodies - the Council of Ministers and the Ministry of Finance - shall not be entitled to take part in the preparation, reporting of the Civic Defender's budget. According to the proposal it could perhaps be similar to the independent budget of the Judiciary<sup>2</sup>. The solution should allow the Civic Defender to perform his main functions independent from any other factors. Any apprehension concerning misuse of funds is irrelevant here, since the Civic Defender's activities are public at any time and its annual report to the Parliament will include a section on the expenses incurred.

According to the developed draft law in his activities, the Civic Defender will be supported by secretaries and an administrative office. The Civic Defender will adopt internal rules for the functioning of his office, appoint and dismiss his employees and define their duties and remuneration. His remuneration could be equal to the remuneration of a Constitutional Court Judge. It is also proposed the officers in the Civic Defender's administrative office to be granted the status of civil servants.

## **3. Powers, Basic Principles and Procedures for Carrying Out the Activity of the Civic Defender**

The Civic Defender should have certain powers in order to perform successfully

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<sup>2</sup> For more details please refer to Decision No.18 of 16.12.1993 on constitutional case No.19/93 of the Constitutional Court of Republic of Bulgaria, State Gazette 1/94.

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his main functions and the tasks that were assigned to him. These powers are to a great extent predetermined by the fact that the Civic Defender will be placed outside the system of state bodies, by its role of an intermediary between the state and society as a guardian and guarantor of private rights and freedoms.

### ***Powers***

In general, the powers of the Civic Defender are:

- to review petitions in any form from private persons - individuals and legal entities, either local and/or foreign, as well as from individuals with no citizenship;
- to conduct investigations and examinations when a particular case has been referred to him;
- to make proposals and recommendations to all observed institutions exercising public powers or functions for respecting the rights and freedoms, overcoming the consequences of interference with certain rights and freedoms and eliminating the reasons for such interference;
- to mediate between the institutions exercising public authority and the persons concerned in order to overcome the committed infringements on private rights and freedoms as well as to reconcile their positions;
- to request and receive timely, complete and precise information from all observed institutions;
- to have direct access to the observed institutions, including presence at their meetings, discussions and other forums;
- to give and announce publicly his opinions on cases he has been approached with or on issues on which he makes summaries and conclusions at his own discretion;
- to notify the prosecution bodies when, as a result of his observations and investigations, data on a committed crime have been established;
- to prepare and present an annual report to the National Assembly;
- to prepare special reports, if necessary, and to inform the Parliament incidentally about particularly serious cases of disrespect and abuse of rights.

It is important to keep in mind that the right of the Civic Defender to receive information and have access to relevant documents and institutions is related to the inquiries he carries out, and naturally this right corresponds to the observed institutions' obligation to provide the requested information and the required access. Nobody shall, under the excuse of state, official or trade secret, obstruct the work of the Civic Defender. The documents of the Civic Defender and the correspondence between him and the persons that address him with complaints and signals shall be inviolable. At the same time the latter shall keep

confidential and shall not disclose any secret information which has become known to him in the course of, or in connection with, the exercise of his powers.

In connection with the outlined limitation of the scope of activity of the Civic Defender, it should once again be noted that he is not entitled to make any proposals or give recommendations and opinions in substance related to the actions of the Judiciary, nor is he entitled to interfere in any way in its function to administer justice. The Civic Defender does not have a right to legislative initiative, nor to approach the Constitutional Court.

When exercising his powers the Civic Defender may cooperate with similar institutions in other countries.

### ***Basic Principles in the Activity of the Civic Defender***

In his activity the Civic Defender shall be governed by principles predetermined by the perceived view of his legal status, his place outside the system of the state bodies and the scope of his powers. When the principles are defined it should be explicitly emphasized that the Civic Defender is primarily a spokesman and defender of the public attitudes and dispositions regarding the exercise of public powers and functions. Therefore, the powers of the Civic Defender do not compete with the powers of the constitutional bodies. The Civic Defender has none of their means for influence and enforcement. He does not grant legal protection, nor does he control the legality or discretionary powers of the administration. His mechanisms of influence are within the sphere of morality, prestige and publicity. The following basic principles of the functions of the Civic Defender are formulated:

- judgment as to whether all observed institutions carry out their activity in compliance with the requirements for fair and efficient government;
- judgment as to what measures are to be taken, according to the requirements of the rule-of-law state and to his own conscience and understanding of justice;
- political and institutional independence in the exercise of his powers.

### ***Complaints and Signals. Procedure***

The Civic Defender shall exercise his authority following extremely simplified and informal procedures. Therefore, no special forms with any obligatory requisites are envisaged for the complaints and signals given to the Civic Defender. The only requirement is that they include information on the complainant, the offence and the offender.

Along with the free-style written form of the complaint or signal, verbal ones are also acceptable on the condition that they are filed in a manner which unquestionably identifies the complainant. This approach will make the

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institution of the Civic Defender easily accessible and open to anyone whose rights have been infringed, irrespectively of any other procedures and means of protection which can be taken in parallel. This accessibility is further enhanced by the fact that the filing of the complaint or signal and the entire procedure for its review will be free of charge for the complainant.

In order to prevent the overloading of the institution with complaints whose settlement is beyond its powers (which can be expected, considering the slow and expensive procedures for defense in the country, the presence of a considerable number of unresolved court disputes, the complicated legal cases, etc.), the law should explicitly state that the Civic Defender cannot initiate proceedings on behalf of the persons who have approached him, cannot represent them before the court or another institution (i.e., does not represent them in the narrow legal meaning), cannot approach the Constitutional court (but can approach the bodies which can approach the Constitutional court) and does not have legislative initiative. In addition, the introduction of a „statute of limitations“ should be considered; e.g., the Civic Defender shall be engaged only with such cases having occurred one or at most two years before the date of submitting the complaint or signal, and, for the rest, the Civic Defender shall be entitled to decide whether to accept them.

After a complaint or a signal has been submitted following any of the above procedures, the Civic Defender shall respond within a fixed term to the complainant whether the complaint or signal is accepted or not without having to give the reasons for his answer. Irrespective of its content and form, an answer should always be given! There is no restriction on a second or further approach if the complaint has not been accepted. The Civic Defender shall be entitled to decide on the acceptability of the complaint not only at the date of its submission but also at a larger stage, at any time in the course of the investigation.

When a complaint or a signal has been accepted, the Civic Defender shall, within his powers, and with the help of his secretaries and administrative office, take the necessary actions for gathering information, including examination of documents, direct observation of the activity of the respective institutions, inquiries, etc. If he ascertains the presence of any action or inaction which has led to the infringement of the rights and freedoms of the complainant or to the prevention of their exercise, he can relay his recommendations and proposals to the relevant institutions.

The institutions to which the recommendations and proposals are extended should be obliged to answer within a fixed term whether they accept them or not and to inform the Civic Defender about the measures which they have taken or intend to take and their prospective timing.

### ***Annual Report before the National Assembly***

The report is submitted to the Parliament until March 31 of the following year. It should contain at least the following parts:

- information about the solved cases;
- information about the cases in which the Civic Defender's intervention was unsuccessful and the reasons for that;
- general information about the submitted complaints pending investigation;
- information about extended proposals and recommendations which have or have not been taken into consideration;
- information on the activities of the local civic mediators;
- expense report.

A summary of the report should be published in the State Gazette and the full text should be available at the office of the Civic Defender to anyone interested. The report has an extremely important role for the publicity of the activity of the Civic Defender. It is equally important in exposing the activity of those institutions which do not respect, or infringe on incidentally or systematically, the rights of private persons, and whether or not they take into account the Civic Defender's recommendations and inform him about the measures undertaken. The information about the successfully resolved cases can serve also as a model for settlement of similar cases.

It would be useful for the office of the Civic Defender to issue, within its authority and budget, a bulletin periodically announcing information about his activity as well as about the activities of similar institutions in other countries.

## **B. Local Civic Mediators**

The possibility Municipal Councils to elect Local Civic Mediators is regulated in a separate chapter. In reference to the Local Civic Mediators the general provisions regarding the election, basic powers and principles of the activity of the Civic Defender shall apply respectively. In relation to the specifics of the institution acting at the municipal level, some special provisions are also envisaged.

### ***First, regarding the election:***

- Local Civic Mediator can be elected a Bulgarian national, who has reached the age of 35;
- Proposals for election of Local Civic Mediator may be made by not less

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than 10% of the citizens that have come of age and have their permanent address within the territory of the municipality and by the Civic Defender. The Municipal Council shall form an interim commission consisting of Members of the Municipal Council, representatives of not-for-profit organizations and distinguished citizens. The commission shall discuss the nominees and shall propose to the Municipal Council the three most appropriate;

- The Local Civic Mediator shall be elected, respectively removed, by a majority of two thirds of the Members of the Municipal Council present and voting.

***Second, regarding the funding:***

- The expenses relating to the activities of the Local Civic Mediator shall be provided by the municipal budget and/or the budget of the Civic Defender;
- Financing from anonymous sources shall not be admissible.

***Third, regarding the status*** - the Local Civic Mediator shall be granted the status of civil servant, but shall not enjoy immunity.

***Fourth, regarding the relationships between the Local Civic Mediator and the Civic Defender:***

- The Local Civic Mediator shall work in cooperation and under the methodological guidance of the Civic Defender;
- The Civic Defender may assign the Local Civic Mediator to perform examinations and to take measures in relation to cases considered by him.

The annual report of the Local Civic Mediator shall be presented to the Civic Defender and shall be submitted for discussion to the Municipal Council until 31 January next year.

The Municipal Council shall send its decision on the report of the Local Civic Mediator to the Civic Defender.

The draft law developed by experts of the Center for the Study of Democracy is based on the expectation that the introduction of the institutions Civic Defender and Local Civic Mediators would not be limited to the settlement of individual cases. The successful development of these institutions can make them an important factor in the evolution of general principles and rules governing the administration's functioning and civil servants' attitudes. The efficient, high-quality work of the Civic Defender and the local Civic Mediators would raise their reputation, gaining the public trust and respect.



# LAW ON THE CIVIC DEFENDER AND THE LOCAL CIVIC MEDIATORS

## Chapter One General Provisions

**S. 1.** This law shall govern the organization, the powers and the activities of the Civic Defender and the Local Civic Mediators.

**S. 2.** The Civic Defender and the Local Civic Mediators shall guarantee respect for the rights and freedoms of citizens and the rights of legal persons and informal organizations by proposing measures to the central administration, the administration of the judiciary, the local self-government bodies and the authorities and persons providing public services or working constantly in the public benefit for:

1. discontinuing the interference with rights,
2. compensating for the damage suffered;
3. creating conditions for an unimpeded and effective exercising of the rights and freedoms.

## Chapter Two Election, Qualifications and Term of Office of the Civic Defender

**S. 3.** Shall be elected Civic Defender a Bulgarian national who has reached the age of 40, but is not older than 65 years, possessing a university degree and knowledge in the field of national and international law and revealing high integrity and devotion to the ideas of humanism and democracy.

**S. 4. (1)** The Civic Defender shall be elected by the National Assembly for a term of five years.

**(2)** No one may be elected Civic Defender more than twice.

**S. 5. (1)** During his term of office, the Civic Defender may not occupy a civil service, nor may he receive remuneration for work, except for teaching and for scientific publications, or fulfil any other public function.

**(2)** The Civic Defender may not be member of a political party or trade union.

**(3)** After the expiration of his term of office the Civic Defender shall have the right to resume his former work, unless legal obstacles exist to that effect.

**S. 6. (1)** Proposals for election of Civic Defender may be made by: the President of the Republic, the President of the Constitutional Court, the Supreme Judicial Council, as well as twenty thousand Bulgarian nationals who have come of age.

**(2)** The proposal must be presented to the National Assembly at least six months before the expiry of the term of office of the active Civic Defender. Where the term of office of the Civic Defender ends earlier, the proposal must be presented to the National Assembly within six months after the term of office has ended.

**S. 7.** The National Assembly shall elect the Civic Defender by a simple majority.

**S. 8.** The election shall take place three months before the expiry of the term of office of the active Civic Defender at the latest, simultaneously for all nominations and with a single secret voting.

**S. 9. (1)** If none of the candidates proposed is elected, one month before the expiry of the term of office of the active Civic Defender at the latest a second voting shall take place under the conditions set out in s. 8.

**(2)** If none of the candidates receives the required majority, shall be deemed elected the candidate who has received the greatest number of votes at the second voting.

**S. 10.** Upon taking office the Civic Defender shall take the following oath: „I swear in the name of the Republic of Bulgaria to observe the Constitution and the laws of the country and in all my actions to be guided by the interests of the people. I have sworn.“

**S. 11. (1)** The Civic Defender shall be removed from office in case of:

1. resignation;
2. expiration of the term for which he was elected;
3. death or loss of legal capacity;
4. removal for failure to carry out his duties;
5. sentencing by virtue of an effective verdict for an intentional crime prosecuted on indictment.

**(2)** In case of removal of the Civic Defender from office under subs. 1, item 2, he shall continue to carry out his powers until the next Civic Defender takes office.

**S. 12. (1)** The Civic Defender may be removed for failure to carry out his duties on a proposal from any of the bodies or persons entitled to propose a nominee.

**(2)** A decision on the removal shall be made by a simple majority, with a single secret voting, after the Civic Defender has been heard. The time for hearing

may not be limited.

### **Chapter Three**

#### **Fundamental Principles of the Activities of the Civic Defender. Independence and Immunity**

**S. 13.** In the carrying out of his functions the Civic Defender shall only obey the Constitution, the laws, the international treaties and agreements, which have entered into force for Republic of Bulgaria, and shall be governed by his own conscience and moral.

**S. 14.** In his activities the Civic Defender shall be guided by the following principles:

1. assessment, on the basis of his inner conviction, as to whether the institutions exercising public authority and the authorities and persons providing public services or working constantly in the public benefit work in compliance with the requirements for just and good governance;
2. determination of the measures to be undertaken in accordance with the principles of the rule of law and justice;
3. independence of any political party, and institutional independence.

**S. 15.** The Civic Defender shall enjoy the same immunity as a Member of Parliament.

**S. 16.** The Civic Defender shall receive remuneration equal to the remuneration of a Member of the Constitutional Court.

### **Chapter Four**

#### **Powers of the Civic Defender**

**S. 17.** The Civic Defender shall:

1. examine complaints and signals against institutions exercising public authority and authorities and persons providing public services or working constantly in the public benefit, which interfere with the rights and freedoms of natural persons, and the rights of legal persons and informal organizations or which fail to create the necessary conditions for the respect for these rights and freedoms;
2. make inquiries and checks upon complaints and signals received as well as upon his own initiative;
3. make proposals and recommendations to institutions exercising public authority and authorities and persons providing public services or working constantly in the public benefit for respecting the rights and freedoms, overcoming the consequences of interference with certain rights and freedoms, as well as eliminating the reasons therefor;

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4. seize the authorities listed in s. 150, subs. 1 of the Constitution where he is of the opinion that it is necessary to interpret the Constitution or to declare a law anti-constitutional;

5. provide statements on cases pending before the Constitutional Court;

6. mediate between the institutions exercising public authority and the authorities and persons providing public services or working constantly in the public benefit on the one hand and on the other hand the persons concerned for overcoming the violations committed, and reconcile their positions;

7. have the right to request and receive timely, comprehensive and accurate information from the institutions exercising public authority and the authorities and persons providing public services or working constantly in the public benefit;

8. have the right of access to the institutions exercising public authority and the authorities and persons providing public services or working constantly in the public benefit, including presence to discussions and decision-making;

9. have the right to publicly express opinions on the interference with rights and freedoms of private persons and the respect therefor;

10. notify the public prosecution office of the results of his inquiries and checks where data exist that a crime has been committed;

11. draft an annual report and present it to the National Assembly;

12. inform the National Assembly of particularly grave cases of interference with and disrespect of rights and freedoms and draft special reports;

13. publish a bulletin.

**S. 18.** The Civic Defender may act on his own initiative where he finds that the necessary conditions are not created to respect the rights and freedoms of citizens and the rights of legal persons and informal organizations.

**S. 19. (1)** The powers of the Civic Defender shall not extend to:

1. the National Assembly, the President, the Constitutional Court and the Supreme Judicial Council;

2. the exercising of judicial power by the courts, the public prosecution offices and the investigation services;

3. the relations pertaining to the field of national security and foreign policy.

**(2)** The Civic Defender may not bring actions on behalf of the persons who have addressed him, nor may he represent these persons before a court, any other institution exercising public authority, or authority or person providing public services or working constantly in the public benefit.

**S. 20.** The institutions exercising public authority and the authorities and persons providing public services or working constantly in the public benefit may not refuse to provide information or deny access to the Civic Defender on the ground that a State, official or commercial secret is affected.

**S. 21. (1)** The Civic Defender must refrain from disclosing any circumstances constituting State, official or commercial secret, as well as any personal secrets of which he has become aware in relation to the exercising of his powers.

**(2)** The documents of the Civic Defender shall be inviolable and shall not be subject to examination and confiscation.

**(3)** The correspondence between the Civic Defender and the persons that address him with complaints and signals shall be inviolable, shall not be subject to examination and may not be used as evidence.

**S. 22.** The Civic Defender cooperates with similar institutions in other countries.

## **Chapter Five Procedure and Organization of the Civic Defender**

**S. 23.** The Civic Defender shall lay down the procedure and the organisation of his activities.

**S. 24. (1)** In the exercising of his powers the Civic Defender shall be assisted by secretaries and by an administrative office.

**(2)** The administrative office of the Civic Defender shall be an independent legal person funded through the budget and having its seat in Sofia.

**(3)** The administrative office shall be managed by an administrative secretary.

**(4)** The officers in the administrative office shall have the status of civil servants.

## **Chapter Six Lodging of Complaints and Signals**

**S. 25.** All Bulgarian and foreign nationals, and stateless persons, all legal persons and informal organizations performing activities within the territory of the Republic of Bulgaria, irrespective of their nationality, may address the Civic Defender by means of complaints and signals.

**S. 26.** The complaint or the signal, accordingly, must contain particulars about the sender, the way in which a contact could be established with him, the violation and the offender.

**S. 27.** For complaints made orally a protocol shall be drawn up.

**S. 28.** The identity of the sender, at the request of the latter, shall be kept in secret.

**S. 29.** No fees shall be charged for complaints and signals lodged with the

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Civic Defender.

**S. 30.** A complaint or signal may be lodged with the Civic Defender irrespective of the fact that other remedies also exist to solve the issue raised.

## **Chapter Seven**

### **Consideration of Complaints and Signals. Procedures**

**S. 31.** Upon receipt of a complaint or signal, the Civic Defender must reply within one month whether he would admit the issue for consideration, without any duty to state reasons for his reply. The admissibility of a complaint or signal may be reconsidered by the Civic Defender even after it has been accepted for consideration.

**S. 32.** Complaints for violations committed before more than two years shall not be admitted for consideration.

**S. 33.** There shall be no obstacle for the same complaint or signal being lodged again.

**S. 34.** The institutions exercising public authority and the authorities and persons providing public services or working constantly in the public benefit to which the Civic Defender has made recommendations or proposals must state, within one month, whether they accept these or not, notify the Civic Defender of the measures they have taken and of the time limits within which they intend to take any such measures.

**S. 35.** The Civic Defender may also require an administrative body to pronounce explicitly in the cases where the time limit to appeal against a silent refusal has expired.

**S. 36.** The Civic Defender shall inform the senders of complaints and signals about the results of the measures taken.

## **Chapter Eight**

### **Annual Report**

**S. 37.** The annual report of the Civic Defender shall contain:

1. information about the cases solved;
2. information about the cases where his intervention has had no consequences and the reasons for that;
3. general information about those complaints and signals lodged, the checks in relation to which have not been terminated;
4. information as to the proposals and recommendations made and whether

these have been taken into consideration;

5. information about the activities of the Local Civic Mediators;
6. an opinion on the degree of respect for the rights and freedoms of the citizens and the rights of legal persons and informal organizations;
7. a statement of expenditure;
8. an executive summary.

**S. 38. (1)** The report shall be presented to the National Assembly for discussion until 31 March of the next year.

**(2)** The full text of the report shall remain at the administrative office of the Civic Defender at the disposal of any interested parties.

**S. 39.** A summary of the annual report shall be published in the State Gazette together with the decision of the National Assembly on the report.

**S. 40.** The unabridged text of the annual report shall be published in the bulletin of the Civic Defender.

## **Chapter Nine Financial Conditions**

**S. 41. (1)** The expenses relating to the activities of the Civic Defender shall form the subject of a separate section of the State budget.

**(2)** Financing from anonymous sources shall not be admissible.

## **Chapter Ten Local Civic Mediator**

**S. 42.** The Municipal Councils may elect Local Civic Mediators for a term of three years.

**S. 43.** Shall be elected Local Civic Mediator a Bulgarian national, who has reached the age of 35, revealing high integrity and devotion to the ideas of humanism and democracy.

**S. 44. (1)** Proposals for election of Local Civic Mediator may be made by the Civic Defender as well as by not less than 10% of the citizens that have come of age and have their permanent address within the territory of the municipality.

**(2)** The Municipal Council shall form an interim commission for discussing the proposals, which shall consist of Members of the Municipal Council, representatives of not-for-profit organizations and distinguished citizens.

**(3)** The interim commission shall propose to the Municipal Council the three most appropriate proposals.

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**S. 45.** The Municipal Council shall elect the Local Civic Mediator by a majority of two-thirds of the Members of the Municipal Council present and voting.

**S. 46. (1)** The Local Civic Mediator may be removed in case of failure to carry out his duties upon a proposal by the interim commission under s. 44 subs. 2 and the Civic Defender.

**(2)** A decision on the removal shall be made by a majority of two-thirds of the Members of the Municipal Council present and voting.

**S. 47. (1)** The expenses relating to the activities of the Local Civic Mediator shall be provided by the municipal budget and/or the budget of the Civic Defender.

**(2)** Financing from anonymous sources shall not be admissible.

**S. 48. (1)** The Local Civic Mediator shall work in cooperation with and under the methodological guidance of the Civic Defender.

**(2)** The Civic Defender may assign the Local Civic Mediators to perform examinations and to take measures in relation to cases considered by him.

**(3)** In the exercising of his powers the Local Civic Mediator shall be assisted by a technical office and/or by the offices of the municipal administration.

**S. 49. (1)** The Local Civic Mediator shall have the status of civil servant and shall enjoy no immunity.

**(2)** The remuneration of the Local Civic Mediator may not be less than the one of a judge in a regional court and shall be specified by the Civic Defender and/or the Municipal Council.

**S. 50. (1)** The annual report of the Local Civic Mediator shall be presented to the Civic Defender and shall be submitted for discussion to the Municipal Council until 31 January next year.

**(2)** The unabridged text of the report of the Local Civic Mediator shall be left in the municipality at disposal of everyone who is interested in it.

**(3)** The Municipal Council shall send its decision on the report to the Civic Defender.

**S. 51.** In reference to the Local Civic Mediator shall be respectively applied the provisions of Chapters Two, Three, Four, Six, Seven and Eight as far as anything else is not provided in this Chapter.

### **Concluding Provision**

**§1.** This Law shall come into force one year after its promulgation in State Gazette.