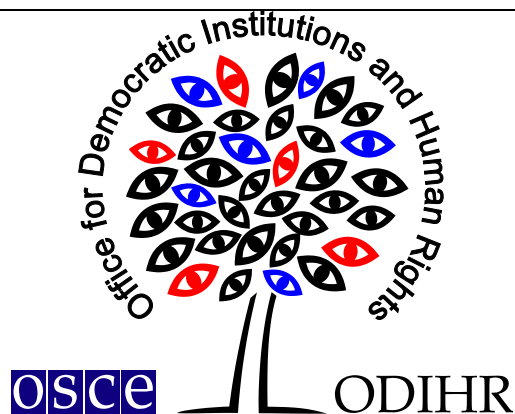


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OPINION

**ON THE DRAFT LAW AMENDING AND
SUPPLEMENTING THE OMBUDSMAN ACT OF
BULGARIA**

**based on an unofficial English translation of the draft amendments
provided by the Office of the Ombudsman of the Republic of Bulgaria**

*This Opinion has benefited from contributions made by the National Institutions and
Regional Mechanisms Section of the Office of the United Nations
High Commissioner for Human Rights (OHCHR)*

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TABLE OF CONTENTS

I. INTRODUCTION.....	3
II. SCOPE OF REVIEW	3
III. EXECUTIVE SUMMARY.....	4
IV. ANALYSIS AND RECOMMENDATIONS.....	5
1. International Standards on National Human Rights Institutions.....	5
2. Mandate	7
2.1. <i>Promotion of Human Rights.....</i>	<i>7</i>
2.2. <i>Extension of the Mandate to Acts and Omissions of the Private Sector.....</i>	<i>7</i>
2.3. <i>Protection of Citizens and Other Natural Persons.....</i>	<i>8</i>
3. The Power to Encourage the Ratification of International Instruments.....	9
4. Selection and Appointment	9
4.1. <i>Selection and Appointment of the Ombudsman and the Deputy Ombudsman</i>	<i>9</i>
4.2. <i>Selection of Staff.....</i>	<i>12</i>
5. Pluralism in Decision-Making Processes	12
6. Adequate Funding of the Institution	13
6.1. <i>General Remarks.....</i>	<i>13</i>
6.2. <i>Specific Budget for the Ombudsman as a National Preventive Mechanism</i>	<i>14</i>
7. Specific Provisions pertaining to NPM	15
8. Other Comments.....	15

Annex: Draft Law Amending and Supplementing the Ombudsman Act

I. INTRODUCTION

1. *On 3 February 2017, the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) received a request for a legal review of the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria (hereinafter “the Draft Amendments”) from the Ombudsman of the Republic of Bulgaria.*
2. *On 7 February 2017, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of these Draft Amendments with OSCE commitments and international human rights standards.*
3. *This Opinion was prepared in response to the above request.*

II. SCOPE OF REVIEW

4. The scope of this Opinion covers only the Draft Amendments, submitted for review, which will be reviewed within the framework of other provisions of the Ombudsman Act of Bulgaria, as well as the Rules of Procedure of the Ombudsman Institution (hereinafter: “Rules of Procedure”), as appropriate and relevant. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the protection and promotion of human rights and fundamental freedoms in Bulgaria.
5. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, it focuses more on those provisions that require improvements rather than on the positive aspects of the Draft Amendments. The ensuing recommendations are based on international standards, norms and practices related to national human rights institutions (hereinafter “NHRIs”), as well as relevant OSCE commitments. The Opinion will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion’s analysis takes into account the potentially different impact of the Draft Amendments on women and men.¹
6. This Opinion is based on an unofficial English translation of the Draft Amendments provided by the Office of the Ombudsman of the Republic of Bulgaria, which is attached to this document as an Annex. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation pertaining to the legal and institutional framework on the protection and promotion of human rights in Bulgaria in the future.

¹ See OSCE Ministerial Council Decision No. 14/04 “2004 OSCE Action Plan for the Promotion of Gender Equality”, 7 December 2004, par 32, available at <http://www.osce.org/mc/23295>.

III. EXECUTIVE SUMMARY

8. The Draft Amendments constitute a positive development and strengthen the Office of the Ombudsman by further broadening its mandate to promote human rights and potential human rights violations also within the private sector. The proposed amendments also seek to ensure an open and transparent selection and appointment process for the positions of Ombudsman and Deputy Ombudsman, as well as for the entire staff.
9. However, the process of selecting and appointing the Ombudsman could be further enhanced in terms of pluralism and participatory engagement. Furthermore, the Ombudsman should be able to protect and promote the human rights of citizens and non-citizens alike, at least with respect to rights enjoyed by both of these groups equally. With regard to the Ombudsman's role as the national preventive mechanism (hereinafter "NPM") for Bulgaria, in particular, the Draft Amendments should ensure that the Ombudsman is endowed with sufficient financial and human resources to also adequately fulfill its NPM mandate.
10. More specifically, and in addition to what was stated above, the OSCE/ODIHR makes the following key recommendations to further enhance the Draft Amendments:
 - A. to provide more details on what the promotional mandate of the Ombudsman entails; [pars 16-17]
 - B. to ensure that the Ombudsman's mandate covers the protection and promotion of human rights of citizens and non-citizens; [par 20]
 - C. to ensure that civil society may also nominate candidates for the position of the Ombudsman and/or that competent candidates are selected through a selection committee representing all levels of society; [pars 22-25]
 - D. to maximize the pool of candidates by publicizing vacancies widely; [par 27]
 - E. to further enhance legislation and policies guaranteeing the representation of women, national minorities and persons with disabilities among the Ombudsman Office's staff; [pars 28-29]
 - F. to allocate funding for the Ombudsman through a separate budget line in the national budget and to ensure a separate budget for the Institution's function as NPM;
 - G. ensure that the Ombudsman Act, and/or other relevant legislation, is in line with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; [pars 36-37] and
 - H. following the adoption of the Draft Amendments, to ensure that the Rules of Procedure are consistent with the amended Ombudsman Act [pars 19, 21, 35 and 39].

Additional Recommendations, highlighted in bold, are also included in the text of the Opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on National Human Rights Institutions

11. The term National Human Rights Institution (hereinafter “NHRI”) refers to independent bodies with the mandate to protect and promote human rights. They are “a key component of effective national human rights protection systems and indispensable actors for the sustainable promotion and protection of human rights at the country level”.²
12. Internationally recognized rules on the mandates and competencies of NHRIs can first and foremost be found in the United Nations Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights, the so-called “Paris Principles”.³ Adopted by the UN General Assembly, these principles set out minimum standards on the establishment and functioning of NHRIs, in terms of pluralism, transparency, guarantees of functional and institutional independence and effectiveness “in order [for an NHRI] to be considered credible by its peer institutions and within the UN system”.⁴ The implementation of the Paris Principles and evaluation of NHRIs against these principles is undertaken by the Global Alliance of National Human Rights Institution’s (hereinafter “GANHRI”) Sub-Committee on Accreditation (hereinafter “SCA”).⁵ The SCA publishes reports on the accreditation applications of states, reviews their status and provides them with status accreditation every five years.⁶ The status of NHRIs may also be reviewed if the legislation regulating them is amended.⁷ The SCA has also developed “General Observations”, which clarify and further explain the Paris Principles.⁸

² See UN High Commissioner for Human Rights, *Report to the UN General Assembly* (2007), A/62/36, par 15, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/461/09/PDF/N0746109.pdf?OpenElement>.

³ The UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (hereinafter “the Paris Principles”) were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7-9 October 1991), and adopted by UN General Assembly Resolution 48/134 of 20 December 1993, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

⁴ UNDP-OHCHR, *Toolkit for Collaboration with National Human Rights Institutions* (hereinafter “UNDP-OHCHR Toolkit”, December 2010), page 242, available at <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>.

⁵ The Global Alliance of National Human Rights Institutions (GANHRI), formerly known as the International Coordinating Committee for National Human Rights Institutions (hereinafter “ICC”), was established in 1993 and is the international association of national human rights institutions (NHRIs) from all parts of the globe. The GANHRI promotes and strengthens NHRIs in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights.

⁶ Accreditation is the official recognition that an NHRI meets the requirements of or continues to comply with the Paris Principles. The SCA awards A, B or C Status. Status A means that an NHRI is fully in compliance with the Paris Principles and a voting member in the work and meetings on NHRIs internationally; Status B means that the NHRI does not yet fully comply with the Paris Principles or has not yet submitted sufficient documentation in this respect. Status B NHRIs have observer status in the work and meetings of NHRIs; Status C Institutions do not comply with the Paris Principles. The Ombudsman of the Republic of Bulgaria currently has Status B; see Sub-Committee on Accreditation, Report and Recommendations of the Session, 25-28 October 2011 (hereinafter “2011 SCA Report”), pages 7-8, available at [http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf). The Institution intends to apply for A Status; see also UNDP-OHCHR Toolkit, *op. cit.* footnote 4, page 256.

⁷ *ibid.* UNDP-OHCHR Toolkit, page 241.

⁸ The latest revised General Observations of the Sub-Committee on Accreditation, as adopted by the ICC Bureau (hereinafter “General Observations”) at its meeting in Geneva on 6-7 May 2013, are available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf>.

OSCE/ODIHR Opinion on the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria

13. The importance that the United Nations ascribe to NHRIs in the promotion and protection of human rights is documented by various resolutions of the UN General Assembly and the UN Human Rights Council.⁹ Additionally, the United Nations Development Programme (hereinafter “UNDP”) and the Office of the United Nations High Commissioner for Human Rights (hereinafter “OCHCR”) have published a Toolkit for Collaboration with National Human Rights Institutions. The toolkit explains the various models of NHRIs and provides guidance on how to support NHRIs in the different phases of their existence, from their establishment to supporting their development into more mature NHRIs and re-accreditation efforts.¹⁰
14. At the Council of Europe (hereinafter “CoE”) level, Parliamentary Assembly Recommendation 1615 (2003) sets out characteristics which are essential for any Ombudsman institution to operate effectively.¹¹ The European Commission for Democracy through Law (hereinafter “Venice Commission”) also published a Compilation of Venice Commission Opinions concerning the Ombudsman Institution.¹²
15. OSCE participating States, in the Copenhagen Document of 1990, have committed to facilitating “the establishment and strengthening of independent national institutions in the area of human rights and the rule of law”.¹³ Other OSCE commitments have further emphasized the important role that NHRIs play in the protection and promotion of human rights, in particular, the Bucharest Plan of Action for Combatting Terrorism, which tasks the OSCE/ODIHR with continuing and increasing “efforts to promote and assist in building democratic institutions at the request of States, inter alia by helping to strengthen [...] ombudsman institutions”.¹⁴ OSCE commitments also encourage the establishment of NHRIs, such as Ombudsman institutions, to address discrimination against Roma and Sinti¹⁵ and women¹⁶ and to generally combat intolerance and

⁹ See e.g., UN General Assembly, *Resolution no. 70/163 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/70/163, adopted on 17 December 2015, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/163; *Resolutions nos. 63/169 and 65/207 on the Role of the Ombudsman, Mediator and Other National Human Rights Institutions in the Promotion and Protection of Human Rights*, A/RES/63/169 and A/RES/65/207, adopted on 18 December 2008 and on 21 December 2010 respectively; *Resolutions nos. 63/172 and 64/161 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/63/172 and A/RES/64/161, adopted on 18 December 2008 and 18 December 2009 respectively; and *Resolution no. 48/134 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/48/134, adopted on 4 March 1994 – all available at <http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html>. See also the *Resolution no. 27/18 on National Institutions for the Promotion and Protection of Human Rights of the UN Human Rights Council*, A/HRC/RES/27/18, adopted on 7 October 2014, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/L.25.

¹⁰ UNDP-OHCHR Toolkit, *op. cit.* footnote 4, page 241.

¹¹ Parliamentary Assembly of the Council of Europe (PACE), *Recommendation 1615 (2003) on the Institution of Ombudsman*, 8 September 2003, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17133&lang=en>; other CoE recommendations of relevance are CoE Committee of Minister, *Recommendation Rec(97)14E on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights*, 30 September 1997, available at <https://wcd.coe.int/ViewDoc.jsp?id=589191>; PACE, *Recommendation 1959 (2013) on the Strengthening of the Institution of Ombudsman in Europe*, adopted on 4 October 2013, available at <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20232&lang=en>.

¹² Available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)001-e).

¹³ See OSCE Copenhagen Document (1990), par 27, available at <http://www.osce.org/odihr/elections/14304?download=true>.

¹⁴ See *Bucharest Plan of Action for Combating Terrorism* (2001), Annex to OSCE Ministerial Council Decision on Combating Terrorism, MC(9).DEC/1, 4 December 2001, par 10, available at <http://www.osce.org/atu/42524>.

¹⁵ See *Annex to OSCE Ministerial Council Decision No. 3/03: Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, 1 and 2 December 20013, par 22, available at <http://www.osce.org/odihr/17554>.

¹⁶ See *OSCE Ministerial Council Decision No. 14/04 “2004 OSCE Action Plan for the Promotion of Gender Equality”*, 7 December 2004, par 42, available at <http://www.osce.org/mc/23295>.

discrimination.¹⁷ Additionally, the OSCE Handbook for National Human Rights Institutions on Women's Rights and Gender Equality, which exemplifies measures and initiatives to strengthen NHRIs' capacity to work on women's rights and gender equality, is a useful resource.¹⁸

2. Mandate

2.1. Promotion of Human Rights

16. According to the Paris Principles, the mandate bestowed on NHRIs should cover both the protection and the promotion of human rights.¹⁹ Whereas the current version of the Ombudsman Act only covers a protection mandate, Article 1 of the Draft Amendments intends to extend the mandate and now reads "[t]he Ombudsman shall promote and protect human rights and fundamental freedoms". In this respect, the Draft Amendments fulfil the requirements of the Paris Principles and also comply with the 2011 recommendations made by the SCA.²⁰
17. General Observation 1.2 provides further detail by stating that the promotional mandate of NHRIs should include functions such as "education, training, advising, public outreach and advocacy".²¹ This could also involve the use of the media, publications, capacity building activities, as well as providing advice and assistance to governments.²² In order to further strengthen the crucial promotional mandate of the Ombudsman, it is **recommended to expand Article 19 of the Ombudsman Act to include concrete examples of what this promotional mandate entails**. It is also crucial to **ensure that the Ombudsman is endowed with adequate resources to effectively fulfill his or her promotional mandate**.

2.2 Extension of the Mandate to Acts and Omissions of the Private Sector

18. Article 1 par 2 of the Draft Amendments supplements the current Article 2 of the Ombudsman Act by including the "violation of citizens' rights and freedoms by an act or omission on the part of [...] the private sector" into the list of situations or cases in which the Ombudsman shall intercede. The private sector is also mentioned in the new Article 19 par 1 sub-par 4a of the Ombudsman Act, stating that as part of his/her functions, the Ombudsman shall "make proposals and recommendations for promoting and protecting citizens' rights and freedoms at risk of violation by the private sector". This new amendment is welcome as a crucial element of the protection of basic human rights and freedoms. Private actors, including businesses, also need to respect human

¹⁷ See *OSCE Ministerial Council Decision No. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding*, 30 November 2007, par 10, available at <http://www.osce.org/mc/29452>.

¹⁸ OSCE/ODIHR, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 4 December 2012, pages 9 and 78, available at <http://www.osce.org/odihr/97756>.

¹⁹ See General Observation 1.2.

²⁰ 2011 SCA Report, page 7.

²¹ See General Observation 1.2.

²² UNDP-OHCHR Toolkit, *op. cit.* footnote 4, page 242. The UNDP-OHCHR Toolkit contains a checklist that includes components of NHRI mandates set up in full compliance with the Paris Principles. This checklist also contains concrete examples on the promotional mandate of NHRIs, as exercised by, e.g. assisting in the development or review of curricula for schools; assisting in the training of prison guards, police, army, security forces and publishing reports, brochures and media news items.

rights and States have an obligation to protect individuals against the abuse of such rights by third parties, including private actors.²³ States may thus be in breach of their international obligations if they fail to prevent, investigate, punish and redress the abuse of human rights by private actors.²⁴ Hence, the extension of the mandate to also cover the private sector allows the Ombudsman to properly protect and promote equality rights in a more comprehensive manner, particularly in such areas as housing, services, goods and employment.²⁵ With the inclusion of acts or omissions of the private sector into the mandate of the Ombudsman, the Draft Amendments fulfill one of the key recommendations of the SCA to Bulgaria, which is also explicitly stated in General Observation 1.2.²⁶

19. At the same time, once the Draft Amendments are adopted, the **Rules of Procedure should be amended to reflect the extension of the mandate to acts and omissions of the private sector** (e.g. in Article 9 par 1 of the Rules of Procedure).

2.3 Protection of Citizens and Other Natural Persons

20. Article 2 of the Ombudsman Act states that the Ombudsman's mandate covers the rights and freedoms of citizens only. The Draft Amendments, while amending Article 2, maintain this limitation. Generally, the majority of basic human rights and fundamental freedoms should apply to everyone and not just to citizens. Section A.2 of the Paris Principles also states that an NHRI should be given "as broad a mandate as possible". This should be reflected in the Ombudsman's mandate, also, in particular, in the context of its capacity as NPM,²⁷ under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).²⁸ That being said, Article 25 of the International Covenant on Civil and Political Rights states that certain rights, e.g. the right to take part in the conduct of public affairs, to vote and to be elected, and to access public services, may indeed only apply to citizens.²⁹ Irrespective of these limitations, **it is recommended that the Ombudsman should have the mandate to protect and promote the human rights of citizens and non-citizens alike.** This is in line with recommendations made with regard to NHRI-related

²³ E.g. OHCHR, *Report to the UN Human Rights Council on the Role of Prevention in the Promotion and Protection of Human Rights* A/HRC/30/20, adopted on 16 July 2015, par 52, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_20_ENG.docx.

²⁴ *ibid.*

²⁵ UNDP-OHCHR Toolkit, *op. cit.* footnote 4, page 145.

²⁶ Available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf>.

²⁷ See also the Venice Commission's comments on the Bulgarian Constitution in this respect: *Opinion on the Constitution of Bulgaria*, CDL-AD(2008)009, 31 March 2008, pars 55-57, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2008\)009-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)009-e); see also Venice Commission, *Opinion on the Draft Law on the Review of the Constitution of Romania*, CDL-AD(2014)010, 24 March 2014, par 49, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)010-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)010-e).

²⁸ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "UN CAT") was adopted by the UN General Assembly by Resolution 39/46 of 10 December 1984. Bulgaria signed the UN CAT on 10 June 1986 and ratified it on 16 December 1986; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by UN General Assembly Resolution A/RES/57/199 on 18 December 2002. Bulgaria signed the OPCAT on 22 December 2010 and ratified it on 1 June 2011.

²⁹ UN International Covenant on Civil and Political Rights (hereinafter "the ICCPR"), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. Bulgaria signed the ICCPR on 8 October 1968 and ratified it on 21 September 1970.

legislation by the Venice Commission.³⁰ It would also be in keeping with European Union Law, as EU citizenship conveys certain rights not only to citizens, but also to persons who are citizens of an EU member State different from the one in which they reside.³¹ The extension of the mandate of the Ombudsman to the violation of human rights of non-citizens is also advisable in light of the recommendation of UNDP and OHCHR to include refugees and stateless persons within the ambit of the NHRI's mandate.³² As Article 91a of the Bulgarian Constitution also limits the mandate of the Ombudsman to citizens, an amendment in line with the above recommendation may be considered by the Bulgarian legislator when engaging in any future constitutional reform process.

3. The Power to Encourage the Ratification of International Instruments

21. The Paris Principles state that an NHRI should have an explicit mandate to encourage a State to ratify or accede to international human rights instruments and to ensure their implementation.³³ This is already partly reflected in Article 19 par 1 (10) of the Ombudsman Act, which states that the Ombudsman shall “make proposals and recommendations to the Council of Ministers and the National Assembly concerning the signing and ratification of international acts in the field of human rights”. Article 6 par 2 of the Draft Amendments renders the legislative framework concerning this responsibility of the Ombudsman fully in line with the Paris Principles by adding that the Ombudsman shall “monitor and promote their effective implementation”. In order to further strengthen this important point, once the Draft Amendments are adopted, the **monitoring and promotion of implementation could also be included in Article 33 of the Rules of Procedure**, which explicitly states that the Ombudsman has the mandate to propose legislative amendments in his or her capacity as NPM.

4. Selection and Appointment

4.1 Selection and Appointment of the Ombudsman and the Deputy Ombudsman

22. The SCA, in its 2011 recommendations regarding the accreditation of the Ombudsman, suggests a number of measures to render the appointment and selection process of the Ombudsman clearer, more transparent and participatory and to promote the independence of and confidence in the Ombudsman.³⁴ Additionally, the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or

³⁰ See *Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe*, CDL-AD(2004)041, 6 December 2004, pars 10 and 21, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2004\)041-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)041-e); *Opinion on the Draft Law on the Public Attorney of “The former Yugoslav Republic of Macedonia”*, CDL-AD(2003)007, 21 March 2003, B I. Article 2.3 available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2003\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2003)007-e).

³¹ E.g. EU citizens have the right to move and reside freely within the territory of the Member States (Article 21 of the Treaty on the Functioning of the European Union, hereinafter “TFEU”) as well as the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State in which they reside, under the same conditions as nationals of that State, see Article 22 par 1 of the TFEU.

³² UNDP-OHCHR Toolkit, *op. cit.* footnote 4, pages 178 and 180.

³³ Section A.3 (c) of the Paris Principles.

³⁴ 2011 SCA Report, pages 7-8.

Punishment holds that an open, transparent and inclusive process is warranted for the selection of an NPM, whose functions are also undertaken by the Ombudsman pursuant to Article 28a of the Ombudsman Act.³⁵ In its General Observations, the SCA explains that “[a] diverse decision-making and staff body facilitates the National Human Rights Institution’s appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the National institutions for all citizens”.³⁶ Pluralism should be considered in “the context of gender, ethnicity and minority status”.³⁷

23. With regard to the selection and appointment of the Ombudsman, the SCA recommended to Bulgaria to put in place provisions to publicize vacancies; maximize the number of potential candidates from a wide range of societal groups; promote broad consultation and/or participation in the application and screening processes; and ensure pluralism in the composition of the staff.³⁸ The Draft Amendments address some of these concerns. In particular, their Article 2 clarifies that the National Assembly shall elect the Ombudsman following the principles of publicity and transparency. Articles 3 and 4 of the Draft Amendments change the mode of electing the Ombudsman and deputy Ombudsman by introducing an open, rather than a secret ballot. Article 4 of the Draft Amendments also spells out that the process at the end of which the Ombudsman nominates a deputy has to be public, transparent and competitive.
24. While the Draft Amendments seek to increase the transparency of the selection of the Ombudsman and his or her deputy to a certain extent, such transparency could be enhanced even further, to emphasize the importance of a selection process of the Ombudsman and the Deputy Ombudsman based on pluralism and participatory engagement. Section B.1 of the Paris Principles reiterates that “pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights” shall be ensured in the composition and the appointment procedure of the national institution. This section also lists stakeholders that the NHRI shall either cooperate with or otherwise involve in the national institution. These stakeholders shall represent “a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; (b) Trends in philosophical or religious thought; (c) Universities and qualified experts; (d) Parliament; (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)”.
25. Pursuant to Article 10 par 1 of the Ombudsman Act, proposals for elections may be made by national representatives and parliamentary groups. Because the Ombudsman is a single-member institution, the process of selecting and appointing the Ombudsman should be pluralist and inclusive to a particularly high degree. **As a minimum, it should be ensured that also civil society organizations or platforms may nominate candidates for a new Ombudsman.**³⁹ **The selection process could also be enhanced through the establishment of a selection commission, whose composition should**

³⁵ See Subcommittee on the Prevention of Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on National Preventive Mechanisms*, II. A. par 16, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en.

³⁶ See General Observation 1.7.

³⁷ *ibid.*

³⁸ 2011 SCA Report, pages 7-8.

³⁹ UNDP-OHCHR Toolkit, *op. cit.* footnote 4, pages 61 and 162.

reflect diverse societal groups (e.g., non-governmental organizations, universities, trade unions, concerned social and professional organizations). This commission would select a pool of candidates who would then be proposed for election by the National Assembly. To ensure an inclusive process, the legal drafters should also consult with various stakeholders, including civil society, when determining the most appropriate procedures for this purpose.⁴⁰

26. Ensuring the appointment of a qualified and independent Ombudsman also depends on the selection criteria established in the Ombudsman Act. Currently, Article 9 of the Ombudsman Act stipulates that the Ombudsman “shall be a Bulgarian citizen with higher education, who possesses high moral qualities and meets the requirements for election of a national representative”. Article 65 of the Bulgarian Constitution notes that “any Bulgarian citizen who does not hold another citizenship, is above the age of 21, is not under a judicial interdiction, and is not serving a prison sentence” is eligible for election to the National Assembly. **In order to enhance the effectiveness of the NHRI, it is recommended that the selection criteria for the Ombudsman, at a minimum, also include demonstrated prior experience in the area of human rights.**⁴¹ In order to enhance gender equality, the National Assembly may consider electing men and women on an alternate basis to serve as Ombudsman.⁴² Another option would be to amend the Ombudsman Act to state that the Deputy Ombudsman and the Ombudsman should be of a different gender.⁴³
27. Finally, with regard to the SCA’s recommendation to publicize vacancies, there are a number of approaches taken by other OSCE participating States that the Bulgarian legislator could draw on. For example, a public call for applications could be published,⁴⁴ e.g. in written or electronic media.⁴⁵ The selection criteria for the position could also be published on the website of the National Assembly.⁴⁶

⁴⁰ See e.g. *OSCE/ODIHR Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland*, 6 February 2017, paras 46-47, available at <http://www.legislationline.org/documents/id/20241>; and Venice Commission, *Opinion on the draft Constitutional Law on the Human Rights Defender*, adopted by the Venice Commission at its 109th Session (Venice, 9-10 December 2016), paras 32-33, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)033-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)033-e).

⁴¹ See e.g. UNDP-OHCHR Toolkit, *op. cit.* footnote 4, page 269.

⁴² *ibid.* page 253; see also OHCHR, *National Human Rights Institutions - History, Principles, Roles and Responsibilities* (2010), page 39, available at http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

⁴³ This is e.g. the practice in Kosovo*, where Article 10 par 5 of Law No. 05/L -019 on Ombudsperson states: “During election procedure of candidates for deputy Ombudspersons, ethnic and gender representation must be ensured. At least one of the deputy Ombudspersons should be a member of non-majority communities in Kosovo, and from the gender that differs from that of the Ombudsperson.; available at http://www.theioi.org/downloads/dvnpv/LAW_NO.05_L-019_ON_OMBUDSPERSON.pdf; [*OSCE disclaimer: “Any reference to Kosovo, whether to the territory, its institutions, or population, is to be understood in full compliance with United Nations Security Council Resolution 1244”].

⁴⁴ The Ombudsman Act of Croatia states in Article 10 par 2: “At the latest six months before the expiry of the Ombudsman mandate, or no later than 30 days after the termination of office due to other reasons, the Croatian Parliament shall publish a public call to propose the candidates for Ombudsman”; Article 12 par. 2 of the same Act reads “The deputy Ombudsman shall be elected by the Croatian Parliament for a term of eight years, with the possibility of reappointment. The Ombudsman shall propose candidates for his/her deputies to the Croatian Parliament within 30 days after the termination of a public call for application”; see Ombudsman’s Act (2012) available at http://www.legislationline.org/download/action/download/id/4349/file/Croatia_Law_Ombudsman_2012_en.pdf; Article 3 of the Belgian Ombudsman Act states: “The ombudsmen are appointed by the House of Representatives (lower house of parliament) for a term of six years, after an open invitation to candidates to apply; see Belgium Federal Ombudsmen Act (as last amended 2007) available at <http://www.theioi.org/downloads/7muur/The%20Federal%20Ombudsmen%20Act.pdf>.

⁴⁵ Article 8 par 3 of the Law on the Ombudsperson of Kosovo* stipulates: “The Assembly of the Republic Kosovo publishes the competition for election of Ombudsperson, in written and electronic media”; Kosovo* Law No. 05/L -019 on Ombudsperson available at http://www.theioi.org/downloads/dvnpv/LAW_NO.05_L-

4.2 Selection of Staff

28. The Draft Amendments propose to include a new Article 18a, which stipulates that the Ombudsman shall be supported by an administration which is appointed in accordance with the principles of transparency, efficiency, pluralism and non-discrimination.⁴⁷ The procedure of announcing vacancies, conducting competitions and announcing the outcome thereof are regulated in internal regulations pursuant to new Article 18a par 2 of the Ombudsman Act.
29. The explicit inclusion of pluralism in the new Article 18a as the basis for the appointment of the administration supporting the Ombudsman is welcome. Ensuring that the staff of NHRIs are as diverse as possible in terms of social, ethnic, religious and geographic composition and reflect the diversity of society as a whole, increases the confidence of the public that the institution “will understand and be more responsive to its specific needs” and hence increases the Ombudsman’s credibility and effectiveness and its real and perceived independence and accessibility.⁴⁸ Additionally, the meaningful participation of women in at all staff levels is crucial to understanding the needs and challenges of a significant proportion of the population.⁴⁹ In the context of the Republic of Bulgaria, it is also important to ensure the capacity of the Ombudsman’s staff to communicate in minority languages, in particular, in Turkish and Romani.⁵⁰ **In order to further a pluralist staff selection, the legislator may consider introducing temporary special measures. At the policy level, gender-sensitive employment conditions and policies, which take into account the needs of pregnant women and persons with parental/caretaking responsibilities, and policies to promote greater gender balance could be envisaged. Policies providing reasonable accommodation for persons with disabilities pursuant to Article 27 of the UN Convention on the Rights of Persons with Disabilities may likewise be considered.**⁵¹

5. Pluralism in Decision-Making Processes

30. In general, it is more challenging to ensure pluralism in decision-making in single-member institutions consisting of one Ombudsman, as is the case in Bulgaria, than in other forms of NHRIs, for example, National Human Rights Commissions consisting of several members. One way of dealing with this issue is the establishment of advisory

[019_ON_OMBUDSPERSON.pdf](#); [*OSCE disclaimer: “Any reference to Kosovo, whether to the territory, its institutions, or population, is to be understood in full compliance with United Nations Security Council Resolution 1244”].

⁴⁶ Article 7 par. 2 of the Moldovan People’s Advocate (Ombudsman) Act reads: “The information on the organization and implementation of the selection, requirements for the candidates and documents to be submitted is displayed on the official webpage of the Parliament and published in the mass media at least 20 days prior to the selection day”; see Law on the People’s Advocate (Ombudsman) of the Republic of Moldova (2014), available at http://www.apr.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf.

⁴⁷ Article 5 par 1 of the Draft Amendments.

⁴⁸ See Justification of General Observation 1.7, page 21: a “diversity of background, capabilities and professional knowledge necessary to enable it to properly fulfil its NPM mandate” is also stipulated in the Guidelines on National Preventive Mechanisms as a requirement for staff. The Guidelines call for staff to also include persons with relevant legal and health-care experience; see Subcommittee on the Prevention of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on National Preventive Mechanisms*, II. A. par 20.

⁴⁹ *ibid.*, Justification of General Observation 1.7, page 21.

⁵⁰ *ibid.*

⁵¹ UN Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 during the sixty-first session of the UN General Assembly by resolution A/RES/61/106; the Convention was ratified by Bulgaria on 22 March 2012.

boards and councils, networks and/or public forums.⁵² Article 15 of the Rules of Procedure of the Ombudsman Institution provides for the possibility of setting up advisory councils. The decision to do so, as well as the modalities and composition of these councils continues to lie, however, with the Ombudsman. **To enhance pluralist decision-making, the Ombudsman is encouraged to set up and consult with advisory councils regularly, in order to obtain more information and expertise in key areas. Additionally, the composition of the advisory councils should ensure the representation of civil society, relevant experts and affected groups. In this context, the inclusion of women and members of ethnic, linguistic, religious, sexual or other minority groups is particularly encouraged.**

6. Adequate Funding of the Institution

6.1. General Remarks

31. Adequate funding is crucial for the financial autonomy of any NHRI and, as such, for its ability to efficiently fulfill its mandate pursuant to Section B.2 of the Paris Principles. Article 47 par 1 of the Rules of Procedure spells out that the work of the Ombudsman and his or her administration “shall be financed by the national budget and other sources”. The justification to General Observation 1.10 clarifies that national law should always indicate the budget allocation for an NHRI, and shall ensure that funds are released in a timely manner. **In light of this justification, it should be ensured that the funding for the Ombudsman is allocated in a transparent manner and funds for the NHRI should be allocated in a separate budget line.**⁵³ **It is recommended to supplement the Draft Amendments accordingly.**
32. Additionally, adequate funding, pursuant to General Observation 1.10, includes an appropriate level of salaries and benefits for an NHRI’s staff, comparable to civil servants performing similar tasks in other independent institutions of the State. The status and remuneration of the Ombudsman and the Deputy Ombudsman should equal that of other positions of high rank within the State structure.⁵⁴ These resources should also be used to ensure that the Ombudsman Office’s premises are accessible to the wider community, including persons with disabilities, and should fund the establishment of well-functioning communications systems including telephone and internet.
33. Funding for an NHRI should also be secure, meaning it should not be arbitrarily altered for the period for which it was approved.⁵⁵ **Additionally, if budget cuts are inevitable, the cuts should not target NHRIs disproportionately. The reduction of funds should not be out of proportion to that of other core areas, in particular in the area**

⁵² UNDP-OHCHR Toolkit, *op. cit.* footnote 4, page 162.

⁵³ See General Observation 1.10; see also *op. cit.* footnote 39, par 74 (OSCE/ODIHR NHRI Opinion Iceland).

⁵⁴ In this regard, practice greatly varies within the OSCE area. See e.g., Article 10 (5) of the Ombudsman Act (1995) of Malta referring to remuneration equivalent to that of the judges of superior courts; Section 8 of the Law on the Public Defender of Rights (1999, as amended 2009) of the Czech Republic, which refers to the salary, severance pay, reimbursement of expenses and benefits in kind equal to that of the President of the Supreme Audit Office; Article 12 of the Law on Establishment of a Mediator of Luxembourg (2003), referring to the specific upper salary scale applicable in the public service; all are available at <http://www.legislationline.org/topics/topic/82>; see also *op. cit.* footnote 12 Section 4.1.1 on Rank and Salary (2016 Venice Commission’s Compilation of Opinions concerning the Ombudsman Institution).

⁵⁵ UNDP-OHCHR Toolkit, *op. cit.* footnote 4, page 254.

of rule of law.⁵⁶ The UNDP-OHCHR Toolkit includes a checklist, which may be consulted in order to ensure that an adequate budget and sufficient financial autonomy is in place that allows the Ombudsman to properly fulfill his or her mandate.⁵⁷ In addition, legal provisions against unwarranted budgetary cutbacks could be introduced, including, but not limited to, the principle that any reductions in the NHRI's budget should not exceed the percentage of reduction of the budgets of the Parliament or the Government in the previous year.⁵⁸

34. Finally, it is important to reiterate the Concluding Observations of the Committee of the rights of the Child, which stressed that, as Article 19 par. 9, gives the Ombudsman the mandate to protect the rights of children, **the Ombudsman should be receive sufficient technical, financial and human resources to address violations of children's human rights in an efficient and child-sensitive manner.**⁵⁹ In a similar fashion, it is noted that the Committee on Economic, Social and Cultural Rights urged Bulgaria to ensure that economic, social and cultural rights are fully covered by the mandate of the Ombudsman and that the Ombudsman Office is provided with the "necessary resources for their effective functioning".⁶⁰

6.2. Specific Budget for the Ombudsman as a National Preventive Mechanism

35. Since 2012, the Ombudsman Act has stipulated that the Ombudsman shall also act as an NPM (Article 19 par 2 and Chapter four of the Ombudsman Act). In its Guidelines on National Preventive Mechanisms (hereinafter "NPM Guidelines"), the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that "[w]here the body designated as the NPM performs other functions in addition to those under the [OPCAT], its NPM functions should be located within a separate unit or department, with its own staff and budget".⁶¹ Additionally, the NPM Guidelines state that NPMs should be provided with the necessary resources to effectively operate in accordance with the OPCAT and that the NPM should enjoy complete financial and operational autonomy.⁶² **It is recommended to amend the Ombudsman Act, and/or the Rules of Procedure, as appropriate, in order to ensure that the NPM functions are carried out by a separate unit or department within the Ombudsman Office, with its own separate budget, allocated through a separate budget line,⁶³ and staff.**

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ *Op. cit.* footnote 39, par 76 (OSCE/ODIHR NHRI Opinion Iceland); see also Venice Commission, *Opinion on the draft Constitutional Law on the Human Rights Defender of Armenia*, adopted by the Venice Commission at its 109th Session (Venice, 9-10 December 2016), CDL-AD(2016)033, par 69, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e).

⁵⁹ UN Committee on the Rights of the Child, *Concluding observations on the combined third to fifth periodic reports of Bulgaria*, 21 November 2015, par 16, available at <http://www.refworld.org/docid/587ce2884.html>.

⁶⁰ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined fourth and fifth reports of Bulgaria, adopted by the Committee at its forty-ninth session*, 12-30 November 2012, par. 6, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWwpdI7QZ9ZIIvEnVcAytL18M9YU96Er9NYuRCpjXDuiLdDiKWIUgdKur18vufflQYcRSpjBLBXQnkaAyrpw6cvI%2B93UEEnR78v47CH0s5Nt4>.

⁶¹ Guidelines on National Preventive Mechanisms, *op. cit.* footnote 34, III. B. par 32.

⁶² *ibid.*, Guidelines on National Preventive Mechanisms, I. A. par 11.

⁶³ This is done e.g. in Moldova, where Article 31 of the Law on the People's Advocate (Ombudsman) reads: "The resources necessary for the realization of the Council's duties [as NPM], to contract specialists and experts are included in a separate budget line, part of the budget of the People's Advocate Office".

7. Specific Provisions pertaining to NPM

36. Pursuant to Article 4 of the OPCAT, any State Party shall allow the NPM to visit “any place under [each State Party’s] jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence”. Article 28a par 1 of the Ombudsman Act states that the competences of the NPM concerns “places with persons deprived of liberty, or detained or accommodated pursuant to an act or with the consent of a state authority, which cannot be left at their will”, which is a more restrictive wording. **It is recommended to amend the Ombudsman Act to ensure that the content of Article 28a is consistent with the requirements of Article 4 of the OPCAT.**
37. Additionally, paragraph 29 of the NPM Guidelines sets out that “[t]he State should inform the NPM of any draft legislation that may be under consideration which is relevant to its mandate and allow the NPM to make proposals or observations on any existing or draft policy or legislation. The State should take into consideration any proposals or observations on such legislation received from the NPM”. **It is suggested that the Ombudsman Act, and/or other relevant legislation, is amended to reflect the responsibility of the legislator to inform the NPM of any draft legislation in its area of competence.**

8. Other Comments

38. Currently, Bulgaria has two institutions listed as NHRIs with B Status by GANHRI, namely the Ombudsman of the Republic of Bulgaria and the Commission for the Protection against Discrimination of the Republic of Bulgaria.⁶⁴ If there is more than one NHRI in the country or where another institution exists that also deals with issues related to human rights and could touch upon the mandate of the NHRI (e.g. an election commission), **it is particularly important to, as far as possible, avoid duplication of work.**⁶⁵ The Paris Principles require NHRIs to “maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights”.⁶⁶ The SCA “recommends that NHRIs should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights. Interaction may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on its activities”.⁶⁷ **In light of this, the Ombudsman may consider formalizing its relationship by outlining the division of competencies, and the modalities of co-operation with the Commission for Protection against Discrimination, e.g. through a Memorandum of Understanding.**
39. In addition to the recommendations made in pars. 19, 21 and 35 supra, **the Ombudsman is encouraged to make the Office’s Rules of Procedure consistent with the Ombudsman Act after adoption of the Draft Amendments, in order to**

⁶⁴ See http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf.

⁶⁵ UNDP-OHCHR Toolkit, *op. cit.* footnote 4, page 145.

⁶⁶ See Section C(f) of the Paris Principles.

⁶⁷ See General Observation 1.5.

OSCE/ODIHR Opinion on the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria

make the mandate and the competencies of the Ombudsman clearer and easier to understand.

40. Finally, OSCE commitments require States to adopt legislation as “as the result of an open process reflecting the will of the people, either directly or through their elected representatives”.⁶⁸ This is particularly true for legislation which can impact and affect human rights. As a consequence, **it is recommended that the Draft Amendments undergo extensive consultation processes throughout the drafting and adoption process, to ensure that human rights organizations and the general public, including marginalized groups, are fully informed in a timely manner and able to submit their views prior to adoption.**

[END OF TEXT]

⁶⁸ See par 18.1 of the Moscow Document (1991), available at <http://www.osce.org/fr/odihr/elections/14310>.

ANNEX:

Draft

LAW

Amending and Supplementing the Ombudsman Act

(Promulgated SG 48 of 23 May 2003, amended SG 30 of 11 April 2006; SG 68 of 22 August 2006; SG 42 of 5 June 2009; SG 97 of 10 December 2010; amended and supplemented SG 29 of 10 April 2012; amended SG 15 of 15 February 2013)

§ 1. 1. A new paragraph 1 shall be inserted in Article 2:

(1) „The Ombudsman shall promote and protect human rights and fundamental freedoms“.

2. The current provision of Article 2 shall become paragraph 2 and shall be amended as follows:

(2) „The Ombudsman shall advocate by the means laid herein in case of violation of citizens’ rights and freedoms by an act or omission on the part of public or municipal authorities or their administrations, entities commissioned to provide public services, or the private sector.“

§2. In Article 8, after the words “National Assembly” the following shall be added: “following the principles of publicity and transparency“.

§3. In Article 10, paragraph 2, first proposition the word “secret” shall be replaced by “open”.

§4. In Article 11, para 1, after the words “the National Assembly” the words „by open ballot” shall be added, and after the word “proposal” the words “following a public, transparent and competitive nomination procedure and election“ shall be added.

§5. A new Article 18a shall be added:

Article 18a. (1) The Ombudsman shall be supported by an administration appointed in accordance with the principles of transparency, efficiency, pluralism and non-discrimination.

OSCE/ODIHR Opinion on the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria

- (2) The procedures for announcing vacancies, conducting competitions and announcing the outcome thereof shall be laid down in the internal regulations of the institution.

§6. The following amendments and supplements shall be made in Article 19, para 1:

1. A new item 4a shall be inserted:

4a. „make proposals and recommendations for promoting and protecting citizens’ rights and freedoms at risk of violation by the private sector“.

2. The following shall be added in item 10 after the words “international human rights treaties”: “monitor and promote their effective implementation”.