THE HEALTHCARE OMBUDSMAN – BEST PRACTICES AND PROSPECTS FOR BULGARIA

Center for the Study of Democracy
Sofia 2006

This edition is devoted to different aspects of the institution of the specialised healthcare ombudsman and the possibilities for its introduction in Bulgaria. The publication contains an overview of the good practices and the experience in the United Kingdom, Australia, Switzerland and Israel. The edition includes also a detailed summary of a discussion in relation with two draft laws concerning the institution of the health ombudsman and the comments and the recommendations on them of the experts of the Center for the Study of Democracy.

This edition is funded by the British Embassy in Sofia.

ISBN-10: 954-477-136-0
ISBN-13: 978-954-477-136-2

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FOREWORD

The ombudsman institution is widespread all over Europe and in a number of states on other continents where it has earned great public trust. It originated in Sweden as long as two centuries ago, spread across the other Scandinavian states and has since developed and established itself as a recognised mechanism of control over the administration and of human rights protection.

The institution originated as a parliamentary ombudsman, a position occupied by an elected **individual whose competences were of general nature**. As the scope and specialisation of its control expanded to respond to the growing specialisation and authority of the contemporary administration, the functions of the ombudsman required more staff to perform. Some states elect several ombudsmen of equal stature to share the workload, others appoint deputy ombudsmen and still others elect specialised ombudsmen whose competences cover only particular areas of public life. A trend towards increasing the number of officials at an ombudsman's office also exists.

The common approach is to elect a single ombudsman with the general competence of human rights protection on the national level. Bulgaria voted for the same model, electing a national parliamentary ombudsman and a deputy ombudsman with competences in all spheres. In April 2005, in compliance with the *Law on the Ombudsman* (in force since January 1, 2004) the Bulgarian parliament elected the first Bulgarian Parliamentary Ombudsman and his deputy.

There are sections of society, however, that are in need of greater care or special protection due to their vulnerable position or the vital consequence of certain social relations they are engaged in. This is the reason why many countries opt for various specialised ombudsmen, in addition to and usually independent of national, regional and local ombudsmen. They are established either through a special law, or through a regulation issued by the institution within which the ombudsman is to operate. The scope and target area of a specialised ombudsman's activities are clearly designated by their name, e.g. an armed forces ombudsman in Germany, the Netherlands and the Czech Republic, an ombudsman on equal opportunities and consumer protection typical for Scandinavian countries, an ombudsman on children's rights protection, a personal data protection ombudsman in Hungary, Finland and others, university, banking, insurance, pensions ombudsmen, etc.

Putting aside country differences, there are several specialisations of the ombudsman institution worth mentioning, regardless of whether they are attached to the national ombudsman or are outside its regulation.

Equal opportunities ombudsman

It appeared first as an ombudsman domain in the Scandinavian states where it has been respectively developed and its specific aim is to establish further guarantees for gender equality in all spheres of social life.

Children's rights ombudsman

Ombudsmen focusing on children's rights had to be founded both because a number of key international organisations issued documents with such effect and because children's rights are so frequently violated. The situation in the poorest countries raises special concerns, but no less sensitive is the issue in many transition countries. Some of them have paid attention to the related practice in the developed societies and, after evaluating the state of play at home, have adopted special laws on children's rights protection. Bulgaria makes no exception, but although the necessary legislation is in place and the relevant administrative bodies have been set up, we still face the vital issue of finding effective guarantees for children's rights protection. One such mechanism of proven efficacy is the specialised children's rights ombudsman.

In Greece, for instance, children's rights protection is entrusted to the first deputy of the parliamentary ombudsman. What is more, because of the type of violations in his/her competence, he/she has the exclusive right to inquire into the behaviour of private physical or juridical persons and not just the public administration. Some countries have even created regional children's ombudsmen. Such is the case in Catalonia where a children's rights defender at the regional public defender's office was elected several years ago.

Ombudsmen for the armed forces and security services

Following their national specifics some countries, such as Norway, Germany, the Czech Republic, the Netherlands, etc., have at various times introduced ombudsmen competent in safeguarding the rights of military personnel. Military ombudsmen can serve very particular national conditions, but they could also provide solutions in relation to some common problems associated with the military anywhere: the peculiarities of military service and military structures, the isolation of army life combined with the crucial influence that the military have on both national security and the future of young conscripts which requires that both temporary recruits and professional military men are handled with proper respect. Transition countries could benefit from such an ombudsman also in relation to the ongoing professionalisation of their armies and in terms of their participation in peace-keeping operations in areas of conflict as part of UN, NATO or other organisation's forces to which these countries are lately acceding.

Consumer protection ombudsmen

Such institutions can be found in Denmark, Norway, Finland, etc., where they have been established to ensure that the *Marketing Practices Act* and the *Consumer Protection Act* are duly observed.

University ombudsmen

They are typical for most universities in Germany and are also very popular in the US and Canada. Such ombudsmen consider complaints against the managerial and administrative

staff of universities, including discrimination incidents, and also act as conflict mediators. The first institution of this kind in Bulgaria was launched through a pilot project with the support of the non-governmental sector at Sofia University *St. Kliment Ohridski* where it functioned between 1 November 2004 and 31 January 2005. As the project was quite successful, currently discussions are going on about introducing permanent academic ombudsmen at Sofia University and other universities across Bulgaria.

Personal data protection ombudsmen

Finland, Hungary and the Czech Republic are the countries where such ombudsmen have been established. Due to the fast-progressing information technologies it gets easier to infringe on individuals' privacy, so these ombudsmen's role is twofold – to conduct inspections and inquiries of such violations and to maintain a register of entities requiring people to disclose their personal data.

Police ombudsman

Such a commission exists in England and Wales to investigate complaints against the police as well as issues brought up by police officers themselves which have a crucial effect on the institution or have arisen as a result of extraordinary circumstances.

Other ombudsmen

Other ombudsmen found in different countries are: *banking and insurance ombudsmen* (the UK), a *civilian conscripts ombudsman* (Norway), *a health service ombudsman* (the UK) who considers complaints from members of the public about the National Health Service. The UK also has *a prisons and probation ombudsman, a housing ombudsman service, a financial services ombudsman*.

Most CEE countries now also have to decide whether to opt for the alternative of setting up ombudsmen officers for specific social areas. Another specialisation option they could use is to form units within the national ombudsman service that would perform functions in particular areas (this is the model chosen in Slovenia). As there are ample practices in this respect, each country will have to base its choice on its needs, experience and traditions.

The Center for the Study of Democracy (CSD) has made consistent efforts to advocate the institution of parliamentary ombudsman through awareness-raising, participation in the drafting of the relevant legislation and support to the actual setting-up of the office. In addition, the CSD has, for some years now, studied the possible ways and existing attitudes to introducing specialised ombudsmen in Bulgaria by researching foreign models and analysing the local mechanisms for human rights protection throughout the spectrum of Bulgarian public life.

At the same time, in recent years, the Bulgarian healthcare system has been undergoing profound reforms. The reforms have been arduous and lacking in transparency and

their outcomes are debatably positive. This has produced a critical amount of public pressure for introducing effective mechanisms for control over health services. CSD experts, therefore, have focused their research on the health service ombudsman abroad and the prospects for establishing it locally, either as a separate institution, or as a specialised unit within the parliamentary ombudsman's office. Apart from that, the two draft laws on the rights and obligations of patients that were submitted to parliament in 2005 contain provisions on the establishment of a healthcare ombudsman, albeit in different forms.

This edition is the ninth consecutive independent publication of CSD devoted to the ombudsman institution since 2000. It regards different aspects of the institution of the specialised healthcare ombudsman and the possibilities for its introduction in Bulgaria. The publication contains an overview of the good practices and foreign experience in the United Kingdom, Australia, Switzerland and Israel. The edition includes also a detailed summary of a discussion in relation with the two draft laws concerning the institution of the health ombudsman mentioned above and the comments and the recommendations on them of the CSD experts. This publication aims to rally the public debate on the need for more effective human rights protection in a sphere as sensitive as healthcare.

FOREIGN EXPERIENCE IN ESTABLISHMENT AND FUNCTIONING OF SPECIALISED HEALTHCARE OMBUDSMEN

1. Great Britain

1.1. General information

The Parliamentary and Health Commissioner carries out independent investigations into complaints about UK government departments and their agencies, and the National Health Service in England (NHS) – and help improve public services as a result.

Full information on its organisation and activities is available at:
http://www.ombudsman.org.uk/index.html

1.2. Case studies

Dealing with dishonest conduct in NHS complaints handling

Miss R's mother, Mrs. R, had suffered breathlessness and chest pains for some time. Her GP referred her for tests including a chest X-ray, blood tests and an ECG. He told her that the test results were normal but prescribed medication for gastric problems, asthma and depression. The GP reviewed her condition the following month. Two months later, Mrs. R had a heart attack and died. The post mortem showed that she had been suffering from coronary artery disease and chronic bronchitis. Miss R complained about the GP's treatment of her late mother and questioned why he had not referred her to a cardiologist. The GP said he had also prescribed medication used in the management of angina, and produced a computer record in support. However, Miss R could not find any medication for angina in her mother's house and explained that her mother always talked to her about her medication, but had not mentioned anything for her heart.

She was dissatisfied and asked the Primary Care Trust (PCT) to carry out an Independent Review of her complaint but this was turned down. Miss R complained to the Commissioner. He requested an audit of the GP's computer entries for Mrs. R's appointments and checked these against the handwritten medical records. This showed that no prescription had been issued for heart medication. Entries had been made retrospectively to make it appear that they had been prescribed.

The GP admitted that he had panicked and altered Mrs. R's medical records. The Commissioner referred this issue to the General Medical Council. Drawing on the advice of two professional assessors Miss R's complaint was upheld. The Commissioner found that the GP had failed to provide an adequate standard of care and treatment to Mrs. R and that Miss R had suffered unnecessary distress because of the delay and obstruction she faced in having her concerns considered.

In relation to that and other similar cases, the Commissioner called for commitment and leadership from the Department of Health in setting the core standard for complaint handling to be met by all providers of NHS care in England and suggested that the Department should ensure the adoption of a common approach to complaints across health and social care. The Commissioner also recommended that the Healthcare Commission, in its role of inspector, should assess the performance of trusts against core standards and share learning from complaints across the health service – an approach fully supported by the Healthcare Commission.

Delivering a seamless service to complainants besides highlighting areas of concern

Mr. K had learning difficulties, epilepsy and a history of difficult behaviour. In June 2000, he was discharged from a medium secure unit – where he had been detained under the compulsory provisions of the Mental Health Act (MHA) – to his mother's home. The responsibility for his aftercare lay jointly with the Health Authority and the Local Authority, which took the lead role. At that time there was no psychiatrist available in the area to act as Mr. K's Responsible Medical Officer (RMO) – helping him to access appropriate services for his needs. In early 2001 Mr. K was the subject of criminal charges related to his behaviour and was remanded to prison. His mother, Mrs. K, felt that his detention was related to a lack of suitable aftercare.

In October 2001, the court ordered compulsory detention for Mr. K, under the MHA, to a medium secure assessment and treatment facility some distance from Mrs. K's home. Mrs. K felt the placement was inappropriate for her son's needs and she found the travel difficult and expensive. Mr. K remained there until May 2004, when the Primary Care Trust found him a new placement in another town. Mrs. K felt that the PCT and the Health Authority failed to provide suitable aftercare for Mr. K after June 2000; that they inappropriately placed him in the secure unit in 2001; that they failed to provide a RMO local accommodation; and that they did not respond appropriately to requests for an epilepsy specialist to treat Mr. K.

The Commissioner upheld the complaint about aftercare, finding that the NHS contribution to Mr. K's aftercare prior to 2001 did not meet even a minimum reasonable standard. The PCT apologised to Mrs. K and agreed to prioritise the recruitment of a Learning Disability Psychiatrist, planned jointly with the local mental health NHS Trust. Until this post was filled, the PCT agreed to consider alternative clinical support for patients leaving secure units.

In Mr. K's case the responsibility for his care lay with both the NHS and his local council. In order to understand why he was not placed more suitably after his remand in prison, why there was no RMO and why he subsequently needed to be placed so far from home, a joint approach to the investigation was needed. The alternative would have been for two completely separate investigations – by the Local Government Ombudsman into the actions of the council, and by the Health Service Commissioner into the NHS bodies – with the risk that the end product would have left gaps and unanswered questions.

Explaining risk and achieving informed consent

Mrs. W was diagnosed with cancer of the oesophagus and her doctors advised that surgery was necessary. However, the Consultant Surgeon performed a different procedure to the one originally discussed with Mrs. W, who subsequently died as a result of complications from the operation. Mrs. W and her husband had met the Consultant Surgeon and discussed the benefits and risks of a conventional procedure ('oesophagectomy'). The evening before the operation, the Consultant Surgeon told Mr. and Mrs. W that he had decided to perform keyhole surgery, rather than the planned procedure. No record was made of the discussion. The Surgeon did not tell Mr. and Mrs. W that he had never performed this keyhole surgery before. On the day of the operation Mrs. W signed a consent form for the procedure presented by the Senior House Officer but he did not discuss any details of the operation with the family. Mr. W's complaint was upheld.

The Commissioner found that the keyhole surgery technique had only been mentioned during a brief discussion the night before the operation, and that this was unacceptable. The fact that the procedure was unusual made it even more imperative for the Consultant Surgeon to make sure that Mrs. W understood precisely what she was giving her consent to. Poor documentation was also a problem - for example, no record was made in Mrs. W's notes or on the consent form of the discussion the evening before the operation. The Commissioner also found it unacceptable that the Senior House Surgeon, a junior doctor, was given the responsibility of obtaining signed consent on the morning of the operation itself. Following a series of similar cases, the Commissioner started a new initiative - to produce a good practice guide for cardiac surgery teams, working in cooperation with patients and the Society of Cardiothoracic Surgeons of Great Britain and Ireland, the General Medical Council, Department of Health, Healthcare Commission and other key healthcare bodies.

Poor transfer arrangements and nursing care

Summary of Case

In 2001 Mrs. N, aged 59, was suffering from terminal cancer. She was being cared for at a hospice, supported by the local palliative care team. The hospice, the palliative care team and Mrs. N agreed that she should transfer to a private nursing home, where she would be funded by the health authority. The manager of the nursing home conducted a pre-admission assessment prior to Mrs. N's transfer.

On the day of her transfer, Mrs. N did not arrive at the nursing home until approximately 7.00 pm. On arrival some of the transfer documents were not available which led to a nurse questioning Mrs. N and her son about her medication and dosage. The nature of the exchanges caused some distress and concern to the patient and her son. In addition, in the absence of the appropriate documentation Mrs. N's room had not been prepared adequately including a lack of bed rails and a call alarm which did not work. Finally, a continence assessment was not made and on the

night of the transfer Mrs. N was given an incontinence pad which she did not want or feel she needed.

Over the next few days Mrs. N experienced a number of problems which caused her real distress including handling by a nurse which she believed to be rough and falling from her bed (this is disputed by the home who said she slid from a chair). Mrs. N's son, Mr. N, was unhappy about the transfer to the nursing home and the quality of care his mother was receiving. He complained to the nursing home and to the health authority but remained dissatisfied about the way in which his complaint had been managed.

Findings

The Ombudsman found that the nursing home's procedures for handling Mrs. N's transfer were unsatisfactory. Full information about Mrs. N's needs had not been available to staff admitting Mrs. N, and her arrival at the nursing home late on the day of the transfer caused her distress. The nursing home was not registered to care for terminally ill patients, did not have adequately skilled and experienced staff to care for Mrs. N and the nursing home's own standards of nursing care were not adhered to. The Ombudsman upheld those aspects of the complaint.

The Ombudsman also found that aspects of the handling of Mr. N's complaint were unsatisfactory.

Remedy

The strategic health authority apologised. The British United Provident Association Care Homes apologised and agreed that: it would ensure that it had copies of transfer forms and care plans before patients arrived at the nursing home; that the home's admission times for patients would be audited; that the home would produce a set of standards for recordkeeping and ensure that staff received training for those standards; that the home would regularly audit nursing records, and that it would develop a recording policy for accidents and adverse incidents, which would be regularly reviewed by the home's manager; that all staff would receive training about continence assessments; and, that staff would be fully trained in BUPA's policy relating to bed rails.

2. Switzerland

The Healthcare Insurance Ombudsman of Switzerland has been functioning since 1993. The seat of the institution is in Lucern.

During 2004, 5431 complaints were submitted to the Ombudsman (6071 in 2003). 5289 of them were solved successfully. 3032 cases concern the health insurance allowances (3571 in 2003); 1193 cases concern the termination or the change/modification of health insurance (1371 in 2003); and 582 cases concern health insurance bonuses (788 in 2003). The remaining 454 cases concern issues not related to health insurance.

Full information on the institution is available in French, German and Italian at: http://www.ombudsman-kv.ch/html/organisation-f.html

3. Israel

The Israeli Health Insurance Ombudsman (Commissioner for Health Insurance Public Complaints) was established according to the *Health Insurance Law* from 1994. Art 45 of the Law enables every Israeli citizen and permanent resident to issue complaints, connected to implementation of Health Insurance Law. Although the Law entered in effect as of 01/01/1995, only in the end of 1996 the Ombudsman, was appointed. According to the para 43 of the Law, the Ombudsman is appointed by the Minister of Health under approval of the government and the Health Council. The appointment is for 5 years and can be extended for one more term. The Law does not specify in which circumstances the Commissioner can be removed from his office.

According to the Health Insurance Law, the Commissioner may investigate complaints, connected to the implementation of the *Health Insurance Law*. Since the establishment of the institution and till the end of 2003, the Ombudsman received 21609 complaints, while the annual number of complaints vary from 1,328 in 1997 (the lowest) to 3,667 in 2001 (the highest). Mostly, complaints are dealing with technical questions such as payment for health services and interactions between the citizens and health services.

The Law does not specify the powers of the Commissioner, the sanctions he may impose and the exact way the Ombudsman interacts with other institutions. The Ombudsman reports show high level of cooperation between the Commissioner and the Ministry of Health high officials and this cooperation assists Ombudsman in his interactions with other bodies in the health insurance system. The major role of this institution is facts-finding and recommendations to the relevant bodies how to correct the wrongs. The Commissioner publishes annual and bi-annual reports, describing the activities of the institution, various types of complaints, statistical information and recommendations for improvement.

In addition to the Health Insurance Ombudsman, the Israeli health system is also supervised by the State Comptroller Office. Since in Israel the offices of the National Ombudsman and the State Comptroller are combined, the State Comptroller is also the National Ombudsman. However, there is no evidence for cooperation between the National and Health Insurance Ombudsmen. The possible explanation for this fact can be that the Health Insurance Ombudsman is an internal body of the Ministry of Health while the National Ombudsman is an external independent institution.

According to an adopted amendment to the National Health Insurance Law if the ombudsman has decided that a complaint is justified and the health fund has not carried out his/her recommendation within 21 days, the complainant may demand that the ombudsman's decision be implemented against the insurer's will.

4. Australia

4.1. Private Health Insurance Ombudsman

The Private Health Insurance Ombudsman is an independent body established to resolve complaints about private health insurance and to be the umpire in dispute resolution at all levels within the private health insurance industry.

Full information on the institution is available at:
http://www.phio.org.au/home.php

Who was complained about?

Most complaints were made about registered health funds (2433), followed by hospitals (191) and practitioners (doctors and dentists) 123. The Ombudsman also received 42 complaints from people holding overseas health cover (these are not counted as registered health fund complaints). Some complaints concerned one or more health funds, or a health fund as well as a hospital, doctor or dentist. Consequently, the total number of organisations or people being complained about (2792) adds up to more than the total number of individual complainants contacting the Ombudsman (2571).

Complaints about hospitals

During the 2004/05 year, there were 191 complaints registered against hospitals. This is a significantly lower number of complaints than the previous year.

Complaints to the Ombudsman about hospitals are usually related to inadequate *informed financial consent (IFC)* being sought from a patient prior to a hospital admission. This occurred either because a check of a patient's health fund membership was not performed, or because of a mistake in communicating the level of out-of-pocket expenses which membership verification should have indicated. Most of the complaints about inadequate *IFC* were in relation to hospitals which held *Hospital Purchaser Provider Agreements (HPPAs)*. The hospital and health fund have a contractual relationship, with the *HPPA* setting the basis of their contract. All such agreements are required to include a requirement that the hospital provide, wherever possible, adequate advance notice to the health fund member of likely out of pocket costs. In effect, when dealing with many of these complaints, the Ombudsman is engaged in requiring either the hospital or fund to comply with their own contractual obligations.

Complaints about practitioners

Most complaints about doctors and practitioners concerned medical gap issues and/or the lack of *informed financial consent*. During 2004/05 year the office received 137 complaints about medical gap issues, 60 less complaints than the previous year. The office registered 123 complaints against practitioners, 54 less complaints than the previous year.

Resolving complaints

46% of complaints were resolved by the Ombudsman's office providing an independent and impartial explanation of the health fund member's complaint. 34% of complaints were referred back to the health fund. Many of these complainants were referred with the assistance of the Ombudsman's staff. Alternatively, the Ombudsman was generally able to suggest ways for the complainant to pursue the matter with the health fund themselves. 9% of complaints were resolved following payments by health funds or the *writing-off* of accounts by hospitals. These payments by health funds usually followed an investigation by the Ombudsman and then the health fund agreeing that a health fund member was entitled to a benefit payment or some other payment. In some cases, payment is made by health funds on an *ex gratia* basis, for instance, where the fund accepts that the member relied on incorrect advice from the fund.

Accounts written off by hospitals are usually the result of hospitals accepting responsibility for their failure to adequately inform patients of their costs. An additional 7% of complaints were resolved by taking other remedial action, such as re-instating a membership or allowing the back payment of contributions where a membership had lapsed. 1% of complaints, which met the criteria for complaint contained in the *National Health Act 1953*, were referred to another agency such as a hospital's patient liaison office, a state based health complaints handling body, the Privacy Commissioner, a state department of fair trading and a small number were referred to the Australian Competition and Consumer Commission. 2% of complaints were withdrawn or required no further action.

Who complained?

The *National Health Act 1953* allows health fund members, hospitals, doctors, some dentists, health funds or persons acting on their behalf to lodge complaints. Overwhelmingly, complaints were made by health fund members (2536), followed by practitioners (23), hospitals/day hospitals (11) and a health fund.

How complaints were made?

85% of complaints were made initially by telephone. 7% were received by letter, almost 7% were lodged by email. The remainder were made by fax, personal visit, or by Parliamentary Representation.

Investigations into health fund practices and procedures

During 2004/05 the Ombudsman initiated one investigation into health fund practices and procedures related to the administration of ambulance cover by BUPA health funds.

Membership Issues

Complaints about membership issues increased in 2004/05. Membership issues include problems with cancellation and suspension of membership, continuity and inter-fund transfers. The introduction of lifetime health and the Medicare levy surcharge have made membership issues even more important than they were previously, because any loss of continuity can affect a member's lifetime health status and may result in them incurring the Medicare levy surcharge. Under the legislation, a fund cannot cancel a membership unless it is more than two months in arrears. After this time, a fund is permitted to cancel the membership, but the fund has discretion to accept arrears and provide continuity if they believe there are special circumstances.

Members have a responsibility to ensure their premiums are up to date. If a member has opted to use a direct debit facility, they are responsible for ensuring the payments are being debited each month. Where a direct debit fails, some members believe the fund should provide continuity without requiring payment of arrears. In most cases, however, it is not unreasonable for the fund to require payment of arrears in return for continuity. The Ombudsman would only recommend waiving of some portion of the arrears if it were evident that the fund had been at fault in the matter.

4.2. Case studies

Problems with inter-fund transfers

The Ombudsman received 163 complaints about problems with inter fund-transfers. The ability to transfer between funds is an important consumer right. In the majority of cases, inter-fund transfers occur without major problems. Unfortunately, however, when things go wrong, it can result in continuity problems for the member, as well as the frustration of trying to resolve the problem with two funds.

Mrs. Corella case

Mrs. Corella had held a basic cover with her health fund for six years. She decided to transfer to another fund on a higher level of hospital and ancillary cover. Before transferring, she e-mailed the new fund to ask about whether she would need to serve waiting periods again if she transferred. The fund e-mailed back to advise (correctly) that she would receive continuity for any completed waiting periods and entitlements. The fund also advised that they needed a clearance certificate from her old fund to be able to confirm her entitlements and any new waiting periods under her new cover.

Mrs. Corella proceeded to cancel her membership with her old fund and joined the new fund. She filled out a form which authorised her new fund to seek a copy of her clearance certificate directly from her old fund. The new fund posted this authorisation to the old fund on the same day the membership commenced.

Unfortunately, the old fund did not receive the clearance certificate request. Mrs. Corella had been with the new fund for two months before they finally received the clearance certificate. It was only at this point that they were able to advise her that she needed to serve a twelve month waiting period for major dental, because this was not covered under her old cover.

Mrs. Corella was very dissatisfied with the length of time it had taken for her entitlements under her new cover to be confirmed. She was also dissatisfied that she would have to serve a waiting period for the higher dental cover (although the Ombudsman confirmed that the new fund was entitled to apply this waiting period). She therefore decided to cancel her cover with the new fund and requested the old fund to re-instate her membership, backdated to the time she had cancelled it. The old fund agreed to do this. The new fund, however, refused to refund Mrs. Corella's premiums as she requested.

After investigating the matter, the Ombudsman was unable to conclude that either of the funds were at fault in relation to the late clearance certificate; records showed the new fund had requested it from the old fund, but it appears the initial request was never received. The Ombudsman believed, however, that the member should not be out of pocket as a result of her attempt to transfer funds and requested the funds concerned resolve the matter between themselves so the member was not left out of pocket. The funds agreed to this course of action.

Mrs. Electus case

Mrs. Electus transferred to a new fund over the telephone in 2002. Staff at the new fund explained to her that she needed to complete an application form and send it back to them to formalise the membership. Staff also advised her that they would organise for the cancellation of her membership with her old fund if she filled out the section of the form giving them authority to do this.

Unfortunately, Mrs. Electus neglected to fill out this part of the application form. This meant the new fund could not confirm her entitlements or her lifetime health status. A 54% penalty loading was applied to Mrs. Electus's new cover, even though she had locked in her lifetime health status and was not liable for the loading. The new fund sent her lifetime health statements for three years indicating she was paying this loading, but these failed to alert Mrs. Electus to the problem. Mrs. Electus was also unaware that because she hadn't authorised the new fund to cancel her membership of the old fund, she was still paying premiums for her old membership as well. She only became aware of this when her bank contacted her to advise that a direct debit payment to the old fund had been dishonoured because there was not enough money in her bank account to cover it.

Mrs. Electus contacted the Ombudsman when she found herself unable to resolve the problem with either fund. The Ombudsman's investigation revealed that Mrs. Electus's old fund had also been sending her correspondence and lifetime health statements,

but because she believed she was no longer a member, she was throwing out this correspondence. The mail was never returned to the old fund and so they did not realise there was a problem with the membership. The Ombudsman concluded Mrs. Electus had contributed to the problem by not reading her mail and not checking her bank statements.

However, the Ombudsman did not believe it was reasonable for Mrs. Electus to be liable for two health fund memberships. The Ombudsman was eventually able to resolve the matter by negotiating a resolution between the funds which did not leave Mrs. Electus out of pocket.

Problems with cover for newborn babies

If a mother holds a single hospital cover when her baby is born, the baby is not covered if it needs to be formally admitted to hospital. In most cases, newborn babies do not need to be formally admitted to hospital. If a baby requires admission and is not covered, however, the member can incur substantial out of pocket costs. All funds have different rules about when a mother needs to take out family cover to ensure the baby is covered, so it is important to check with the fund well in advance of the birth.

Mrs. Regent case

Mrs. Regent was pregnant and due to give birth in two months' time, when she went into her fund branch to inquire about ensuring her baby was covered when it was born. Fund staff told her she needed to change her membership from a single to a family cover to ensure the baby was covered if it needed admission to hospital. Fund staff advised her to fill out an application form for family cover and put her due date as the date the cover would commence.

Fund staff advised that if the baby came early, all she needed to do was ring the fund and have the commencement date of the new cover adjusted. Some weeks later, Mrs. Regent was admitted to hospital and required an emergency caesarian section which meant her baby was born one month prematurely and before the date her family cover would commence. The baby was immediately admitted to the hospital's intensive care unit. Later that day, Mrs. Regent rang the fund and requested her family cover commence that same day to ensure the baby was covered. Fund staff advised a new application form would be sent to her to sign and return in fourteen days. Unfortunately, the signed application form reached the fund a few days after the fourteen day deadline and the fund denied benefits for the baby's admission.

After investigating the matter, the Ombudsman concluded that fund staff should have advised Mrs. Regent to upgrade her single cover to family cover from the date she went into the branch. If this had happened, the baby's admission would have been

covered. The Ombudsman negotiated a resolution of the matter between the fund and hospital which did not leave Mrs. Regent out of pocket.

Mistaken names

Mr. Lorikeet was due to have his wisdom teeth removed. Before arranging treatment, he asked his dental surgeon how much would be charged and where the surgery would take place. His dental surgeon advised that he operated at a couple of facilities, so he chose the most convenient one for his needs. This was Mr. Lorikeet's first operation, so he walked into his local health fund office to ask about how much he was covered for. At the same time, he made a claim for his dental surgeon's consultation fee. The health fund confirmed that the day surgery that Mr Lorikeet wanted to go to was covered because it was an agreement facility. Health fund memberships usually entitle members to be fully covered (less any agreed excess) for a range of hospitals that hold agreements with the fund. Both the facilities that Mr. Lorikeet's dental surgeon offered to use were covered, so he chose the more convenient one.

On the day of the admission, the day surgery facility asked Mr. Lorikeet to pay $1300 as an upfront payment on his credit card. He thought this was unusual at the time, however he was too nervous about having his first operation to contact the fund right away and so he agreed to pay the amount. He was sure the fund would reimburse him $900 (he knew he had to pay a $400 excess) later on. On attempting to make a claim for the $900, the health fund paid him only $55. He asked why the benefit was so low and was told it was a default benefit as he attended a non-agreement hospital. If a facility chosen by a health fund member is not an agreement facility, Mr. Lorikeet's health fund pays only a default benefit which is equivalent to what a public hospital would charge for a private admission. The fund denied that it had provided advice that the day hospital was covered as an agreement hospital at the time he says he visited the branch. Mr. Lorikeet contacted the Ombudsman who asked the fund about the advice given at the time he visited the branch. The fund initially responded that it held no record that Mr. Lorikeet had visited its office on the day he claimed he was misadvised.

However, the Ombudsman tended to favour Mr. Lorikeet's version of events because it could clearly be established that he had visited the fund's office on that day because he made a cash claim at the time. Also, it made sense that he would query the fund covering the hospital at the time of this visit because his doctor had advised him in writing to do so.

Additionally, it seemed that the name of the hospital that Mr. Lorikeet attended was the same as another day surgery facility; the difference between the two was that one was a stand-alone facility and the other a private facility in the grounds of a public hospital (the one in the public hospital was the one that wasn't covered). A staff member could easily mistake the two if he or she didn't double check the address details. After reviewing the matter, the Ombudsman formed the opinion that it was more than likely that Mr. Lorikeet was misadvised about benefits during his visit. The fund agreed and paid a further $900.

4.3. Other Specialized Healthcare Ombudsmen in Australia

New South Wales Health Care Complaints Commission

The NSW Health Care Complaints Commission (HCCC) acts in the public interest by receiving, reviewing and investigating complaints about health care in NSW.

The HCCC is an independent statutory body, established by the *Health Care Complaints Act 1993*. The HCCC:

- receives and deals with complaints concerning the care and treatment provided by health practitioners and health services;
- resolves complaints with parties;
- provides opportunities and support for people to resolve their complaints and concerns locally;
- investigates complaints and takes appropriate action;
- prosecutes cases before disciplinary bodies;
- advises the Minister and others on trends in complaints;
- consults with consumers and other key stakeholders.

More information is available at:
http://www.hccc.nsw.gov.au

Tasmanian Health Care Complaints (Health Complaints Commissioner)

The *Health Complaints Act 1995* established a Health Complaints Commissioner. The Commissioner can enquire into complaints related to the provision of health services in both the private and public sectors. The service is free.

Full information is available at:
http://www.healthcomplaints.tas.gov.au

THE HEALTH OMBUDSMAN – MECHANISM FOR PATIENTS' RIGHTS PROTECTION

Summary of the public discussion on The Health Ombudsman – Mechanism for Patients' Rights Protection – held on October 11, 2005 at the Center for the Study of Democracy

The discussion was dedicated to the two draft Laws on the Patients' Rights and Obligations, recently submitted to the 40th National Assembly. The draft laws also provide for the establishment of the institution of the health ombudsman as a mechanism for patients' rights protection.

Dr. Maria Yordanova, Director of the CSD Law Program, presented the yearlong work of CSD on the research of the ombudsman institutions with universal competences, as well as specialised ombudsman institutions, and the active work of the Center for the establishment of the institutions of the parliamentary ombudsman and local public mediators in Bulgaria.

She explained that the establishment of a specialised health ombudsman, envisaged in the two draft laws, provoked this gathering of expert community in order to assist the lawmaking process at early stage. The acquired experience shows that multiple draft laws on similar subjects not always lead to good results because of the mechanical merging of the existing draft laws' texts, no wide public debate takes place before the voting and the results are rarely satisfactory. The idea of the creation of specialised ombudsmen, such as the healthcare ombudsman, must be re-considered as such fragmentation of the institution may not always help its efficient functioning.

Ms. Dragomira Paunova from the CSD Law Program presented to the participants the critical remarks and comments, elaborated by Law Program Task Force concerning the regulations on the healthcare ombudsman.[1]

Ms. Rada Kulekova from the *Protection of Health* Confederation shared the opinion that the two draft laws are object of serious criticism. First of all she underlined the positive fact that efforts had been made to prepare the draft laws and that those draft laws take into account to certain degree the main European acts and concepts on patients' rights. The main weaknesses of the two draft laws, including the healthcare ombudsman provisions, are the ambiguity and incompleteness of the texts. The texts contain many repetitions and unnecessary details, while in the same time some fundamental notions lack clearness.

She gave as an example the terms *patient and consumer*, whose definitions in the draft laws are not adequate and do not reflect the fundamental characteristics of the concept. The notion of patient in Belgian law where the necessary conditions to be fulfilled

[1] The comments are published on p. 29.

are the need of professional medical care and health service was compared to the Bulgarian draft provision, which stressed on the formal interaction of the patient with the healthcare system.

The foreign experience was not fully used for the preparation of the draft laws, nor were respected the fundamental requirements for the elaboration of legislative acts such as orderliness, clear definitions of the subject, scope of regulation and the principles of the act. The draft laws also suffer from the multiple repletion of the statement that the state guarantees the respect of rights. This statement is left with no real meaning as there are no clear rules to guarantee the implementation and the protection of the patients' rights.

With relation to this, the question about the means for the protection of patients' rights remains very important. Ms. Kulekova shared the view of the CSD concerning the most inadequate provisions on the role of the non-governmental organisations working in the field of the patients' rights protection. She pointed out the paradox that these organisations are invested with powers and obligations typical for the ombudsman institutions, as part of their voluntary work, while in the same time they are bound by the obligations to accept and examine complaints, to respect the time limits for giving reply, to provide detailed motivation of their decisions, etc.

She underlined the position of the confederation that a strong institution of a healthcare ombudsman shall be established on national level either within the office of the national ombudsman or as a specialised deputy ombudsman, taking into account the huge number of problems in the Bulgarian healthcare system.

The introduction of "hospital ombudsmen", acting at each medical establishment, as provided by one of the draft laws, is deprived of meaning as they will not have any real power and will only provide advice to patients on writing the complaints, which renders the institution meaningless. A better idea will be the presence of persons, attached to the law departments of the medical establishments, whose tasks will be to advise the patients and inform them about their rights, conduct controlling activities, etc, in order to promote the healthcare culture, although these persons can not be qualified as ombudsmen.

Ms. Rossitsa Totkova, social issues expert at the office of the Parliamentary Ombudsman, shared the opinion that the protection of the patients' rights and the healthcare ombudsman as a specific mechanism thereof have wider dimensions as they reflect or are expected to reflect the development of the civil society in Bulgaria.

The functioning of the ombudsman institution, either specialised or not, shows to what degree the citizens participate in the decisions-making process by exercising civil control and the level of preparedness of the state institutions for this type of control. Unfortunately, due to the very recent establishment of the ombudsman institution in Bulgaria, such relevant experience is not accumulated yet. Despite that fact, the institution will for sure promote the process of strengthening civil control and make the

state institutions acknowledge the criticisms and improve their work accordingly. The necessary prerequisites for achieving these results are time and two essential factors: will and trust; trust to be won mostly from the citizens and also from the institutions; and will to impose such decisions and to address propositions to the institutions.

According to Ms. Totkova, among the more important issues in the healthcare is the lack of:

- criteria such as efficiency and quality of the healthcare services provided in the healthcare establishments;
- state control and the created chaos in the healthcare, as source of corruption;
- structured systems for control over the spending of funds, etc.

The issues concerning the control over the financial flows and the quality of the healthcare service are not likely to be solved by one person whose appointment in the healthcare establishment is not even compulsory. More radical actions and complex measures are needed for the protection of patients' rights. This is required in order to insure more efficient protection of the patients' rights and to avoid unjustified expectations and disappointment of the ombudsman institution when charged with all the weight of patients' problems.

According to **Ms. Valentina Taneva**, Sofia Municipality Deputy Public Mediator, in Bulgaria do not exist yet the notion of *good medical practice* (system of rules and acts for the service provided to the persons who entered a medical establishment, seeking urgent medical care or continuous treatment). Once established, it is not clear if the notion will be coherent with the two draft laws.

She pointed other issues not tackled by any adequate provisions in the draft laws, such as the lack of information for the patients and their unreasonable claims including concerning the mode of treatment; the surcharge of the medical staff and the insufficient opportunities for additional qualification; etc.

According to her the creation of healthcare ombudsmen in every healthcare establishment is senseless. It would be a chaotic structure within which they will not be able to interact efficiently due to the different types of healthcare establishments (university clinics, public hospitals, etc.).

The Sofia Municipality Public Mediator received for about a year only five complaints concerning the healthcare, although not based on real problems and not permitting any active action.

Yet again, this is an example for the lack of information for the citizens what types of problems the ombudsman deals with and what complaints can be examined by his office and underlines the need to continue the explanatory activities which is the main role of the non-governmental organisations, and not the seizure of the ombudsman's functions as it is provided in the draft laws.

The Chair of the Foundation for Multiple Sclerosis "MS Society-Bulgaria" **Ms. Tatyana Ivancheva** stressed that such institution is extremely needed as an expression of transparency and civil participation in the healthcare policy as every individual is affected by the healthcare system and its functioning.

She underlined again the importance of the information for the patients and the interaction between them, the non-governmental organisations and the lawmakers in order to prepare and submit to the National Assembly legal acts of higher quality.

Dr. Georgi Uzunov from "Preservation and Public Health Control" Direction of the Ministry of Health shared that the two draft laws suffer from serious weaknesses and the experts from the Ministry of Health were not adequately consulted in the preparation of the texts.

Dr. Plamen Radoslavov from the Federation the in Health care at the Confederation of Independent Trade Unions in Bulgaria took the position that the two draft laws must be withdrawn and work should continue in the direction to implement more efficiently the existing Law on *Healthcare* and the Law on the *Health Insurance*. According to him, the current framework is sufficient to offer real protection for the patients' rights. Special legislation with no real value which would empty of its substance institution such as the healthcare ombudsman is deprived of sense.

At the discussion as fundamental problems were pointed:

- **the lack of unified conception** as to the need and the substance of special draft laws for the protection of patients' rights;
- the need of **widespread informational campaign** concerning the acting mechanisms for the protection of patients' rights and the active work of the non-governmental organisations;
- **the need of cooperation** between the different interested authorities, institutions and organisations working in the area of the healthcare in order to reach the best possible results, including expert participation in the preparation/improvement of the two draft laws and other legal acts in the field;
- the need of serious research and implementation of **the foreign experience and international standards**, including the health ombudsman;
- finding the most appropriate for Bulgaria mode of functioning of **the institution of the health ombudsman**: creation of an office on national level with clear and detailed framework; or as a specialised part of the office of the parliamentary ombudsman.

The participants in the discussion shared the opinion that the two draft laws suffer from serious imperfections as to both the provisions regarding the health ombudsman and the general conception and substance. In the view of the participants, the draft laws must be withdrawn and substantially revised by experts before their re-examination by the relevant committees at the National Assembly; or to be withdrawn

and to extend the parts of the acting legislation, concerning the patients' rights and the mechanisms for protection.

Ms. Totkova suggested the Parliamentary Ombudsman along with the NCOs concerned to search for the best possible legislative provisions for patients' rights protection. CSD promised to coordinate jointly with the parliamentary ombudsman the further activities of the civil society regarding the adoption of a *Law on the Patients' Rights and Obligations* and establishing the institution of healthcare ombudsman.

COMMENTS OF THE CENTER FOR THE STUDY OF DEMOCRACY ON THE TWO DRAFT LAWS ON THE RIGHTS AND OBLIGATIONS OF PATIENTS CONCERNING THE ESTABLISHMENT OF A HEALTHCARE OMBUDSMAN

1. General comments

The two draft laws concerning patients' rights and obligations (Draft Law № 554-01-19 and Draft Law № 554-01-37) submitted for deliberations by the 40th National Assembly contain provisions on the introduction of a healthcare ombudsman as a mechanism for patients' rights protection.

The way both draft laws tackle the institution warrants a number of general observations and comments.

Both laws have the following common drawbacks concerning the organization of the healthcare ombudsman office:

- They contain no provisions on the election and/or appointment of the health ombudsman, on the way his/her activities are to be funded, on his/her removal from office, etc. Thus, the launch of healthcare ombudsmen remains a vague possibility both as regards their establishment and their existence.
- No provisions are included to enable interaction and cooperation with the national ombudsman and no distinction whatsoever is made between the powers of the healthcare and the national ombudsman. This could lead to inconsistent actions and conflicting practices of the two offices as well as to waste of resources.
- In addition to the establishment of the healthcare ombudsman, it is set forth that specialised non-governmental organisations should act in protection of patients' rights, but the distribution of competences between the two mechanisms of defense is not specified. For instance, the NGOs are entrusted with powers typical to the ombudsman, such as receiving complaints and starting inquiries on their own initiative. This type of activities as performed by an NGO should not be institutionalised in a law. NGOs are private legal persons which can work in this area solely on a voluntary basis and in a manner they consider appropriate. Therefore, they cannot operate as substitutes to an institution such as the ombudsman which functions in accordance with specific rules and procedures and is particularly dedicated to defending the rights and freedoms of all citizens or of specific groups of the population.

2. Notes on Draft Law on the Rights and Obligations of Patients № 554-01-19 submitted by Mr. Radoslav Gaidarski (current Minister of Health) and a group of MPs.

Chapter Nine "Bodies of Patients' Protection"
…
Section II
Healthcare Ombudsman

Art. 161. (1) The system of the ombudsman shall provide opportunity for the patient to receive assistance in the formulation of his/her complaint.
(2) The ombudsman shall function as a mediator, if this is possible, but in most cases as a attorney-at-law or lawyer.
(3) The ombudsman shall request information from the concerned doctors, ask medical experts to assess the quality of health services, alert the central health authorities and encourage them to investigate complaints against medical staff, and advise the patient to hire a lawyer.
...

The ombudsman is an institution to which citizens address complaints. Its original purpose is to guarantee effectively that the rights and freedoms of citizens are respected in their interaction with the administration through offering measures to: remedy violations of rights, offer redress for damages and create conditions for uncomplicated and efficient exercising of rights and freedoms. The ombudsman is by no means a system that provides complaint-writing assistance as it is defined in art. 161 para 1. The definition necessary in this case concerns the institutional system within which the ombudsman will function – whether in the executive branch, as a parliamentary institution or on a voluntary basis.

In case the healthcare ombudsman is assigned the role of mediator, as laid down in para 2 of art. 161, it is necessary also to specify the type of disputes he/she can mediate, the procedures to be observed in this mediation, etc.

The functions of attorney-at-law or lawyer delegated to the healthcare ombudsman are in direct conflict with the institution's fundamental purpose. From a comparative point of view, no legal system has ombudsman-type institutions, whether general or specialised, authorised to represent in court the persons whose rights they are defending. Moreover, in Bulgaria a lawyer is not a profession, but denotes a person with an academic degree in law; to practice the profession of attorney-at-law, apart from a degree in law, one needs to comply to other conditions as well. Most countries, however, do not require ombudsmen to have such qualifications.

The law includes no provisions on the manner of establishment of the institution and on its status. Art. 161's use of third person singular verbs suggests that this is a single-member centralised institution, but there is no mention of what authority would

elect/appoint the ombudsman, for what period, how he/she would report the office's activities and how it would be funded.

The position of the healthcare ombudsman in the health system and his/her relations with the other healthcare bodies and institutions also remains unregulated. The bodies that need to be considered are the Ministry of Health, the National Health Insurance Fund and its territorial offices, the professional associations of doctors and dentists and also the so called National Council on Ethics and Patients' Rights whose establishment as yet another patients' rights protection mechanism is set forth in Section III of the same chapter.

No criteria against which the ombudsman should measure are specified, e.g. appropriate education (medicine, law, public administration, other), necessary experience, knowledge of health management. No restrictions or conditions are mentioned either, e.g. ban on simultaneous holding of another position in healthcare to preclude conflict of interests, etc.

There is no procedure specified for the ombudsman to exercise his/her powers. Par. 3 gives a brief list which does not exhaust all possible actions of the ombudsman and does not describe the *modus operandi*. Apart from the lack of procedure for investigating complaints and signals, no provisions are made for the ombudsman to address proposals and recommendations to the concerned authorities which would help remove the opportunities for violation of rights and freedoms and improve the work of the healthcare administration.

Neither Chapter Nine, nor the Transitional and Concluding Provisions of the draft law contain provisions obliging the healthcare ombudsman to adopt rules on the organisation and activities of the institution which would foster its effectiveness.

3. Notes on Draft Law on the Rights and Obligations of Patients № 554-01-37 submitted by Mr. Atanas Shterev (current Deputy Chair of the parliamentary Health Committee) and a group of MPs.

Chapter Three
...
Section II

Patients' Rights Protection at Healthcare Establishments (Healthcare Ombudsman)

Art. 51. (1) Each patient shall have the right of defense of his rights as a patient in the medical establishment where he obtains medical help.
(2) Defense of the rights of patients at medical establishments shall be carried out by a patients' rights defender at the respective establishment – a healthcare ombudsman.
(3) The defense under Art. 2 shall be carried out by a person with a degree in medicine, psychology, pedagogy and social science.
(4) The defender under Art. 2 shall:

1. provide information to patients concerning patients' rights;
2. evaluate the sufficiency and quality of the medical services provided;
3. ensure that the patient's dignity is respected;
4. monitor whether the terms and conditions of the Law on Access to and Provision of Medical Information to Patients and Other Individuals are observed;
5. consult patients on the occurrence and degree of patient rights violation and the possibilities of defending these rights;

(5) On determining that a patient's rights have been violated, the healthcare ombudsman shall notify the management of the respective medical establishment, the regional healthcare center (RHC) or the regional health insurance fund (RHIF), depending on the severity of the violation, and in case any of these bodies confirms the violation, he/she shall monitor what actions are taken to remedy the situation and to impose penalties on the responsible persons.
...

Similar to Draft Law № 554-01-19, this law contains provisions on the establishment of two parallel mechanisms of patients' rights protection – specialised organisations and healthcare ombudsman. In contrast, however, this law places healthcare ombudsmen at individual/all medical establishments.

One reason for this may be that within the limits of the healthcare establishment ombudsmen would find it easier to process complaints and signals and to conduct investigations.

On the other hand, positioning such an institution throughout medical establishments would place a severe financial burden on them, especially if the ombudsman is made mandatory at a time of general financial shortages in the healthcare system.

The law does not specify any appointment and removal from office procedures (whether they should be decided by the establishments' directors or otherwise) or the institution's legal status.

The requirement that the ombudsman should have legal education is limiting and unjustified. No other criteria such as certain experience or a ban on holding other healthcare positions to avoid possible conflict of interests are put in place.

The definition of the ombudsman's powers lacks clarity and comprehensiveness. There is no special provision allowing the ombudsman to conduct independent checks and investigations; instead, he is able only to notify the respective RHC or RHIF. Thus, his functions overlap with those of the other institutions, which in practice rules out the ombudsman as unfeasible.

The use of terminology is undiscerning and the institution is interchangeably called "healthcare ombudsman" and "defender".

4. Recommendations

Research of foreign experience shows it is mainly countries with no national (parliamentary) ombudsman, e.g. Switzerland, Australia, the UK, Israel, that establish centralised health ombudsman offices. In countries that have set up a parliamentary ombudsman it is common practice to create internal specialised units within the national ombudsman office or appoint a deputy in charge of healthcare issues.

In recent years several Bulgarian municipalities have elected their own local public mediators. In April 2005 the Bulgarian parliament elected the first national ombudsman whose powers allow him to consider all sorts of complaints concerning human rights violations, including those related to healthcare. As the institution is fairly new both on the local and the national level and has yet to gain solid experience, it is still early to judge whether it would be able to process successfully complaints specifically related to health issues.

This is why further research and discussions are needed into the feasibility of introducing a specialised health ombudsman.

A possible short-term solution is for medical establishments to develop internal mechanisms for collecting and considering patients' complaints and signals. Meanwhile, the two possibilities of introducing a national health ombudsman or creating a specialised unit at the national ombudsman's office may be deliberated.

The *Law on the Ombudsman* (Appendix III) envisages that the ombudsman regards complaints and signals also against the persons assigned with the provision of public services, including healthcare activities. *The Rules on the Organisation and Activities of the Ombudsman* (Appendix IV) provide for the internal division of the office of the ombudsman which includes directorates and divisions. Within this organisational framework was established a division "Quality of life and development", among whose main priorities are the monitoring and control over the healthcare system. Thus the legislative provisions and internal specialisation create the necessary prerequisites for efficient work of the ombudsman in this field of public life, without necessarily establish a specialised healthcare ombudsman.

In all cases, though, the parliamentary ombudsman or the prospective national health ombudsman should keep in check both the activities of medical establishments and all other institutions of the system: the regional healthcare centres, the regional health insurance funds, the National Health Insurance Fund, the Ministry of Health, etc. Of course, the ombudsman should be entitled to consider complaints in case any of them, through their actions or failures to act, violates citizens' rights.

APPENDIX I

HEALTH SERVICE COMMISSIONERS ACT 1993

An Act to consolidate the enactments relating to the Health Service Commissioners for England, for Wales and for Scotland with amendments to give effect to recommendations of the Law Commission and the Scottish Law Commission.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Health Service Commissioners

The Commissioners

1. (1) For the purpose of conducting investigations in accordance with this Act, there shall continue to be:

(a) a Health Service Commissioner for England,
(b) a Health Service Commissioner for Wales, and
(c) a Health Service Commissioner for Scotland.

(2) References in this Act to a Commissioner (or Health Service Commissioner) are, unless the context otherwise requires, to any of the Commissioners.

(3) Schedule 1 has effect with respect to the appointment and remuneration of the Commissioners and other administrative matters.

Health service bodies subject to investigation

The bodies subject to investigation

2. (1) The bodies subject to investigation by the Health Service Commissioner for England are:

(a) Regional Health Authorities,
(b) District Health Authorities whose district is in England,
(c) Special Health Authorities to which this section applies exercising functions only or mainly in England,
(d) National Health Service trusts managing a hospital, or other establishment or facility, in England,
(e) Family Health Services Authorities whose locality is in England,
(f) the Dental Practice Board, and
(g) the Public Health Laboratory Service Board.

(2) The bodies subject to investigation by the Health Service Commissioner for Wales are:
(a) District Health Authorities whose district is in Wales,
(b) Special Health Authorities to which this section applies exercising functions only or mainly in Wales,
(c) National Health Service trusts managing a hospital, or other establishment or facility, in Wales, and
(d) Family Health Services Authorities whose locality is in Wales.

(3) The bodies subject to investigation by the Health Service Commissioner for Scotland are:
(a) Health Boards,
(b) National Health Service trusts established under section 12A of the [1978 c. 29.] National Health Service (Scotland) Act 1978,
(c) the Common Services Agency for the Scottish Health Service, and
(d) the Scottish Dental Practice Board.

(4) References in this Act to a "health service body" are to any of the bodies mentioned above.

(5) The Special Health Authorities to which this section applies are those,
(a) established on or before 1st April 1974, or
(b) established after that date and designated by Order in Council as ones to which this section applies.

(6) A statutory instrument containing an Order in Council made by virtue of subsection (5)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Matters subject to investigation

General remit of Commissioners

3. (1) On a complaint duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of:
(a) a failure in a service provided by a health service body,
(b) a failure of such a body to provide a service which it was a function of the body to provide, or
(c) maladministration connected with any other action taken by or on behalf of such a body,

the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.

(2) In determining whether to initiate, continue or discontinue an investigation under this Act, a Commissioner shall act in accordance with his own discretion.

(3) Any question whether a complaint is duly made to a Commissioner shall be determined by him.

(4) Nothing in this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by a health service body in the exercise of a discretion vested in that body.

Matters excluded from investigation

Availability of other remedy

4. (1) A Commissioner shall not conduct an investigation in respect of action in relation to which the person aggrieved has or had:

(a) a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative, or

(b) a remedy by way of proceedings in any court of law,

unless the Commissioner is satisfied that in the particular circumstances it is not reasonable to expect that person to resort or have resorted to it.

(2) A Commissioner shall not conduct an investigation in respect of action which has been, or is, the subject of an inquiry under section 84 of the [1977 c. 49.] National Health Service Act 1977 or section 76 of the [1978 c. 29.] National Health Service (Scotland) Act 1978 (general powers to hold inquiries).

(3) A Commissioner shall not conduct an investigation in respect of action in relation to which the protective functions of the Mental Welfare Commission for Scotland have been, are being or may be exercised under the [1984 c. 36.] Mental Health (Scotland) Act 1984.

Exercise of clinical judgment

5. (1) A Commissioner shall not conduct an investigation in respect of action taken in connection with:

(a) the diagnosis of illness, or

(b) the care or treatment of a patient,

which, in the opinion of the Commissioner, was taken solely in consequence of the exercise of clinical judgment, whether formed by the person taking the action or any other person.

(2) In subsection (1), "illness" includes a mental disorder within the meaning of the [1983 c. 20.] Mental Health Act 1983 or the Mental Health (Scotland) Act 1984 and any injury or disability requiring medical or dental treatment or nursing.

General health services and service committees

6. (1) A Commissioner shall not conduct an investigation in respect of action taken in connection with any general medical services, general dental services, general ophthalmic services or pharmaceutical services under the National Health Service Act 1977 by a person providing those services.

(2) A Commissioner shall not conduct an investigation in respect of action taken by medical practitioners, dental practitioners, ophthalmic or dispensing opticians or pharmacists in pursuance of their contracts with Health Boards under Part II of the National Health Service (Scotland) Act 1978.

(3) A Commissioner shall not conduct an investigation in respect of action taken by a Family Health Services Authority in the exercise of its functions under the [S.I. 1992/664.] National Health Service (Service Committees and Tribunal) Regulations 1992, or any instrument amending or replacing those regulations.

(4) A Commissioner shall not conduct an investigation in respect of action taken by a Health Board in the exercise of its functions under the [S.I. 1992/434.] National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992, or any instrument amending or replacing those regulations.

Personnel, contracts etc

7. (1) A Commissioner shall not conduct an investigation in respect of action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service under the [1977 c. 49.] National Health Service Act 1977 or the [1978 c. 29.] National Health Service (Scotland) Act 1978.

(2) A Commissioner shall not conduct an investigation in respect of action taken in matters relating to contractual or other commercial transactions, except for—
(a) matters relating to NHS contracts (as defined by section 4 of the [1990 c. 19.] National Health Service and Community Care Act 1990 and, in relation to Scotland, by section 17A of the National Health Service (Scotland) Act 1978), and
(b) matters arising from arrangements between a health service body and a body which is not a health service body for the provision of services for patients by that body.

(3) In determining what matters arise from arrangements mentioned in subsection (2)(b) the Health Service Commissioners for England and for Wales shall disregard any arrangements for the provision of services at an establishment maintained by a Minister of the Crown mainly for patients who are members of the armed forces of the Crown.

(4) Her Majesty may by Order in Council amend this section so as to permit the investigation by a Commissioner of any of the matters mentioned in subsection (1) or (2).

(5) A statutory instrument containing an Order in Council made by virtue of subsection (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Complaints

Individuals and bodies entitled to complain

8. (1) A complaint under this Act may be made by an individual or a body of persons, whether incorporated or not, other than a public authority.

(2) In subsection (1), "public authority" means:
(a) a local authority or other authority or body constituted for the purposes of the public service or of local government,
(b) an authority or body constituted for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking, and
(c) any other authority or body,
(i) whose members are appointed by Her Majesty or any Minister of the Crown or government department, or
(ii) whose revenues consist wholly or mainly of money provided by Parliament.

Requirements to be complied with

9. (1) The following requirements apply in relation to a complaint made to a Commissioner.

(2) A complaint must be made in writing.

(3) The complaint shall not be entertained unless it is made:
(a) by the person aggrieved, or
(b) where the person by whom a complaint might have been made has died or is for any reason unable to act for himself, by:
(i) his personal representative,
(ii) a member of his family, or
(iii) some body or individual suitable to represent him.

(4) The Commissioner shall not entertain the complaint if it is made more than a year after the day on which the person aggrieved first had notice of the matters alleged in the complaint, unless he considers it reasonable to do so.

(5) Before proceeding to investigate the complaint, the Commissioner shall satisfy himself that:
(a) the complaint has been brought to the notice of the health service body concerned by or on behalf of the person aggrieved, and
(b) that body has been afforded a reasonable opportunity to investigate and reply to the complaint.

(6) The Commissioner shall disregard the provisions of subsection (5) if the complaint is made under subsection (3)(b) on behalf of the person aggrieved by an officer of the health service body in question and the Commissioner is satisfied that in the particular circumstances those provisions ought to be disregarded.

Referral of complaint by health service body

10. (1) A health service body may itself refer to a Commissioner a complaint made to that body that a person has, in consequence of a failure or maladministration for which the body is responsible, sustained such injustice or hardship as is mentioned in section 3(1).

(2) A complaint may not be so referred unless it was made:
(a) in writing,
(b) by the person aggrieved or by a person authorised by section 9(3)(b) to complain to the Commissioner on his behalf, and
(c) not more than a year after the person aggrieved first had notice of the matters alleged in the complaint, or such later date as the Commissioner considers appropriate in any particular case.

(3) A health service body may not refer a complaint under this section after the period of one year beginning with the day on which the body received the complaint.

(4) Any question whether a complaint has been duly referred to a Commissioner under this section shall be determined by him.

(5) A complaint referred to a Commissioner under this section shall be deemed to be duly made to him.

Investigations

Procedure in respect of investigations

11. (1) Where a Commissioner proposes to conduct an investigation pursuant to a complaint under this Act, he shall afford:
(a) to the health service body concerned, and
(b) o any other person who is alleged in the complaint to have taken or authorised the action complained of,

an opportunity to comment on any allegations contained in the complaint.

(2) An investigation shall be conducted in private.

(3) In other respects, the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case, and in particular:
(a) he may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and
(b) he may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.

(4) A Commissioner may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or supplies information for the purposes of an investigation:
(a) sums in respect of expenses properly incurred by them, and
(b) allowances by way of compensation for the loss of their time.

Payments under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by the Treasury.

(5) The conduct of an investigation shall not affect any action taken by the health service body concerned, or any power or duty of that body to take further action with respect to any matters subject to the investigation.

(6) Where the person aggrieved has been removed from the United Kingdom under any order in force under the [1971 c. 77.] Immigration Act 1971 he shall, if the Commissioner so directs, be permitted to re-enter and remain in the United Kingdom, subject to such conditions as the Secretary of State may direct, for the purposes of the investigation.

Evidence

12. (1) For the purposes of an investigation a Commissioner may require any officer or member of the health service body concerned or any other person who in his opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such document.

(2) For the purposes of an investigation a Commissioner shall have the same powers as the Court in respect of:
(a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
(b) the production of documents.

(3) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service,

whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of an investigation.

(4) The Crown shall not be entitled in relation to an investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(5) No person shall be required or authorised by this Act:
(a) to supply any information or answer any question relating to proceedings of the Cabinet or of any Committee of the Cabinet, or
(b) to produce so much of any document as relates to such proceedings;

and for the purposes of this subsection a certificate issued by the Secretary of the Cabinet with the approval of the Prime Minister and certifying that any information, question, document or part of a document relates to such proceedings shall be conclusive.

(6) Subject to subsections (3) and (4), no person shall be compelled for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Court.

Obstruction and contempt

13. (1) A Commissioner may certify an offence to the Court where:
(a) a person without lawful excuse obstructs him or any of his officers in the performance of his functions, or
(b) a person is guilty of any act or omission in relation to an investigation which, if that investigation were a proceeding in the Court, would constitute contempt of court.

(2) Where an offence is so certified the Court may inquire into the matter and after hearing:
(a) any witnesses who may be produced against or on behalf of the person charged with the offence, and
(b) any statement that may be offered in defence,

the Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the like offence in relation to the Court.

(3) Nothing in this section shall be construed as applying to the taking of any such action as is mentioned in section 11(5).

Reports

Reports by Commissioners

14. (1) A Commissioner shall send a report of the results of an investigation by him:
(a) to the person who made the complaint,
(b) to any member of the House of Commons who to the Commissioner's knowledge assisted in the making of the complaint (or if he is no longer a member to such other member as the Commissioner thinks appropriate),
(c) to the health service body concerned,
(d) to any person who is alleged in the complaint to have taken or authorised the action complained of,
(e) if the body concerned is not a District Health Authority for a district in England, to the Secretary of State, and
(f) if that body is a District Health Authority for a district in England, to the Regional Health Authority whose region includes that district.

(2) In any case where a Commissioner decides not to conduct an investigation he shall send a statement of his reasons:
(a) to the person who made the complaint,
(b) to any such member of the House of Commons as is mentioned in subsection (1)(b), and
(c) to the health service body concerned.

(3) If after conducting an investigation it appears to a Commissioner that:
(a) the person aggrieved has sustained such injustice or hardship as is mentioned in section 3(1), and
(b) the injustice or hardship has not been and will not be remedied,

he may if he thinks fit make a special report to the Secretary of State who shall, as soon as is reasonably practicable, lay a copy of the report before each House of Parliament.

(4) Each of the Commissioners:
(a) shall annually make to the Secretary of State a report on the performance of his functions under this Act, and
(b) may from time to time make to the Secretary of State such other reports with respect to those functions as the Commissioner thinks fit;

and the Secretary of State shall lay a copy of every such report before each House of Parliament.

(5) For the purposes of the law of defamation, the publication of any matter by a Commissioner in sending or making a report or statement in pursuance of this section shall be absolutely privileged.

Information and consultation

Confidentiality of information

15. (1) Information obtained by a Commissioner or his officers in the course of or for the purposes of an investigation shall not be disclosed except:

(a) for the purposes of the investigation and any report to be made in respect of it,

(b) for the purposes of any proceedings for—

(i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by virtue of this Act by a Commissioner or any of his officers, or

(ii) an offence of perjury alleged to have been committed in the course of the investigation,

(c) for the purposes of an inquiry with a view to the taking of such proceedings as are mentioned in paragraph (b), or

(d) for the purposes of any proceedings under section 13 (offences of obstruction and contempt).

(2 Neither a Commissioner nor his officers shall be called on to give evidence in any proceedings, other than proceedings mentioned in subsection (1), of matters coming to his or their knowledge in the course of an investigation under this Act.

Information prejudicial to the safety of the State

16. (1) A Minister of the Crown may give notice in writing to a Commissioner with respect to any document or information specified in the notice that in the Minister's opinion the disclosure of the document or information would be prejudicial to the safety of the State or otherwise contrary to the public interest.

(2) Where such a notice is given to a Commissioner, nothing in this Act shall be construed as authorising or requiring him or any of his officers to communicate to any person or for any purpose any document or information specified in the notice.

(3) References above to a document or information include references to a class of document or a class of information.

Use of information by Commissioner in other capacity

17. (1) This section applies where a Commissioner also holds either of the other offices of Health Service Commissioner or the office of Parliamentary Commissioner (an «additional office»).

(2) Where:
(a) a person initiates a complaint to the Commissioner as the holder of the additional office, and
(b) the complaint relates partly to a matter with respect to which that person has previously initiated, or subsequently initiates, a complaint to the Commissioner in his capacity as such,

information obtained by the Commissioner or his officers in the course of or for the purposes of the investigation of that other complaint may be disclosed for the purposes of carrying out his functions in relation to the complaint initiated to him as the holder of the additional office.

Consultation during investigations

18. (1) Where a Commissioner, at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation:
(a) by either of the other Health Service Commissioners under this Act,
(b) by the Parliamentary Commissioner under the [1967 c. 13.] Parliamentary Commissioner Act 1967,
(c) by a Local Commissioner under Part III of the [1974 c. 7.] Local Government Act 1974, or
(d) by the Commissioner for Local Administration in Scotland under Part II of the [1975 c. 30.] Local Government (Scotland) Act 1975,

he shall consult about the complaint with the appropriate Commissioner and, if he considers it necessary, he shall inform the person initiating the complaint of the steps necessary to initiate a complaint to that Commissioner.

(2) Where a Commissioner consults with another Commissioner in accordance with this section, the consultations may extend to any matter relating to the complaint, including:
(a) the conduct of any investigation into the complaint, and
(b) the form, content and publication of any report of the results of such an investigation.

(3) Nothing in section 15 (confidentiality of information) applies in relation to the disclosure of information by a Commissioner or his officers in the course of consultations held in accordance with this section.

Supplementary

Interpretation

19. In this Act:

"action" includes failure to act, and related expressions shall be construed accordingly;
"the Court" means, in relation to England and Wales, the High Court, in relation to Scotland, the Court of Session, and in relation to Northern Ireland, the High Court in Northern Ireland;
"functions" includes powers and duties;
"health service body" has the meaning given by section 2;
"local authority" means:

(a) in relation to England and Wales, a county, district or London borough council or the Common Council of the City of London,

(b) in relation to Scotland, a regional, district or islands council;

"officer" includes employee;
"Parliamentary Commissioner" means Parliamentary Commissioner for Administration;
"patient" includes an expectant or nursing mother and a lying-in woman; and
"person aggrieved" means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 3(1).

Consequential amendments and repeals

20. (1) Schedule 2 to this Act (which contains amendments consequential on this Act) has effect.

(2) The enactments set out in Schedule 3 are repealed to the extent specified. Transitional provisions.

21. (1) The repeal and re-enactment of provisions in this Act does not affect the continuity of the law.

(2) Anything done, or having effect as if done, under a provision reproduced in this Act has effect as if done under the corresponding provision of this Act.

(3) Any reference (express or implied) in this Act or any other enactment, or in any instrument or document, to a provision of this Act shall (so far as the context permits) be construed as (according to the context) being or including in relation to times, circumstances or purposes before the commencement of this Act a reference to the corresponding provision repealed in this Act.

(4) Any reference (express or implied) in this Act or any other enactment, or in any instrument or document, to a provision repealed in this Act shall (so far as the context permits) be construed as (according to the context) being or including in relation to times, circumstances or purposes after the commencement of this Act a reference to the corresponding provision of this Act.

(5) Subsection (4) is subject to Schedule 2.

Short title, extent and commencement

22. (1) This Act may be cited as the Health Service Commissioners Act 1993.

(2) The following provisions of this Act extend to Northern Ireland—
(a) sections 11, 12, 13, 14(5), 15, 16 and this section;
(b) section 19 so far as it relates to provisions mentioned in this subsection;
(c) Schedule 2 so far as it amends any enactment which extends to Northern Ireland; and
(d) Schedule 3 so far as it repeals any enactment which extends to Northern Ireland.

(3) The Secretary of State may by order provide that this Act shall apply to the Isles of Scilly with such modifications, if any, as are specified in the order.

Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.

SCHEDULES

SCHEDULE 1 Section 1(3).

The Commissioners Appointment of Commissioners

1. (1) Her Majesty may by Letters Patent appoint a person to be a Commissioner and a person so appointed shall hold office during good behaviour.

(2) A person appointed to be a Commissioner:
(a) may at his own request be relieved of office by Her Majesty, or
(b) may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament;

and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five.

(3) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed to be the Commissioner is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.

Appointment of acting Commissioners

2. (1) Where any of the offices of Commissioner becomes vacant, Her Majesty may, pending the appointment of the new Commissioner, appoint a person under this paragraph to act as that Commissioner at any time during the period of twelve months beginning with the date on which the vacancy arose.

(2) A person appointed under this paragraph shall hold office during Her Majesty's pleasure and, subject to that, shall hold office:
(a) until the appointment of the new Commissioner or the expiry of the period of twelve months beginning with the date on which the vacancy arose, whichever occurs first, and
(b) in other respects, in accordance with the terms and conditions of his appointment which shall be such as the Secretary of State may, with the approval of the Treasury, determine.

(3) A person appointed under this paragraph shall, while he holds office, be treated for all purposes except those of paragraphs 4 to 10 as the Commissioner.

Ineligibility of certain persons for appointment

3. (1) A person who is a member of a relevant health service body shall not be appointed a Commissioner or acting Commissioner; and a person so appointed shall not, during his appointment, become a member of such a body.

(2) For this purpose a «relevant health service body» means:
(a) in relation to the Health Service Commissioner for England or for Wales or a person appointed to act as such, a body mentioned in section 2(1) or (2), and
(b) in relation to the Health Service Commissioner for Scotland or a person appointed to act as such, a body mentioned in section 2(3) or any management committee of such a body.

Salaries

4. There shall be paid to the holder of the office of a Commissioner the same salary as if he were employed in the civil service of the State in such appointment as the House of Commons may by resolution from time to time determine; and any such resolution may take effect from the date on which it is passed or from such other date as may be specified in it.

5. The salary payable to a holder of the office of a Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he has previously been appointed or elected.

6. (1) Where a person holds:
(a) the office of Parliamentary Commissioner, and
(b) one or more of the offices of Health Service Commissioner,

he shall, so long as he does so, be entitled only to the salary pertaining to the office of Parliamentary Commissioner.

(2) Where a person holds two or more of the offices of Health Service Commissioner he shall, so long as he does so, be entitled only to the salary pertaining to such one of those offices as he selects.

Pensions and other benefits

7. Schedule 1 to the [1967 c. 13.] Parliamentary Commissioner Act 1967 (which relates to pensions and other benefits) has effect with respect to persons who hold or have held office as a Commissioner as it has effect with respect to persons who hold or have held office as the Parliamentary Commissioner.

8. In computing the salary of a former holder of the office of Commissioner for the purposes of Schedule 1 to the 1967 Act, there shall be disregarded:
(a) any abatement of that salary under paragraph 5,
(b) any temporary abatement of that salary in the national interest, and
(c) any voluntary surrender of that salary in whole or in part.

9. (1) In this paragraph, «relevant office» means the office of Parliamentary Commissioner or any of the offices of Health Service Commissioner.

(2) The Treasury may by regulations provide that Schedule 1 to the Parliamentary Commissioner Act 1967 shall have effect, in relation to persons who have held more than one relevant office, with such modifications as it considers necessary in consequence of those persons having held more than one such office; and different regulations may be made in pursuance of paragraph 4 of Schedule 1 to the 1967 Act in relation to different relevant offices.

(3) A person shall not be entitled to make simultaneously different elections in pursuance of paragraph 1 or 2 of Schedule 1 to the 1967 Act in respect of different relevant offices.

(4) Where a person has made or is treated as having made an election in pursuance of paragraph 1 or 2 of Schedule 1 to the 1967 Act in respect of any relevant office, he shall be deemed to have made the same election in respect of all such other offices to which he is, or is subsequently, appointed.

(5) No account shall be taken for the purposes of Schedule 1 to the 1967 Act of a period of service in a relevant office if salary in respect of the office was not paid for that period.

(6) Regulations under this paragraph may make such incidental or supplementary provision as the Treasury considers necessary.

(7) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

10. In any case where a person makes an election under paragraph 2(1)(a) of Schedule 1 to the [1967 c. 13.] Parliamentary Commissioner Act 1967 (as substituted by Part II of Schedule 4 to the [1993 c. 8.] Judicial Pensions and Retirement Act 1993) so that Schedule 1 to the 1967 Act continues to have effect in relation to him as it did before the coming into force of Part II of Schedule 4 to the 1993 Act, this Schedule shall have effect:

(a) as if in paragraph 7 the words «hold or» (in both places) and in paragraph 9(3) and (4) the words «or 2» (in both places) were omitted, and

(b) as if for the reference in paragraph 9(2) to paragraph 4 of Schedule 1 to the 1967 Act there were substituted a reference to paragraph 8 of that Schedule.

Staff and advisers

11. (1) A Commissioner may appoint such officers as he may determine with the approval of the Treasury as to numbers and conditions of service.

(2) The Health Service Commissioner for Wales shall include among his officers such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.

12. Any functions of a Commissioner under this Act may be performed by any officer of the Commissioner authorised by him for that purpose, or by any officer so authorised of another Commissioner or the Parliamentary Commissioner.

13. (1) To assist him in any investigation a Commissioner may obtain advice from any person who, in his opinion, is qualified to give it.

(2) A Commissioner may pay to any such person from whom he obtains advice under this paragraph such fees or allowances as he may determine with the approval of the Treasury.

Financial provisions

14. The expenses of a Commissioner under this Act:
(a) shall be paid out of money provided by Parliament, and
(b) shall not exceed such amount as the Treasury may sanction.

15. Any salary, pension or other benefit payable by virtue of paragraph 2 and paragraphs 4 to 9 shall be charged on and issued out of the Consolidated Fund.

APPENDIX II

SPECIAL REPORT "MAKING THINGS BETTER? A REPORT ON REFORM OF THE NATIONAL HEALTH SERVICE"

The special report *"Making things better?"* A *Report on Reform of the National Health service"*, presented to the Parliament, highlighted the Health Commissioner concerns that fragmentation of complaints systems across health and social care and the NHS and the private sector had led to a system which made it difficult for patients and their families to know who to complain to when things had gone wrong. For example complainants who are unhappy about the handling of their complaints by a social services authority and subsequently by the Commission for Social Care Inspection (CSCI), might need to refer the complaint both to the Local Government Ombudsman (who can consider complaints about local authorities) and the Parliamentary Ombudsman (who can consider complaints about CSCI).

Besides highlighting areas of concern, the special report included a number of recommendations. In particular the Health Ombudsman called for commitment and leadership from the Department of Health in setting the core standard for complaint handling to be met by all providers of NHS care in England and suggested that the Department should ensure the adoption of a common approach to complaints across health and social care. He also recommended that the Healthcare Commission, in its role of inspector, should assess the performance of trusts against core standards and share learning from complaints across the health service – an approach fully supported by the Healthcare Commission. This, together with training and development for complaints handlers and leadership from the Department and local health chief executives, should ensure an accessible service for all; thorough investigations of complaints; a culture of openness and non-defensiveness by senior managers; the provision of a full range of remedies for justified complaints at all levels of the system; and the implementation of recommendations arising from the investigation of complaints to try to make sure that mistakes do not recur.

APPENDIX III

LAW ON THE OMBUDSMAN
(Promulgated, SG, no. 48/23.05.2003, in force since 01.01.2004)

Chapter One
General provisions

Art. 1. This law shall regulate the legal status, organization and activities of the Ombudsman.

Art. 2. The Ombudsman shall intervene by the means, envisaged in this law, when citizens' rights and freedoms have been violated by actions or omissions of the state and municipal authorities and their administrations as well as by the persons assigned with the provision of public services.

Art. 3. (1) The Ombudsman shall be independent in his/her activities and shall obey only to the Constitution, the laws, and the ratified international treaties to which the Republic of Bulgaria is a party. He/she shall be guided by his/her personal conscience and morality.

(2) The Ombudsman shall perform his/her activities based on rules on the organization and activities of the institution. The rules shall be elaborated by the Ombudsman, shall be approved by a decision of the National Assembly and shall be promulgated in the State Gazette.

Art. 4. The activities of the Ombudsman shall be public.

Art. 5. The Ombudsman shall be assisted in his/her activities by a Deputy Ombudsman.

Art. 6. The state and municipal authorities and their administrations, the legal persons and citizens shall be obliged to provide the Ombudsman with information, entrusted to them officially, and to provide assistance to the Ombudsman in relation with the complaints and signals sent to him/her.

Art. 7. The activities of the Ombudsman and his/her administration shall be financed by the State Budget and/or by other public sources. The Ombudsman shall be first-rate administrator of budgetary credits.

Chapter Two
Taking the office. Legal status

Art. 8. The Ombudsman shall be elected by the National Assembly for a term of five years and may be re-elected for the same office only once.

Art. 9. Shall be elected Ombudsman a Bulgarian citizen, possessing university degree, revealing high integrity and meeting the requirements for the election of Member of Parliament.

Art. 10. (1) The Members of Parliament and the Parliamentary Groups may submit proposals for election of Ombudsman.

(2) The National Assembly shall elect the Ombudsman by secret voting. The candidate, who has received more than a half of the votes of the Members of Parliament participating in the voting, shall be elected.

(3) If none of the candidates has received the required majority at the first voting, a second voting shall take place, in which only the two candidates, who has received the greatest number of votes shall participate. The candidate, who has received more than half of the votes of the Members of Parliament participating in the second voting, shall be considered elected.

Art. 11. (1) The Deputy Ombudsman shall be elected by the National Assembly within one month following the election of the Ombudsman upon proposal by the Ombudsman and for the term under article 8.
(2) The Deputy Ombudsman shall meet the election criteria under article 9.

Art. 12. The Ombudsman shall take office after taking the following oath before the National Assembly: «I swear in the name of the Republic of Bulgaria to observe the Constitution and the laws of the country and to protect the human rights and fundamental freedoms by exercising conscientiously and impartially my powers».

Art. 13. The election of a new Ombudsman shall take place at least two months before the expiry of the term of office of the active Ombudsman. The Ombudsman shall continue to carry out his/her duties until the newly elected Ombudsman takes office.

Art. 14. The office of the Ombudsman and the Deputy Ombudsman shall be incompatible with any other state office, managerial position in commercial company or not-for-profit legal person, as well as with membership in political party or trade union. The Ombudsman and the Deputy Ombudsman may not perform commercial activities.

Art. 15. (1) The powers of the Ombudsman and the Deputy Ombudsman shall be terminated by the National Assembly before the expiry of their term of office in case of:
1. establishment of incompatibility or ineligibility;
2. inability to carry out his/her powers for more than six months;
3. entry in force of a sentence for intentional crime;
4. failure to carry out his/her duties and violation of the Constitution and the laws of the country or the commonly accepted ethical rules;

5. resignation;
6. death.

(2) The decision for termination of the powers of the Ombudsman or the Deputy Ombudsman before the expiry of their term of office on the grounds of paragraph (1), items 1, 2 and 4 shall be adopted by the National Assembly upon request by at least one-fifth of the Members of Parliament; the grounds under paragraph (1) items 3, 5 and 6 shall be announced before the National Assembly by the Chair of the National Assembly.

(3) Apart from the grounds under paragraph (1), the Deputy Ombudsman shall be dismissed by the National Assembly upon a justified proposal by the Ombudsman.

(4) The Ombudsman and the Deputy Ombudsman shall have the right to speak before the National Assembly in the cases under paragraph (1), items 1, 2, 4 and 5; the Deputy Ombudsman shall have the same right in the case under paragraph (3) as well.

Art. 16. (1) The Ombudsman shall enjoy the same immunity as a Member of Parliament.

(2) The immunity of the Ombudsman may be removed under the terms and through the procedure, envisaged for the Members of Parliament.

Art. 17. (1) In cases of termination of the mandate of the Ombudsman before the expiry of his/her term of office, the new Ombudsman shall be elected within one month following the entry into force of the decision for termination under article 15, paragraph (1), items 1, 2 or 4, or following the announcement under article 15, paragraph (1), items 3, 5 or 6.

(2) In cases of termination of the powers of the Ombudsman before the expiry of his/her term of office, the Deputy Ombudsman shall take the office until the election of a new Ombudsman.

Art. 18. (1) The Ombudsman shall receive remuneration in the amount of three average month salaries of the civil servants and the employees in the public sector, according to the data of the National Statistical Institute.

(2) The remuneration of the Deputy Ombudsman shall be 80% of the remuneration of the Ombudsman.

(3) The Ombudsman and the Deputy Ombudsman may not receive other remuneration under as employee or civil servant.

Chapter Three
Powers

Art. 19. (1) The Ombudsman shall:
1. receive and consider complaints and signals regarding violations of rights and freedoms by the state and municipal authorities and their administrations as well as by persons assigned with the provision of public services;
2. make examinations upon the complaints and signals received;
3. reply in writing to the person, who has lodged the complaint or signal, within one month; if the case requires a more thorough examination, this term shall be three months;
4. make proposals and recommendations for reinstatement of the violated rights and freedoms before the respective authorities, their administrations, and persons under item 1;
5. mediate between the administrative authorities and the persons concerned for overcoming the violations admitted and shall reconcile their positions;
6. make proposals and recommendations for eliminating the reasons and conditions, which create prerequisites for violation of rights and freedoms;
7. notify the authorities, listed under article 150 of the Constitution, for approaching the Constitutional Court, when he/she is of the opinion that it is necessary the Constitution to be interpreted or a law to be declared unconstitutional;
8. notify the Public Prosecution Office when data exists that a crime, prosecuted on indictment, has been committed.

(2) The Ombudsman may act on his/her own initiative as well when he/she has established that the necessary conditions for protecting citizens' rights and freedoms have not been created.

(3) The Ombudsman may assign some of his/her powers to the Deputy Ombudsman.

Art. 20. (1) The Ombudsman shall have the right:
1. of access to the authorities, their administrations and the persons under article 2, including the right to be present when they discuss and make decisions;
2. to request and receive timely, accurate and comprehensive information from the authorities, their administrations and persons under article 2;
3. to publicly express opinions and statements, including in the media.

(2) The Ombudsman shall not have the right to disclose any circumstances that he/she has become aware of while performing his/her functions, which are state, official or commercial secret or are of personal nature.

Art. 21. The Ombudsman shall maintain a public register on the received oral and written complaints and signals and their movement.

Art. 22. (1) The Ombudsman shall submit an annual report on his/her activities to the National Assembly by March 31 every year.

(2) The report shall contain information on:

1. the complaints and signals received, the examinations on which have been completed;
2. the cases when his/her intervention has led to a certain result;
3. the cases when his/her intervention has had no consequences and the reasons thereof;
4. the proposals and recommendations made and whether these have been taken into consideration;
5. the respect for the human rights and fundamental freedoms and the efficiency of the legislation in force in this area;
6. a report on the expenditures;
7. a summary.

(3) The report under paragraph (1) shall be public.

(4) The Ombudsman shall prepare reports on particular cases upon request by the National Assembly or upon his/her own initiative.

Art. 23. The Ombudsman shall publish an annual bulletin on his/her activities.

Chapter Four
Submission of complaints and signals

Art. 24. Complaints and signals to the Ombudsman may be submitted by natural persons, irrespective of their citizenship, gender, political affiliation or religious beliefs.

Art. 25. (1) Complaints and signals may be written or oral, submitted personally, by post or by other traditional means of communication.

(2) The complaint must contain the name and permanent address of the sender, description of the violation, the authority, administration, or person against whom the complaint is lodged. Written evidence may also be enclosed to the complaint.

(3) Anonymous complaints and signals and complaints for violations committed before more than two years shall not be considered.
(4) For oral complaints a protocol shall be drawn up, containing the information required under paragraph (2).

Art. 26. The submission of complaints before the Ombudsman shall be free of charge.

Art. 27. The complaints and signals received shall be entered into the register under article 21. The measures undertaken on each case and the results thereof shall also be entered into the register.

Art. 28. The authorities and the persons under article 2, to whom the opinions, proposals and recommendations have been addressed, shall be obliged to consider them within fourteen days and to notify the Ombudsman on the measures undertaken.

Chapter Five
Administrative penal provisions

Art. 29. Any person who hinders the Ombudsman to perform his/her official duties shall be punished by a fine of up to 600 BGN, if he/she is not liable to a more severe penalty.

Art. 30. Any person who fails to submit data, documents or certificates, demanded by the Ombudsman, in the term, specified by him/her, shall be punished by a fine of up to 500 BGN, if he/she is not liable to a more severe penalty.

Art. 31. Any person who fails to perform another obligation, specified by this law or the relevant secondary legislation on its implementation, shall be punished by a fine of up to 300 BGN, if he/she is not liable to a more severe penalty.

Art. 32. The administrative penalty for the violations under articles 29-31 shall be imposed by the respective regional court. The statement of establishment of the administrative violation shall be drawn up by an official, determined by the Ombudsman, and shall be sent to the respective regional court.

Art. 33. The court shall notify the person, whose punishment has been demanded, of the materials received under article 32, and shall specify the term for this person to get acquainted with them, to make objections and to indicate evidence in their support. The term may not be shorter than one month.

Art. 34. (1) After the expiry of the term under article 33 an open hearing shall be appointed.

(2) The Ombudsman may participate in the court proceedings if he/she finds it necessary.

Art. 35. (1) The regional court shall hear the case upon its merits and shall pronounce a decision for imposing the administrative penalty specified in this law or for discharging the person whose punishment has been demanded.

(2) The decision shall be subject to cassation appeal before the district court under the procedure of the Law on the Supreme Administrative Court. The Ombudsman may also appeal the decision.

Art. 36. Unless otherwise provided in this law the Law on Administrative Violations and Penalties shall be applied.

Additional provision

§ 1. Within the meaning of this law:

1. «public services» are educational, healthcare and social activities, activities related to water, heat and electricity supply, postal and telecommunications activities, commercial activities, activities related to security and transport safety as well as other similar services, provided for satisfying public needs and in relation to which administrative services may be performed;

2. «traditional means of communication» are letters, telephone, telegraph, telex, fax and e-mail.

Transitional and concluding provisions

§ 2. The National Assembly shall elect the Ombudsman within three months following the entry into force of this Law.

§ 3. The Ombudsman shall submit to the National Assembly for approval the rules on the organization and activity of the institution within one month after taking the office.

§ 4. The law shall enter into force on January 1, 2004.

The law was adopted by the 39th National Assembly on May 8, 2003, and was sealed with the official seal of the National Assembly.

APPENDIX IV

REGULATION OF THE ORGANIZATION AND ACTIVITY OF THE OMBUDSMAN
(Promulgated in State Gazette No. 45 of 31.05. 2005)

Section I.
General

Art. 1. This regulation shall provide the organization and the activity of the ombudsman and his administration and the order for accepting and considering of appeals and signals, for implementing check on initiative of the ombudsman, for mediation and for directing proposals and recommendations.

Art. 2. The issues about the activity of the ombudsman and the organization of his administration which have not been provided in the Law of the ombudsman and the present regulation shall be regulated with internal acts of the ombudsman: instructions, ordinances, orders, decisions, methodical directives etc.

Art. 3. The ombudsman shall be assisted by deputy-ombudsman to whom he shall assign with a written act the fulfillment of some of his authorities or the implementing of some actions.

Art. 4. The official language in the work of the ombudsman shall be Bulgarian. Who does not know Bulgarian may address the ombudsman in other language.

Art. 5. (1) The ombudsman shall cooperate with similar institutions in other states and their associations as well as with international organizations

(2) The ombudsman shall interact with the local public mediators (local ombudsmen) and other similar institutions in Bulgaria and render them methodical assistance.

Art. 6. (1) The activity of the ombudsman shall be public.

(2) The ombudsman shall inform the public about his work by messages for the press, statements in the media, press-conferences, appearing in programs of the electronic media etc.

(3) The ombudsman shall be obliged not to divulge the circumstances constituting state, official or trade secret as well as personal secrets that have become known to him in connection with implementing his authorities

Art. 7. (1) The papers of the ombudsman shall be inviolable and shall not be subject to check and seizure.

(2) The correspondence between the ombudsman and persons addressing him with appeals and signals shall be inviolable, not subject to checks and cannot be used as means of proof in any procedures.

Section II.
Basic principles in the activity of the Ombudsman. Authorities

Art. 8. In his activity the ombudsman shall be lead by the following basic principles:
1. impartiality and independence;
2. approval of state of law and fairness;
3. assessment according to internal belief whether the requirements for good management have been observed.

Art. 9. (1) The ombudsman shall:
1. consider appeals and signals against the state and the municipal bodies and their administrations and against persons to whom has been assigned the implementing of public function or the rendering of public services when at implementing by them administrative activities are impaired rights and liberties or the necessary conditions for their recognizing are not created;
2. make checks on received appeals and signals;
3. undertake actions on his own initiative when he finds that his intervention is necessary with regard to respecting the rights and the liberties;
4. make proposals and recommendations to the persons of item 1 for respecting the rights and the liberties, for removing the consequences of impairing defined rights and liberties as well as for removal of the reasons lead to this;
5. propose to the bodies of art. 150, para 1 of the Constitution to approach the Constitutional Court if he decides that interpretation of the Constitution is necessary or announcement of the unconstitutionality of a law;
6. mediate between the persons of item 1 and the affected persons and for overcoming the admitted violations and reconcile their positions;
7. require information from the persons of item 1 in connection with the considered cases;
8. check, including on the spot, the activity of the persons of item 1 and be present at considering and taking of decisions;
9. publicly express opinion on observing the rights and the liberties and can require to be listened to by the National Assembly;
10. inform the Prosecutor's Office about the results of his checks when there are data about committed crime;
11. prepare and submit annual report to the National Assembly;
12. inform the National Assembly about separate cases of impairing and not observing of rights and liberties and prepare reports on them;
13. issue bulletin;
14. implement also other activities in connection with observing the rights and the liberties;

(2) The authorities of the ombudsman shall not refer to:
1. the National Assembly, the Constitutional Court, the Supreme Judicial Council and the Audit Office;
2. the implementing of judicial power by the court, the prosecutor's office and the investigation;
3. the relations connected with the national security and the foreign policy.

(3) The ombudsman cannot lead procedures in the name of the persons addressed him and cannot represent them before court and before the persons of para 1, item 1.

Section III.
Administration of Ombudsman

Art. 10. (1) The administration of the ombudsman shall be managed by chief secretary and organized in directorates and divisions

(2) The ombudsman shall appoint and discharge the employees in his administration and determine their authorities and remunerations.

(3) The ombudsman shall determine the working time of his administration and the reception time for citizens.

Art. 11. (1) Reception centre shall be created at the administration of the ombudsman.

(2) The ombudsman shall receive personally the citizens in time defined by him.

(3) The employees shall work in the reception centre on every day rotation principle, on the basis of monthly program approved by the chief secretary.

(4) The ombudsman can open temporary reception centers also in other settlements.

Art. 12. (1) The persons working in the administration of the ombudsman shall be in employment or official legal relations. The ombudsman shall determine which positions are taken by persons in official legal relation.

(2) The practice of the employees with the ombudsman shall be considered as labor practice in their specialty, respectively official practice

(3) The ombudsman, the deputy ombudsman and the employees shall have right to additional paid leave up to 12 working days for fulfillment of their obligations out of working time. The concrete amount of the leave shall be determined by the ombudsman.

Art. 13. The activity of the ombudsman may be assisted by external experts and specialists working with civil contract or publicly.

Art. 14. The ombudsman may form consultative councils in which he, his deputy or other representatives of his administration, representatives of the academic circles, the media, the organizations of the citizens, external consultants etc. participate.

Art. 15. The ombudsman may create regional councils for interaction with the public mediators, assisting their activity and equaling the practice. In them shall participate the ombudsman, the deputy-ombudsman or representatives of his administration, public mediators from several municipalities and representatives of the respective municipal councils, representatives of the media, of organizations of the citizens etc.

Section IV.
Receiving and considering appeals and signals

Art. 16. (1) The appeals and the signals submitted to the ombudsman may be written or verbal. Their receiving shall take place at the reception centre of the ombudsman.

(2) The form of the appeals and the signals shall be free but they shall obligatory contain:
1. data about the sender, including for contact with him;
2. description of the violation;
3. data about the violator;
4. the time when the violation has been made;
5. information about whether the same case is in procedure in a court or other institution;
6. information about the caused damages if indemnification is searched for them.

(3) The lack of information of para 2 shall not be obstacle for receiving the appeal or the signal. Any necessary information may be required at or after their submitting.

(4) The written appeals and signals shall be submitted personally, with letter, by fax, telegraph or by e-mail. The ombudsman may issue exemplary model the use of which shall not be compulsory.

(5) The verbal appeals and signals shall be given personally or by telephone.
(6) The submitting of appeals and signals as well as the whole procedure of considering them shall be free of charge for the sender.

Art. 17. The received written appeals and signals shall be entered in the register of the appeals and the signals by the receiving employee for considering in the respective division.

Art. 18. (1) The employee on duty in the reception centre shall compile record about the received verbal appeals of signals, in which shall be pointed out the name and the permanent address of the sender, description of the violation, the body, the administration or the person against whom is the appeal has been submitted.

(2) The record shall be entered in the register of the appeals and the signals.

(3) The receiving employee shall distribute the recorded appeals and signals for considering in the respective division.

Art. 19. When a sender of appeal or signal wishes his identity to be kept is secret in the register shall not be pointed out data about his identity.

Art. 20. (1) The receiving employee shall enter in the register but shall not distribute for considering anonymous appeals and signals as well as appeals and signals for violations made before more than two years.

(2) If the issues in the appeals and the signals that are not subject to distribution of the previous para are with big public importance the employee shall propose implementing of check on initiative of the ombudsman.

Art. 21. (1) The appeals and the signals, distributed in divisions shall be assigned to an employee of the respective division.

(2) The divisions shall cooperate among themselves when given case is in the sphere of activity of more than one of them.

(3) The appeals and the signals containing data about corruption shall be kept in separate account.

Art. 22. (1) An employee to whom have been assigned appeals and signals shall implement check of their admissibility.

(2) In two weeks term after receiving the appeal or the signal the employee shall prepare written answer to the sender whether the appeal or the signal is accepted for considering. At receiving the appeal or the signal for considering to the sender shall be notified the entrance number and the division or the employee who will consider the case. Upon negative answer the ground shall be pointed out without being necessary to present other motives.

(3) If necessary sender may be required additional data from the sender of the appeal or the signal.

(4) The existing of other ways shall not be ground for not admitting of the appeal or the signal. If the appeal or the signal refer to issue which can be referred to higher administrative body or other specialized body (commission, agency) the ombudsman may advise the sender to address the respective institution unless he assesses that it is necessary he himself to consider the case.

(5) If the appeal or the signal is out of the authorities of the ombudsman he shall not take it for considering, inform the sender about his decision and may advise him to address other body.

(6) In separate cases with the consent of the sender the ombudsman may send the appeal or the signal to other competent body

Art. 23. (1) The employee to whom the considering of the appeal or the signal has been assigned shall implement check collecting information , require and check documents, observe directly the activity of the bodies and the persons of art. 9, para 1, item 1, make inquiries etc.

(2) The check may include also collecting data from the sender of the appeal or the signal, questions to bodies or persons out of these of art. 9, para 1, item 1 etc.

(3) The ombudsman may assign the making of investigations and expert reports if he decides that they are necessary for the objectives of the check.

Art. 24. (1) The check shall finish with written statement.

(2) The statement of para 1 shall reflect the results of the check and includes:
1. the cause for implementing the check
2. description of the violation;
3. the division and the employee to whom the case has been distributed;
4. the undertaken activities;
5. the collected proofs;
6. the findings and the conclusions made;
7. recommendations and proposals if there are such;
8. other information of importance for the case.

(3) the statement shall be signed by the ombudsman or a person authorized by him.

(4) a copy of the statement shall be sent to the interested bodies and persons.

(5) the number and the date of the statement shall be entered in the register of the appeals and the signals.

(6) In separate cases the ombudsman may send n advance draft of his statements to the affected parties. In a term defined by him they may express their opinion.

Art. 25. (1) The register of the appeals and the signals shall contain:
1. entry number and date of receiving of the appeal or the signal;
2. the name and the address of the sender except in the cases of art. 19;
3. name of the body of art. 19, para 1, item 1;
4. the essential of the complaints;
5. the division or the employee to whom the case has been distributed;
6. the statement of the respective division on accepting the appeal or the signal for considering;
7. number and date of the statement;

8. the pronouncing of the ombudsman, respective other measures that have been undertaken on the case;
9. the implementing of mediation and the results of it;
10. noting whether the case is included in the annual or the special reports of the ombudsman.

(2) The entries in the register shall be prepared by the receiving employees and the employees making the checks and implemented by the chief secretary or employee of the administration.

(3) The information contained in the register shall be accessible for all bodies and persons.

Section V.
Mediation

Art. 26. At any time at considering of appeal or signal the ombudsman may propose mediation for voluntary settling of the case between the affected person and the body or the person of art. 9, para 1, item 1.

Art. 27. The ombudsman shall upon his discretion implement mediation personally or by assigning of separate or all activities to the deputy ombudsman or employee of the administration.

Art. 28. (1) In the cases of art. 26 the ombudsman shall direct proposal for mediation to the sender and the body or the person against which the appeal or the signal has been submitted.

(2) In case both parties accept the mediation the ombudsman shall render any help for overcoming the conflict (making contact, support in the progress of eventual negotiations etc.). For this purpose he can conduct without limitation sequence of common meetings, with the two parties and also individual meetings with each of them separately.

(3) In the progress of the meetings at each stage the ombudsman shall listen to the statements of the parties and supports them in the process of overcoming the differences with all possible means, including proposal of formula for resolving the dispute.

(4) The ombudsman may reveal to the other party of the dispute information which has received at individual meeting only upon existing of explicit consent by the party from which he has received the information.

(5) In case of successful settling of the conflict for the results of the mediation a record shall be compiled which shall be signed by the two parties and the ombudsman or an employee defined by him.

(6) In case of unsuccessful finishing of the mediation for implementing his function the ombudsman may use the other authorities provided by the law and this regulation.

Section VI.
Activities on initiative of the Ombudsman

Art. 29. (1) The ombudsman can undertake actions on his initiative when he finds that the necessary conditions for protection of the rights and liberties are not being created.

(2) When the ombudsman acts on his own initiative he can implement checks also about violations made before more than two years.

(3) The undertaking of actions of the ombudsman on his initiative shall be entered in separate section of the register of the appeals and the signals.

(4) When the ombudsman undertake actions on his own initiative he can assign the check to the deputy ombudsman or to one or more employees.

(5) When the ombudsman assigns the implementation of the check to the deputy ombudsman or to one or more employees he shall determine the term for finishing the check.

Art. 30. If other is not provided in this section for the implementation of the check on initiative of the ombudsman and its finishing shall be applied respectively the rules for the check for appeal or signal.

Section VII.
Recommendations and proposals

Art. 31. In the statement with which finishes the implemented check when he finds it is appropriate the ombudsman shall make recommendations and proposals:
1. for the implementing or terminating the accomplishment of defined administrative activities
2. for restoration of violated rights and liberties;
3. for removal the reasons and the conditions creating prerequisites for violations of the rights and liberties;
4. for removal the acts of bad administration and for improving the work of the administration.

Art. 32. (1) In 14 days term after receiving the statement and the proposals the body or the person to whom it has been sent shall be obliged to consider them and to notify the ombudsman about the undertaken measures.

(2) If no measures are undertaken the ombudsman can include the case in his annual report of in separate report before the National Assembly.

Art. 33. (1) If as result of implemented check the ombudsman establishes that defined law provision is reason or creates prerequisites for violation of the rights and liberties he can direct proposals and recommendations for legislative changes.

(2) The proposals and the recommendations for legislative changes shall be sent to the National Assembly and to the Council of Ministers.

(3) The proposals and the recommendations for legislative changes and the actions undertaken for them shall be entered in the register of the appeals and signals and shall be included in the annual report of the ombudsman.

Section VIII.
Annual report. Reports on separate cases

Art. 34. (1) The ombudsman shall present annual report about his activity before the National Assembly.

(2) The report shall be submitted till March 31 of the following year and it shall contain information about:
1. the received appeals and signals for which the checks have finished;
2. the cases when his interference has had result;
3. the cases when his interference has remained without result and the reasons for this;
4. the made proposals and recommendations as well as whether they have been taken in mind;
5. the respecting of the rights and the basic liberties and the effectiveness of the acting legislation in this field;
6. proposals and recommendations for implementing changed in the legislation;
7. account of the expenses;
8. abstract;
9. other information which the ombudsman considers necessary for full and precise presentation of his activity.

(3) The report of para 1 shall be public. The full text of the report shall be at disposal in the reception centre of the ombudsman.

(4) Abstract of the annual report shall be promulgated in State Gazette.

Art. 35. (1) Upon request by the National Assembly or on his own initiative the ombudsman shall prepare and present reports on separate cases.

(2) The reports of para 1 shall be public.

(3) Copies of the separate reports shall be sent to the bodies and the persons to which activity they refer.

Art. 36. The ombudsman shall publish bulletin in which he presents his activity, problems of respecting the rights and the liberties, the implementation of the legislation in this sphere, scientific investigations and publications, the activity of similar institutions in other countries etc.

Section IX.
Budget

Art. 37. (1) The activity of the ombudsman and his administration shall be financed from the state budget and from other sources

(2) The ombudsman shall be primary administrator with budget credits.

Art. 38. The basic monthly remunerations of the administrative of the ombudsman shall be determined by the ombudsman, according to the Internal rules for the salary and the disposable resources in the budget for the respective year.

Art. 39. The fulfillment, the accounting and the control of the activities, financed with resources from the budget of the ombudsman shall be implemented according to the general rules of the Bulgarian legislation.

Concluding provision

Sole paragraph. The regulation has been approved with decision of the National Assembly pursuant to art. 3, para 2 of the Law of the ombudsman (prom. SG 48/03).