



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 11 April 2001

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Restricted
CDL (2001) 34
English only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS ON THE DRAFT LAW “OMBUDSMAN ACT”

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I. GENERAL REMARKS

1. The institution of an Ombudsman – PUBLIC MEDIATOR – in Bulgaria is a very positive one.
2. This Draft is, in the whole, a good one. It is well constructed and contains many good provisions. Such is the case, for instance, of articles 5 (specially number 3), 18, 21, 22, 29 and 42.
3. However with the scope to contribute to a better law, I would make the following remarks and suggestions:

II. REMARKS ON SOME ARTICLES OF THE DRAFT LAW

1. ARTICLE 6

- 1.1 The number one of this article stipulates that the PUBLIC MEDIATOR can be elected by a motion of the *Supreme Judiciary Council*.
- 1.2 Having in mind the nature and powers of this organ, strictly connected with the Judiciary Power, it may not seem a very good idea to have the PUBLIC MEDIATOR elected according to a motion of the *Supreme Judiciary Council*.
- 1.3 Article 6.2 says that “*the motion must be put before the National Assembly not less than 6 months before of the expiry of the term of the acting PUBLIC MEDIATOR*”,
- 1.4 This delay of 6 months to put a motion before the National Assembly, may prove to be a very long one.
- 1.5 It seems to be a specially long one when “*the term of office of the PUBLIC MEDIATOR is terminated before its expiry*”.

In this case the motion “*must be presented to the National Assembly within 6 months after the said termination*”.

Adding these 6 months to the delay necessary to elect a PUBLIC MEDIATOR, the result is that there will not be a PUBLIC MEDIATOR – and no PUBLIC LOCAL MEDIATORS as well – during almost a year.

2. ARTICLES 7, 8 AND 9

- 2.1 Article 7 says that the PUBLIC MEDIATOR shall be elected by a “*simple majority*”.

Article 8 says: “*the election shall be held simultaneously for all nominations, by a simple vote*”.

If it is so, if no special majority is required, than the elected will be the nominee who gets a greater numbers of votes.

This does not agree with the provision of article 9.2 that mentions “*the required majority*”.

- 2.2 If there is a “*required majority*” than, contrary to what says Article 7, the PUBLIC MEDIATOR is not elected by a “*simple majority*”.
- 2.3 This being so, Article 7 should say something like:

“The National Assembly shall elect the PUBLIC MEDIATOR by more than one-half of the valid votes of all its Members”.

or

“The National Assembly shall elect the PUBLIC MEDIATOR by more than one-half of the valid ballots, provided that more than half of all voters have cast their ballots in the election.”

This last formulation exists in *Article 93.3* of the Constitution of Bulgaria (1991).

- 2.4 Only with a specification like those proposed above will article 9.2 make sense.
- 2.5 However, in order to confer a greater strength to the institution of the PUBLIC MEDIATOR, I would suggest that his election would require a greater majority like, for instance, two-thirds of all the Members of the National Assembly, as required in article 103.2 of the Constitution of Bulgaria (1991).

This large majority could be a warrant that the person chosen is supported by a large part of society, with the consequences thereof like *independence* and *impartiality*.

3. ARTICLE 11.4 AND ARTICLE 12

- 3.1 The draft stipulates in Article 11.4 that the PUBLIC MEDIATOR should be relieved of duty in case of “*recall in due to failure to perform his duties*”, and Article 12.2 says that “*the decision on his recall shall be taken by simple majority by a single vote after hearing the PUBLIC MEDIATOR*”.
- 3.2 Although article 12 does not mention the national Assembly, I assume that the decision of recall needs the votes of the Members of the National Assembly.

However, it should be said clearly. As French people say: “*si cela va sans dire, cela va mieux en le disant*”.

- 3.3 Besides, one decision of such a great importance and consequences should be taken by a special majority like the one suggested for the election: two thirds of all the Members of the National Assembly.

4. ARTICLE 14.1

- 4.1 Due to specificities of languages and translation, I am not sure of the exact meaning of the principle number 1 of article 14 that, according to the draft, should guide the activity of the PUBLIC MEDIATOR.

Is it purely subjective?

I mention this because the activity of the Ombudsman must be a transparent one.

5. FINAL PROVISION

- 5.1 According to this paragraph the act that creates the PUBLIC MEDIATOR shall enter into force one year after its [publication] in the “State Gazette”.

But it does not say how the first PUBLIC MEDIATOR is chosen.

- 5.2 There should be a **transitional provision** stating how the first PUBLIC MEDIATOR is elected.