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The Long Way of the Emerging Ombudsman Institution in Bulgaria: Six Months Later

Overview

The present brief is aimed to examine the recent developments in establishing national and local ombudsmen in Bulgaria and is a follow up of Policy Brief No. 3 of May this year.¹

The introduction of the ombudsman institution in Bulgaria on national and local level has progressed at different pace.

On the one hand, the establishment of local public mediators (municipal ombudsmen) continued to gain speed and since May three more mediators have been elected. Thus, as of October 2004, public mediators are operating in seven municipalities, while in several others the election procedures are under way. *Coalition 2000* through its *Civil Society against Corruption* Program continued to actively support and encourage the process.

On the other hand, the establishment of the national parliamentary ombudsman is still pending at the National Assembly, which once again failed to elect an ombudsman. The second attempt did not succeed despite civil society pressure and its calls for a timely election of the national ombudsman through an open, transparent and non-partisan procedure.

As far as the legal framework is concerned, the policy makers did not undertake any steps to improve the existing legislation, which is reasonably criticized by non-governmental organizations and experts as not providing guarantees for the impartiality and effectiveness of the ombudsman. However, thanks to the efforts of the *Coalition 2000* Ombudsman Expert Group, specific proposals and recommendations for legislative amendments have already been elaborated and published. In order to enhance the independence and stability of the ombudsman institution *Coalition 2000* is now developing draft amendments to the Constitution, which will be submitted to the Ad-Hoc Parliamentary Committee on Amendments to the Constitution.

¹ <http://www.csd.bg/artShow.php?id=2689>

The achievements: establishment of local public mediators

A successful beginning

Despite deficiencies of the legal framework the establishment of the local public mediators made notable headway.

As result of the efforts of *Coalition 2000* to promote the local ombudsman citizens in a number of municipalities became aware of the new institution and started demanding its introduction, while local authorities became supportive. The partnership of NGOs and local authorities, facilitated by *Coalition 2000* created an environment which – together with the initial legal framework, also developed with the assistance of the Coalition – made it possible for local public mediators to successfully start spreading throughout the country.

At present, public mediators are operating in seven Bulgarian municipalities: Kavarna, Banite, Botevgrad, Razgrad, Oriahovo, Sofia and Shoumen. In several other municipalities (Pazardzhik, Bourgas, Velingrad, Silistra) election procedures have been opened and the establishment of the institution is on the way. The Coalition supports this process through education, expert consultations, provision of publications, facilitating experience sharing among elected mediators and among them and local authorities.

Operating Public Mediators in Bulgaria: a summary (information updated as of October 2004)

Municipality	Public Mediator	Elected	Rules on the Organization and Activities	Term of office
Kavarna	Ms. Eli Mileva	January 27, 2004	Adopted in March 2004	5 years
Banite	Ms. Zorka Karipova	March 23, 2004	Adopted on June 18, 2004	3 years
Botevgrad	Mr. Vassil Vassilev	March 30, 2004	Adopted on March 25, 2004	4 years
Razgrad	Ms. Ivanichka Dimitrova	May 31, 2004	Adopted on March 9, 2004	the end of 2004
Oriahovo	Ms. Raina Roussolova	September 9, 2004	Adopted in September 2004	undetermined
Sofia	Mr. Angel Stefanov	September 23, 2004	Adopted on April 28, 2004	term of office coincides with the term of office of the municipal council
Shoumen	Mr. Hristo Hristov	September 30, 2004	Adopted on April 29, 2004	4 years

The legal framework: deficiencies and necessary improvements

To help advance the legal regulation of local public mediators *Coalition 2000*, together with the National Association of Municipalities, the Foundation for Local Government Reform, and the Public Mediator of Sofia Municipality set up a Task Force, coordinated by LGI, which elaborated Model Rules on the Organization and Activities of the Public Mediator. The model rules have been disseminated among municipalities throughout the country in order to serve as guidelines for municipal authorities willing to establish their own local ombudsmen.

The amendment to the local government law in 2003 made possible the first local ombudsman offices to be set up. However, with the spread of the institution throughout the country, the deficiencies in the existing legal framework have become evident. As the current law gives very general provisions, municipal authorities had to adopt detailed rules of organization and activities of the institution, which sometimes differ with each other. Therefore, a number of improvements to the legislation are urgently needed to set unified standards.

Some of the shortcomings with potential negative consequences include:

- Neither the Law on the Ombudsman nor the Law on the Local Self-Government and Local Administration includes provisions on the division of responsibilities and the possible cooperation between the national ombudsman and the local public mediators;
- No legal provision allows the national ombudsman to assign particular cases to the local public mediators;
- The local public mediators lack financial independence as the expenses relating to their activity are provided only by the municipal budgets and, in some cases, by projects implemented by NGOs. Thus the establishment and functioning of the local institutions depend entirely on the financial state of the municipality concerned and on the good political will of the members of the respective municipal council.

In order to overcome these and other shortcomings in the law, *Coalition 2000* has developed a set of recommendations for improving the legal framework. The most important suggestions in this respect are:

- The expenses related to the activities of the local public mediators should be provided (at least partly) by the budget of the national ombudsman. That approach, which could be achieved through amending the Law on the Ombudsman, Law on Local Self-Government and Local Administration and Law on the Organization of the State Budget, would guarantee the independence of local ombudsmen.
- Explicit provisions should be included in the Law on the Ombudsman to regulate the relationship between the national ombudsman and the local public mediators. They should contain the possibility for the local public mediators to work in cooperation and under the methodological guidance

of the national ombudsman and should allow the national ombudsman to assign the local public mediators to perform examinations and take measures on cases considered by him/her.

In the long run, a complete review of the legal framework of the national and local ombudsmen is needed in order to achieve the necessary efficiency and independence of these institutions in compliance with the established European and international standards.

The parliamentary ombudsman: yet another failed election attempt

Election procedure and results

For a second time this year the Bulgarian Parliament failed to elect a national parliamentary ombudsman as none of the nominated candidates managed to obtain the required majority of more than half of the votes of the MPs participating in the voting.

The second election took place on October 8, 2004 (or five months after the first attempt) and with only two candidates in the running: the sociologist Prof. Peter-Emil Mitev, nominated by MPs from the National Movement Simeon II and the Movement for Rights and Freedoms, and the lawyer Prof. Alexander Dzherov, nominated by MPs from the People's Union. Both participated in the first unsuccessful election held in May this year.

206 out of 240 MPs participated in the secret ballot, which resulted in 100 votes (48.5%) for Prof. Peter-Emil Mitev and 41 votes (19.9%) for Prof. Alexander Dzherov. As earlier this year, the lack of consensus and the amount of invalid ballots again influenced the election results and none of the candidates received the required majority.

The result of the voting confirmed the conclusion that the simple majority for election of the national ombudsman, envisaged under the current law due to constitutional restrictions, is not an appropriate solution. It does not encourage political parties to seek consensus but rather to put forward their own candidates. The application of a higher majority proved its effectiveness on the municipal level – local public mediators are elected by municipal councils with a majority of 2/3 of all municipal councilors. Because of this requirement all public mediators appointed so far have been elected following preliminary consultations among the political parties represented in the particular municipal council as well as among them and local civic organizations.

Conclusion: lessons ignored

One of the main reasons for the failed second election of the parliamentary ombudsman was the fact that the Parliament once again completely ignored the recommendations coming from the civil society and prevented any civic participation in the process.

Just one month following the first election *Coalition 2000* held a round table discussion bringing together newly elected local public mediators, representatives of

non-governmental organizations and experts, committed to the establishment of the ombudsman institution in Bulgaria. The participants adopted an open address to the National Assembly calling for timely selection of a highly-qualified, politically independent and reputable parliamentary ombudsman, broad public debate in advance of the election aimed at guaranteeing the transparency and openness of the nomination procedure, reaching consensus between the MPs on selecting a personality possessing all the necessary qualities. This should have resulted in an election where more than the 50%+1 required currently would have voted for the person.

On July 9, 2004, the address was sent the Chair of the National Assembly as well as to the Chairs of all Parliamentary Groups, but did not receive any reaction and the National Assembly did not take into account any of the recommendations made. Instead of initiating a broad public debate before the election, it followed an even less transparent procedure. No public event was organized to allow the nominated candidates to present their views on the institution and they did not have the opportunity to address a parliament plenary session.

Meanwhile, several NGOs disseminated an appeal for supporting the nomination of Prof. Peter-Emil Mitev. However, the initiative remained isolated as the initiators did not seek cooperation from either the elected local public mediators, or the non-governmental organizations promoting the establishment of the ombudsman institution on national and local level. As expected, such efforts did not contribute to speeding up the process or increasing its transparency, because they promoted a single candidate instead of focusing on the very criteria for nominating candidates.

Preceded by nontransparent political bargaining instead of an open dialogue, the whole procedure concluded with a voting as politicized as the one held in May. The nominated candidates received primarily the votes of the Parliamentary Groups that had nominated them, while the rest of the MPs submitted invalid ballots or did not participate in the voting at all.

Following the announcement of the election results the President of the National Assembly expressed his hopes that one last attempt will be made before the parliamentary elections in the summer of 2005. However, if the Parliament maintains the same approach of politicizing the process and completely ignoring civil society, it would hardly manage to elect a national ombudsman of reputation and integrity.