

Center for the Study of Democracy

Public Hearing

THE OMBUDSMAN INSTITUTION IN BULGARIA

Full Records of the Discussion

Sofia, April 9, 2002

On April 9th, 2002 at 9 o'clock a public hearing on the Ombudsman institution was held in Hall 134 of the National Assembly.

MARIANA VITANOVA: Good afternoon! On behalf of the Parliamentary Information Center, the Commission on Human Rights and Religions and all MPs who are the ones to discuss and later adopt the Draft Ombudsman Act I would like to thank you for responding to the invitation to participate in this public hearing and wish you a fruitful work.

I shall now give the floor to Ms. Maria Yordanova from the Center for the Study of Democracy who will be the moderator of our discussion.

MARIA YORDANOVA, moderator: Thank you. I will have the pleasure to be the moderator of this public hearing on the Ombudsman institution, which has been organized by the Union of Lawyers in Bulgaria, the Center for the Study of Democracy, the Parliamentary Information Center and the American Bar Association / Central and East European Law Initiative – organizations that have actively cooperated in the past years in studying the existing legislative regulations of this institution, its practical functioning and in seeking solutions for introducing this institutions that are possible and appropriate for Bulgaria. This is indeed one of several public hearings that are being conducted with the support of public institutions and it is one of the good examples of introducing the public-private dialogue in Bulgaria with respect to issues that are of importance for country's legislation and politics.

The cause for this discussion is a bit different – the presence of several draft laws in the National Assembly, which implies a forthcoming legislative regulation of the institution. As you have seen in the agenda we will have the pleasure to hear short presentations by the drafters of the acts, debate on specific issues raised by the introduced drafts and on the Concept for introducing this institution. But before going to the merits of this discussion I am very happy to give the floor for opening words to the Minister of Justice Mr. Anton Stankov.

MINISTER ANTON STANKOV: Hello everybody! I am very glad at the great interest in this meeting. Maybe I will again have to start by saying that Bulgaria is undergoing a process of reforms but all of you understand that in the last 12 years the word "reform" has become trite. When we comment on the Ombudsman we probably have the grounds to say that these reforms are just a beginning. The Ombudsman is a new legal figure for the Bulgarian society and I sincerely hope that with the functions law would assign to it, it would find a place in Bulgarian traditions.

The process of democratizations requires further transparency and openness of state authorities to society and the Ombudsman is one of the possible forms of public control over state institutions.

Under the definition of "Ombudsman" the main function and goal of this institution is to monitor the administrative activity of the state and serve as a preventing factor against abuse of power, corruption and arbitrariness on the part of state authorities. You know that such a figure would find its proper place with a view to public expectations and the chance to provide society with the opportunity to directly seek protection and participate in the work of state authorities.

It will be interesting to debate on the scope of the law, the areas, in which the Ombudsman will have certain powers. I hope that the discussion would be at a serious level so that we

could decide what should be Ombudsman's powers and their boundaries. I am not an expert in this field but I can see at this table a sufficient number of people who could have an extensive and comprehensive debate. I would not take a lot of your time but would like to say just one thing: the idea to find a place for the Ombudsman institution in Bulgarian legal system is fully supported by the Ministry of Justice and I sincerely hope that we would soon have an Ombudsman Act. Thank you.

MARIA YORDANOVA: Thank you, Minister Stankov.

We, the representatives of the NGOs, of civil society are extremely glad that after the idea for introducing this institution has first been promoted and discussed by the civil society, it became popular and state institutions have agreed on the necessity of its introducing, which has just been confirmed by Minister Stankov.

And now I am giving the floor to Mr. Vladislav Slavov – Chairman of the Supreme Administrative Court and Chairman of the Union of Lawyers in Bulgaria – who has been empathic to the topic of Ombudsman institution ever since we work together.

VLADISLAV SLAVOV: Dear Minister, dear Members of Parliament, dear colleagues, on behalf of the co-sponsors of this event I would like to wish success to this workshop and I would like to extend my special thanks to the American Bar Association for financing the forum. There have been several such forums and I am sorry that the good draft laws, on which the Center for the Study of Democracy has worked for several years cannot find their place in the plenary hall of the National Assembly. I hope that this would be the last seminar debating on such draft laws. I consider this debate very important, especially for the MPs who could familiarize themselves with the matter, which is to be adopted by the National Assembly; I hope that we would indeed soon adopt such law.

I would like to dwell on the issue of the Ombudsman institution from two perspectives, which would probably not be touched upon by the present discussion. These perspectives relate to the judiciary. Many of you remember that several months ago we celebrated the fifth anniversary of the restoration of the Supreme Administrative Court. The relation between the Ombudsman institution and the administrative justice is direct. Why am I mentioning the Supreme Administrative Court? At this fifth anniversary we reported that the caseload of the court has almost tripled in the course of this not so long time period. In the first year we had about 4000 cases, in the last year the cases are more than 11000.

I would not like to analyze the number of cases but I would like to draw your attention to the serious problems these cases pose before the judiciary, before the administrative justice from the perspective of the volume of our work. In the last years we discussed many problems of the judicial power, we received lots of criticism, especially in the annual reports of the European Commission. One of the forms to open the judiciary is the introducing of this institution, which would in all cases have its effect on the number of administrative cases that go to court. In district courts, which also review administrative cases their number is tens of thousands. I.e. more than half of the civil cases in district courts are administrative. This is a serious caseload that could probably not reach the courts if the Ombudsman institution is established and working.

The second issue I would like to touch upon in this respect in the role of the prosecutor's office. There is a direct relation between the work of the prosecutor's office and the

Ombudsman institution and it is in the so-called general supervising function, which is still being performed by the prosecutor's office. For me this supervision is not constitutionally regulated and that is why while discussing the new Draft Law for Amending and Supplementing the Judicial Power Act at the General Assembly of the judges of the Supreme Administrative Court all judges unanimously suggested that the prosecutor's office should really become an authority with functions and powers similar to those that can be found in every West European state. In other words it should be responsible solely for the criminal prosecution and the issues related to criminal justice and not be assigned activities that are not done in any European country. This is a remnant of the past in the activity of the prosecutor's office that is obviously problematic for the prosecutor's office itself and is by no means beneficial for society. Amongst other things I have in mind the general supervision in respect to the large-scale cases of arbitrariness because since the amendments to the Code of Civil Procedure that were made several years ago regarding the so-called prompt proceedings such cases should be decided by the courts. I also have in mind the circumstance that based on the general supervision the prosecutor's office undertakes activities that could be dealt with by the Ombudsman, by the administrative justice and respectively the prosecutor's office should not spare its resources and capacity to solve such problems.

That is why as one of the organizers of today's workshop I hope that the draft laws, which will be discussed today, will soon enter the plenary sessions of Parliament. I wish you successful work!

MARIA YORDANOVA: Thank you, Mr. Slavov.

Before giving the floor to our young colleagues from the Parliamentary Internship Program I would like to mention that the debate on the draft laws at this public hearing and in the National Assembly takes place in an extremely favorable environment, in which almost all European states have already built such institutions. Some of them have a longer tradition, a richer experience and our in neighboring countries the institution has functioned for a shorter time – this provides us with an opportunity to learn from the positive experience and from the mistakes so that we could indeed find the solution, which is most suitable for Bulgaria.

The comparative review prepared by the students will help us in that. We will now have the pleasure to see and hear them.

TATIANA BACHVAROVA, student: The topic of the present legislative study is the Ombudsman institution. It has been prepared by nine legislative assistants with the Parliamentary Internship Program and will be presented by four of us.

The legislative study dwells on the following main issues: Essence, name, Ombudsman models, legislative regulation in member states of the European Union and states outside the European Union; we have reviewed the terms and conditions for selection; compatibility with other positions, termination of powers and immunity. Another issue that has been studied is the scope of Ombudsman's activities and powers and especially his/her power to review complaints and to take actions based on them. The study also addresses the administration of the Ombudsman, the budget of the institution and the annual report that it presents before the Parliament. We have reviewed Acts of the Council of Europe and the European Union in relation to the formation of a European Ombudsman and a European Children's Ombudsman. Last but not least, we have studied the International Ombudsman Institute, the aim of which is to promote the cooperation between Ombudsmen worldwide.

The Ombudsman institution has first been formed in Sweden by the Swedish king Karl XII. By introducing the Ombudsman institution he created a corrective of his rule that was intended to set the beginning of better governance. Until today the essence of the Ombudsman has been the same – to guarantee the rights of private persons whereas the general rule is that the institution may be referred to by individuals and by legal entities. Exceptions to this rule are Macedonia and Norway where the Ombudsman is competent to review solely complaints filed by individuals.

The Ombudsman may review complaints filed by citizens of the relevant state, by foreign citizens and by persons with no citizenship.

It is important to note that the Ombudsman institution is out-of-court means for protecting the rights of persons that have been affected by unlawful actions of state administration. It provides prompt, timely, efficient and accessible protection for the affected rights.

In the course of the study we have found out that although Ombudsman is the classic name of the institution, it can also be found under the names of “people’s attorney” in Austria, Albania and Romania, “civil defender” in Italy and Macedonia, “people’s defender in Spain and Argentina, “mediator” in France, “civil representative” or “Parliamentary representative” in Hungary and many others.

We have found out two main approaches towards the legislative regulation of the institution.

Under the first approach selected by most states (which are listed on the screen) the establishment of the Ombudsman institution is provided for in the Constitution in rather general terms. In Austria and Poland however the Constitution provides a very detailed regulation of the functions, the powers and the mandate of the Ombudsman. Special Acts regulating the institution in details have been adopted based on the constitutional provisions.

The second approach is used in states like Belgium, United Kingdom, Greece and Italy. There are no constitutional provisions relating to the Ombudsman in these states and a special act regulates the establishment and the functioning of the institution.

There are three main Ombudsman models. The classic model can be found in Switzerland and in the other Scandinavian states, in Poland and in some other European states, which have adopted the Swedish model. Under this model the Ombudsman is competent to review complaints of persons against unlawful actions of state administration.

The second type of Ombudsman is the so-called mediator who functions in France, the European Union, England, Wales, Bosnia and Herzegovina, Australia and New Zealand. The Ombudsman in these countries is competent to review not only complaints against unlawful actions of state administration but also against any form of bad administration including unfair actions, unjustified delays and some procedural omissions.

The last model is the Ombudsman whose main task is to review complaints against violations of constitutionally proclaimed rights and freedoms. Such an Ombudsman has been formed and functions successfully in Hungary, Romania, Russia and other new democracies.

The Ombudsman is a personalized institution irrespective of the name and the model of functioning in the individual state. Generally it is a one-person body but there are exceptions. For example in Bosnia and Herzegovina the Ombudsman is an institution, which is composed of three persons who investigate and jointly make decisions on the complaints.

There are Ombudsmen with general and with special competence. Specialized Ombudsmen will be touched upon later in my colleague's presentation.

There are national, as well as local Ombudsmen and this is the general practice.

Generally the Ombudsman is selected by the Parliament and not by the executive, which guarantees its independence in the performance of its functions. Exceptions to the rule can be found in France, United Kingdom and Netherlands. In France the Ombudsman is appointed with a Presidential Decree based on a proposal by the government. In the United Kingdom it is appointed by the queen based on a proposal by the government and after consultations with a special questioning committee. In Netherlands when electing the Ombudsman the Lower Chamber of Parliament may take into consideration the recommendation of the Deputy Chairman of the State Council, the Chairman of the Supreme Court and the Chairman of the General Audit Office.

The requirements pertaining to the selection of an Ombudsman are identical in all states. He/she shall be a citizen of the relevant state, shall have a clean court record and shall possess high moral qualities. This is the formulation of the requirement in Albania; in other state the law stipulates that the Ombudsman shall be a reputable person. Another requirement is the possession of a University degree whereas in Greece the Ombudsman shall have a Degree in Law. In most Scandinavian states it is necessary that the person should have excellent legal knowledge. There are also age requirements.

The incompatibility requirements in the studied states are also identical. While taking the Ombudsman position the person may not be a magistrate, be involved in commercial activity or be politically affiliated.

Immunity is yet another issue, which is reviewed under the legislation of the studied states. The Ombudsman may not be criminally responsible for opinions expressed in respect to reviewed complaints or for actions undertaken in his/her official capacity.

The Ombudsman may not be detained except with Parliament's explicit consent. In Bosnia and Herzegovina he/she may be detained only if he/she is arrested while committing a crime, which is punishable with more than five years of imprisonment. In Greece the Ombudsman may be prosecuted solely in cases of an insult or slander or divulgence of official secret. In Spain the people's defender may be arrested if caught on the scene of crime.

There are different legislative solutions as regards Ombudsman's tenure. He/she may have from 4 to 8 year's tenure and generally the term is 4 years (in most Scandinavian states) or 5 years. Korea is an exception in this respect. The Ombudsman there has 3 years tenure.

The terms and conditions for termination of Ombudsman's powers are again identical in all reviewed states. This occurs in cases of resignation, end of tenure, incompatibility, obvious negligence in the performance of his/her duties and lasting incapability to perform his/her

duties in cases of loss of physical or psychical abilities. Particularities can be found in the United Kingdom, Belgium, Denmark, and France where Ombudsman's tenure automatically ends with the reaching of retirement age. In Spain Ombudsman's powers may be terminated before the end of his/her tenure in case he/she is arrested in the act or is sentenced to imprisonment for an intentional crime.

Ombudsman's responsibilities reach to the executive, the organization and management of court administration, as well as all persons and institutions that perform public functions. Particularities can be found in the Czech Republic and Norway. In the Czech Republic the Ombudsman has broader powers. He/she may exercise control over the police, the Health Insurance Fund and the Radio and Television Council; in Norway his/her powers are more restricted and the military state administration remains outside the scope of his/her powers.

When discussing the scope of Ombudsman's powers we have to mention the bodies that remain outside this scope. The Ombudsman may not control the supreme state bodies and the bodies of judicial power.

TEODORA TSENOVA, student: In all reviewed states the Ombudsman has the following powers and duties: to review complaints filed with him/her and conduct investigations based on them; to address suggestions and recommendations to the monitored institutions pertaining to the protection of the rights and freedoms of private persons and the elimination of breaches related to these; to mediate between the monitored institutions and affected persons; to demand and receive timely, complete, accurate and clear information by these institutions; to have direct access to them; to publicly state his/her opinion on a case investigated by him/her; to inform the competent prosecution authorities in cases of obtaining data of a committed crime; to prepare and submit to Parliament an annual report, as well as a special report when needed; inform the Parliament of particular cases of disrespect for rights and freedoms.

Except the general powers some national legislations provide for certain specific powers. For example, in case an official hinders the activity of the Ombudsman, the latter may require the initiation of disciplinary proceedings against the official. In France and Greece the Ombudsman may impose a disciplinary penalty on such an official himself/herself. In Scotland there is an Ombudsman who has special competence in the area of legal services provided by state bodies. In Finland the Ombudsman monitors the lawfulness of official actions of the government, the Ministers and the President and exercises internal control over prisons, military units and social security institutions. In Austria, Ukraine, Albania and Spain the Ombudsman has the right to refer to the Constitutional Court. In Netherlands he/she informs the Parliament or the Minister responsible for the specific sector about gaps in legislative acts. In Finland the Ombudsman may give an opinion on a draft law if addressed with such request. In Portugal he/she may point to shortcomings in legislation through recommendations. He/she may also issue recommendations on the interpretation of laws or opinions for necessary legislative amendments. In Uzbekistan and the Czech Republic the Ombudsman has the right to legislative initiative and in Sweden he/she cooperates for overcoming the imperfections in legislation.

The main power of the Ombudsman is to conduct investigations on complaints and based on his own initiative with the exceptions of France and Greece where he/she may not act based on his/her own initiative. When acting *ex officio* the Ombudsman should generally obtain the

explicit consent of the person concerned in order to start an investigation. Under the legislation of Slovenia and Bosnia and Herzegovina no consent is required.

Some legislations provide for restrictions in respect to the complaints that may be reviewed by the Ombudsman. A statute of limitation is one such exception. Generally the violation should have occurred no longer than a year before referring to the Ombudsman. There are however different cases. In Greece there is six months statute of limitations, in Lithuania – three months and in Finland – five years whereas in cases of serious allegations, a complaint against a violation that has occurred more than five years before may also be reviewed.

Another exception is the exhaustion of other remedies. In Norway, Denmark, Uzbekistan, the Russian Federation, New Zealand, etc. no complaint may be reviewed in case other remedies are not exhausted. There is no such requirement in Sweden, Netherlands and Poland. Generally any citizen of the relevant state, foreign citizen or a person without citizenship may file a complaint with the Ombudsman. There is one exception in the Czech Republic – complaints filed by imprisoned persons are not reviewed.

In most of the studied states only persons whose rights have been directly infringed are entitled to file a complaint with the Ombudsman. Exceptions to this rule are Poland, Croatia, Finland and Netherlands where any person may file a complaint regardless of whether its personal interests and rights have been infringed.

The procedures for filing the complaint and its review are generally free. A complaint may be lodged orally or in writing. In certain national legislations, for example those of Bosnia and Herzegovina, Slovenia and Romania a complaint may only be lodged in writing.

Anonymous complaints may not be reviewed. The allegations in the complaint shall be formulated accurately and clearly. There are three cases, in which the Ombudsman may refuse to review a complaint: it is ungrounded; it relates to issues that are outside the scope of his/her competence; it has been formulated unclearly or is ill intentioned. If the Ombudsman deems that the complaint relates to issues outside the scope of his/her competence he/she may also forward it to the competent body

When reviewing a complaint the Ombudsman may demand complete and accurate information from the relevant state authority, interview any person that he deems has relation to the case, take experts opinions, have access to documents that are state secret, if these are of importance to the case, have access to the monitored institutions.

In the event of findings of violations the Ombudsman shall issue recommendations for their cessation and the repairing of damages caused therefrom. Certain particularity can be observed in Latvia – the main task of the Ombudsman there is to help parties conciliate.

A generally adopted duty of the Ombudsman is to present an annual report before the Parliament. It reviews Ombudsman's activities throughout the previous year. The report should comprise information of the number of received complaints, number of reviewed complaints, results from the investigation, recommendations issued, actions undertaken by the relevant authorities based on the recommendations and cases, in which no actions were taken and reasons thereof. If the Ombudsman deems it necessary, he/she may submit to Parliament a special report on a particular case.

In most of the studies states the Ombudsman is being assisted by an administrative service organized in a different way in different legal systems. For instance in Albania it is being assisted by three specialized division headed by commissioners; in Greece 30 scholars and persons with special qualifications are being appointed; In Slovenia the Ombudsman works with a team of experts, consultants and a chief secretary; in Moldavia the parliamentary attorneys together with the administrative service form an independent institution – human rights center.

A guarantee of the financial independence of the Ombudsman institution is its budget. It is usually drafted by it and adopted by the legislative authority as a part of the parliamentary budget or as an independent part of the state budget. In Greece the budget of the Ombudsman forms part of the budget of the Ministry of Interior, in Albania the Ombudsman may receive pecuniary or non-pecuniary donations, which have to be reported by their entering into a special registry. I Germany the Ombudsman may receive gifts and is obliged to inform the Minister of interior of them. The latter makes the decision on their use.

ARTHUR ASLANIAN, student: In an international perspective the necessity to create a supranational coordinating organization lead to the establishment of the International Ombudsman Institute. It was established in 1978 in Edmonton, Canada.

The Institute is an NGO. Its members are independent Ombudsman institutions from all over the world. The International Ombudsman Institute has six units. It has offices in Asia, Africa, Australia, Europe, Caribbean and Latin America and North America. The official languages of the institute are English, French and Spanish.

There are five categories of members of the Institute. These are members with a right to vote, members with no right to vote, honorary members, individual members and libraries.

The main goals of the International Ombudsman Institute are to develop programs that promote the exchange of information and experience between the Ombudsmen all over the world, to develop training projects for the needs of the Ombudsmen, their offices and other interested persons, to encourage interest towards the Ombudsman and render assistance in studies of this institution, in the collection, storing and distribution of information and data on the Ombudsman, organization of international conferences and granting of scholarships and other types of financial support to individuals all over the world with a view to encouraging the research and development of the Ombudsman institution.

The Treaty of European Union signed in 1991 in Maastricht provides for the establishment of an entirely new institution on EU level – the European Ombudsman. The citizens of the European Union may file complaints with the European Ombudsman with regard to problems in the administrative activity of the European Union.

The legal regulation of the European Ombudsman can be found in the Treaty of European Union, in the Statute of the European Ombudsman adopted by the European Parliament after the approval of the European Commission, as well as in a decision of the European Ombudsman regarding the appointment of an official to prevent information leakage.

The competence of the European Ombudsman includes the review of complaints filed by individuals or legal entities who have their permanent residence of seat in a members state of

the European Union, as well as the issuance of recommendations to the administrative bodies of the European Union.

The European Ombudsman is appointed by the European Parliament for the time period of its mandate. He/she is selected amongst persons who are citizens of the European Union and possess civil and political rights and should also provide all necessary guarantees for his/her independence and meet the requirements for taking the highest legal position in his/her country or the requirements for taking an Ombudsman position under his/her national legislation.

The main task of the European Ombudsman is to cooperate for detecting illegal activity in the work of institutions and bodies of the European Union. He/she shall issue recommendations for the cessation of such activity. The Ombudsman however may not interfere in court cases or make statements pertaining to the lawfulness of court decisions. He/she may cooperate with other institutions of the same type in member countries at a regional level where this is beneficial to Ombudsman's activity and to the interests of the persons that have filed complaints with him/her.

The Ombudsman institution was first established as a corrective of the executive and later evolved as an institution protecting the basic rights and interests of citizens against infringements. There are specialized Ombudsmen for these issues established in some legal systems. The need for them is based on the special value of certain categories of citizens' rights. A number of international instruments regulate the rights of the child. In 1989 The General Assembly of the United Nations adopted a Convention on the Rights of the Child. Bulgaria ratified and promulgated it in State Gazette in 1991, which made the Convention binding for Bulgarian authorities. A great number of the Conventions, Resolutions and Recommendations of the Council of Europe are devoted to the rights of the child. The most important ones of these are Recommendation 1286 on the Establishment of the Children's Ombudsman on a local level and recommendation 1460 on the Establishment of a European Children's Ombudsman. The purposes of the children's Ombudsman are to facilitate the adoption and implementation of the Convention on the Rights of the Child, to provide advice and support to all persons who are working on the problems of the children.

These are the recommendations of a European level.

On a national level there is a Children's Ombudsman in Sweden and Poland. In the United Kingdom there are more than 15 specialized Ombudsmen – for example a military / defense Ombudsman.

In conclusion I can say that these were the main accents in our legislative study on the Legal Regulation of the Ombudsman Institution and we provide it to you for future reference.

MARIA YORDANOVA: Thanks to the students from the Program. I hope that the participants will excuse us for exceeding the scheduled time but we had an opportunity to hear a systematic and interesting study. I hope that it would be useful in the discussion and in legislators' work. Before going to the next item I would like to thank once again to Minister Stankov and give him the floor before he leaves the hall.

MINISTER ANTON STANKOV: thank you. If we had an Ombudsman in Bulgaria right now, he would have probably criticized me for not doing my direct job. So please, excuse

me, I have to see to that. I wish you successful work and I remain committed to the topic. Have a successful day!

MARIA YORDANOVA: Thank you. Have a good day.

We shall now proceed to presenting the draft laws, which were introduced to the National Assembly and will be presented in the order of their introducing. I have the pleasure to first give the floor to Mr. Liuben Kornezov who will present his Draft Ombudsman Act that was introduced in Parliament on July 11th, 2001 and also in the previous National Assembly.

LIUBEN KORNEZOV, MP from the Coalition for Bulgaria: I am acclaiming the initiative of the Union of Lawyers in Bulgaria and of the other co-sponsors of the discussion. I am glad to see so many young people here. I am also acquainted with the students' study. It is of a very high level. It was a pleasure to read it; I am saying this with all my heart.

We have been discussing the Ombudsman issue for 10 years now. I have participated in 15 – 20 conferences, meetings, and discussions. Many of these were pretty formal. So we have been discussing that for 10 years and we still do not have a law. Presently as you know there are 3 draft laws, I know that a fourth one is being drafted, maybe their number will increase to five, which means that we would not have results soon.

For me the Ombudsman is not a panacea, it is illusion to expect it to solve citizens' problems. Presently the problems in Bulgaria are mainly in the economic sphere, in the economic rights. So even if we adopt a perfect Ombudsman Act and we have a perfect Ombudsman from there on, he could not solve the main problems. Do we need such a law then? Categorically yes! You can see that all Europe has such a law and only Bulgaria does not. The great danger however is that the Ombudsman may turn into a Complaints Bureau in the bad sense of the word. By creating the Ombudsman institution we may pile it with thousands of complaints, which it would not be able to process. I will give one simple example: you may be aware of the fact that the president Peter Stoyanov has received 47000 complaints from all over the country. Can you imagine how these could be processed, responded, how can something really be done? That's absurd!

On the draft law I have introduced to Parliament: for me the Ombudsman may not be a state body. He may not have power but only influence. By the way, in the draft of Ms. Mihaylova also views the Ombudsman as a non-state body unlike the third draft. Since the Ombudsman is not a state body, it has no authoritative powers so it cannot in any form replace the prosecutor's office.

Who may refer to the Ombudsman? I am sure that my suggestion that these should be only citizens is much more rational than a number of systems including the other two drafts, which allow the Ombudsman to protect rights of legal entities and informal organizations (pay attention to the latter!). For me we would make a mistake if we give such opportunity to the tens of thousands of legal entities. Legal entities have opportunities other than the Ombudsman to protect themselves. I am supportive of civil society and civil organizations but please, imagine what would happen. The wording "informal organizations" includes at least 3 – 4 000 organizations that are not registered but function in addition to the 9600 foundations that are presently registered in Bulgaria. We would give them the opportunity to address the Ombudsman! That means that after only 3 – 4 months of his activity he would be blocked regardless of his personnel. Therefore I consider that at least at the first stage until

things are sorted out the Ombudsman shall defend the rights and interests of citizens but not defend, respectively be referred to by legal entities and informal organizations.

Who can be an Ombudsman? All three drafts do not provide for the so-called specialized Ombudsmen. I consider that at this stage Bulgaria shall have one Ombudsman with general competence.

Regarding education: At least for me the Ombudsman shall have higher legal education with at least 15 years of legal record of service. My experience as a Chairman of the Commission on Complaints and Petitions, which is also piled with Complaints and cannot process them, categorically shows that to be able to give a competent written or oral answer the person would need legal competence in 99% of the cases. All else is not possible. I am saying this without the slightest desire to underestimate other specialties. But this type of activity requires legal education and a certain experience. Questions from all bodies of law are being posed. To answer a complaint a person should know whether there has been a violation and which authority is competent to perform certain activity. Unlike my proposal the other two drafts require only University education. Of course this problem can be solved in the course of the discussion.

Under my draft the Ombudsman shall have the status of a Constitutional judge. Of course, he would not be a constitutional judge and would not have such powers. But the status of the constitutional judge is regulated in the Constitution and in the Constitutional Court Act. These specify the remuneration, the immunity, the service, etc. By the way judicial power is also bound to the status of constitutional judges to a certain extent. I use this as an example and not to direct to specific sums.

In my opinion the Ombudsman who would have the status of a constitutional judge should be a Bulgarian citizen, only Bulgarian citizen. My colleagues do not set such a requirement in their drafts. Consequently if we adopt their drafts it would mean that the Ombudsman might have double citizenship.

Regarding the dismissal provisions: It is quite clear the National Assembly would elect the Ombudsman. We have to think however who would be entitled to nominate him. My idea is a broader one – in my opinion not only the president but also the Supreme Judicial Council should have this right but of course the National Assembly would have to elect it in the end. How should he be dismissed in case he does not live up to the entrusted position? If it is the National Assembly that may dismiss him in any case, I have to say as a person who has left the courtroom for the Parliament that here the issue would always be politicized no matter whether we want it or not. The parliamentary majority could select an Ombudsman and then dismiss it at all times. Therefore we have to create a hindrance to the easy dismissal of the Ombudsman. Otherwise we can easily turn him into a political functionary. This would be dangerous and we should not allow it. I know that the issue is standing on the very edge of the Constitution but I suggest that there should be an opportunity for citizens to directly dismiss the Ombudsman by 200 000 votes. Maybe someone would ask me how I have selected this number. 200 000 is about the 4% barrier for entering the Parliament. If we give this opportunity to the Parliamentary groups, I am positive that there would be dismissal that would not be based solely on Ombudsman's performance.

I am drawing to an end. I have not studied Ombudsman's activity only from the books but have met with foreign colleagues, fifteen days ago I met the Hungarian minorities

Ombudsman and I also have certain observations on the Ombudsman's activity in Poland. In some countries the Ombudsman functions with the authority of the person that takes this position, in other countries his activity has been turned into a kind of intercession. Some countries indeed have serious problems because from the 30-40 thousand complaints only those are selected and reviewed that are from friends and relatives. This is the danger we face. As I said the Bulgarian Ombudsman should not be turned into a Complaints Bureau. We already had such bureaus before 1989.

Thank you for your attention. I hope this Parliament adopts its Ombudsman Act at last. We can have it under a different name because even that is debatable.

MARIA YORDANOVA: Thank you, Mr. Kornezov. I think that there will be questions and opinions but I would suggest listening to all presentations within the 15 minutes allocated to them under the agenda (which Mr. Kornezov fitted perfectly) and then we would have a basis for comparison and discussion.

I have the pleasure to give the floor to Ms. Ekaterina Mihaylova, an MP from the Union of Democratic Forces, one of the MPs who introduced the Draft Ombudsman Act on July 19th, 2001. She also introduced that draft in the previous National Assembly. These are the first two drafts that continue their life and we would really like to see a law adopted.

EKATERINA MIHAYLOVA, MP from UDF: Thank you. This draft indeed enters the National Assembly for the second time. I hope it has a better fate in this Parliament than in the former one. In fact it was introduced in the end of our mandate and we were not able to review the drafts that were introduced by our parliamentary group and by the BSP. That is why we introduced our two drafts in the very beginning of the activity of the present National Assembly so that we could launch a discussion on them and hopefully adopt a law.

From all we heard up to now it becomes clear that sooner or later there will be an Ombudsman Act in Bulgaria but the question is when and what will be the law that would be adopted. I am sorry that the number of MPs attending this discussion is not very big because I think that it would have been very useful for them to hear the presentations of our young colleagues – the students who provided a detailed review and analysis of the Ombudsman institution. Therefore I would not repeat many of the provisions of the draft law. I would just say that we are proposing a classical Ombudsman, i.e. we have used the Scandinavian model. I have to say that it was not us – the MPs who signed the draft – that actually drafted it. This draft law was developed by the Center for the Study of Democracy and they kindly provided it to us during the mandate of the previous Parliament after the organization of numerous discussions, meetings, exchange of experience. Of course, we who signed the draft worked closely with the true authors of the draft, we were able to visit Spain and see the work of the Spanish Ombudsman so that when we introduced the draft we knew what it was about instead of it being simply a text that does not in fact give us an idea of how would the Ombudsman function.

I think that what Mr. Kornezov mentioned is the most important thing – not to turn the Ombudsman into a Complaints Bureau or into a state body similar to another body that was ruling the country in a certain period of time. So these are the most important basic issues regarding the law we are going to adopt and from there on nuances are important but the difference in that respect could be solved more easily. Of course, I could argue with Mr. Kornezov here regarding the 200 000 signatures. It would not be difficult for a parliamentary

group to collect 200 000 signatures if it decides to oust an Ombudsman it does not like. So politics will indeed be present in the selection of the Ombudsman and in his removal. We should certainly look for mechanisms for preventing abuse of power but I think that it is more important to adopt a modern law that would not make the Ombudsman a state body and thus depreciate it.

In the end I would like to say one more thing – after we adopt the law it would be extremely important to find the proper persons. We can adopt a great law but we should also find the people who would really be the face of the institution and a person of good reputation should be selected. At least in the beginning this would help to establish a certain standard for Ombudsman's conduct. So even though I do not wish to overrate the role of the personality in an institution, I consider that when starting, when traditions are built, the figure that would implement law we comment on today is extremely important.

There were two attempts at establishing specialized Ombudsman. They both ended unsuccessfully. One of these was in the previous Parliament when we were a majority and had the idea to have an Ombudsman in the Tax Procedure Code who would monitor the work of tax administration. There were discussions but we could not agree on whether Bulgaria shall have such specialized body in its tax system and so we did not adopt these provisions. The last attempt at establishing a specialized Ombudsman ended last week when we discussed that Draft Equal Opportunities Act. It also provided for a specialized Ombudsman who would monitor the observance of these rights.

We should really adopt a general Ombudsman Act that would give its framework and opportunities so that the Ombudsman could become an effectively operating body that keeps the executive power, the court administration, the public and anti-corruption activity away from temptation. This is the inherent idea of such draft.

I hope that today's discussion will not result in four more drafts, which would prevent us from adopting a final one and would rather help nearing our views and developing something that Bulgaria needs. Bulgaria is already behind due to the lack of understanding why this is necessary. Even the word "Ombudsman" was difficult to learn, all kinds of labels were stuck to it that sounded a bit worrying for us like for example "people's' defender," which promptly leads us to some old associations. I am not sure that it would be better to look for a Bulgarian translation.

I apologize that I would not be able to participate in the discussion since I have an appointment for the rest of the day but I will end with what I already said: the true authors of the drafts are here; they can answer all your questions. This draft is a good example of the cooperation between the institutions and civil society. I would like to thank to the organizers of the discussion and to the Center for the Study of Democracy.

Thank you.

MARIA YORDANOVA: Thanks to Ms. Mihaylova for the concise presentation and the good words. The fact that the adoption of the law has taken so long has a positive side as well – we have the chance to obtain a broader agreement and maybe even a consensus among the political forces. This is an institution that indeed requires such consensus. Moreover, thus we would overcome the constitutional obstacle of qualified majorities for

selection and removal of the Ombudsman. So the experts are ready to do their job, all we need now is the good will of politicians.

Now I have the pleasure to give the floor to the MP Emil Koshlukov from the National Movement Simeon II who would present the third draft that was introduced in Parliament on January 2002, then withdrawn on February 9th and introduced again with some revisions on March 1st 2002.

EMIL KOSHLUKOV, MP Emil Koshlukov from the National Movement Simeon II: Good morning everyone! This draft was also developed by a team of people and by presenting it I do not want to take the credit for it.

As you know this Parliament has a Civil Society Committee – a Committee that works with a Social Council the representatives in which have been nominated among 150 organizations. The Social Council comprises 21 persons that represent to a great extent the positions and opinions of the third sector – the non-governmental organizations. These are the main creators of this draft law; these are the places where this concept was discussed. To a large extent, maybe even 90 %, it integrates the draft laws that were already introduced in Parliament by the other political forces. The sense in creating a new draft instead of using the old ones is that to some extent it develops and clarifies the matter. No party and political differences matter here and we are not aiming at ignoring the other drafts but when discussing them in the Social Council and in the Commission we decided that several issues needed to be improved. So we met with the people who introduced those drafts and asked them to revise these issues. They however preserved them so we decided to supplement and develop these in a new draft.

The draft law was discussed at a number of meetings with many NGOs. Several Round tables were organized on the topic, the commission made some presentations in the countryside on the topic. Mr. Liakov who is a member of the Commission and is here now attended one of these presentations, other members attended other presentations. We have tried to include in the draft most proposals and opinions that we heard. These were our reasons for withdrawing it when we heard the opinions of Mr. Kornezov and of other members of the Commission while discussing the first version of the draft – to try to do things better. Whether we have succeeded in doing so is a different issue. I consider the draft good enough to be passed at a first reading. Of course, we are open for proposals. It is natural that the issue would cause a great discussion in Parliament and in society – this is a unique institution that is new for Bulgaria and there are different views on it. We have tried to use the experience of other states and the practices here although these have not been very successful. Several NGOs introduced this institution and tested it in Sofia and in the countryside. We spoke to them to hear what the problems were. I consider that we were able to develop a good basis. We are by no means insisting on a title deed on truth or claiming that this is the best that could be achieved. Just the opposite, we are hoping for a serious debate in Parliament and in society on this topic once the draft law starts.

Since a lot has been said on the various issues and I came late, I am afraid that I might say things that have already been discussed. Therefore I prefer to participate in the discussion.

MARIA YORDANOVA: Thank you, Mr. Koshlukov.

Before going to the discussion let us hear a short presentation of a general concept for introducing the Ombudsman institution in Bulgaria, which will be made by Mr. Borislav Belazelkov, judge in the Supreme Court of Cassation and a member of the working group with the Center for the Study of Democracy, which has been working on the concept and the draft of the Ombudsman institution for 4 years. Mr. Belazelkov will not present a draft but rather the platform that could become the basis for developing a solution that would be generally accepted and apt to Bulgarian conditions.

BORISLAV BELAZELKOV: Thank you. I think that the delay in the adoption of this draft has one more positive side – at least in my opinion this is one of the few drafts that have been developed based on a clear and widely discussed and adopted concept. We are experts in writing laws in a hurry but in my opinion the issue here is much more serious and indeed the work started long ago with the preparation of a common concept. Not only prominent lawyers but also representatives of different state institutions took part in this work. Generally nobody has argued on the concept.

I think that what is most important for the Institution is that the Constitution does not allow the Ombudsman to have any power. It is a state body but it may have no power since if it is a body of power it has to be regulated in the Constitution. This gives us the unique chance to create a new state body that would not be the fourth center of power because Bulgaria does not need that. We would rather institute a state body that would in a new, different way help in the establishment of appropriate relations between the bodies of power and the addressees of power. If we are united on and have true understanding about this issue, it would be very easy to find the concrete solutions in a law. The idea of the Ombudsman is to be a corrective of the fourth power. We all have our impressions of the work of the fourth power – it sometimes succeeds and sometimes does not. The scandal, the turnover, the profit however matter in the fourth power. We want to have an institution that would be able seriously and competently to review the problem, hear the citizen and not only raise the problem with the administration but also propose a solution. It is very easy to criticize, we are very good at it but when it comes to work everybody says: you do it; we did our share by criticizing.

We hope that the Ombudsman would set a different framework for the relations between the bodies of power and the citizens who are subject to this power. So the Ombudsman may not have any power and that is also not allowed by the Constitution.

Next, the Constitution sets out the issues, on which the National Assembly may take decisions with a qualified majority of votes. Unless the very Ombudsman Act receives a qualified majority, it may not stipulate that anything should be done through qualified majority. This raises in a new way the issue of the selection of a consensus figure because it is beyond any doubt that this should be a consensual figure. Traditionally in other states this issue is being solved by the requirement of a selection by qualified majority but thus in fact the minority would select the Ombudsman. It is not bad, of course. I think that we have the good chance of adopting a serious solution, which would allow us to select a consensual and deserving person through the bodies that would be entitled to nominate persons. If we allow a parliamentary group to propose an Ombudsman, I cannot see who would stop it from approving him/her. The resort in this situation is to allow serious institution to select these nominations while at the same time not denying direct democracy – a reasonable big number of citizens should also be able to make nominations.

It can be said that the Ombudsman raises serious constitutional questions. These have been reviewed in the concept and relevant solutions have been proposed. I think that a discussion of the draft laws would be very useful if we take into consideration the concept, which at least raises the true, the serious problems. And the solutions to them could be various. Thank you.

MARIA YORDANOVA: Thank you, Mr. Belazelkov. The concept is published in detail in the edition we proposed to your attention today. It was improved and developed since the first edition of 2000, which is known to many of you. Based on the improved concept we also propose an improved draft law but as I mentioned it would not be discussed today because as I mentioned what matters is the concept, the basis for a possible consensus.

I would like to open the discussion on the presented drafts and the concept. The first speech under the agenda is the opinion on the drafts by Stanimira Hadjimitova from the Social Council with the Civil Society Committee.

STANIMIRA HADJIMITOVA: Good morning everyone! I have been assigned to present to you the opinion of the Social Council with the Civil Society Committee on the first two drafts.

Regarding compatibility with the present legislation the Social Council considers that the two drafts do not contradict to the Constitution, the Normative Acts Law and Decree 883 on its implementation, as well as to the effective legislative provision pertaining the protection of the rights of citizens. The remarks relate to the structure and the subject matter of the two drafts.

I will first dwell on the draft law, which was introduced by the MPs Abadjiev, Mihaylova and Maseva. Generally the draft has an appropriate structure, which is better than that of the other draft. Chapter three however, which proclaims the principles should either be moved to the General Provisions where it belongs from a systematical perspective, or should come right before the institution of the Ombudsman to the extent these principles should apply in this process.

Secondly, the regulation is not evenly spread throughout the individual chapters.

Thirdly, there are no instructions as to the subsidiary implementation of the General Provisions, for example of the Administrative Procedure Act, as well as to the implicit or explicit repealing of contradicting relations.

We also have some remarks on the substance.

The draft law correctly addresses the main aspects of the organization and the activity of the Ombudsman but it was unsuccessful in regulating some major issues. For instance, in Art. 2 of the General Provisions the draft law does not specify what form of alternative protection the Ombudsman is and how it fits into the system of the existing remedies. Thus the purpose of the institution is not clearly defined and there is a risk of collision between these provisions and the purpose of the law in the future control over the acts and actions of the administration.

Art. 3 of the Second Chapter does not answer the question of the type of education, specialized record of service and the tenure of this body. The procedural rules for the selection of the Ombudsman under Art. 3 and 4 have not been clarified and the evaluation criteria in the vaguely formulated requirements to candidates, as well as the very selection procedure and its consequences, the types of acts that shall be issued to that effect and whether these could be appealed – for example under Art. 11, para 1, subparas 3 and 4.

The principles of Ombudsman's activity as formulated in Art. 14 are so general that they apply to every state body and in this sense they mean nothing because are neither distinguishing characteristics nor grounds to hold anybody liable.

The powers formulated in Chapter 4, Art. 17 do not have an independent value before a proper defining what type of legal subject the Ombudsman is – the Social Council considers that both drafts are purposefully keeping silent on this issue. The objects that shall be monitored by the Ombudsman are not specified.

The provisions of Art. 19 and the following ones are using a negative criterion for excluding certain bodies of the Ombudsman's scope of powers but this does not give a practical answer and dilutes the activity of the institution. Art. 18 and 19 do not clarify the subject matter of Ombudsman's activity. Chapter Five does not propose any legal solutions but solely refers to a future legislative regulation, which is in itself a violation of the legislative drafting rules.

Chapter Six introduces the term “complaint”, which is not defines and is therefore dangerous. The procedure, to the extent that it exists, is unclear.

Art. 32 is restrictive and unclear as regards its consequences. The provisions of Art. 33 and 25 are a legal absurd since they do not clarify what would happen as a result of Ombudsman's actions. We could draw the same conclusion in respect to Chapter Eight.

Finally, no responsibility is provided for the Ombudsman, which raises doubts as to its efficiency and suggests cultivation of corruption attitudes.

We have several comments on the motives. In the opinion of the Social Council they do not answer the questions and do not remove the vagueness. The motives use terms that are different from those used in the draft; they do not touch upon the purpose of the law and are consistent from a political but not from a legal point of view.

We have objections to the structure of the second draft that was introduced by Mr. Liuben Kornezov. The draft uses an untraditional structure, which goes against the natural sequence of the establishment of the institution. We also have some specific remarks. Chapters Two and Three are devoted to the same issue. In fact Chapter Two deals with instituting the Ombudsman.

Based on its title Chapter Five should come before Chapter Four. The content of the chapter however does not correspond to its title.

The regulation is not evenly spread throughout the individual chapters. There are no instructions as to the subsidiary implementation of the General Provisions, for example of the Administrative Procedure Act, as well as to the implicit or explicit repealing of contradicting relations.

We have several remarks on the substance. Generally the draft encompasses the main aspects of the organization and the activity of the Ombudsman but it was unsuccessful in regulating several issues of major importance like for example: the general provisions are declarations that could only be accepted if they manage to successfully set out the goal of the law; the draft does not specify what form of alternative protection the Ombudsman is and how does it fit into the system of the existing remedies; it is too much to restrict the membership in unregistered organizations the way Art. 10, subpara 4 does it; the selection procedure is relatively well regulated but the types of acts that shall be issued in that respect and their appeal is not clear (see Art. 5 and 11).

The powers of the Ombudsman have no independent value before the nature of the institution is defined. As I already mentioned, the first draft also gives no answer to this question. The nature of the acts of the Ombudsman is not defined, as well as the subjects of his monitoring competence. The scope of his/her activity is not clear. There is no distinguishing criterion as regards applications, complaints and signals of citizens (see Art. 20 and the following). We have to have in mind that the Applications, Complaints and Signals of Citizens Act is still in force in Bulgaria.

The provisions of Art. 22 and 23 are restrictive and vague. The provision of Art. 26 is absurd having in mind that under this draft the Ombudsman is not a state body. No responsibility is provided for the Ombudsman, which raises doubts as to its efficiency and suggests cultivation of corruption attitudes.

The proposals on the two drafts are the same. Their main flaw is the lack of a concept of the effect of the institution amongst the existing systems of remedies and the lack of understanding about the independence and the over-institutional nature of the Ombudsman.

Thank you.

MARIA YORDANOVA: Thank you, Ms. Hadjimitova. You have the floor to debate on the three drafts, including the concept. First, we will hear Prof. Shezhana Nacheva.

SNEZHANA NACHEVA: Thank you.

First, I would like to thank the organizers. Yet another time I have the opportunity to attend a Round table that addresses an issue – challenge. Dear colleagues, I am afraid that this word has already become trite but this is indeed a challenge. If I have to draw an analogy, the situation reminds me of 1991 when we included the Constitutional Court in the system of state bodies. Many people asked how could 12 persons that are not elected have the tools to limit the effect of laws. But later on we saw that there is life, logic, mechanism and possibility to guarantee the supremacy of the Constitution through this body. The challenge now is much different. What is it? Allow me to use a mythological character. For me the Ombudsman is a kind of Centaur – it combines element of what is classically living in our idea of the state and elements of what exists autonomously outside its institutions – the civil society. This is the philosophy of the Ombudsman – to provide to the civil society an instrument for influencing the state. So please, do not regard this institution as a state body that would make decisions that would exercise competence in the classical sense of this word. By trying to do that we would burden the administration with yet another body. Generally the Ombudsman countervails not the fourth but the second power (Excuse me, Mr.

Belazelkov). Why is that so? By definition the Ombudsman opposes bad administration. Moreover we have the wonderful para 2 of Art. 120 of the Constitution – a general clause for appeal of all administrative acts. Anyone whose rights have been violated may attack the acts of the executive. The Chairman of the Supreme Administrative Court, of which the government should be very respectful, is here. We can see however that this mechanism is not sufficient. Society has to have tools of its own for influencing the executive. This is the Ombudsman who stays at the very boundary because it does not only plead for legality but also for justice, which is a border category. In 999 out of 1000 cases law is just but in the 1000th case it may be unjust. This would affect the person who suffers this injustice. We have to understand this thin line between the intervening tools of the state body and the influencing tool of the Ombudsman, we should not expect from the Ombudsman more than he/she can do.

In this sense for me the first two drafts – the one of Mr. Kornezov and the one of Ms. Mihaylova and a group of MPs – and the tools they provide for are much closer to the philosophy of the institution. Lots of hard work has been done on the second draft – several round table discussions were organized, the Council of Europe was also very active. I remember the stages these draft laws went through. The third draft is interesting with its attempt to make the Ombudsman more “Bulgarian” and to take care of its efficiency. But let us look at it from a different perspective – we want to find the tools that would create commitments and we immediately turn to the well-known tools of state power. For me it does not fit in this institution’s philosophy. I would repeat that this draft is very interesting but it deviates from the philosophy of this body. The civil society shall demand from the state bodies to respect this body despite the fact that it may not have authority.

Dear colleagues, there is no such body in the Constitution. In 1995 I included in the curriculum of the University an optional discipline called “Institutions for the Protection of Human Rights”. I am very glad that at last the Ombudsman may turn from an exotic figure amongst the different type of institutions for protection of human rights to a really existing body in Bulgaria. On one hand this is very good news. On the other hand since we do not have the constitutional framework of this institution I would very much like the National Assembly to realize that law would be the framework of the institution. Therefore this law should regulate this institution fully and comprehensively without relying on secondary legislation because the latter could bring about too many collisions. So I would like to ask the three drafting committees to think about a full and comprehensive regulation of this issue under the situation where there are no constitutional provisions thereof. Nevertheless the Constitution gives such an opportunity.

I would like to digress here. The Bar is a similar institution – it is independent, self-governing, outside the system of state authorities but there is a provision in the Constitution that assigns it the task to assist citizens in the protection of their rights. Thus we can make an analogue with the idea that an institution, which is not a state authority, may protect significant, constitutionally proclaimed values, for example human rights, and this is assigned to the Bar, which is not a state authority. Unfortunately in 1991 we did not do that with the Ombudsman. That is why for me it is extremely important that the law be comprehensive.

The second very important issue was already mentioned and I am glad that the drafters are aware of that. Dear Ladies and Gentlemen, every time when we speak about a one-man body the concrete personality matters. The framework of the Constitution or the law in this case

will be in place but the person with his/her personal mentality, with the presence or absence of legal knowledge, with his/her sense of justice built in time, with his/her experience would have its effect on the way the institution would live. I would not draw comparisons between the presidents but you can see how one and the same institution has its different life with the different people. All presidents of Bulgaria have been successful but the person is also very important for the life of the institution.

Who should build this institution? First, the very person should of course find sufficient guarantees for independence. We should protect this person from political influence. Therefore my appeal to the drafters would be to think about overlapping in the mandates of the National Assembly and the Ombudsman. This is a significant guarantee so that there isn't a new Ombudsman with each new majority. Give the Ombudsman a longer tenure.

Under the different models there are different relationships with the Parliaments. Our colleagues from the Parliamentary Internship Program have prepared a very good study. I would like to express my special thanks to them, you have justified your presence here by this panoramic and deep profound study. You also found out that there are Ombudsmen whose functions are close to parliamentary control. They are very similar to complaints committees and sometimes there are even special committees that work with Ombudsmen. This is the case for example in Spain. There are even systems, in which the Ombudsman may not be directly referred to but only through an MP. For me however it is very important to see what would be the reaction of the executive. Dear audience, if the executive disregards the Ombudsman, if it does not have the necessary respect for him, if we cannot see that it was impressed by the fact that the Ombudsman addressed it and therefore corrected its practices, then no efforts of the civil society or of the legislator could convince the Bulgarian citizen that this is a respectable institution that helps citizens and creates a climate of impossible abuse of powers or bad administration even though it does not have coercive authority.

In the end I would say that I am very pleased that the Center for the Study of Democracy continues to be interested in these problems. I am very glad that the drafters are here and I look forward to see the practice of this new institution for the protection of human rights.

Thank you.

MARIA YORDANOVA: Thank you, Ms. Nacheva. You have the floor for statements and comments.

ALEXANDER KASHUMOV, Access to Information Program: I would like to pose an additional question, which was not raised in the discussion up to now although Ms. Mihaylova touched upon it in her statement. My question concerns specialization, the clear outlining of Ombudsman's competences because it seems to me that this issue is not resolved in all three drafts. This is a remark our organization had to the draft two years ago when it was still a draft of the Center for the Study of Democracy. As far as I know in most countries in the world the Ombudsman works in certain specific areas. These are clearly defined in law and respectively Ombudsman's competences are clearly defined as well. This would focus Ombudsman's work thus guaranteeing its effectiveness.

A traditional area these competences include is personal data protection. About 40 Ombudsmen in different countries work in this area and their competence is regulated by the

relevant Personal Data Protection Act. There are such specialized Ombudsmen that work in the area of the protection of the right to access to information, the protection of citizens' rights against discrimination and, as the students from the Parliamentary Internship Program mentioned, in the area of the rights of the child. In most of these areas Bulgarian legislation has introduced different institutions that control the performance of state bodies' duties in this respect of these rights. It is exactly control that these institutions – Personal Data Protection Commission, Protection of the Rights of the Child Agency – exercise. Thus there would be a discrepancy, doubling of the functions of different bodies.

Our organization stands on the position that the public efficiency of Ombudsman's activity comes not from the possible mandatory nature of the acts he issues, since they could be recommendations as in most countries, but from the specific public effect from his work. In this sense it seems to me that it is necessary to specify, to narrow his powers. For example I don't see how he could help protect the right to life, which is also a basic human right. Different legislations traditionally specify these rights. The Hungarian Ombudsman for personal data protection and access to information is one of the most reputable institutions of this type in the world exactly because the Hungarian Personal Data Protection and Access to Information Act specifies his powers. So the recommendations of this Ombudsman are highly respected in Hungarian society.

Thank you.

MARIA YORDANOVA: Thank you, Mr. Kashumov.

Who else would like to give remarks?

STELA TRIFONOVA, Human Rights Directorate of the Ministry of Foreign Affairs: I could agree with the speaker before me. It all depends on the system we choose. The draft laws point out that the Council of Europe recommends that we create an Ombudsman. This is right. There are however also recommendations to establish national human rights institutions similar to those that are also recommended by the United Nations. So we could think of the system we would adopt. In my view the third draft views the Ombudsman more like a mediator. We could also adopt the system, in which the Ombudsman sees to the lawfulness of acts and actions of the administration. It would also be good however if the Ombudsman has powers in the area of human rights. In this sense I would recommend that the Ombudsman be entitled to make proposals in cases a law does not correspond to the international standards and could be attacked in the European Human Rights Court in Strasbourg. In such cases the Ombudsman should be entitled to propose to the National Assembly the amendment of the act in question.

My last remark relates to the possibility under the first and the second drafts for the Ombudsman to be dismissed before the end of his tenure based on a request by 20 or 200 thousand Bulgarian citizens. This could be argued upon because the independence of an institution is not necessarily publicly popular. In many cases the Ombudsman may defend the rights of unpopular minorities and may be subject to public discontent. Therefore as an expert of the Human Rights Directorate I consider that it would be good if there were no such possibility.

Thank you.

MARIA YORDANOVA: Thank you for your remarks. I hope that the drafters would take them into consideration. Of course some of your remarks could not be taken into account until we have this Constitution no matter how appropriate they might be. The Ombudsman simply may not be provided with legislative Initiative.

PANAYOT LIAKOV, UDF MP: I would like to make my remarks immediately because they are a continuation of the previous remarks. Of course the Ombudsman may have such findings and they would be covered in his annual report to the National Assembly. This annual report would not only register the cases reviewed by the Ombudsman based on complaints and signals but would also outline trends, typical breaches in certain areas and whether these have been caused by legislative flaws. I consider that this report should by all means contain such recommendations. I would give a random example. The Access to Public Information Act could contain provisions that do not allow the exercising of the relevant right and central and local administrations are refusing such access on a mass scale. By the way I think that this is the exact situation with the act in question. I think that it does not provide sufficient guarantees of this right. Citizens are also not aware of this right and do not use their opportunities to receive timely and accurate information that the administration owns them. So the Ombudsman would be able to do that.

I have some comments on the restriction under Mr. Kornezov's draft, according to which the Ombudsman may be referred to solely by citizens and not by legal entities. I feel this is a weakness. You know that the NGOs are registered under the Non-profit Legal Entities Act. There is a central registry for them so the argument that these are too many is simply not valid. Everybody who works for public benefit is registered and would continue to be registered. These organizations are very sensitive and very well informed of violations of human rights and freedoms. They are in fact barometers and it is inadmissible to deprive them of the right to refer to the Ombudsman. Therefore I think that the UDF draft that provides for such opportunity is in my opinion much better. NGOs and all other legal entities should have such opportunity because they are often victims to clerks' arbitrariness and administration's power that should in all cases have such corrective.

I would like to thank Ms. Nacheva for her statement. We should not expect too much from the Ombudsman and should not regard it as an appeal instance. What is much more important is its public significance – this figure should take its place in society and citizens should know that they have one more opportunity to protect their rights without expecting that he would do miracles or could actually eliminate breaches.

The person who would be elected, especially the first one is also very important because he would give the tone and outline what should be the Ombudsman in a democratic society. The responsibility of the National Assembly in this respect is very big. I hope that in electing the Ombudsman it would not consider political affiliations and would elect a reputable person that would be able to strengthen the position of this institution and give it weight. For me this is one of the most important tasks before the National Assembly. I believe that it will adopt such a law.

I think that there is an opportunity for uniting the draft laws and formulating a joint draft that would be supported by the whole National Assembly thus reinforcing the significance of this mediator. This is also my ending. For me the most important function of this man and of this institution is mediation – not defense but mediation. He should be the mediator between civil

society and administration; he should intervene every time when administration has violated somebody's rights and protect civil society.

I hope that the National Assembly would soon adopt this law and the institution would start to operate. Thank you.

MARIA YORDANOVA: Thank you, Mr. Liakov. I give the floor to Mr. Silvy Chernev.

SILVY CHERNEV: I am one of the participants in the working group that developed the draft of the Center for the Study of Democracy. I have just a few words to say.

Obviously the nature of the Ombudsman institution is so complex that at today's discussion we have once again to explain the concept of it. That is why I am very grateful to Ms. Nacheva for the precise characteristic that she provided. I dare state my disagreement with those that are trying to include in a draft law theoretical qualifications, which should be given later by Universities and institutions engaged in academic legal work. The law is not supposed to provide qualifications but rather short and clear rules that would be subject to subsequent interpretation. While drafting the law we kept in mind the main characteristics of the institution and I think that it can be sensed by a careful reading of the provisions. Trying to give qualifications in the law would contradict to the basic rules of legislative drafting techniques and the Normative Acts Law also does not provide for such a thing.

I hope that after the present meeting we would agree on the concept. I think that the technical issues related to the accepted solutions could be achieved easily.

On the other hand, here we witnessed an attempt to oppose different systems. These are different accents. In practice defense would be provided in the form of mediation or we would find another similar term. It is not appropriate however to oppose the mediation model and the defense model. The very powers that would be provided to the Ombudsman would demonstrate that this is not a classical remedy. At the same time we cannot say that this is specifically mediation because as you know in the new era of law mediation is an independent method and only in some instances we would be right in qualifying Ombudsman's activity as mediation.

I would like to touch upon some specific things because we raised almost no concrete questions related to the differences in the drafts.

I fully agree with Mr. Liakov that we cannot exclude from this important remedy a large sector of civil society. I think that from the perspective of subjects of law we should speak of persons. Law deals with persons and differences should exist only where there are incompatibilities between the status of natural and legal persons. Mr. Kornezov is worried that the institution would turn into a Complaints Bureau. If we exclude the third sector, if we exclude legal entities in general, and I mean commercial entities as well, it would really turn into that. I am a bit biased here because I work in the commercial law area. Entities in that area also need untraditional remedies outside those that are provided by the system of public authorities.

I do not agree that if a certain number of citizens may nominate or dismiss the Ombudsman they could succumb to moods. We have to find the reasonable number between 20 and 200 thousand but the decision would after all be made by the Parliament.

I very much like the idea of the so-called temporal asynchrony or the difference in the beginning of the mandates of the Parliament and the Ombudsman and their time period. This practice has been adopted around the world as one of the guarantees for independence and I like it very much.

I cannot understand why the Ombudsman should be only a Bulgarian citizen and not a person with double citizenship. Are we again afraid of foreign spies that might occupy the institution? This is not serious in my opinion. Our constitutional practice demonstrated that all speculations with Bulgarian citizenship were quite inappropriate.

I have a suggestion. Maybe this discussion should continue at an experts level since obviously within this format and the time we have got left, we would not be able to review the differences between the drafts and this is basically our purpose.

Thank you.

MARIA YORDANOVA: Thank you, Mr. Chernev. Ms. Nacheva wants to make a remark.

SNEZHANA NACHEVA: Thank you. I would like to add to Mr. Chernev's statement. The requirement for Bulgarian citizenship is sufficient. The remaining "having no other citizenship" is not appropriate for another reason that none of us seems to be aware of at present. Up to Maastricht citizenship was a national institution, belonging to a certain state. After Maastricht with the subsidiary European citizenship it will turn out that our accession would give us one more citizenship. So if we preserve the requirement "a Bulgarian citizen with no other citizenship" it will turn out that none of us would have the right to take any position or be elected as an MP, president, etc.

So this is the second reason. First, it does not correspond to the idea of belonging only to a single state and secondly, with a view to the trend and our integration to the European Union this requirement would surely have to be eliminated because all of us would be Bulgarian citizens and citizens of the European Union.

MARIA YORDANOVA: THANK YOU, Ms. Nacheva.

Mr. Koshlov was also interested in making a comment.

EMIL KOSHLUKOV, NMSII MP: Thank you. I can see that due to the novelty of the institution it is difficult for us to define it. Probably it is the practice that would show how the laws would be implemented. But I think that most of the comments that were made are taken into account by the draft law. I would repeat that we do not have copyright over this draft; we have actively used both drafts that were present to that date and also the opinions of NGOs.

I would like to very shortly outline our draft. First, it clarifies the legal status of the Ombudsman. Secondly, it specifies the rights and duties of the Ombudsman and the forms of his actions. Thirdly, it specifies who would be entitled to address the Ombudsman. Of course, legal entities are included in the scope of the law. This draft also specifies what are the procedures for the work of the Ombudsman and what would be the consequences if

he/she does not work, i.e. the responsibility of the Ombudsman. We have also specified what would be the consequences if institutions refuse to cooperate with the Ombudsman.

I consider that our draft solves lots of issues including the one of the difference in mandates. We were choosing between three and five years so that the mandate of the Ombudsman does not coincide with the mandate of the Parliament. I would not like to dwell on the specific number of years but there obviously should be a difference and it is provided for in our draft law.

I think that regardless of all different opinions the Bulgarian Parliament has a sufficient base to start from in establishing this institution. It has been postponed for quite some time. We would never have a unified opinion or an Ombudsman that is approved by everybody. For me it is more important to have an efficient Ombudsman.

The draft categorically does not provide for any forms of influence of the administration over the Ombudsman or removal as you mentioned. Our draft was introduced with detailed motives and if you take the time to read them you will see the extent to which other drafts are taken into consideration.

Thank you.

MARIA YORDANOVA: Thank you. Now I open the 15 minutes break and after that the discussion would continue with a presentation of local experience.

(After the coffee break)

MARIA YORDANOVA: We shall continue with a presentation of the experience of the functioning of local civil mediators. As you know in many towns and municipalities NGOs in cooperation with local authorities conducted experiments with the creation of Ombudsman-like institutions at a local level. There are no relevant laws but there are also no obstacles to that. The first two drafts provide for such local structures and the third one does not. Of course, such institutions could exist without a law but to a certain extent the first two drafts reflect the experience gathered from the activity of local mediators or local Ombudsmen. Practice demonstrates that they could be stabilized and be more respectable if they are regulated in a law.

We will listen to three representatives in this sphere – Lilly Kolova from the center for Social Practices, Rada Kulekova, former civil mediator for Mladost Municipality and Antoaneta Tsoneva, present civil mediator for Sofia Municipality.

LILLY KOLOVA: The Center for Social Practices in constantly monitoring the cultural changes of political activities through different researches using two methods – cultural and qualitative. The researches of relationships between citizens and institutions started in 1995. These researches show that the relationships between the state and the civil society are far from the democratic understanding of power. The citizen does not see himself as a person who might have some participation in the law-making process and is always presented as a scandalous beggar for rights.

As a result of these projects we made the following conclusions. There is no classical civil control over central or local state institutions in Bulgaria. There are no organized citizens that

view institutions as an entity providing assistance for solving their problems. The figure of the clerk in the administration is associated with force and coercive functions that are inadequate in respect to civil society.

Analyzing the results our team formulated the following recommendations. It is necessary to conduct a systematic civil control over the institutions, which should be implemented through clear procedures for access to internal institutional information by citizens and media. It is important to develop an effective system of civil education that would inform citizens of their rights, of the concept of separation of powers and the addressees of citizens' complaints. Officials in administration need a change of their role in respect to citizens. This change should be directed at friendliness and cooperation with citizens instead of hostility. Therefore we reached the conclusion that as a first step it would be easier to assist the organization of the communication between citizens and local administration. The idea was to institute a consultant-mediator between the civil society and the institutions. The main requirement to that person was to be aware of the culture of institutions and of citizens and to translate institutions' language to citizens. Thus the idea was born that we should reorganize the information environment of institutions by providing citizens with a free access to information within institutions.

The Center for Social Practices decided that there is no need to rediscover the wheel and reviewed foreign practices and in particular the practice of the United Kingdom. Based on research work in the United Kingdom the center launched three pilot projects in three municipalities – Mladost, Koprivštitsa and Sevlievo. In the course of the work we included in the project experts from the Ministry of Regional Development and Communal Services. In relation to the analysis we had to study the law and the possibilities for legitimating the Ombudsman institution in municipalities. At the initial stage of the project we attracted people from the executive with a view to ensuring their commitment for the purposes of the project.

People from our team, experts and local coordinators developed a statute for the civil mediator, which outlined his rights and duties and a regulation of its activities. Based on the statute and the regulation separate municipalities developed different options for legitimating the institution in their municipality through an approval by the municipal council, a framework agreement with the mayor of the municipality, etc.

The main goal in implementing the project and the introduction of the institution at a local level was the complete transparency of the work of the expert team. The results of its work were regularly presented before the local media in the three municipalities and before the administration and the political forces.

In the very beginning we were able to get the support of municipal councilors and political forces. After the municipalities agreed in principle with the establishment of this institution on their territory they developed principles for the Ombudsman's work there. As the foreign practice demonstrated the work of the Ombudsman is characterized by authority, dignity and political neutrality. In order to come closer to this model we chose the following approach in selecting the Ombudsmen for the individual municipalities: we wanted candidates who were young and unburdened from a political and social viewpoint. Commissions were formed that included all stakeholders – municipal councilors from all political groups, municipal officials, experts. The goal of these commissions was to choose the most appropriate candidate. Representatives of regional media attended all stages of the selection of local

mediators. The best candidates were approved at a meeting of the municipal councils and thus legitimated at a local level. The first three Ombudsmen in Bulgaria were selected based on this approach.

The selected public mediators started their work in reception offices that were organized and equipped with project resources so that they would not be associated with the local administration. These receptions were situated outside municipalities with the sole exception of Mladost municipality where the reception was situated on the territory of the local government and the present Ombudsman. This was necessitated by the need for an easier access to the institution.

After the selection of candidates we started a campaign for popularizing the Ombudsman institution. We invited journalists to join the expert councils who undertook the task to promote Ombudsman's activity. We also launched an active regional campaign; articles were published in the local press as to how the institution could be useful to citizens. Every municipality developed different options for the work of the public mediators that were appropriate for its territory. The Mladost regional office served only citizens of Mladost municipality although citizens from other municipalities constantly contacted us. Now the operating Sofia Ombudsman could serve them as well.

The public mediator worked based on rules providing for equal rights of citizens to defend their rights regardless of gender, race, ethnic origin, social background, age, economic status, political and religious beliefs. The attitude towards the parties was courteous, the mediator informed them of his/her actions and intentions, listened to what they had to say and gave them an opportunity to revise their own positions. The names of the persons concerned in specific cases were kept confidential.

The Ombudsman's office in Koprivshtitsa municipality was located in the local cultural center. This place was chosen to prevent the identification of the reception with local administration. One of the main accents in the work of the public mediator was providing consultations to citizens. Our team found out that citizens are not sufficiently educated; they lack sufficient civic culture as to their rights and the competences of the local administration. This uncertainty allows administrators to forward their complaints from one office to another thus delaying the solution of their problems. Therefore one of the main functions of the Ombudsman was the educational one – he/she had to inform citizens about their rights. Thus citizens could claim their rights in case the latter have been violated. In relation to that the public mediator in Koprivshtitsa prepared a reference book with all services and tariffs offered by the municipality.

The work of the public mediator in Sevlievo started at a later time due to the fact that his/her function was politicized and at the initial stage the local elite did not trust this institution. The status of the public mediator had to be approved at a meeting of the municipal council but several times the meetings were boycotted by one of the political forces. After the municipal council approved the institution, the same political force launched the thesis that the Ombudsman was a useless institution. A radio survey however showed that all listeners would use the services of such institution if it existed. The idea of educating citizens about their rights and obligations could allow them to actively participate in the decision-making. Most of the local administrators viewed the institution only as a relief for their own work but not as a form of control over them.

At the stage, in which the local Ombudsman works in close cooperation with the mayors of individual municipalities, there were conflicts of interests occurring due to the strong influence of the mayor over the institution. Therefore we were constantly seeking ways not to leave that impression and to avoid this effect. The positive results achieved through the pilot projects were that the Ombudsman institution was accepted by the public and the municipal authorities showed a willingness to introduce such institution in their regions. The members of the project team took the initiative to develop the statute of the Ombudsman's work. The positive experience in the three municipalities was presented before other municipalities. Pleven, Veliko Turnovo and other municipalities expressed their willingness to participate in such projects.

The problems that we faced were related to the traditional attitude of the citizens of municipalities composed of 6-7 thousand people who are used to being in a direct contact with the mayor who accepted all complaints regardless of whether these were within his/her competence or not. The people preferred to work directly with the mayor because they considered that their complaints would have to travel a much longer way if yet another institution is introduced. Generally I can say that the practice we observed proved that it is a working model. In the course of our work we together with the Center for Liberal Strategies developed a draft law. In this law we take the position that the new draft shall include a chapter devoted to the local Ombudsman.

MARIA YORDANOVA: Thank you.

There are such chapters in two of the drafts so I would give the floor to Mrs. Kulekova, former civil mediator for Mladost municipality. I hope that her presentation would be related to the debated drafts laws.

RADA KULEKOVA: Having in mind the time concerns I would have to reorganize ad hoc what I wanted to present before you. But it is indeed related to the draft laws.

First, I am glad that the three drafts are again on the table for discussion and that I can see here lots of people that I have not met before. This means that new people are getting interested in these issues. It does not matter whether this interest is due to newly acquired capacities or personal interest. The important thing is that it is necessary to debate the topic about this institution and about the draft laws more and more effectively so that we could get closer to adopting an Ombudsman Act.

I have almost three-years' practice as an Ombudsman of Mladost Municipality. Mladost is a district with a population of 100000 – larger than some district towns in Bulgaria. It has grave problems and burdened administration. The results of the implementation of the projects were summarized and changes and improvements were made to the first draft law, which was introduced in the Human Rights Committee. We developed our regulations based on this draft and on the foreign experience in this field. Later on our own practice was also able to provide feedback and information, which influenced this draft. It is nor an accident that the people from the Legal Program of the Center for the Study of Democracy speak about laws. They introduced in Parliament several versions of this draft law and every time they were able to better sense the needs and possibilities for introducing this institution in Bulgaria.

In short, my opinion on the presence of three drafts is that it is good that there are three of them and each of these drafts fills a gap that existed in the others or provides a better formulation on some issue. I consider that one of the main advantages of each draft is that they take into consideration the world practice, the requirements for the harmonization of our legislation with the European one, which is one of the reasons for the development of these drafts, and the existing conditions in Bulgaria. I think that the positive trend in the revisions and in the new drafts is that the powers and the competence of the Ombudsman, the entities that may address it – individuals, and organizations, including informal organizations, the institutions that the Ombudsman may monitor and consult or to which he/she may address critiques and recommendations. This means that matters are no longer limited to state central and local administration, the powers of the Ombudsman are not limited to acts ensuing from citizens' complaints but he/she may ex officio do inspections. It seems to me that we have a chance to establish (legislatively and practically) an institution that would on one hand use the authority of internationally established institutions, including the European Ombudsman, and on the other hand – to cover the lowest practical level, on which citizens encounter problems with the administration. Such institution that has its peaks in the achievements of recognized foreign institutions and the European legislation and at the same time is based on the problematic administrative and civil situation in Bulgaria would be the best option.

I support the broadest regulation of that institution with possibilities (but without obligations) for establishing local Ombudsmen, even specialized Ombudsmen depending on emerging problems in our social life. You are well aware of the fact that presently minority rights are such problematic field. Roma organizations insist on introducing minority rights Ombudsman. There have been suggestions for introducing equal opportunities Ombudsman. No matter whether such specialized Ombudsman would be established, the institution should have the right to work on such problematic spheres of our social life; otherwise it would be a dead body. This does not necessarily mean to establish specialized Ombudsmen but rather to provide a broader framework. Minority rights exist as such exactly because of the violated civil rights. In practice an institution for the protection of civil rights should protect all rights when they are violated. In my opinion minority rights are distinguished as such where civil rights have been violated.

A general argument in support of the existence of local Ombudsmen could be the knowledge of and the direct access to the practice of local administrations. I claim that in these administrations there are practices and procedures - legalized or not – which are a prerequisite for or a fact of infringements of civil rights. Human rights institutions are not aware of that because in local, as well as in central government chiefs operate under a certain mandate and are not always able to understand in-depth the practice that irremovable or older middle-level officials have managed to strengthen. I intended to give a specific example to illustrate the need for local Ombudsmen. I even consider that the capital needs municipal Ombudsmen because the Sofia Ombudsman would not be able to tackle all problems of the citizens of the capital.

In conclusion I would like to say that there is no use of an institution that would report the number of solved individual cases but would not be able to study certain pending, everyday problems on its own initiative. This has to happen in local administration.

MARIA YORDANOVA: Thank you, Ms. Kulekova. I guess that later there will be questions on your presentation. I am now giving the floor to Ms. Antoaneta Tsoneva who is the public mediator of Sofia municipality and who could tell us a little more about this institution.

ANTOANETA TSONEVA, Ombudsman of Sofia: Ladies and Gentlemen, dear Organizers of the present forum. Thank you for giving me the opportunity to talk to you in the context of so broad a debate, which is in essence parliamentary, about the meaning and the significance of the Ombudsman institution and about all that we experience in its practical dimensions. My goal is to take you away from the abstract issues and the theory on the topic of the Ombudsman.

The Ombudsman in Sofia Municipality is functioning based on a Regulation on the Organization and the Activity of the Civil Mediator of the Capital adopted by the Municipal Council of Sofia. Our Reception started to work effectively on February 27th, 2002. Today I will present our experience, which has not been gathered throughout a long period of time. This experience however is very intense and even at this stage we could already see certain trends that could be analyzed and could suggest working solutions and mechanisms that the legislator could take into consideration in developing a future law.

In my work with citizens I can see what are the expectations and attitudes of people. I can say that they have a good orientation as regards the functions of the institution, they have the stable perception that the Ombudsman is outside the structures of local administration and that he is independent of the local power in his/her acts and decisions. Frequently asked questions that demonstrate the seeking of the independence of the institution are “Who appointed you?”, “What are the legal grounds for your work?”, “Who pays you?”, “Who provides the resources for your activity?”

Regarding the name our experience shows that citizens difficultly accept the word “Ombudsman”. This Swedish word is too complicated to articulate and unclear and it sometimes awakes strange associations. Ombudsman means a person who represents somebody, a mediator. Having in mind the present public attitude, this is too neutral. This institution is expected to perform defense functions. In this sense I consider that it would be much more relevant, as it was also proposed by the Concept, to speak of a Civil Defender and Local Mediators Act. Thus we would achieve a very good balance in respect to public expectations and attitudes and the use of this institution based on its very name.

As I mentioned our powers are regulated in the Regulation that serves as grounds for our work. These include mostly complaints against acts of the administration that contradict the principles and rules that are obligatory for it, namely cases, in which it has not observed the procedural rules for providing administrative services and making decisions, where there is lack of openness, the administration refuses to provide information or provides too restricted information of citizens’ rights in respect to administrative services. These are also cases of slowness, indifference, incompetence and humiliating attitude to citizens in their contacts with the administration.

These are generally the cases that we take. Of course they differ in matter and subject. I will try to briefly outline them. Up to now we have filed 120 complaints, we have provided more than 30 oral consultations in cases we are addressed by citizens, the addressees of whose complaints are not the structures of Regional administration or Sofia administration. Even in these cases we do not refuse contacts with citizens but consult them as to whom to address

on a regional or central level while trying to be as comprehensive as possible in respect to the methods for solving their problem.

Let us go back to these 120 complaints that relate directly to our activity. The largest number of those relate to placing in municipal accommodations, management of and disposal with municipal property, administrative legal procedures related to restitution and compensation of citizens, cases of illegal construction works. The citizens of Sofia are very sensitive to ecology, to the preservation of the green system of the city. This is the right moment to mention a trend that is outside the scope of our powers. Pursuant to the Regulation we do not have powers in respect to the activity of municipal companies. We however receive a large percentage of complaints related to the activity of these entities, which are merchants under the law. These are however companies that provide public services based on a concession or a procurement contract or these are just companies, the principal of which is the municipality. Therefore I consider very important the fact that the Concept of the Center for the Study of Democracy provides a very detailed regulation of this possibility. Under the Concept citizens may address the Ombudsman in relation to persons and bodies that provide public services. I am convinced that if the future law includes such a rule, it would meet a blatant need for protection in this sphere.

We have noticed that citizens prefer personal contact in reception days. A smaller number of complaints reach us through the mail or through the filling out of the form we offer. During the reception we make a protocol of the complaint and clarify the circumstances pertaining to the specific complaint. We are very careful in identifying the body, the official, the specific directorate, division or sector, against which citizens file their complaint so that we know whether that falls within our competences and if so, what would be the most appropriate reaction and how to receive the necessary information for reviewing the case.

Citizens often need assistance for formulating the subject matter of the complaint. A big percentage of citizens are not aware of their rights and obligations, especially those that are based on Regulations of the municipal council. Of course, I am not discovering the wheel by saying that. In this sense however we could expect that the national institution would also have such consultative, informational functions as to citizens' rights. It would also have the task to achieve maximum transparency and accountability in the activity of the administration through consecutive monitoring of the communication policy of public authorities and the issuance of specific recommendations related to that policy. This is directly corresponding to the level of acquaintance with the rights and legal interests of citizens and of course, with their obligations.

Functionally, we can distinguish between two types of complaints. The first type includes complaints requiring assistance in the framework of the administrative procedure itself at the stage where the administrative body itself solves the problem. In this case we point out to the citizen the way for solving the problem and the steps he should take for defending his/her rights before the administration. The other type of complaints are those, which include complicated factual and legal issues and need in-depth review, a meeting with the administrative body, with the officials who are responsible for the case to very carefully discuss the administrative procedure and the legal grounds for taking the relevant decision. Our view is that this is a good approach because at this stage of the inspection we could seek opportunities for revising a certain decision at this stage. In cases where the complaints require more time and effort for clarifying the subject matter, we consider that if there is no statute of limitations for accepting a complaint as in some of the draft laws – one year in one

of them and two years in another and the last draft lacks such a requirement at all – the institution could fail from the very beginning. The complaints that are addressed to the President or to the Council of Ministers amount to thousands. And if there is no statute of limitations, the institution might not be able to move and effectively deal with the cases.

From a practical perspective I can say that there is yet another unrealistic deadline in the last draft. It states that within three days a motivated opinion shall be sent to the citizen on his/her case. Everybody who is acquainted with the tempo of work of the administration and the efforts that are necessary to review a single case file would agree that this is an unrealistic deadline that would cause unjustified expectations and would once more affect the reputation of the institution, which would be burdened with a commitment it could not meet.

Regarding the question of whether the Ombudsman could be addressed with a complaint where there is a pending court or administrative case, I would like to note that under our regulation we may not take complaints in cases where there are court proceedings. We would like to note however that citizens are aware that it is only the administrative body or the court that could issue a decision. They however address us to be their mediator for reaching an out-of-court agreement. This is my first consideration on the issue.

Secondly, it is interesting to review such cases. It is these cases that disclose corrupt administrative practices. To correct the through the means of the institution and to bring them into conformity with law would lead to improving the conditions for exercising citizens' rights and to fair decisions that would prevent administrative and court appeals.

I would now like to dwell on the administrative structure and financing. The institution would obviously receive tens of thousands of complaints. With a view to that and to the social, cultural and political context, in which the institution should work, the fact that the third draft law does not provide for territorial structures is unjustified. We have to take into account that the Ombudsman is not only a tool for protecting rights that have been violated in a specific case. A Parliamentary Ombudsman should above all direct its capacity to solving problems of the society as a whole and the functioning of the administration should guarantee the development of the general principles and rules, on which the administration functions and in which the activity of civil servants is regulated. In this sense without local Ombudsmen or local public mediators that are present in this Concept, we would not be able to guarantee a monitoring of the administrative practice on a daily basis, we would not be able to develop a mechanism that would filter, analyze and direct information to the Parliamentary Ombudsman about the level of respect to citizens' rights in their contacts with the administration.

Regarding financing: I consider that it could be financed from the budget of Parliament. Unless this suggestion is contrary to the State Budget Act, the Ombudsman's budget could be a proportion of the total budget of Parliament for the year. This amount should be inviolable so that the institution does not lose its financial independence, which forms part of its integrity.

In the end I would like to say that the right to public expression is a key element of the functioning of the institution. The approach to the media of the future Ombudsman and the very authority of his/her personality would be the sufficient guarantees for administration's respect to him/her. Therefore the providing for sanctions, fees and the imposition of coercive

measures in cases of established violations, which are proposed in the last draft would lead the institution to power relations and would be contrary to the philosophy that the Ombudsman shall propose and not impose measures and to the understanding that this is not a body exercising state power and authoritative functions.

I could note an interesting trend. We are often being addressed for partnership by different non-governmental organizations that obviously see the Ombudsman as their natural partner and try to coordinate with us their activity for the protection of human rights. On the other hand citizens also address the institution to ask for information about specialized NGOs – human rights, ecological, alternative dispute resolution. This means that this figure is regarded by society as a bridge to the other subjects of civil society. This trust confirms the idea that the Ombudsman should be understood and viewed as a figure chosen by the civil society. Today that civil society is addressing the state and asking it to institutionalize this figure while depriving it of its guardianship. The legislative and social philosophy of such a practice should be providing more powers to citizens, expanding the scope of civil society and achieving responsible and transparent administration and governance.

I would end with something I cannot help noting. The trend towards a political commitment of the Ombudsman to a Parliamentary majority under the last draft, the fact that the proposals for selection and removal shall be made by only one fifth of the MPs, is in our opinion replacing the attitudes and expectations of civil society by not taking into account the practice that was gathered and promoted by it, by being contrary to the very idea and sense of introducing the Ombudsman as an independent and politically unaffiliated institution based on the culture of civil conscience and responsibility. I can assure you that these are clear attitudes and expectations. Let us realize what is that kind of law that Bulgarian society expects and what would be the conclusion of the present debate – would we adopt a reminiscence of a law that was effective in the 70-ies – the State and People's Control Actor or we would adopt a law that would indeed be up to public expectations. What kind of an Ombudsman are we going to create – a civil servant with a political mandate or a figure that would indeed be recognized by civil society?

MARIA YORDANOVA: Thank you, Ms. Tsoneva for the interesting and well-reasoned presentation. We are way ahead of time so I suggest we continue the discussion in a more concise manner with short remarks and questions. I open the floor.

RADA KULEKOVA: First, I would like to make a clarification. It seems that I was not clear enough when I said that the law and the institution itself have to have the opportunity to guard and protect civil rights in all spheres and stages of the development of civil society. When I mentioned specialized Ombudsmen I probably did not mention that minority rights are in fact breached civil rights. These are all civil rights. When the rights of citizens in a state are breached, then the painful issues of minority or of patient's rights emerge. In other words the law has to give an opportunity for Ombudsman's interference and initiative on all such problems regardless of the stage of development of civil society we are at instead of establishing a too voluminous institution.

As a start of the discussion I can address a remark to Ms. Tsoneva. She would probably agree but she did not mention it – we have to introduce criteria for limiting the flow of complaints to the Ombudsman. Indeed, we should not allow for his/her piling with numerous complaints and we should not obligate the institution to review every single complaint. Therefore it is worth discussing what the Ombudsman's priorities should be in the selection of complaints –

whether these should be problems affecting more people or a stricter or superior rule of law. We can select a number of criteria that would give the Ombudsman an opportunity to choose the complaints that deserve to be handled with priority instead of being piled with complaints.

As far as the statute of limitations is concerned, if the violation is still taking place the Ombudsman should be empowered to review the complaint regardless of when it was filed.

MARIA YORDANOVA: Thank you, Ms. Kulekova. You have the floor.

KONSTANTIN TANEV: I would like to clarify several things. In developing the concept and the drafts that resulted from it we based them on the principle of the universal nature of human rights. That is why the Ombudsman was built as a personalized institution of general competence. This was the result of the comparative analysis we did and of the analysis of the political, financial and social readiness for introducing this institution in the country. This resulted in the decision that it would not be appropriate to establish specialized Ombudsmen. Quite often such specialization of the functions of institutions leads to inefficiency in their operation. The simplest argument would be the habit of Bulgarian institutions, administrative or civil, to refer complainants to each other because that is not in their sphere of competence. And there would be many border cases.

The problem of minorities was raised at numerous discussions. From a comparative perspective there is only one minority Ombudsman – in Hungary. But we have to emphasize that they also have an Ombudsman with general competence. Things always boil down to the need for such personalized institution. In this respect the concept proposes local institutions that would not be in districts but in municipalities. This would to a large extent cover minority problems. I do not mean to say that we were trying to compensate for this but rather that the working group gave attention to the issue. Please, note that the protection of universal human rights is a number one priority in Bulgaria, as Ms. Kulekova also mentioned and secondly, that minorities in Bulgaria are geographically distributed in certain regions or towns. So the municipal Ombudsman would be able to cover these problems.

In conclusion I would like to note that both drafts – the ones introduced by UDF and by Mr. Kornezov – are based on the idea of the need to establish local Ombudsmen not as an obligation but rather as a possibility allowing the taking into account of the particularities of each region.

Thank you.

VERA SMILKOVA, Parliamentary journalist: Obviously attendants are convinced that there has to be such institution. For more than 10 years now the Center for the Study of Democracy has been working very actively and keenly, unlike politicians and parliamentarians.

I would like to express a concern of mine. You remember that in October we had a big discussion with the participation of civil NGOs. A paradox however occurred after that – the Parliamentarian majority categorically discarded the draft laws that were introduced in Parliament and approved by the Legal Committee and the Euro-integration Committee. Moreover, last year the Ombudsman Act was adopted at first reading but there was no time or political law for final adoption. It was said here that all member states of the Council of

Europe have such institution except for three. In Bulgaria there are about 20 Ombudsmen with positive and with negative practice. Therefore my question to Ms. Kulekova is whether there is negative practice in her work – three years are a long time after all.

Secondly, even lawyers do not demonstrate enough will for introducing the Ombudsman. Ms. Tsoneva, you know that it took years to finally decide that Sofia should have an Ombudsman. I would like to ask the people who have been working on these issues for a long time whether they consider that this discussion could initiate and move forward the adoption of such an act. My question is addressed to Ms. Nacheva who is with a very high Parliamentary Commission and to Ms. Yordanova.

Thank you.

MARIA YORDANOVA: Ms. Kulekova, there was a question addressed to you. You have the floor.

RADA KULEKOVA: Thank you for the question. Thus you give me an opportunity to extend the short time I had for my presentation. There are indeed bad practices and they are just as helpful as the good practices. The unsolved complaints or rather the unsolved problems are usually a result of the lack of understanding by the administration of the fact that the Ombudsman can be equally useful for it and for the citizens. This is due to the fear that all the information, the reasons for taking certain decisions could be made public. It is necessary not only to convince citizens that they have rights and obligations they should be aware of, but also to convince central and local administrative bodies that the Ombudsman can be very useful to them. Unfortunately I am under the impression that Parliamentarians also need to be convinced. I have this impression because of the fact that we have draft laws since 1999 and although we have the opportunity to establish an additional body to assist Parliamentary control over the executive, the adoption of the law is taking too long.

The negative examples that have been present in my practice are due not only to the lack of understanding from the administration but mostly to the attitude of the mayor. There are several possible scenarios in this respect. It is not prestigious for a mayor to declare that he does not agree to allow such control over his/her administration. So he can be very polite every time and he can take all recommendations and critiques that come to his knowledge without transferring them to his administration. I had such a case. In the first mandate of the Mladost Ombudsman the mayor was very supportive of the institution. When I tried to present it to him he had just come back from the United States. We had his full consent and we also had long discussions with the administrators on the procedures we were going to follow. Thus we were able to overcome their concerns and their resistance to an institution that would see to the legality of their actions without itself being legislatively established. Later on the mayor changed and although the new mayor did not want to blemish his reputation by refusing to re-sign the framework agreement with the Ombudsman, he immediately deprived the Ombudsman of the right to directly contact the heads of the departments that received most complaints and even the deputy mayor. Limiting the contacts of the public mediator only to the mayor makes information vague and obstructs decision-making. This is again to demonstrate that the main figure the local Ombudsman deals with is the mayor. Of course, the municipal council can be very useful in this respect and the relationships between the municipal council and the local Ombudsman can be comparable to those between the Parliament and the Parliamentary Ombudsman.

Not always the administration is to blame for bad practices. Laws and secondary legislation are neither systematic, nor comprehensive. There is no need to explain this to lawyers. We need not only to synchronize our legislation with the European one but to also carry out an internal synchronization and to fill the gaps with Ombudsman's participation.

MARIA YORDANOVA: I give the floor to Ms. Nacheva for a short answer.

SNEZHANA NACHEVA: First, I would like to note that there is a personal dualism in my participation today. Up to now I was talking as Prof. Nacheva who is deeply convinced that it is possible to have an exotic instrument such as the Ombudsman on these latitudes and given the Bulgarian character, that it is possible to have an human rights institution that would have no coercive power but would still be able to protect citizens through its influence. This is my first consideration.

Secondly however, you are appealing to another capacity of mine. The highly respected Prof. Kino Lazarov is seated next to me and his behavior is more appropriate than mine in relation to that other capacity. We are members of Consultative Legislative Council. It comprises 27 lawyers and is chaired by Prof. Vassil Mruchkov. We have the task to work on draft laws between the first and the second reading. In other words after the development of the political framework we have to legally craft the law after the politicians have told us what is the type of law they want, what should be its subject matter, its principles. So when time comes for me to work on this draft in the Council I would understand that I have to modestly work to improve the technicalities of the law. There I would have an expert's position. Here however I dare do something that I would never do there. For me it is important to influence the political framework at this stage. I sincerely regret the fact that the drafters who presented their drafts with monologues in the beginning are now absent. It was very important for me to see their reaction. If you ask me what would be most satisfying for me, it would be to see the three political forces standing behind the drafts reach a consensus and adopt a logical, unified Ombudsman Act utilizing all ideas. This would be a very good sign that the Ombudsman institution is being born with a consensus. Thus we would guarantee human rights.

I would repeat that it would make me most happy if we have a united draft adopted on first reading when the leading commission could work on one draft, or even better if there is a unified view about the institution. This would be a very good indicator because the most important thing for this body is to stay away from political commitments.

Thank you.

MARIA YORDANOVA: Thank you, Ms. Nacheva.

A question was addressed to me as well so I will answer very shortly. As a representative of NGOs we have acted as a sort of an Ombudsman in the long debates on the Ombudsman idea. We cannot make decisions, we can only recommend and for so many years we never tired to do so. I do not want to get contaminated with the skepticism you shared in the coffee break but I am a bit disturbed by the last statement before the coffee break – that there is no consensus and that there could not be a consensus on the draft law and on the person. I hope this was an accidental phrase because as Ms. Nacheva said this institution is doomed without agreement. Even if the law were adopted, if the institution is politicized, its influence would be diminished. The sense of today's discussion was not only for us to meet and say things

that we have been discussing for years but also for the MPs and for the Commissions that are responsible for the adoption of the drafts to attend and to hear about the work of the students and the experts' work so that they be prepared for the future debates. Unfortunately, especially in the second part of the public hearing there is no active participation on their side. Let us however allow ourselves a little optimism.

TEODORA KALEYNSKA, European Information Center, Veliko Turnovo: It is obviously me who has to bring in some optimism. I am a representative of the European Information Center in Veliko Turnovo that has the complete documentation of Strasbourg and Brussels and has in the last four years played the part of a regional Ombudsman because everybody who wanted to file a complaint with the EU did it through us. Therefore we were able to take a project with the Democratic Commission Program of the American Embassy for instituting a specialized anti-corruption Ombudsman. I would not want to talk about it because for a number of reasons we still do not have a document for appointment. I would like however to discuss the three drafts and to ask the people who are present here (I believed that more MPs would be present) to think very carefully about the local institution. If the national Ombudsman can be a consensus figure with established reputation who has his position and may speak out, plead, etc., it still remains in Sofia. If we introduce this institution in a small community where people are aware of their stories and problems, we have to be very careful. This has to be done with the law and not through its subsequent revisions. It seems to me that the three drafts have weaknesses in respect to the so-called local civic mediator.

For two years now there have been media presentations and I heard all kinds of variations of the word "Ombudsman". This is not a matter of bad media policy since Veliko Turnovo was about to become one of the three municipalities of the Institute for Social Practices of Mr. Daynov. So we categorically have to find, the Parliamentarians have to find a Bulgarian version of the word that gives the citizen regardless of his/her educational and cultural background the best idea of what this is. I consider that the words mediator and defender are really good in this sense.

Next, we have experience with the endless lists and the endless experiments of the political forces on a local level with the so-called heads of lists. How can you imagine that a person nominated by the national civil defender could be local? How could the national civil defender select the best civil mediator for Suhindol Municipality? He could not possibly know him. The other option is that he/she may be nominated by 10% of the citizens of Veliko Turnovo municipality, i.e. 16500 persons having the right to vote. Why should they do it? I consider that under all three drafts the mechanism for nominating the local defender is imperfect. I cannot say how it should happen because I do not have enough practice. I however regret that MPs are away because I would like to emphasize the importance of having local defenders. I would even go further and narrow the selection only to people who have been registered on the territory of the relevant municipality for a certain period of time. This should be a person who is acquainted with local problems, who has influence in local community and knows their history and not a person who comes from elsewhere and has to start to familiarize him/herself with issues from scratch. In other words I would include in the draft law the requirement for address registration with the municipality for several years.

Next, education: I am a philosopher and I would not like to restrict candidates. From my experience of interviewing the 36 candidates for the post however I can say that candidates should have a master's degree and if possible the latter should be in the field of social

sciences. There is no use in simply having somebody who would bear the title of mediator. For me the best option would be legal education.

Fourth, I vary much like the words humanism and democracy and I have been very happy for the last 12 years. Would you tell me however what “high moral qualities and attachment to ideas of humanism” means? Let the people who work on the drafts formulate things more precisely especially as regards local structures. I think you understand what I have in mind. The general formulation would not help but would rather burden the selection.

Fifth, financing: Under the UN ranking I come from a flourishing municipality but it is only because we have independent financing from the Political Department of the Council of Europe that we survive as a structure. From the moment when (I do not mean 2002 but probably 2012) this person has to be financed from the municipal budget, he would cease to be neutral. I would not comment on that, in my opinion it is rather clear. Categorically the financing should come from the state budget from the allocations for the national civil defender. If we bring financing down to the municipal level, there is no sense in starting the experiment.

Sixth, we have to have very exact criteria. These should be developed by Parliament. I like the quota three thirds. But I can tell you why Veliko Turnovo does not have an Ombudsman – because this quota is unachievable on the local level. We say that we try to exclude politics but this is not true. If we put the requirement of two thirds of the votes the selection would always be a political bargain. I think that we should be aware of that. Therefore if we are to require two thirds of the votes, we have to have very clear criteria. This could also be the quota for Ombudsman’s removal.

MARIA YORDANOVA: Thank you for your statements. I give the floor to the last participant in our discussion.

VESELIN TSANKOV, Legal Institute with the Bulgarian Academy of Sciences: There are two issues I would like to touch upon. The first one is the selection criteria for the Ombudsman. Mr. Kornezov suggested that this should only be a person having legal education and at least 15 years of record of service. The world practice is different. Last year for example the Greek Ombudsman visited Bulgaria. He was a diplomat but it did not obstruct his work. I think that the other option would be a form of restricting civil rights, although I am a lawyer myself.

Regarding citizenship I shared with some colleagues during the coffee break that the Constitution requires that all significant public figures have only Bulgarian citizenship. These are the president, the MPs, the constitutional court judges, etc. Even the Local Elections Act provides that all mayors and municipal councilors should be solely Bulgarian citizens. The basis for that is the commitment of this person to the problems of Bulgaria and its citizens.

Last, Mr. Kornezov noted how important the opinion of the public defender or the Ombudsman is from the perspective of his/her competences and the legal nature of this opinion. For the last ten days I reviewed two opinions of the Parliamentary Committee chaired by Mr. Kornezov. I hope that a representative of Mr. Kornezov attends this meeting and would inform him of my statement. The Complaints Committee gave a written opinion to the Ministry of Justice and to Triaditsa Municipality with regard to a certain case. Both

asked for the opinions of several independent lawyers. All of these lawyers were on the opinion that the statements of the Committee were legally imprecise. The citizen was very glad that he had received a letter from parliament so I asked him if he knew what it meant. He did not.

The Ombudsman cannot simply send a letter or an opinion. In neighboring countries competent people work under the Ombudsman in certain sectors. When they sign an opinion they can defend it. This is very important. If a high institution gives incompetent or contradicting opinions, this would ruin its reputation.

Thank you.

MARIA YORDANOVA: Thank you, Mr. Tsankov.

I would like to assure all participants that the recommendations, comments and remarks that you made would be presented to the MPs and would also be accessible on the website of the Center for the Study of Democracy. I sincerely hope that they would reach their addressees.

In conclusion I would like to thank to all participants on behalf of the co-sponsors, I would also like to thank our partners from the American Bar Association for their continuous support for introducing the Ombudsman institution in Bulgaria, for its promotion through opinions and comments. I would also like to express my conviction that this discussion would contribute to moving the issue forward and finding the best solution for Bulgaria.

Thank you for your attention. Have a good day and I hope to see you again.