
INTRODUCING THE OMBUDSMAN INSTITUTION IN BULGARIA

1. Background

For a long period of time Bulgaria has been among the very few European countries without a national ombudsman institution. However, with the recent adoption of the *Law on the Ombudsman* by the National Assembly on May 8, 2003, the necessary legal basis for the establishment of such institution is already in place. The law will become effective on January 1, 2004, and within three months following this date the Parliament is expected to elect the first Bulgarian Ombudsman.

The passing of the law is a result of the sustained efforts of the civil society in cooperation with representatives of governmental institutions and the academic community for popularization of the advantages of the ombudsman type institutions.

The completion of the legislative procedure brought to a conclusion a long period of examining the various models and practices, existing in the European countries. In the same time, it put the beginning of the even more difficult process of establishment and strengthening of a new institution that could face many challenges, deriving from the existing social, institutional, and legislative specifics of the transition period as well as from the constitutional limitations and legislative imperfections.

For the first time the introduction of an ombudsman institution was discussed at the very beginning of the democratic transition in Bulgaria when the new Bulgarian *Constitution*, adopted in 1991, was being elaborated. Two of the 15 presented Constitution's drafts envisaged the establishment of a national ombudsman as a constitutional institution. The initial ideas, however, were not further developed due to the lack of tradition and understanding of the existing practices.

Subsequently, in early 1998, the initiative of setting up an institution (an ombudsman or a civic/people's defender) to control and monitor the administration, including for cases of corruption, was taken up by the Center for the Study of Democracy (CSD). A Task Force of experts, set up with the CSD, examined the existing legislation and the experience of the institution in a number of established and new democracies and as a result developed a concept paper and a draft law for Bulgaria. The process of developing the concept paper and the draft law involved experts in constitutional law, practicing lawyers, representatives of governmental institutions and municipalities, non-governmental organizations and media. The initial idea, the main principles and provisions regarding the possible future legal regulation of an ombudsman type institution in Bulgaria, corresponding to the existing needs, the public attitudes and the political and constitutional realities in the country, were incorporated in the report *Opportunities for Establishment of an Ombudsman Institution in Bulgaria*, developed in 1998. The recommendations, formulated in the report, were included in the *Anti-Corruption Action Plan* – the main document of *Coalition 2000* anti-corruption initiative (www.anticorruption.bg). On the basis of the detailed concept paper on the establishment of an ombudsman institution a *Draft Law on the People's Defender and the Local Civic Mediators* was developed, which provided for the introduction of

ombudsman institutions on both national and local level, combining the characteristics of the classical Scandinavian model, the versions implemented in other European countries, and some features reflecting the specific conditions in Bulgaria. As a result of the experience accumulated by non-governmental initiatives to introduce local civic mediators and observers on municipal level the draft law included special section regulating the institution of the local civic mediator.

In the course of the development of the concept paper and the first version of the draft law in the period 1998 – 2000 a series of meetings, consultations and public hearings were carried out, including jointly with Parliamentary Committees, Bulgarian and foreign experts. At that time, when there were no conditions favorable for amending the *Constitution*, the selected approach envisaged the establishment of the institution by a special law, despite the well known shortcomings of such solution. Justification for this approach was found in the experience of some other countries that have initially followed this way and have later included the institution in their constitutions. The developed *Draft Law on the Ombudsman* was submitted to the 38th National Assembly by a group of MPs but was never discussed.

Meanwhile, the CSD experts continued their work on improving the draft law. The Task Force was provided with useful opinions, comments, and recommendations by the Parliamentary Ombudsmen of Sweden Mr. Claes Eklundh and Ms. Kerstin Andre, Professor Antonio Rovira, then First Deputy of the People's Defender of Spain, the Greek Ombudsman Professor Nikiforos Diamandouros (European Ombudsman since April 1, 2003), the Federal Ombudsmen of Belgium Dr. Herman Wuyts and Mr. Pierre-Yves Monette, and many others. Most of the comments received were taken into consideration and incorporated in the last version of the *Draft Law on the Civic Defender and the Local Civic Mediators*, which was presented to the Chair of the 39th National Assembly, the Parliamentary Committee on Human Rights and Religions and to the Minister of Justice, and was also widely circulated for discussion at local, national and international forums, but was not officially submitted to the National Assembly. The government did not take advantage of the opportunity to exercise its right of legislative initiative and to commit itself directly to the introduction of the ombudsman institution, despite the fundamental role of such institution for promoting the rule of law.

Instead, three other draft laws, governing the same matter, were submitted to the Parliament by individual MPs. The draft law, submitted by Ms. Ekaterina Mihailova and a group of MPs from the United Democratic Forces, included many of the main provisions, envisaged in the draft, developed by CSD, while the draft law, submitted by Mr. Liuben Kornezov from Coalition for Bulgaria offered some similar legislative solutions regarding the main aspects of the institution's regulation. The third draft law was submitted by Mr. Emil Koshlukov from the Parliamentary Group of the National Movement Simeon II in the beginning of 2002. The three draft laws were adopted on first reading on June 5, 2002, and the Parliamentary Committee on Human Rights and Religions, appointed as leading committee, developed a consolidated version, which was later submitted for adoption on second reading. With some insignificant changes the latter was adopted on May 8, 2003.

The adoption of the *Law on the Ombudsman* is a response, although a considerably late one, to the need of a new mechanism that does not duplicate the functions of the existing

safeguarding and controlling mechanisms, but could operate parallel to them, complement to their activities, initiate directly or indirectly their interference, and in certain cases – be their alternative.

Although the National Assembly did not adopt the initially envisaged general provision providing opportunities for municipal councils to elect local civic mediators (ombudsmen), in a number of municipalities (Sofia, Veliko Turnovo, Razgrad, Zavet, Loznitsa, etc.) successful experience has been accumulated with the operation of similar institutions, established primarily upon initiative of the civil society on the basis of cooperation with the local self-government authorities. Their activities are aimed to facilitate the access of citizens to the provision of public services and to limit the unregulated contacts between citizens and municipal officials in the process of exercising their duties.

In the same time, under the increasing pressure by the civil society and as a result of the established public-private partnership, the *Law on Amending and Supplementing the Law on Local Self Government and Local Administration*, adopted on July 18, 2003, provided the municipal councils with the opportunity to elect public mediators (ombudsman type institutions on local level) and to adopt rules on their organization and activities. Although far from detailed this legal framework was the first step towards regulating the activities of the local mediators, operating in several municipalities, as well as for developing the legal basis for establishing new institutions on local level.

The sustained efforts of CSD in cooperation with other non-governmental organizations and representatives of governmental institutions, local self-government authorities, including the National Association of Municipalities in the Republic of Bulgaria, contributed to a great extent for achieving this positive result.