

**REPUBLIC OF MACEDONIA  
MINISTRY OF JUSTICE**

**LAW PROPOSAL  
ON THE OMBUDSMAN**

**Skopje, February 2003**

## **I. CONSTITUTIONAL BASE FOR PASSING THE LAW**

The constitutional base for passing the Law is contained in the provision of Article 68 paragraph 1 indent 2 of the Constitution of the Republic of Macedonia, pursuant to which, the Parliament of the Republic of Macedonia passes laws.

## **II. REASONS FOR PASSING THE LAW**

The passing of the Law on the Ombudsman is determined by the necessity to harmonise the existing Law with the provisions of the Amendment XI of the Constitution of the Republic of Macedonia, adopted by the Parliament of the Republic of Macedonia on 16.11.2001 and the necessity to fulfil the commitments stipulated with the Ohrid Framework Agreement.

The constitutional amendment modifies and amends the position and status of the Ombudsman of the Republic of Macedonia, and simultaneously fosters his organisational placement and jurisdiction. Namely, this Amendment and the Framework Agreement stipulate that the Ombudsman shall undertake actions for protection of the principles of non-discrimination and equitable representation of community members in the state administration bodies, the local self-government units and the public institutions and agencies; that the Ombudsman shall establish dispersed offices outside its headquarters for the purpose of performing his function; the Parliament of the Republic of Macedonia shall separately vote for the Ombudsman's budget; the Ombudsman is to be given the possibility of temporary postponement of the carrying out of the administrative act until the passing of the decision by the competent body, i.e. court; possibility to contest a law in front of the Constitutional Court of the Republic of Macedonia, i.e. whether the law is in accordance with the Constitution of the Republic of Macedonia and naturally that his appointment requires a majority vote of the total number of MPs who belong to the non-majority communities in the Republic of Macedonia.

In addition, a reason for passing this Law is also the necessity of complete defining and outlining of some of the existing Law provisions which, in the past period of functioning of this body, have proved as non-functional, contrary to other provisions and inadequate with the conditions and states of realising the protection of citizens' rights within the legal system in the Republic of Macedonia, from the aspect of its improvement in the process of protection and realisation of the citizens' freedoms and rights.

## **III. BASIC PRINCIPLES OF THE LAW**

The Law on the Ombudsman is based upon the principles of legitimacy, equity, equality, efficient realisation of protection of citizens' rights, as fundamental principles for the functioning of the rule of law.

#### **IV. CONTENTS OF THE LAW**

The contents of the Law cover the basic relations regulated by law and the manner in which their regulation is proposed. The contents are presented as Law Proposal.

# **LAW PROPOSAL ON THE OMBUDSMAN**

## **I. BASIC PROVISIONS**

### **Article 1**

This Law shall regulate the terms of appointment and discharge, the jurisdiction and manner of work of the Ombudsman.

### **Article 2**

The Ombudsman shall be a body of the Republic of Macedonia that shall protect the constitutional and legal freedoms and rights of citizens when these are infringed by acts, actions and oversights by the state administration bodies and by other bodies and organisations that have public authority and who shall undertake actions and measures for protection of the principle of non-discrimination and proper and equitable representation of community members in the state administration bodies, the local self-government units and the public institutions and agencies.

### **Article 3**

The Ombudsman shall be independent and self-governing in the performance of his function.

The Ombudsman shall carry out the affairs within his scope of competence on the basis of and within the framework of the Constitution, laws and international agreements ratified pursuant to the Constitution.

In the procedure, the Ombudsman may quote the principle of equity.

### **Article 4**

The main office of the Ombudsman shall be in the City of Skopje.

The Ombudsman shall have a seal that contains the name and headquarters, the national coat of arms and the name of the Republic of Macedonia.

On the building in which the Ombudsman has seat there must be hung out the name and headquarters, the national coat of arms and the flag of the Republic of Macedonia.

## **II. TERMS OF APPOINTMENT AND DISCHARGE OF THE OMBUDSMAN**

### **Article 5**

The Parliament of the Republic of Macedonia shall appoint and discharge the Ombudsman with a majority vote of the total number of MPs, whereby there must be a majority of votes of the total number of MPs who belong to the non-majority communities in the Republic of Macedonia. The Ombudsman shall be appointed for the period of eight years, and shall be entitled to another tenure.

The Ombudsman shall have one or more deputies. The number of deputies of the Ombudsman shall be determined by the Parliament of the Republic of Macedonia upon proposal by the Ombudsman.

The deputies of the Ombudsman, upon proposal by the Ombudsman shall be appointed and discharged by the Parliament of the Republic of Macedonia with a majority vote of the total number of MPs who belong to the non-majority communities in the Republic of Macedonia. The Ombudsman's deputies shall be appointed for the period of eight years, entitled to another tenure.

The appointment procedure for the Ombudsman and his deputies shall commence three months before the expiration of the tenure.

In a case of absence or impediment of the Ombudsman he shall be replaced by his Deputy according to a schedule determined by the Ombudsman.

### **Article 6**

A person who fulfils the general terms stipulated by the Law on Employment in the State Administration Bodies, a graduated lawyer who has a working experience in legal affairs of over nine years and whose activity has been proven in the sphere of protection of citizens' rights may be appointed Ombudsman.

A person who fulfils the general terms stipulated by the Law on Employment in the State Administration Bodies, a graduated lawyer who has a working experience in legal affairs of over seven years and whose activity has been proved in the sphere of protection of citizens' rights may be appointed Deputy of the Ombudsman.

### **Article 7**

The Ombudsman, prior to his coming into office, shall make a solemn declaration in front of the Parliament of the Republic of Macedonia, which shall read:

“I declare that I shall perform the Ombudsman function conscientiously, impartially and responsibly, I shall protect the rights of the citizens and I shall abide by the Constitution, the laws and the international agreements ratified pursuant to the Constitution of the Republic of Macedonia”.

#### **Article 8**

The Ombudsman function shall not complement with performing another public function and profession or with political party membership.

#### **Article 9**

The Ombudsman shall be discharged:

- 1) if he himself asks for that;
- 2) if he is convicted of a criminal act to an unconditional sentence of imprisonment to at least six months;
- 3) if he permanently loses his psycho-physical ability to perform the Ombudsman function what is determined on the basis of a finding and opinion by a competent health centre;
- 4) if he fulfils the terms of retirement according to age.

#### **Article 10**

Owing to an unprofessional, biased and unconscientiously performing of the function, the Ombudsman shall be discharged with a two-thirds majority vote of the total number of MPs, whereby there must be a majority of votes of the total number of MPs who belong to the non-majority communities in the Republic of Macedonia.

#### **Article 11**

The provisions in the Articles 7, 8, 9 and 10 of this Law shall also refer to the deputies of the Ombudsman.

### **III. JURISDICTION AND MANNER OF WORK**

#### **Article 12**

The Ombudsman, in performing his function, shall undertake actions for which he is authorised with this Law for the purpose of protection of the constitutional and legal rights of citizens when these are infringed by the state administration bodies and by other bodies and organisations that have public authorisations and shall undertake actions and measures for protection of the principle of non-discrimination and proper and equitable

representation of community members in the state administration bodies, the local self-government units and public institutions and agencies.

### **Article 13**

The Ombudsman shall undertake actions and measures for protection of unjustified prolongation of court proceedings or of the work of courts, as well as actions and measures for protection of tardy performance of other administrative tasks and affairs stipulated by law.

The Ombudsman shall not proceed upon cases undergoing court proceedings, except for the cases in paragraph 1 of this Article.

### **Article 14**

Anyone may put forward a submission to the Ombudsman when he/she assesses that his/her constitutional and legal freedoms and rights have been infringed or when the principal of non-discrimination and proper and equitable representation of community members in the bodies of Article 2 of this Law has been breached.

The Ombudsman may initiate a procedure on his own initiative.

### **Article 15**

In a procedure of the Ombudsman, the Macedonian language and its Cyrillic script shall be the official language.

In a procedure of the Ombudsman, another language spoken by at least 20% of the citizens and its script shall also be an official language.

### **Article 16**

Every citizen in his/her communication with the Ombudsman may use one of the official languages and its script, and the Ombudsman shall respond in Macedonian and its Cyrillic script, as well as in the official language and the script which the citizen uses.

The person who puts forward the submission who speaks a language different from the Macedonian, which is also an official language, may put forward the submission in that language and script. Such submissions shall be translated into Macedonian and the Ombudsman shall proceed upon them.

### **Article 17**

The submission addressed to the Ombudsman ought to be signed and contain personal data about the person who has put it forward and to contain the circumstances, facts and evidence on which the submission is based.

The body, organisation, institution or person to whom the submission refers, ought to be stated in the submission, as well as whether the person who has put it forward has already utilised legal remedies and which remedies he/she has utilised.

The submission for initiating a procedure shall be put forward in writing or orally in minutes.

The submission with which the procedure is initiated shall not have a fixed form.

The person who puts forward the submission shall be tax exempt for the procedure of the Ombudsman.

### **Article 18**

The Ombudsman is obliged to proceed upon the submission conscientiously, impartially, efficiently and responsibly.

When proceeding upon the submission, the Ombudsman is obliged to obtain from the interested parties all the facts and evidence of vital significance to the decision following the submission.

### **Article 19**

The Ombudsman, during the procedure upon the submission, is obliged to respect the privacy and confidentiality of information regarding the persons who put forward the submission in Article 17 of this Law.

### **Article 20**

The Ombudsman, proceeding upon the submission, may:

- discard it;
- initiate a procedure and
- stop or terminate a procedure.

### **Article 21**

The Ombudsman shall discard a submission:

- if the submission is anonymous;
- if the submission is put forward by an unauthorised person;
- if the submission insults the body or abuses the right to put forward a submission;
- if the submission is incomplete and if the person who put it forward has not completed the submission after the previous instruction by the Ombudsman;
- if it is concluded from the submission that it is a less important case, which would not be able to yield proper results even after the end of the investigation;

- if the very submission and the evidence presented, as well as if after the end of the procedure upon the submission it is concluded that there is no infringement of the constitutional and legal freedoms and rights of the person who put forward the submission by the state administration bodies and by other bodies and organisations that have public authorisation i.e. infringement of the principle of non-discrimination and proper and equitable representation of community members in the state administration bodies, local self-government units and public institutions and agencies of public interest;
- if he is not competent to proceed.
- if more than a year has passed since the action or the last decision of the body, organisation or institution, except if he assesses that the person who put forward the submission has missed the deadline due to justified reasons;
- if there is ongoing court proceedings following the subject of the submission, except for the affairs in Article 13 paragraph 1 of this Law.

When the Ombudsman discards the submission, he is obliged to notify the person who put forward the submission within 15 days and to explain to him/her the reasons for which he discards the submission and possibly to clarify the manner in which he/she may realise his/her right.

#### **Article 22**

The Ombudsman shall initiate a procedure following a submission put forward, or on his own initiative, if there are well-founded results that the constitutional and legal rights of the citizens or the principle of non-discrimination and proper and equitable representation of community members have been infringed by the bodies in Article 2 of this Law, following the allegations, evidence and facts enclosed to the submission or the information obtained by other means.

If the Ombudsman initiates a procedure on his own initiative or if another person addresses him on the behalf of the injured person with a submission, a consent from the injured person whose constitutional and legal rights have been infringed is necessary for initiating the procedure, or if the principle of non-discrimination and proper and equitable representation of community members has been violated, as well.

When the Ombudsman initiates a procedure on his own initiative for violation of freedoms and rights of a larger number of citizens, juveniles, infirm people and persons incapable of work, consent from paragraph 2 of this Article shall not be needed.

#### **Article 23**

When the Ombudsman decides to initiate a procedure, he shall notify the person who put forward the submission about it.

## **Article 24**

The Ombudsman shall stop or terminate the procedure upon the submission:

- if it is concluded, after the termination of the procedure following the submission, that there is no infringement of the constitutional and legal freedoms and rights of the person who put forward the submission by the state administration bodies and by other bodies and organisations that have public authorisations i.e. violation of the principle of non-discrimination and proper and equitable representation of community members in the state administration bodies, the local self-government units and the public institutions and common interest agencies;
- if the person who put forward the submission initiates court proceedings during the procedure upon the submission;
- if the person who put forward the submission does not show interest for further procedure;
- if the person who put forward the submission withdraws it during the procedure;
- if the person who put forward the submission passes on during the procedure, except if his/her successors do not demand continuation of the commenced procedure and
- if the right of the person who put forward the submission has been realised in the meantime.

## **Article 25**

For the purpose of investigating the submission, the Ombudsman may undertake the following actions, within his scope of competence, towards the bodies in Article 2 of this Law:

- demand necessary explanations and information about the submission allegations;
- enter the office premises and have a direct insight into the files and affairs in their competence;
- interview an official, a clerk and any other person who can provide certain information in the procedure;
- ask for opinion of scientific and specialised institutions and
- undertake other actions stipulated by law.

The bodies in Article 2 of this Law are obliged to submit the demanded explanations and information in paragraph 1 indent 1 of this Article to the Ombudsman immediately, and no later than eight days. Should they be impeded to submit them due to justified reasons, they are obliged to notify the Ombudsman without delay about the reasons for which they are unable to proceed.

The rejection of and disrespect for the demands of the Ombudsman for undertaking the actions in paragraph 2 of this Article shall be deemed as obstruction to the work of the Ombudsman.

## **Article 26**

The Ombudsman may inform the official in charge of the body in Article 2 of this Law, the immediately superior body, or the Government of the Republic of Macedonia, with a special report, about the obstruction of work in Article 24 paragraph 3, and if they do not undertake the necessary measures, the Parliament of the Republic of Macedonia.

The Parliament of the Republic of Macedonia shall discuss the special report at a Parliament session which shall be compulsorily attended by the official in charge of the body in Article 2 of this Law.

The Ombudsman may publicise the case in the mass media, at the expense of the body, organisation or institution to which the case pertains, when there is infringement of freedoms and rights.

## **Article 27**

The persons in Article 25 paragraph 1 indent 3 of this Law are obliged to appear at the Ombudsman's invitation and to give the necessary explanations regarding the submission.

Upon request from the Ombudsman, the President of the Republic of Macedonia, the Speaker of the Parliament of the Republic of Macedonia, the President of the Government of the Republic of Macedonia and other officials in charge of the bodies in Article 2 of this Law, are obliged to see him personally without any delay.

## **Article 28**

The bodies in Article 2 of this Law are obliged to co-operate with the Ombudsman and upon his request to provide him with all the evidence, data and information, notwithstanding the degree of confidentiality and to enable him to enforce the procedure.

The Ombudsman is obliged to keep a state and official secret in a manner and under the conditions stipulated by law and other regulation.

## **Article 29**

The Ombudsman may present his opinion to the bodies in Article 2 of this Law, with regard to the protection of human freedoms and rights and the protection of the principle of non-discrimination and proper and equitable representation of community members for the case under procedure, notwithstanding the type and degree of the ongoing procedure in front of the bodies in Article 2 of this Law.

With regard to the situation with ensuring respect and protection of human freedoms and rights and the principle of non-discrimination and proper and equitable representation of community members, the Ombudsman, within the scope of his competence, may forward

recommendations, opinions and criticisms, on his own initiative, to the bodies in Article 2 of this Law.

### **Article 30**

The Ombudsman shall follow, within the scope of his competence, the situation regarding the respect and protection of citizens' freedoms and rights and respect of the principle of non-discrimination and proper and equitable representation of community members and by means of visits and insights into the bodies in Article 2 of this Law.

The Ombudsman may visit and have insight of paragraph 1 of this Article even without a prior notice and approval.

### **Article 31**

The Ombudsman may propose initiatives to the authorised proposers for amendments and modifications to laws and other by-laws and their harmonisation with international agreements ratified pursuant to the Constitution of the Republic of Macedonia.

The Ombudsman may submit a proposal to the Constitutional Court of the Republic of Macedonia for evaluation of the constitutionality of the laws and the constitutionality and legitimacy of the other regulations.

### **Article 32**

The Ombudsman shall follow the situation with the respect and protection of the freedoms and rights of the persons in the bodies, organisations and institutions where the freedom of movement is restricted.

The Ombudsman shall follow the situation with the respect and protection of the freedoms and rights of the persons summoned, detained or deprived of their freedom.

The Ombudsman shall especially follow the situation with the respect and protection of the freedoms and rights of the persons detained, jailed, and those who are serving a prison sentence or a corrective and educational measure in the prisons and penal-correctional facilities.

The Ombudsman may visit and have insight of paragraphs 1 and 2 of this Article, at any time without prior notice and approval, as well as talk with the persons at these bodies, organisations or institutions without the presence of official persons.

The person deprived of his/her freedom shall be entitled to put forward the submission to the Ombudsman in a closed envelope without the check by the official persons of the body, organisation or institution where he/she is situated.

### **Article 33**

When the Ombudsman concludes that the constitutional and legal freedoms and rights of the person who put forward the submission are infringed by the state administration bodies and by other bodies and organisations that have public authorisation or that the principle of non-discrimination and proper and equitable representation of community members in the state administration bodies, the local self-government units and public institutions and agencies is breached or some other irregularities have occurred, he may:

- give recommendations, proposals and opinions on the manner of the removal of the determined infringements;
- propose that a certain procedure be implemented again pursuant to law;
- initiate disciplinary proceedings against an official, i.e. responsible person;
- submit a request to the competent Public Prosecutor for initiation of a procedure in order to determine a penal or criminal liability and
- make proposals to the bodies, organisations or institutions for the improvement of the work and behaviour with the clients.

### **Article 34**

When the Ombudsman concludes that the constitutional and legal freedoms and rights of the person who put forward the submission are infringed by the state administration bodies and by other bodies and organisations that have public authorisation or that the principle of non-discrimination and proper and equitable representation of community members in the state administration bodies, local self-government units and public institutions and agencies has been breached or some other irregularities have occurred, if he assesses that the carrying out of the administrative act may cause irreparable damage to the right of the interested person, he shall:

- temporarily postpone the carrying out of the administrative act until the decision by the second-instance body
- temporarily postpone the carrying out of the administrative act until passing a decision by the competent court.

The bodies in Article 2 of this Law are obliged to pass and submit to the Ombudsman the decision immediately and within 3 days at the latest, whereby the administrative act is temporarily postponed from enforcement.

The competent bodies are obliged to submit the decision to the Ombudsman as well, after the termination of the procedure.

### **Article 35**

The bodies in Article 2 of this Law are obliged to notify the Ombudsman about the undertaken measures for enforcing his requests, proposals, opinions or recommendations, in a deadline that he shall determine, and no later than 30 days.

If the body does not notify the Ombudsman pursuant to paragraph 1 of this Article or if it only partly accepts his conclusions, requests, proposals, opinions or recommendations, the Ombudsman shall inform the official in charge of the body in Article 2 of this Law, the immediate superior body, or the Government of the Republic of Macedonia, with a special report and if they do not undertake the necessary measures, the Parliament of the Republic of Macedonia.

The Parliament of the Republic of Macedonia shall discuss the special report at a Parliament session which shall be compulsorily attended by the official who is in charge of the body in Article 2 of this Law.

The Ombudsman may publicise the case in the mass media, at the expense of the body in paragraph 2 of this Law to which the case pertains, when there is infringement of freedoms and rights.

#### **Article 36**

If the bodies in Article 2 of this Law proceed upon the requests, recommendations, opinions and proposals in Article 35 of this Law within the determined deadline, the Ombudsman shall conclude that the procedure is over and he shall immediately notify the person who put forward the submission and the body to which it pertains.

### **IV. THE PUBLICITY OF THE WORK**

#### **Article 37**

The Ombudsman shall inform the Parliament of the Republic of Macedonia about the extent of ensuring respect and protection of citizens' freedoms and rights and respect of the principle of non-discrimination and proper and equitable representation of community members by the bodies in Article 2 of this Law, with an annual report.

The report in paragraph 1 of this Article shall be discussed by the Parliament of the Republic of Macedonia at a Parliament session which shall be compulsorily attended by members of the Government of the Republic of Macedonia, i.e. its representatives.

The Ombudsman's report shall be publicised in the mass media.

#### **Article 38**

The Ombudsman may submit a separate report on the affairs within his scope of competence in the area of the local self-government units where an office is established, as an organisational unit of the Ombudsman.

The Ombudsman may submit a special report on the affairs within his scope of competence to the local self-government units.

The annual report, the special reports, notices and other actions undertaken by the Ombudsman shall be publicised in the mass media.

Special funds shall be provided for the publication of reports, announcements and other undertaken activities, from the part of the budget intended for the Ombudsman.

## **V. LEGAL POSITION OF THE OMBUDSMAN**

### **Article 39**

The Ombudsman and his deputies shall have immunity.

The Ombudsman and his deputies cannot be called to account for a given opinion and actions, measures and activities undertaken following the submission.

The Ombudsman and his deputies cannot be detained without the approval of the Parliament of the Republic of Macedonia, except if they are caught in a criminal act for which an imprisonment sentence of at least five years is prescribed.

### **Article 40**

The Ombudsman, his deputies, the Secretary General and the employees in the Ombudsman's professional service shall have an official pass.

The form, contents, procedure and manner of issuing, usage and confiscation of the official pass shall be prescribed by the Ombudsman with a general act.

### **Article 41**

The Ombudsman and his deputies, who have been employed prior to their appointment, shall have the right to return to the jobs they have previously had or to another job that suits the type and degree of their professional education, within three months after the termination of their tenures.

### **Article 42**

The Ombudsman and his deputies to whom the tenure has expired and who cannot continue to practise their previous job or be assigned to other suitable working post, due to justified reasons, and who have not fulfilled the retirement terms, pursuant to the general provisions, shall be entitled to an allowance to the salary they would receive if they performed the function, until they find employment, i.e. until they fulfil the

retirement terms pursuant to the general provisions, but one year after the termination of the tenure at the most.

The right to allowance from the previous paragraph may be prolonged until the fulfilment of the retirement terms pursuant to the general provisions, but up to one year at the most.

#### **Article 43**

The Ombudsman, his deputies and the employees in the Ombudsman's professional service shall have the right and obligation to constant professional training and improvement.

Funds from the Budget set aside for the Ombudsman shall be provided for the needs of professional training and improvement.

#### **Article 44**

The Ombudsman and his deputies that have no flat of their own at the headquarters of the Ombudsman shall be entitled to use a suitable official flat.

#### **Article 45**

As special rights of the Ombudsman, his deputies and the persons authorised by the Ombudsman in the performance of their function, shall be deemed:

- a right to enter and have a free pass at the stations, airports and ports only by showing the official pass;
- a right to free usage of public, land or lake traffic on the territory of the Republic of Macedonia and
- a right to special protection of his life, his family and property, upon his request to the police in his place of residence, whenever there are serious threats to his safety.

The Ombudsman shall more closely regulate the manner of realisation of the special rights in paragraph 1 of this Article with a general act.

## **VI. PROFESSIONAL SERVICE**

#### **Article 46**

The general acts on organisation of work and systematisation of working posts whereby the type and number of employees and their work assignments are stipulated shall be passed by the Ombudsman.

### **Article 47**

The following organisational units shall be organised for a more efficient performance of the affairs within the Ombudsman's scope of competence:

- 1) Office of the Ombudsman in Tetovo;
- 2) Office of the Ombudsman in Kicevo;
- 3) Office of the Ombudsman in Struga
- 4) Office of the Ombudsman in Kumanovo
- 5) Office of the Ombudsman in Stip
- 6) Office of the Ombudsman in Bitola
- 7) Office of the Ombudsman in Strumica

The Ombudsman through a general Act, directly regulates the manner in which the work is carried out including the number of employees engaged in employment who in the offices of the Ombudsman perform various duties which are within the scope of the Ombudsman's jurisdiction.

### **Article 48**

The Ombudsman may establish and organise departments for the purpose of a more efficient and more successful protection of the citizens' freedoms and rights in particular areas.

The Ombudsman shall regulate more closely the manner of work and number of employees in the departments who shall perform the operations in the area of the Ombudsman's scope of competence, with a general act.

#### **Alternative to Article 48:**

The Ombudsman shall establish and organise departments for the purpose of more efficient and more successful protection of citizens' freedoms and rights in particular areas, these being:

- Department for protection of community members' rights;
- Department for protection of children's rights;
- Department for protection of rights of the persons with a restricted freedom of movement;
- Department for protection of rights of the security forces members;
- Department for protection of women's rights.

Depending on the needs for protection of the basic freedoms and rights of the citizens in the Republic of Macedonia, the Ombudsman may organise other departments as well.

The Ombudsman shall stipulate the organisation and the manner of work, as well as the scope of competence of the departments, with the Rules of Procedure.

#### **Article 49**

The Ombudsman is therefore responsible to independently appoint a General Secretary who will be drawn from a pool of available State Public Service Managers.

The General Secretary's mandate at the Ombudsman's office in the Republic of Macedonia is equal in its service length like the Ombudsman's.

A General Secretary to the Ombudsman in the Republic of Macedonia is a person who is primarily responsible to manage the professional service.

#### **Article 50**

The Ombudsman compiles a book of rules for his/her work.

The book of rules regulates the work manner and procedures which are to be applied before the Ombudsman.

### **VI. THE FUNDS REQUIRED FOR THE WORK**

#### **Article 51**

The funds that are required for the Ombudsman usually are allocated out of the Budget segment of the Republic of Macedonia.

The usage, distribution and the applicability of the funds which are required for work these are secured from the Budget segment of the Republic of Macedonia for the Ombudsman, who in turn manages the funds in an independent manner.

The organ that is responsible to make a proposal for the Budget segment of the Republic of Macedonia for the Ombudsman also has the obligation before the actual voting takes place in Parliament of the Republic of Macedonia to submit the same for review and seek any comments that the Ombudsman may have.

The comments from item 3 of this Article must be compulsorily submitted before the Parliament of the Republic of Macedonia along with the proposal concerning the Budget segment for the Ombudsman.

The Parliament would vote separately about Budget segment for the Ombudsman.

Any necessary supervision and review in the implementation of the Ombudsman's Budget segment in the Republic of Macedonia could be performed only by authorized State Audit Institute this is usually done upon a request made by the Parliament of the Republic of Macedonia.

## **Article 52**

The Ombudsman is entitled to a salary and other types of allowances at same rates as those applicable for the President to the Constitutional Court in the Republic of Macedonia.

The Ombudsman's deputies are entitled to a salary and other types of allowances at same rates as those applicable for the Judges to the Constitutional Court in the Republic of Macedonia.

The salaries and the other types of allowances for the professional Service shall be determined by the Ombudsman's General Act and in line with the law on Collective Bargaining Agreements.

## **V11 TRANSITIONAL AND FINAL PROVISIONS**

### **Article 53**

The book of rules for the Ombudsman and the Acts which are relate to the organizational manner of the work including the classifications of various posts, salary Act and other types of allowances for the Ombudsman's Professional Service shall be aligned with the provisions provided in this law within 45 days on enactment of the law.

The Act, regulating the ways in which the special entitlements can be achieved and the way in which the Ombudsman's work is performed, the deputies and the other authorized personnel and the Act, shall regulate the manner of work and the total number of engaged employees within the Ombudsman's organizational units these are derived from the Article 47, of this law and shall be implemented within 45 days on enactment of the law.

The decision about the number of Ombudsman's deputies derives from Article 5, item 2 of this law and is made by the Parliament of the Republic of Macedonia within 30 days on enactment of the law.

### **Article 54**

The organizational units shall start practicing their work no later than 6 months on enactment of the law.

### **Article 55**

With the enactment of this law, the previous Ombudsman's law shall cease to exist (Official Gazette of RM" No. 7/97.)

## **Article 56**

This law is in force on the 8th day from the day when it was publicly announced in (The Official Gazette of the Republic of Macedonia No.7/97.)

## **THE JUSTIFICATION**

### **1. THE ASSESSMENT OF CONDITIONS WHICH PREVAIL IN THIS AREA**

The Ombudsman is a new institution relatively speaking within the legal and political system in Republic of Macedonia which was established via the Constitution of the Republic of Macedonia (Official Gazette of RM" No. 52/91) and the law on Ombudsman (Official Gazette of RM" No. 7/97), whose primary function is to protect Constitutional and legal rights of citizens especially when these rights are infringed by the State Administrative organs, other organs and organizations performing public duties/functions.

The Ombudsman commenced performing the duties that are determined by the legal and the Constitutional competencies on 1 March 1998 despite the fact that the Ombudsman was chosen on 7 June 1997, the Ombudsman's deputies were chosen in December 1997, with the establishment of the Professional Service when funds were secured, material-technical requirements, space and other necessary means and conditions were met that were necessary to ensure that the work commences.

The three years of existence and associated activities of the Ombudsman in the Republic of Macedonia, not excluding the comparative, normative, theoretical and practical knowledge that was gained regarding the functions and activities of this type and similar alike institutions in the countries with more highly developed democratic relations are proving that in order to ensure an efficient functioning and achievement of results it becomes clear that besides the highly developed democratic relations and awareness, there is also a need to have a functional legal state and to prevail the rule of law in all segment of society, in other words, it requires from those who have the state authority to adopt an adequate approach toward this institution. The public perception, the citizenry, media and the independence, would contribute toward the efficient and successful accomplishment of this function.

Based on data which was received from the Ombudsman there is no room to doubt that during the past three years this organ indeed had a huge work load to perform. Namely, during 1997 the Ombudsman acted upon 1.670 complaints which were submitted by 4.500 citizens, out of which 1.202 cases of complaints were mentioned within the reporting period. Whereas 468 cases of complaints from the previous year were transferred for the next year. Compared with last year when 1.060 complaints cases were received during 1999 the amount of received complaints increased to about 31 per cent. The Ombudsman initiated proceedings on his own accord in eight cases. Similarly 2,500 citizens were granted interviews whereas 735 were granted audiences outside the Ombudsman's office premises of this institution. In context of the overall work volume, one should have in mind the number of telephone call interviews conducted with more than 4.000 citizens not excluding other measures and activities undertaken in relation to the work and the functions of the Ombudsman.

During year 2000, the Ombudsman acted in 1.396 complaints in total which were submitted from over 2.500 citizens, from which 1.166 complaints were submitted during the reporting period and 230 cases of complaints were transferred from the previous year. Compared with the previous year when 1.202 complaints cases were received during year 2000 this number insignificantly decreased to 3, 00 per cent. The Ombudsman initiated on his own accord proceedings in 11 complaints cases. Similarly, more than 2.000 citizens were granted an audience for interviews, out of which 520 were conducted outside the Ombudsman's office premises, and other 3.000 telephone calls were made to citizens.

During year 2001 the Ombudsman acted in total of 1,423 complaints which were submitted by 5.000 citizens out which 1,107 were presented during the reporting period whereas 316 complaints cases were transferred from the previous year. By comparison with the previous year when 1,166 complaints were received the total number of cases indicates an insignificant decrease of 0, 05 per cent. The Ombudsman initiated on his own accord proceedings in 11 complaints cases. Similarly, during year 2001 about 3, 000 citizens were accommodated with interviews out of whom 580 were interviewed outside the Ombudsman's office premises.

However, when analyzing the work of this organ one should consider the volume and the work effects of the Ombudsman, therefore it becomes necessary not only to assess the received number of complaints and the conducted interviews with citizens but instead it should be viewed from an aspect of overall activities and communications made by the Ombudsman with appropriate administrative organs, citizens etc.

## **11. THE GOALS THAT SHOULD BE ACHIEVED BY THIS LAW**

The enactment of the law on the Ombudsman at the same time assumes that the amendment XI in the Constitution of Republic of Macedonia would be put into operation including the Framework Agreement implementation. Namely, the aforementioned documents considerably change the position and the organizational structure and enhance the competence of the Ombudsman in the judicial system of the Republic of Macedonia with a highlighted role of the human rights protection in front of the State organs, Local Government Units and the Public Institutions and Offices.

The Law whose adoption is being suggested is systemized in 8 chapters with 56 articles.

**Chapter one- basic provisions (article 1 – 4)** defines the competence of the Ombudsman, his/her independent position in the legal system and determines the location of his Office, in front of which the coat of arms and the name of the Republic of Macedonia shall be placed. In this chapter an important provision of the **article 2** has been singled out, according to which the Ombudsman as an organ of the Republic of Macedonia protects constitutional and the rights of the citizens defined by law when they are violated by the State organs and institutions, and at the same time undertakes actions and measures for protection of the principle of non- discrimination and the adequate and

righteous representation of representatives of the communities in the organs of the State Institutions, Local Government units, Public Institutions and Services.

**Chapter two (article 5-11)** expands the terms for appointment and dismissal of the Ombudsman. Namely, pursuant to constitutional change, the Ombudsman and his/her deputies are appointed and dismissed by the Parliament of the Republic of Macedonia with majority of votes of the total number of MPs that belong to the communities that are not majority in the Republic of Macedonia. Same procedure applies for Ombudsman's deputies. An Ombudsman can be the candidate who has graduated from the Law Faculty with over nine years of work experience, and seven years of work experience in human rights related fields is required for his/her deputy. Besides the provision for solemn oath (**article 9**), which is given in the Parliament of the Republic of Macedonia, this chapter also defines the role of the Ombudsman as incommensurable with other public function or profession and forbids membership in any political party. As for the terms of dismissal (**article 9**), besides the present terms, two novelties have been introduced, if the term for old age pension has been met, and if the dismissal follows as a result of unprofessional, biased and irresponsible performance, a qualified majority of votes of two thirds of the present MPs is required.

The competence and the manner of work have been systemized in **chapter three (article 12-36)**, as the most significant part of this law that is drafted for adoption. The provisions of this chapter prescribe the Ombudsman's actions with regard to citizens' complaints; implementation of the principles of awareness, unbiased approach, efficiency and responsibility; communication with State Organs; deadlines of proceedings; the use of language in the proceedings etc. This part has made the Constitutional basis operational as regards the use of other language, besides Macedonian, that is spoken by at least 20% of the citizens of the Republic of Macedonia. As for the complaints related to the work of the Courts, a novelty that would enable the Ombudsman to directly respond to the complaints in case of prolongation of the Court proceeding or complaints against Court administration has been introduced, instead of having this procedure done through the Ministry of Justice. This novelty is based on the fact that the Ombudsman has authority over entire management bodies and in that regard over the Ministry itself, so the creation of a mediatory position is unjustifiable, and at the same time this provision is a consequence of the comparative experiences and the position of the Ombudsman in the democratic States.

The Ombudsman takes over the proceedings upon the initiative of the plaintiff, as well as on his own initiative when he assesses that the Constitutional and legal rights of the citizens or when the principle of non discrimination and legal representation of the members of the communities have been breached. Within the framework of his/her competences, pending on the determined situations after the content of complaints was checked, the Ombudsman issues recommendations, suggestions, and opinions about the ways to redress the breaches; can initiate disciplinary proceedings against an official or authorized person; can bring charges to the authorized Public Prosecutor to launch a criminal proceedings and give recommendations for enhancement of the work and behaviour of the parties towards organs and organizations. This chapter incorporates the possibility to enable the Ombudsman to submit to the Constitutional Court a proposal to evaluate if laws and other provisions and acts are in conformity with the Constitution

**(article 31)**, and at the same time the possibility to request postponement of enforcement of the act until the Court of Appeal has reached a decision, respectively the authorized Court, depending on the level of the proceedings.

The provisions of **chapter four (article 37- 38)** define the obligation of Ombudsman to submit an annual report to the Parliament of the Republic of Macedonia and to make it available to the media. At the same time, the Ombudsman can prepare special reports, announcements for the activities and measures taken by him/her.

The legal position of the Ombudsman has been defined in **chapter five (article 39-45)**. The Ombudsman enjoys immunity and cannot be held responsible for expressing his views and for undertaking measures and activities during his actions. At the same time, it has been prescribed that without the consent of the Parliament of the Republic of Macedonia, the Ombudsman and his/her deputies cannot be detained, unless they are caught in the criminal act for which a sentence of at least five years has been envisaged. The Ombudsman, his/her deputies, secretary general and the clerks in the professional service are in possession of official IDs whose content, procedure and the way of issuance, use, and their confiscation are determined by the Ombudsman by means on an general act. This chapter defines the rights that derive from the scope of duties; professional upgrading and qualification; redeployment after dismissal and so on, which correspond with general standards of labour legislation and the law on Civil Servants.

**Chapter six- professional service (article 46-49)** is a very significant part of this draft considering that it establishes organizational units outside the Ombudsman's HQ which is predefined with the Framework Agreement for subsidiary offices. Namely, it has been suggested that the Ombudsman establishes offices in Tetovo, Kicevo, Struga, Kumanovo, Stip, Bitola, and Strumica. Ombudsman's Secretary General is elected among the leading figures of the civil servants, pursuant to the standard defined in the Law on Civil Servants. Financial independence is very important for successful accomplishment of the function, and yet his budget is part of the State's budget.

The necessary funds – **chapter seven (article 50-51)** for the Ombudsman's office are provided from the State's budget, whereby an emphasis should be put to independent planning, preparation and allocation of operational funds, and regarded as a specialty, as referred by the Framework Agreement.

In the transitional and final provisions, contained in **chapter eight (article 52- 56)** it has been confirmed that the adoption of rule book, classification and organizational acts and other writs shall be conducted within 45 days upon adoption of the law, respectively its enactment. Similarly, this section incorporates provision according to which the Ombudsman and his/her deputies chosen in accordance with the previous law continue to perform their duties until the end of their term. In order to make the subsidiary offices operational, it has been suggested that the deadline should not be more than six months because some organizational and human resource activities are necessary to be performed and in any case funds must be secured.

### **III. FINANCIAL RESOURCES FOR THE IMPLEMENTATION OF THE LAW**

The implementation of the law that has been proposed requires financial resources that should be provided from the budget of the Republic of Macedonia and foreign donations as defined in the action plan for the implementation of the Framework Agreement.

According to the next year's calculations, additional funds of MKD 11.127.000, 00 shall be required for salaries and other allowances for the employees in this organ, and MKD 5.556.000,00 for goods and services or the total of 16.683.000,00 which with the last year's Ombudsman's budget of MKD 19.626.000,00 tallies the amount of 36.309.000,00.

According to the Action Plan for implementation of The Framework Agreement relating to the Constitutional position of the Ombudsman, € 0.46 million have been envisaged for this purpose.