

# Independent Assessment of the Ombudsman Institution

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Republic of Macedonia  
Ombudsman

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# Independent Assessment of the Ombudsman Institution (December 2004 – March 2005)

## Report

April 2005

In cooperation between the Macedonian Ombudsman, OSCE, SIDA, the Parliamentary Ombudsman  
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## 1. Introduction

### Generally about this report and the scope

The scope of this report is specified in the OSCE's Terms of Reference for the undersigned expert. In short; the focus of the assessment was to identify priority areas for further development and improvement, with special attention to:

- the current practice and organisational systems of the Ombudsman office (including investigations, organisation, Deputies' responsibilities, use of powers)
- training and staff development needs
- establishing a mentoring relation with the Swedish Parliamentary Ombudsmen
- Ensuring that project activities meet the needs of the Ombudsman, including consideration of possible future trainers etc. to be involved during the implementation
- Other areas where developments are viewed as necessary

Though the report focus on the practical it is not really feasible to leave out theoretical matters in the discussion. So theory is mixed with practice, although the recommendations take aim on the practical (what changes appear needed, what modifications or amendments to discuss further, what can possibly be done within the scope of the OSCE project). The principle focus is the objectives of the implementation phase of the project in 2005, considering the budget limits, some 200,000 EUR, and an 8-9 month implementation period (Mar-Dec 2005). Longer term recommendations are made where appropriate, i.e. beyond 2005 (for instance suggestions to amend the Ombudsman law). I also wish to refer to the excellent study and report by Mr. Aleck H. Trawick (*Review and Recommendations on the Operation of the Office of the Public Attorney of the Republic of Macedonia, May 2002*). I have endeavoured not to duplicate the work done by Mr. Trawick even though this is not always possible since many subjects of our studies are of course mutual. The Trawick report contains very useful observations and recommendations. The organisation and tasks etc. of the Ombudsman are known by the recipients of this report. Therefore texts from the Ombudsman law, regulations etc, is repeated only when necessary for the discussion.

### The use of certain terms

I use the name *Ombudsman* instead of *Public Attorney* since the former is widely used internationally to point out institutions like the Macedonian Ombudsman, and the name Ombudsman also is the term used in the English translation of law No 07-4502/1 of September 10<sup>th</sup> 2003) – *the Ombudsman Law*. Furthermore – when discussing an authority or official under Ombudsman supervision, I use the term *respondent authority* or simply *respondent*. In this report State Counsellors/Counsellors are often called *Investigators*. The *Ombudsman law* is sometimes just referred to as the *Law*. Also, I often use the term "*Investigations Unit*" for the Unit for Expert Analytical Matters (as it is called in my English version of the Ombudsman organigram) because it is shorter and connects directly to the fact that the core activity (investigations into complaints) is carried out by the unit.

### Meetings and other sources

I was superbly received by the Ombudsman and his staff (of which all are not mentioned in the list of meetings below) and by the OSCE during my stay in Skopje, December 5-16 2004. The OSCE had made a schedule for important meetings and I could freely add to the schedule. No efforts were saved to arrange meetings and study visits on my request. Only the

time of my visit set the limits. Throughout the visit I had first rate assistance by State Counsellor Uranija Pirovska who arranged meetings and took care of logistics. All Deputies, State Counsellors, Secretaries and other personnel patiently took time to explain their work, procedures etc. to me. Furthermore I was assisted by an excellent interpreter, Filip Markovic, who also kept me updated on the national and local news reports.

### *Meetings and Interviews*

- Ombudsman Office: (The then) Ombudsman Branko Naumovski; Deputies Nevenka Krusharovska, Ljupcho Ivanovski, Suzana Saliu and Tripun Tanushevski; Secretary General, State Counsellors and other staff.
- Ombudsman Regional offices in Tetovo and Stip
- The OSCE: Ambassador Carlos Pais; Head of Rule of Law Victor Ullom; Rule of Law Program Director Andrew Palmer; Public Administration Coordinator Barbara Nost and Public Administration Officer Kristina Jovanovska
- The Swedish Embassy: Head of Office Jöran Bjällerstedt; Country Coordinator Ulrika Lindberg; Programme Officer Jenny Thunberg
- The Parliamentary Assembly: Member of Parliament Ismet Ramadani; Advisor to the Committee for the Protection of the Human Rights Marjan Madzovski
- Supreme Court: Judge Agim Miftari
- Public Prosecutors Office: Chief Prosecutor Sterio Zikov
- The Government: (Acting) Minister of Justice (now Ombudsman) Ihxet Memeti; Secretary General Meri Mladenovska-Gjorgjievska; Ministry of Finance, State Advisor Dimitar Todevski; Ministry of Labour and Social Policy, Head of Unit for Gender Equality Elena Grozdanova; Ministry of Interior, Deputy Head of the PSU Kire Rusevski and Head of Dept. of citizenship and Civic Matters Nadica Velevska
- Police Academy: Director, Dr. Sladjana Taseva
- The State Commission for the Prevention of Corruption: Dr. Sladjana Taseva
- Mayor of the Municipality of Tetovo, Dr. Murtezan Ismaili
- International Community and NGOs: Helsinki Committee/Dr. Mirjana Najcevska; ABA-CEELI/Legal Specialist David Sip and Legal Advisor Aneta Musmanovska; Association for Emancipation – ESE/Officer Maria Gelevska; Council for Prevention of Juvenile Delinquency/Secretary General Petre Mixev; Civil Society Resource Centre/Advokat Shpend Devaja; UNICEF/Project Officer Bridget Blagoevski-Trazoff and Program Assistant Katerina Matevska; UNHCHR/Program Officer Silva Pesic; EUPOL-Proxima, Legal Assistant Olja Ristova; Macedonian Union of Women's Organisations (UWOM) – Director Savka Todorovska
- Media: Representatives for newspapers Vreme, Vecer, Dnevnik and Fakti, and TV Channel 5 Bitola.
- Representatives of creators of the Ohrid Agreement: Ismet Ramadani of the PDP

### *Written sources*

- The Ombudsman Law (No. 07-4502/1 of 10<sup>th</sup> September 2003)
- Annual Reports of the Ombudsman, 2000, 2001, 2002, 2003



- Draft Operation Manual of the Ombudsman
- 2005 Operation Manual of the Ombudsman
- Draft Rulebook of the Ombudsman
- 2005 Rulebook of the Ombudsman
- Organigrams of the Ombudsman Office
- Public Opinion Survey on the Ombudsman, Centre for Strategic Research and Documentation of 15<sup>th</sup> of February 2003 (Report) and 21<sup>st</sup> March 2003 (Summary)
- Review and Recommendations of the Operation of the Office of the Public Attorney by Aleck H. Trawick on May 14<sup>th</sup> 2002
- Essential Characteristics of a classical Ombudsman, by Dean M Gottehrer and Michael Hostina
- Report of 10<sup>th</sup> October 2003 by the Swedish Parliamentary Ombudsmen, “*Fact Finding Mission regarding the Ombudsman in Macedonia*”

### Summary of recommendations and priorities

Out of the project budget of approx. 230.000 EUR the most urgent suggested activities, improvements and equipment can be estimated to cost some 110.000-180.000 EUR depending mainly on how many personnel will participate in the most costly training activities.

The *first* priority in project budget terms is considered to be the training activities. The cost-estimate for all suggested training activities is approx. 165.000 EUR. However, by (“for example”) reducing the number of participants in the advanced HR training course abroad from 30 to 15 participants the total training costs can be limited to some 100.000 EUR.

The *second* priority (cost wise) may well be expert assistance on the drafting of amendments to the Ombudsman law, internal regulations and different manuals. The costs for a two working week visit by an international ombudsman expert can be estimated to 10.000 - 12.000 EUR. These activities cover:

- ❖ Drafting of proposed amendments to the Ombudsman Law and to internal regulations
- ❖ Manuals on case handling techniques including HR, equitable representation, Children’s rights and other specific areas
- ❖ Manual on reporting formats
- ❖ Ombudsman Action plan to support equitable representation in supervised organs incl. a follow up system
- ❖ Office manuals for Regional Offices
- ❖ Programmes for the training of trainers
- ❖ Programmes for the arrangement of lectures and seminars by the Ombudsman as an educator
- ❖ Policies for media cooperation

The *third* priority appears to be the IT-assessment and needs for various equipment. If the IT-assessment should indicate that new software is needed to handle registration of cases in the near future and beyond, then costs will extend far beyond the project budget limits. The equipment costs *excluding* IT assessment, more than a limited number of computers and new software, probably could be handled by the project (10.000 – 15.000 EUR for 2 digital cameras, a video camera, a tape recorder and maybe 10 computers).

OSCE assistance in public awareness campaigns would probably also have to be carried out in a separate project.

According to the planning the Swedish Parliamentary Ombudsman will play an important role in the continued development of the Macedonian Ombudsman. Inter alia, it is proposed that the Swedish Ombudsmen Office will assist in different respects with training, receiving study visits etc., see Chapter 19. The undersigned expert is also ready to assist in the ongoing development efforts, for instance with assistance in drafting amendments to laws and manuals.

## **2. General about the organisation of the Ombudsman institution**

The set up of the office and the function is “European style”, structured after the Ombudsman in Sweden, Poland and other European countries. It is reflected in the Ombudsman law and the set up of the office and “for example” the way cases are handled. Like the previous expert, Mr. Aleck H. Trawick (*Review and Recommendations, 2002*), I am impressed by the efforts done to set up the office and achievements made to become an operational Ombudsman institution. Many aspects of the Ombudsman's procedures and efforts are remarkable, for instance that the number of persons received for interviews in 2003 was 3 500 (see p. 15 in the Annual report of 2003) and the continuous work to inform about reluctance from state authorities, including the ministries and government, to proceed upon Ombudsman recommendations, as well as many aspects of case handling and reporting. As to the regional offices, the basic goal is said to be the need to bring the Ombudsman closer to people. The political and ethnical situation in the country is a crucial reason behind their establishment as well.

## **3. Personnel organisation**

### General

According to the Ombudsman's Rule Book (2005) the office is principally made up of:

- The Ombudsman,
- The Deputies,
- The Expert Department, administratively managed by the General Secretary, and
- The Regional offices.

At the time of the assessment the Expert Department, according to the Ombudsman office organigram, consisted of the Unit for Analytics and Investigations, the Unit for Public Relations and the Administrative Unit. Internally the “investigative function” (Deputy + Investigator/s) are called *teams*. To this comes the six Regional Offices. After the assessment

and the first draft to this report, the names of the units have slightly changed and a fourth unit has been added, namely a unit for the coordination of the Ombudsman's work. The names are now the Expert Analytical Unit (I still often use the term “Investigations Unit”), The Unit for International and Public Relations (Public Relations or PR Unit), the Unit for Human Resources and Finance (Administration Unit), and the Unit for Coordination of the work of the Ombudsman (tasked with coordination between Skopje and the regional offices [the Coordination Unit]).

Organisationally the Deputies in the Skopje Head Quarters have their own “boxes” under the Ombudsman. The Investigations Unit is manned basically by State/Counsellors. The PR Unit has a State Counsellor and staff for proof reading, IT and interpretation. The Administrative Unit has secretaries and personnel for finances, book keeping, registry, archives, supplies, reception, transport, service and cleaning. The plan for the Coordination Unit is to man it with a number of State Counsellors/Counsellors and other staff. The Regional Offices are run by a Deputy assisted by a State Counsellor, an interpreter, a person for administration/archives and a driver.

At the time of the assessment the personnel organisation appeared principally sufficient. Among my comments at the time was that there is a need for someone to be in charge of each unit. That remark is still valid.

In relation to the *planned* personnel organisation the Ombudsman office was and still is grossly understaffed. In practice however, with a few significant exceptions (below), the head office appears to have an appropriate level of staffing in relation to the *current* work load. Thus the present situation does not in general appear to call for filling all the vacant positions. The situation will of course change when the regional offices become operative and start processing cases to the extent foreseen. The most urgent decision now is of course the appointment and instatement of Deputies to run the regional offices. The newly appointed Ombudsman is acting to make this happen as soon as possible.

The function of Ombudsman *Secretary General* appears to involve too many tasks. In lack of “middle men” the function seems to entail a duty to act on calls regarding everything from lack of supplies to leaking pipes. This calls for an *Administrative Manager* to handle requests from staff in the four units. He/she should be responsible to the General Secretary.

At the time of the assessment there was a need for a *Regional Office Coordinator* or similar to attend specially to the six regional offices, who would be directly responsible to the Secretary General. By a decision codified in the new Rulebook of the Ombudsman (February 2005) there is now, as already described, a special unit for the coordination work, but not implemented yet.

### The Deputies

The mandate of the Deputies to act is crucial. They need to have a mandate to investigate urgent cases even if the Ombudsman is, for instance, abroad. This is achieved by delegation which was taken into consideration in suggestions to amendments to the 2003 Operation Manual. The new Operation Manual of 2005 clearly expresses the Ombudsman's possibility to authorize deputies to carry out different tasks.

### The Experts Unit (or Investigations Unit)

The task of a State Counsellor is equivalent to those of an Investigator. A *State Counsellor* (or State Advisor) relates to a *Counsellor* (or Adviser) as a *Senior Investigator* relates to an *Investigator*. The State Counsellors have seven years of experience as Ombudsman Counsellors. At the establishment of regional offices, in order to avoid “hierarchical inconsistencies” and other unfavourable effects, the (then) Counsellors in Skopje were advanced to State Counsellors. So today there are State Counsellors both in the Ombudsman Headquarters Office in Skopje (*hereinafter, HQ*) and in the regional offices, and no Counsellors/Advisers.

One of the State Counsellors rotates between Deputies who handle *police matters*. Police matters belong to the group of matters that are difficult to investigate due to the non compliance problem. For this and other reasons the “police function” appear to operate short of at least one Investigator.

At the time of the assessment there were twelve *State Counsellors* working in the Investigations Unit under the Deputies in Skopje (of which one on a voluntary basis) and six in the regional offices. One State Counsellor serves in the Ombudsman Cabinet and one is assigned to the PR Unit. According to the Secretary General 5-6 positions as State Counsellor were vacant. The missing State Counsellors are not yet identified but are foreseen to be needed to support Deputies as new areas of responsibility will be (or may be) introduced and the regional offices become operational. The vacant positions in the organigram are planned to be filled successively as need arise *and* necessary funds are released.

The number of complaints 2003 was 2 605. At the time of the assessment statistics indicated that the number of complaints during 2004 would decrease compared to 2003. However, the number is expected to increase substantially during 2005 due to the establishment of the regional offices.

In the Ombudsman's organigram it is foreseen that the Investigations Unit will have a number of Counsellors (a position under State Counsellor), interpreters and assistants. The interpreters are needed. My assessment, however, did not indicate that additional Counsellors were needed. As to assistants in that unit there seems to be a sufficient number in the Administrative Unit.

### The Administrative Unit

At the time of the assessment there were three technical secretaries in the unit; one Ombudsman secretary and two secretaries working for the Deputies. There are also two administrative archivists, one employed on regular basis (Macedonian) and two volunteers (an Albanian and a Bosnian). Secretaries describe normal secretarial tasks. Problems forwarded concerned low and inflexible salaries, some uncertainty regarding tasks (due to the resignation of the Ombudsman) and lack of internet connection. Due to the expected increase in the workload a need for an additional archivist to the Administrative Unit is indicated.

My assessment has not covered the situation for and function of the supporting personnel (such as supply officers, drivers and cleaners).

### The PR Unit and the Coordination Unit

In the initial organigram the senior associate for economics and finance matters was placed in this unit. The function later was moved to the Administrative Unit. The two positions as interpreters – one for English and one for Albanian – were vacant at the time of the assessment. At least the Albanian interpreter should be appointed as soon as possible. The needs for interpretation and translation (in Skopje) are presently met by using one of the archivists who has interpretation as side task. As to the Coordination Unit – see below.

### Certain additional personnel matters

The Secretary General explained that 70 percent of the complaints could be solved if there was more time to listen and talk to complainants. The personnel are trying to accommodate all needs but some complainants will always remain dissatisfied. A natural reaction would be to suggest the assignment of a Counsellor to attend especially to these restorative and extra informative tasks. See further below.

### *Recommendations*

The No. 1 priority is to appoint Deputies to the regional offices. The Ombudsman is doing what is possible. Appointments are made by the Assembly. Hopefully candidates are identified so that the decision can come soon and Deputies be installed.

The General Secretary has too many tasks. A middle function is needed to manage the units and regional offices. I suggest an Administrative Manager to handle administrative requests from the units in Skopje. He/she will *head the Administrative Unit* and report to- and work closely with the Secretary General. Reports from the units about administrative needs and requests can be divided between the Secretary General and the Administrative Manager in a proper way which should also be stated in the Rule Book. Also a separate Regional Office Coordinator is needed. The immediate superior of both suggested positions is the Secretary General. In fact, there needs to be heads in all units. The Ombudsman has in the latest organisational plan established a Coordination Unit. In my opinion, however, the unit has far too many positions. The Experts Unit (Investigations) is special since the Deputies lead the investigative work in the unit while administratively, the Secretary General is in charge of the unit.

An additional Investigator (State Counsellor or Counsellor) seems needed to help out in the handling of police matters. This suggestion is another technical issue that falls within the scope of my assessment.

There is an obvious need to employ at least one Albanian interpreter/translator to the HQ and interpreters to four of the regional offices as soon as possible. The Ombudsman has already taken steps to solve this problem.

The work load for inter alia the archivist will increase with the influx of cases emanating from the regional offices. Even if the regional offices will keep their own records, the HQ will keep track of regional office cases. Thus, an additional archivist may soon be needed.

The over all picture however, is that the *planned* personnel organisation should be down-sized. Among other changes I suggest removing the positions as Counsellor (under State

Counsellor). Further details are presented in an organigram on an *optional* solution to the personnel organisation of the Ombudsman office is attached.

As to the issue whether more complaints could be “solved” with additional efforts to explain the Ombudsman's tasks and soothe disappointed complainants (“for example” by assign a Counsellor especially for this), there is a limit to this kind of service. There will always be a portion of unsatisfied complainants. It is a problem that practically all ombudsman institutions have to deal with.

#### **4. Budget and salaries**

##### General about the budget

The total 2003 budget for the Ombudsman was some 21 million MKD or approx. 345,000 EUR. The Assembly approved a 100 percent increase for the Ombudsman institution or some 42 million MKD, equivalent to approx. 690,000 EUR for 2004. The budget for 2005 is some 718,000 EUR, of which 685,000 EUR are calculated for salaries and rent, leaving 33,000 for equipment, supplies, printing, PR etc. for the head office and six regional offices. The Ombudsman foresees considerable difficulties to cover the costs to operate the office sufficiently. However, direct budget support falls outside this project.

In relation to the constrained Ombudsman budget, it is very much in the hands of the Ministry of Finance. This system is an impediment to the activities of the Ombudsman. Relieving the Government from control of the Ombudsman's budget appears to be at least as urgent as a budget increase. The Ombudsman should forward a special report to the Assembly with a proposal for necessary amendments in the legislation as well as try to attract public attention through media as to this budget control system.

##### More about the budget procedure

The budget procedure means that the Government proposes, the Assembly approves and then again the Ministry of Finance distributes the funds to the Ombudsman (and other state organs).

The Ministry of Finance has explained inter alia: The same rules apply to all beneficiaries of the state budget. Ministry of Finance provides funding for salaries and equipment etc. Donor funds are deposited in the same single treasury account which for accountability reasons is handled by the Ministry of Finance. The Ministry of Finance states that the budget is to the disposal of the beneficiary even though all beneficiaries have to prepare a budget for each year and make annual accounts for their spending. There is an obligation to draw up quarterly plans for the over all spending as well as to submit plans five days in advance for the use of funds for the coming month. If this is not done, no funds are released. There are other Parliamentary organs - the State Audit Office and the State Regulatory Office – who are obliged to follow the same procedure.

The Ministry of Finance sees no risks for contradiction between the Ombudsman's supervision and the budget procedure, “since the budget issue is completely different from the responsibilities towards the Ombudsman”. The budget is handled by one of 16 sectors. The Ministry of Finance agrees that people “on the street” may *perceive* a conflict of interest but adds that it is then an obligation to explain the procedure to the people.

From the Ombudsman's financial officer I learned that monthly reports to the Ministry of Finance are made regarding changes in staff structure, salaries and outstanding liabilities, as well as statistics on salaries etc.. With the same periodicity the Ombudsman reports separately on funds relating to donor grants.

The Parliamentary Committee on the Protection of the Human Rights regards the centralization as useful sometimes but the concept of the Ombudsman's budget within the Ministry of Finance as negative. The Ombudsman should in principal be independent from the government. A problem with corruption, however, makes the Parliamentary Committee cautious to give even parliamentary agencies full independence in relation to budgetary issues. The Committee appears to take the standpoint that the political climate needs to mature before the budget can be handled in the same way as in other European countries. The current procedure however is not perceived as adequate.

My assessment gives at hand that the system obviously creates setbacks to the Ombudsman. Among other things the Ombudsman has difficulties to obtain necessary funding for operational costs. Since the Ombudsman basically has to apply for funds every month, the problems recur with that periodicity. An example given is that the Ombudsman on occasions has not even been able to cover, at short notice, costs for a conference. The system is inefficient and time consuming.

The Ombudsman also supervises authorities under the Ministry of Finance. It is not only a theoretical possibility that the Ombudsman one day will ask the Ministry of Finance to take action in a case under investigation and the next day finds it necessary to ask for money to cover certain costs in the same investigation.

The independence of the Ombudsman, a parliamentary organ, obviously is affected negatively by the current system with the extensive involvement of the Ministry of Finance. The budget should be handled by the Parliament as far as the Ombudsman (and other parliamentary bodies) are concerned. If there is any involvement by governmental agencies it should not involve the *assessment* of the expenditure of the Ombudsman; the assessment should stay within the Parliament. This is to say that the Government should not assess the spending of the Ombudsman. Instead, the Ombudsman should receive the funds as decided by the Assembly and be able to use them over the fiscal year. Then the Ombudsman makes account for its spending annually to the Assembly.

In Sweden for instance, the Parliamentary Ombudsman's budget is prepared and decided by the parliament. Funds are released by 1/12 on a monthly basis by the (Swedish) National Debit Office (NDO). Though this is an authority under the Government tasked i.e. with the management of the state budget, it does *not* have any power to assess the expenditure of the Ombudsman or other parliamentary organs. The NDO acts as an "internal bank" for state agencies, which is the only function of the NDO relevant to the Ombudsman.

Of course the budget is handled in this way due to relevant laws. Changing the system to the benefit of the Ombudsman therefore requires an amendment to these laws. One way of doing this is to propose an amendment of Art. 48 of the Ombudsman law, which will add an exception from the normal budget procedure.

### About salaries

There are some grievances as to the salaries on higher levels in the Ombudsman institution. The Investigators do not forward specific complaints as to their economic situation. Their net salaries are approx. 350 Euro per month. The institution seeks an increase to 500-550 EUR on 1 April 2006. The Deputies explained that their salaries are in level with Supreme Court Justices, i.e. some 650 EUR net/month plus certain benefits, which they regard as insufficient to cover normal living costs. It is not possible for them to have other paid jobs on the side. They point out that there are only four Deputies (ten when the regional offices become functional), and compare it with “for example” judges who number more than 1 000 and have their own association. The Deputies feel that they are in a problematic position in this respect.

The salaries are low in comparisons with developed European democracies. However, the situation does not appear *critical* in the respect where meaningful work and development cannot be achieved without substantial salary increases. Also, an insufficient salary level in state agencies is a general problem. I have no specific recommendations regarding salaries within the scope of this project report.

### **5. The procedures for appointment and dismissal**

The procedure for appointment and removal of the Ombudsman and Deputies has been laid down and described in Art 5, 9 and 10 of the Ombudsman law.

The general opinion among initiated officials is that the Government has or at least can have undue influence over the Assembly since MPs are linked to the Government. It is perceived that they may be put under pressure even to dismiss an Ombudsman for not being professional. It is claimed that such dismissal has happened to court judges (dismissals as a result of “inappropriate” political affiliation). Several sources claim that the dismissal rules need to be much more objective and that amendments are necessary so that it is expressly pointed out what the actual meaning of “incompetent, biased and unconscientiously” (Art. 9:5 of the Law) is and who is to determine if the precondition has been met. Not even the special majority regulations (Art. 5) is perceived by all to be a sufficient guarantee against pressure from the Government. On the other hand, during my assessment the Parliament has forwarded the principal viewpoint that *without* a rule of the discussed *nature* there would be a risk for misuse by an Ombudsman of his/her position.

#### *Recommendations*

An Ombudsman must be non-political, respected by all groups and highly skilled in legal matters. When the main focus of the Ombudsman is human rights matters (and not primarily mal administration matters) the office holder should also be very capable in human rights issues. It is a good idea to recruit candidates among judges who preferably also has a human rights back ground or a jurist scholar (“for example” a professor in human rights).

A way to strengthen the Ombudsman's independence is to have an appointment mechanism that requires the candidate to be supported by a *super* majority of the parliament (“for example”  $\frac{3}{4}$  of voting MPs). To achieve such a majority there should be informal consultation within the relevant Parliamentary Committee/Committees.



Obviously, with the Badinter mechanism the idea of adding a super majority rule would mean that a candidate must be supported by (“for example”)  $\frac{3}{4}$  of all MPs as well as  $\frac{3}{4}$  of the MPs who belong to the non-majority communities, i.e. a “double super majority”.

A candidate can be said to be “widely respected” if he/she is perceived as fair, objective and skilled and is appointed by a super majority. If the removal procedure principally follows the same system it will, all and all, greatly diminish risks for “political dismissals”. Also, it is worth considering to remove the words “incompetent, biased and unconscientiously” from Art 9 of the Ombudsman law. Instead a stricter general clause could be used, “for example” /that he/she “for other reasons obviously no longer can perform his or her duties”. A decision would still rest with the parliamentary “double” (and super) majority.

To soothe critics and decrease negative feelings and pessimism, and with the goal to elevate the confidence in the Ombudsman among people and media, it may be advisable also to discuss the establishment of an *informal Civil Council* or Board tasked with forwarding names of Ombudsman candidates (and/or Deputies) to the relevant Parliamentary Commission (the Appointment Commission). The constitutional aspects of such a solution of course have to be examined, but in practice the Council could forward the names to the Assembly to be used as an additional bank of candidates (formally non-obliging to the Assembly of course). Members of the Council could be, for example, media representatives, private advocates, NGOs and other civil society groups not least in municipalities, and maybe law scholars from universities and senior lawyers from the Constitutional Court (which according to my information is not under Ombudsman supervision). The Council could also be asked to give the reasons why a nominee was put on the list.

## 6. Trust from the people

In situations where the Ombudsman can actually promote peace by mediating between ethnic groups, and by gathering them together before the institution, the importance of trust from the people can hardly be exaggerated.

The issue of peoples trust has a direct connection to what message is passed on to people during public awareness campaigns, etc. (see Chapter 17). Peoples trust is of course also strongly connected to the general performance and impact of the institution. The issue of trust from the *supervised authorities* is discussed in Chapter 12.

While in principal there is consensus regarding the difficulties to obtain a satisfactory cooperation with the respondent authorities, the opinions regarding people’s trust in the Ombudsman varies depending on whom in the Ombudsman institution, or outside, you ask. Opinions seem to range from statements that the Ombudsman is respected by the people regardless of ethnicity, to the position that people on average are more or less indifferent to the Ombudsman and do not even know much about its activities or expect any help from the institution. The realistic conclusion of the “median” opinion among the interviewees would be that that trust in the Ombudsman (institution) *is* the same regardless of ethnicity, but it is not overwhelming. This conclusion is supported by the 2003 Public Opinion Survey on the Ombudsman. The situation calls for increased (direct) transparency by the Ombudsman (use media etc. more) to show people what cases the institution is dealing with. It also calls for further general awareness efforts (balanced information about the institutions mandate and tasks etc.) Several sources stress the importance of getting the regional offices operative so

they can receive complaints and give advice in the regions. This will make the Ombudsman known and build up trust among citizens.

The issue of peoples trust definitely is an internationally recognized ombudsman problem; people are reluctant to believe that an agency with only “persuasive powers” (the power to *criticise* the governments authorities and to *recommend* steps to be taken) can make any substantial difference with regard to the rights and freedoms of the people. In the Macedonian case the situation is clearly aggravated by respondent authorities getting away with non compliance. People notice such disobedience and it impacts negatively on the building up of trust. See further in Chapter 17 on public awareness.

## **7. The Ombudsman law and the internal Ombudsman regulations**

### Amendments in the Ombudsman Law

In the recommendation “box” in Chapter 13 I recommend the Ombudsman to advocate for the obtaining of powers to impose an *administrative fine* in cases of non compliance in relation to the provisions in Art. 24 in the law. It is worth emphasizing that this suggestion concerns the *investigative* instruments of the Ombudsman. Such powers should not be sought as to the *recommendation power* of the Ombudsman.

Also I recommend the eight day dead line rule (Art. 24) to be amended to give respondent authorities more time initially to respond (“for example” 30 days). The reason is that eight days appears very short even in countries where the cooperation with respondents functions smoothly.

Also, in my opinion provisions like the Art 20 in the Ombudsman law should not be made so strictly with relation to the Ombudsman; “The Ombudsman *shall* not initiate [italics mine]...” appears as an unnecessary limitation to the Ombudsman. In my opinion the wording should be “for example” “The Ombudsman *may* decide not to...” This is because situations that may come up in reality are hard to foresee and thus regulations regarding the work of a supervisory agency should not be limited unless necessary for constitutional or other important reasons. The limitation in Art. 20 appears uncalled for. There are several examples of these imposed and probably unnecessary limitations in the Law, “for example” Art. 23 (“...*shall* stop or terminate the procedure...”). It should be “...*may* stop or terminate the procedure...”. I suggest that the Ombudsman decides an amendment in this respect.

In Chapter 13 (under the section “Possible reasons to the non compliance problem”) Art. 24 is discussed in terms of a possible need to define the way the respondent authorities are obliged to submit demanded explanations.

As for the rules governing the appointment and dismissal procedures – see Chapter 5.

### The new Operation Manual (2005)

The Operation Manual gives time limits as to requests for additional information from the complainant: see Art. 15, “cannot be shorter than 8 days or longer than 30 days”. The 8-30 day rule also applies to approvals from violated persons in initiative cases (Art. 18). I can not see the sufficient reason to such limitations to the Ombudsman's activities. My message is; do

not limit Ombudsman's possibilities to carry out his/her tasks if it is not necessary. Is it not sufficient with “for example” “within a period that the Ombudsman decides” or similar?

The proposed amendments should also be checked on the basis of *duplication of texts* from the Ombudsman law. Such parts should, if they are not necessary, be stricken from the Operation Manual to avoid making it unnecessarily complex and to avoid risks for misinterpretations of the law. See “for example” Art 24 in the Operation Manual, which is a duplication of Art. 19 of the Ombudsman law. It is difficult to see the reason for repeating texts in this way.

Also, the Manual should be checked for inconsistencies with the Ombudsman law. To mention one example: Art. 25 in the Manual in the first paragraph second point (about the investigations in spite of complainant being rude to the institution), defining the regulations of Art. 20 of the Ombudsman law, appears to extend the Ombudsman law, i.e. to make an exception that formally speaking is not permitted by the Law. I agree with the stipulation in the Manual in the matter as such, but it appears to call for an amendment in the Ombudsman law. The Manual should be carefully analysed for tendencies to make such “amendments” to the Ombudsman law.

In principal a statute cannot reduce, add or make changes to the content of a superior statute, “for example” a bylaw in relation to a law, unless it is permitted in the superior statute. Another issue is that the inferior statute can define such provisions in the superior statute that have been “left open” for definition. An example is the expression “common interest” in relation to investigation into anonymous complaints in Art. 20 (the first item in paragraph one) of the Ombudsman law has been defined in Art. 25 (first paragraph, the first item) in the Manual, which gives that violations of the rights of “a larger group of citizens, juveniles ...” (etc.) are of common interest.

The assessment and drafting of amendments outlined above can be made internally in the Ombudsman office by the Ombudsman, the Deputies and/or other staff, perhaps with assistance from an international expert.

### *Recommendations*

#### Suggested amendments to the Ombudsman law

- Add the right to impose an administrative fine
- Extension of deadline to give respondents more time to respond (Art. 24)
- Reduce limitations on Ombudsman’s right to use his good judgement (see “for example” the first paragraphs in Art. 20, Art. 21, and Art. 23; replace “shall” with “may”)
- The appointment - and dismissal rules in Art. 5 and 9 (see Chapter 5 above).
- Define in Art. 24 how the bodies set out in Art. 2 of the Law are to submit requested information (for instance “in the manner that the Ombudsman decides”)
- Amend “for example” Art. 26 to grant the Ombudsman power to go to court to enforce the right to summon testimony or subpoena documents

#### The 2005 Operation Manual

- Discuss and amendment of the 8-30 day rule, consider changing to a flexible provision, such as “...within a period that the Ombudsman decides.”
- Check Manual for unnecessary duplication of text from Ombudsman law
- Check Manual (“for example” Art. 25) for inconsistencies in relation to the Ombudsman law

### The drafting process

The drafting of the amendments outlined can be made internally. Preferably the Ombudsman should appoint a working group (an internal Committee) to discuss and make drafts to the amendments that the Committee finds necessary. It might be beneficial to assign an expert to assist in the work, at least in the drafting of amendments to laws.

## **8. Case handling and reporting**

### Complaints intake and registration

Incoming written complaints, incl. those made by e-mail and all other incoming mail is recorded. Visits by complainants (very frequent) are recorded manually but in a way that allows statistical check ups. All incoming mail is recorded in the Lotus system.

A State Counsellor makes the initial “selection” of cases. He or she may *direct* an applicant to another authority if convinced that the issue is outside the Ombudsman's jurisdiction. This is to be considered as a service measure and *not a rejection*. It is important to remember that under no circumstances may an Investigator (without due delegation) act in a way that may be misinterpreted as rejecting a complaint; only the authorised officer (in principle the Ombudsman) may reject a case. Information given to a person who asks for guidance may result in the person refraining from filing a complaint (for instance because he/she realises that a complaint would be outside the Ombudsman's jurisdiction). The practice is efficient and used “for example” by staff of the Swedish Parliamentary Ombudsman too.

Complaints are stamped, given a case number, and registered under the complainants name and under the respective area of responsibility (AoR), “for example” police procedures. Cross references are not really possible on the Investigator level since State Counsellors only have access in old files to the names of complainants. If it is a common name cross references are practically impossible. To manage such checks the Counsellors ask a Deputy for information. The system is laid down by internal directives. It is not a matter of technical limitations.

After registration the complaint is distributed to one of the Deputies, who assesses the case and hands it to a State Counsellor. The latter carries out the investigation under the Deputy. The State Counsellor checks that all documentation is there. If not, he/she contacts the complainant. The complainant is required to give certain information about “for example” an impugned decision (case number, day of decision etc.). Lack of such information is not a cause for rejection in itself. The main point is that files (etc.) of a respondent authority can be identified.

According to the information I received (during a study visit to Idrizovo State Prison) prisoners and detainees may complain to the Ombudsman without interference.

### Investigation

If the Ombudsman (or by delegation, the concerned Deputy) decides to launch an investigation, the respondent authority will be contacted by mail or phone. If there is no response the respondent authority will be reminded in a second letter, where the Ombudsman

(when applicable) also lists other unsettled cases of the respondent. If the investigating State Counsellor encounters non compliance from the respondent authority then he or she will turn to the team leader, i.e. the Deputy, who will either contact the state agency in question or – if a contact needs to be taken with a minister or other high official – leave to the Ombudsman take the necessary steps.

The Ombudsman may direct the respondent on what areas to cover in the response. Sometimes Ombudsman Officers will visit the authority, and may then also look into and recommend how to improve the routines and warning methods of the authority under investigation. The Ombudsman Officers can also call the authority by telephone to obtain information and may borrow material, such as files from the respondent. The authorities do know about the Ombudsman after the seven years that the Ombudsman Office has been operational, but they do not comply sufficiently with the Ombudsman's requests (see Chapter 13). The authority's response is sometimes sent to the complainant, but not always.

If a complainant wants his details to be kept secret the Ombudsman tries as far as possible to respect this. The Ombudsman's obligation is laid down in Art. 18 in the Ombudsman law. To keep the identity of the complainant secret may of course be difficult since inquiries often compel the Ombudsman to reveal relevant information to the respondent. In such cases an *initiative investigation* can be the solution.

#### The Deputies role and the distribution of their work etc.

Under the Ombudsman the Deputies lead the investigations and carry out other tasks in relation to their area of responsibility. The Deputies sign all outgoing mail, including letters with "for example" request for documents or files of an authority. The reason, it has been said, is that it is advantageous if the Deputy knows what is going on in the cases at all times, even if he/she does not read the letters in all details. The Deputies refer to the principle of four eyes seeing more than two and also observe that there must be some control over the Counsellors work.

The matters are administratively divided in different area of responsibilities. The different teams principally deal with separate area of responsibilities, even if exchanges occur. Also, some areas are shared by several Deputies ("for example" police matters). The basic rule says that the four deputies receive 25 % of all incoming cases each. From that some exceptions are made according to the complexity etc. of cases. In practice the Deputies have different volumes/quantities of work, but there is a tolerance to that difference so the principal distribution principle holds and variations are remedied by extra resources: a Deputy who has gotten an extraordinary work load may be given an additional State Counsellor.

The deputies have a visitor's day system, whereby one Deputy receives visitors on Mondays, another on Tuesdays and so on. If a complainant wishes to meet a certain Deputy outside that Deputy's visitor's day then that person may be directed to some other Deputy; so nobody is rejected from seeing a Deputy. The Deputies take "each other" visitors/matters on an informal collegial basis.

*As to competencies between Deputies in Skopje and Deputies in the regional offices see Chapter 9.*

At the time of the assessment matters regarding *police procedures* were divided between three Deputies. The area of responsibility is a delicate one. In case the workload becomes too heavy for some of the deputies compared to other deputies, the concerned Deputy will (as said above) be compensated with an additional Counsellor. That way the situation is kept fair and backlogs of cases are prevented from building up.

The Ombudsman will normally not start an investigation into a case that has been *closed by the respondent authority*. If for instance court case has been disposed by the court in question after a long delay, then normally the Ombudsman would not take action in the case. This routine can be questioned, see recommendations below.

The assessments indicates that the Ombudsman sometimes feels compelled to take fast action in cases which can be tried by a court so that the complainant does not fail on the correct terms of appeal. This routine may be problematic in relation to resources and efficiency.

### Ombudsman letters and reports

First I would like to point out that according to my observations the quality of both outgoing letters and annual reports of the Ombudsman is high. Below remarks therefore should be seen as suggestions from an “outsider” on how to possibly improve the quality. I am sure that the Ombudsman and his staff can find additional ways to raise both quality and efficiency in these and other matters.

As stated in Chapter 13 certain sources have questioned the objectivity of some of the Ombudsman's inquiries and reports, stating that it sometimes appears as the Ombudsman has decided that a breach is at hand even before the respondent authority has submitted any information or statements.

#### *Letters*

A few examined letters from the Ombudsman Office to respondent parties indicate that there is a risk that inquiries of the Ombudsman sometimes may be considered as not fully objective.

For instance: In letter No. 07-909/03 of August 14, 2003 the Ombudsman expresses his opinion regarding a case of police action in the village Sopot (see also p. 47 in 2003 Annual Report) where the Ministry of Interior is asked to compensate damage or to evaluate the damages, before it had been established what was actually done in this respect. Also, it appears questionable that in the letter the Ombudsman appears to have already established that a crime or disciplinary offence had been committed by officials, though this was not yet established (by the prosecutor general or a disciplinary board). In another letter to the Ministry of Interior in the Sopot case (NP No 07-909/03 of June 3, 2003) the Ombudsman is requiring facts to be added to information that the Ombudsman had obtained in media and during inspections. The letter includes open neutral questions (correct) but also conclusions regarding officials; “The Ombudsman requests to be informed whether you have undertaken measures /.../ for an adequate criminal or penal liability against the members who overstepped their authorisations”. Even if many of the allegations of violation by police etc. were later substantiated, the letter appears overly influenced by information not yet commented by the Ministry of Interior.

#### *Reports*

After the implementation of the new Ombudsman law the Ombudsman's Annual Reports are not presented in writing only but also orally in a parliamentary session. The annual reports are also distributed to press and NGOs etc. A press conference is held. Sometimes the

Ombudsman Office also uses commercial media. The reports are very useful and informative. Representatives of the international community have expressed that they find the documentation of the Ombudsman very important. For instance the UNICEF collects data from the Ombudsman's annual reports. Therefore it is vital that the Ombudsman's reports are accurate and relevant.

The Parliamentary Committee for the Protection of Human Rights finds the reports of good quality and well prepared. However they find that the case reports are not specific enough, not even in the oral presentations by the Ombudsman. The Committee mentions for instance that no suggestion has been made by the Ombudsman to dismiss officials though such suggestions at times have appeared justified. The Committee asks for *Special reports* in important cases from the Ombudsman and declares that such reports would be beneficial to the Committee which then could take up an issue as an Ombudsman's initiative.

In Chapter 7 of the 2003 Annual Report there are examples of 29 cases processed. They are overviews and do not go into detail. The headline of the Chapter reads “Examples from the Practice” and it is not clear whether the examples were selected because they represent unusually successful cases, typical or high profile decisions, “precedent cases” of the Ombudsman, or if they are of special importance for other reasons.

Another issue raised is whether the Ombudsman should issue one Annual Report or two separate, of which one is to the Assembly and one is for medial and citizen use etc. The Annual Reports are written in a comprehensible and not overly complex way and should serve the purposes for both state organs, NGOs, interested citizens and others. The extra efforts needed to issue two separate reports do not appear motivated. Also two reports entail some risks for confusion. It is another issue that distributing *excerpts* from the Annual Report may be beneficial. The Ombudsman's current method is to issue an Annual Report from which then also is extracted an abridge version. The abridge version is basically an excerpt of the “full” Annual Report (with some exceptions). There is no need to change the system of making excerpts.

#### *Objectivity of letters and reports*

The question of accountability should always be left “open” until facts from “both sides” are established and a conclusion can be made. This will underline and reflect the Ombudsman's objectivity. Even in cases where the Complainant has attached what appears to be fully relevant and valid documentation, the conclusions have to wait until facts are established. The Ombudsman could issue internal directives and examples of “investigative” letters for the Investigators’ use, all in order to avoid situations where requests to respondent authorities (for facts) may be regarded as biased.

In countries where urgent action by an independent oversight agency is especially important due to more frequent and/or serious human rights encroachment it may appear justified waiving, at least to some degree, the Ombudsman's “burden of proof”, “for example” But this entails a risk of losing the authorities’ confidence in the Ombudsman and thus the ability to act professionally in investigations and reporting. The Ombudsman must operate professionally and make sure that all its reports are objective and meet expected high legal qualities. But this does not mean that the refusal by a state agency to answer questions is an irrelevant issue.

*When encountering non compliance (see also Chapter 12-13)*

If the authority does not answer even after a reminding letter from the Ombudsman, and there is no reason to continue repeating the request to the non compliant authority, the Ombudsman is then supposed to turn to the Government and give it proper time to respond, (see Art. 25 of the Ombudsman law). If that does not lead to a satisfactory reaction then the Ombudsman should issue a *special report* to the Parliamentary Committee for the Protection of the Human Rights. The special report should describe the situation and petition for specified action by the Assembly.

The tools of the Ombudsman are basically limited to issuing reports to the state organs or media. These are certainly crucial tools but they could be supplemented by instruments that have a higher degree of direct impact, see recommendations in Chapter 13.

*If a decision can be tried by a court etc.*

It is not principally the Ombudsman's task to see to it that complainants comply with legal appeal terms etc. If a case can be tried by court the Ombudsman may of course refer the case/direct the complainant to court proceedings, but should perhaps refrain from taking further action to assist the complainant. That way the Ombudsman can use the limited resources on cases where only the Ombudsman can take action.

*Cases closed by the respondent*

The Ombudsman's policy of not proceeding on cases closed by the respondent appears questionable; there may be legal, moral and pedagogical reasons to uphold the Ombudsman's mandate in such cases so that an erring authority cannot go free from justified criticism by simply closing the case. The Ombudsman Law does not exclude continued investigation in such cases. Art. 20 concerning "less important" cases "which would not be able to yield adequate results even after the end of the investigation" is open for interpretation, but establishing an error may have important future results even if the complainant's rights in the case cannot be restored.

*Annual reports*

Keep the system of publishing one Annual Report with excerpts (abridged versions). In the future different excerpts can be issued ("for example" an excerpt regarding police matters including case reports relating to police, an excerpt covering children's rights incl. relevant case reports etc.). Those way interested authorities, organisations and individuals, can obtain an excerpt covering "their" specific area.

The Annual Report, *case reports* should be more elaborate and the principles for selection of cases assessed/discussed. Respondent authorities are expected to use the Annual Reports as important sources on interpretation of laws etc. The Ombudsman could publish cases that refer to the non compliance problem, cases that are principally important ("high profile" cases, "precedent" cases, i.e. that entails a recommendation on how to interpret for instance a provision in a law) and cases that reflect the Ombudsman's jurisdiction and policies.



*A few technical issues*

In the first draft report I recommended the Ombudsman office to work out a system with area of responsibility -codes so that all cases can be registered under a certain area code (“for example” code 01 = judiciary; 02 = prosecutors; 03 = police procedures). In comments to my draft report the Ombudsman has notified me that the office had already worked out codes. When fully developed they may simplify among other things the statistical search possibilities in the computerized system.

As to case handling activities in general I recommend, for efficiency reasons, delegating to the Investigators to carry out more of the different investigative steps without prior consent from their superiors in each individual case. For instance the signing of outgoing mail, such as requests to respondents for information, could be made by State Counsellors in cases where the “non compliance problem” does not require the Ombudsman’s or a Deputy’s signature.

## **9. Competencies between the head office and the regional offices in some aspects**

In Skopje the Deputies are specialists, with certain area of responsibilities. In the regions the Deputies of course need to be generalists, to handle all sorts of complaints. The question is how to define the area of responsibility between the specialists in the HQ and the generalists in the regional offices. There are some options.

One model presented to me was to let the Deputies in Skopje head the regional offices in relation to each such Deputy’s speciality, i.e. that each deputy (in Skopje) would be responsible for all regions in their respective speciality. This means that there would be no room for regional Deputies, since the Skopje Deputies together of course have all area of responsibilities. In addition, one Skopje Deputy or the Secretary General would be the *administrative* chief for the six regional offices. The State Counsellor in each regional office would then function as the Regional Office Manager. This model is out of the question in reality. – An option would be to have two levels, “Senior Deputies” in Skopje and (merely) Deputies in the regional offices. The Senior Deputies would be in charge in the different area of responsibilities, but administratively the Regional Office Deputies would manage the regional offices under the Ombudsman and the Secretary General. The model is probably not possible to establish in practice.

Another way of handling the situation is simply to “let the complainants decide” which office will, not only register and assess, but also investigate the case. If the complaint is lodged in Skopje then the HQ will have full responsibility over the case, no matter what the complaint concerns, what authority or if the complainant comes from one of the “Ombudsman regions” or not, *unless* the Ombudsman decides otherwise. If on the other hand the complaint is made to a regional office the case would be registered, assessed and investigated in that regional office, of course after proscribed coordination with Ombudsman (same coordination procedure as in the HQ), *unless* the Ombudsman decides otherwise. The routine could also involve directing from the regional offices to the HQ cases that are of:

- Particular complexity
- Principal importance (“precedent” cases)
- National interest (cases that attracts national mass medial attention)
- More?

If there is to be a specific Children's Rights Deputy, then cases belonging to that area of responsibility probably needs to be sent to the Children's Rights Deputy.

When in doubt the Ombudsman should decide which cases belong to which area of responsibility. The Ombudsman's power to make exceptions from the main rules above, "for example" to decide that a case from Skopje should be handled by a regional office or vice versa, may be delegated. If the Ombudsman would consider such delegation it should preferably be made to the Senior Deputy (the acting Ombudsman in the Ombudsman's absence) or to the General Secretary.

After my draft report the Ombudsman decided and adopted the following system (stated in Art. 17 in the Ombudsman Operation Manual of 14 February 2005). The basic rule is that the *complainants domicile* decides where a case *will* be handled. If the complainant for instance lives in Tetovo then the regional office in Tetovo will handle the case. If the Tetovo citizen files the complaint in Skopje, it will be forwarded to the regional office in Tetovo. According to the text this rule is mandatory. In addition there is a rule stating that the respondents' location (its seat) can also be decisive. This means that a complaint against an authority in "for example" Bitola *can* be directed to the regional office in Bitola. This rule is facultative (optional). The rule is completed with provisions on the handling of cases regarding children's rights, non discrimination issues and matters regarding equitable representation. It is obligatory that such cases are processed in Skopje. This rule, based on the domicile of the complainant and the seat of the authority, together with the exceptions for special matters, appears sufficient. For clarity it could be added to the article in the Manual that the Ombudsman's can make exceptions from the rules.

*Remarks and recommendations*

The Ombudsman's own solution (in Art. 17 of the Ombudsman Operation Manual 2005) to the specialist-generalist issue appears sufficient. The important thing is that there is a written rule on a proper and reasonable solution to this latent or presumptive competence dilemma, so that the dilemma will not occur, or at least not hamper the work of the Ombudsman.

The provision should explicitly confirm the Ombudsman's right to make exceptions from the rule and decide in border line- or otherwise doubtful cases.

## **10. A Children's rights Deputy?**

As to children's rights matters, the interviews have indicated that the cooperation, not least with the Ministry of Education, is very poor. The Ombudsman has on several occasions tried to set up meetings with the responsible minister to inspire him to improve conditions for children. So far no improvement has been seen. According to initiated information one of the reasons for the poor cooperation may actually be lack of knowledge and skills on children's rights within the Ministry.

A separate children's rights function is not yet established in practice. Such a function is desired not only by the Deputy in whose area of responsibility those matters – among other matters – now fall. Many people already see her as the Children's Rights Ombudsman. The UNICEF advocates a children's rights function. UNICEF sees a risk that matters regarding children's rights will not be solid enough over time without a specialized children's rights function.

UNICEF also stated that if the Ombudsman cannot be strengthened with a separate Deputy for children's rights then there should be established a completely *separate* Children's Rights Ombudsman in. UNICEF has not, however, decided if it would support a parliamentary or governmental (separate) Children's Rights Ombudsman.

The idea of establishing a special children's rights function is of course supported by the actual situation for the children in the country (lack of clothes, shelter, health care, education, and the situation with begging etc.).

The total *number of cases* regarding children's rights specifically is 50-70 per annum. This low number seems to contradict the claimed need for a specialist function and instead encourages keeping the current system, with children's rights matters as one of several tasks, within the same area of responsibility. On the other hand, it is natural that children do not complain by themselves or, at least, that only a low number of children actually contact the Ombudsman. Their rights have to be safeguarded by other means, "for example" by Ombudsman initiatives. It may also be more time consuming to monitor children's rights. UNICEF claims that the low number may well be the result of the Ombudsman's lack of (sufficient) activity regarding children's rights. UNICEF encourages initiative investigations by the Ombudsman into children's rights matters.

However, like with equitable representation and non discrimination it may cause some confusion and blur the structure of the Ombudsman office if authority is "focused to another position" than the Ombudsman. On the other hand, children's rights matters are probably not as politically sensitive and volatile as equitable representation and non discrimination.

The state (so far) has *one* Ombudsman institution, and it is a parliamentary one with its base in the constitution. In the formal sense that is the strongest positioned ombudsman institution there is. Specialized ombudsmen could of course be established separately (on a parliamentary or governmental level). But that too involves risks for confusion among people. It may actually be too early for that.

The need to pay special attention to children's rights is not really under debate. The Ombudsman has decided to handle all children's rights matters under the area of responsibility Social Security and Safety where it is given special attention. Also, according to Art. 17 of the 2005 Operation Manual, all complaints regarding children's rights are handled centrally, in Skopje.

My (somewhat cautious) recommendation initially was to *consider* establishing a Children's Rights Deputy. I maintain that recommendation. However, for the time being, I can support the Ombudsman's solution. i.e. to handle children's rights issues together with other types of matters, but centrally. This principally means that the "old" solution is upheld and that the Deputy who has the area of responsibility of Social Security and Safety can be regarded as a Children's Rights Deputy.

This special Deputy should be proactive in the work to raise initiative investigations into children's rights matters in order to focus investigations on relevant issues. As to the specialist – generalist problem I did (in the first draft report) recommend establishing a simple and clear rule in the Ombudsman Operation Manual so that all cases on children's rights would be handled in Skopje, regardless of where complaints are submitted etc. Art. 17 of the 2005 Operation Manual now includes such a stipulation. My remaining recommendation is to add to the Article that the Ombudsman can make exceptions from the rule.

## 11. Gender issues

There are approx. 50 % women in the country. However, women are not represented in reflection of that in the decision making bodies and they are not adequately represented in politics. The information and examples I have been given also indicates that the situation for women is quite unacceptable in other areas including the labour market.

“for example” in Stip, many women work in the approximately 80 textile industries under illegal and unfavourable contracts and bad working conditions (long days etc.).The economic situation and unemployment problems bring along reluctance to report problems to “for example” the media or even to the Ombudsman. According to the information the unions are not paying sufficient attention to the problem. Another problem area is domestic violence.

Among others, the NGO Macedonian Union of Women’s Organisations (UWOM) advocates a separate Gender Ombudsman. UWOM claims that more women who feel they have been discriminated would be motivated to contact a separate Gender Ombudsman. A separate Gender Ombudsman was also proposed in an earlier draft law on gender issues. My view is that a separate Ombudsman for these issues will, at least in the beginning, to some degree confuse the people about the Ombudsman’s mandate even if it probably would be beneficial to the building up of experience and competence in these matters.

Gender issues are specific and may well be suited for special treatment, but the resources of the Ombudsman Office have to be considered. It is not possible to establish separate functions for all areas. If the proposed law on gender issues is adopted by the Parliament a separate Gender Ombudsman will be instated. I would recommend the establishment at least to be postponed until a time when the Ombudsman have had a chance to operate under the amended Ombudsman law and its modified structure. That way there will be an opportunity to observe and evaluate the Ombudsman’s handling of gender issues.

Remarks and recommendations on gender issues:

Art 8 of the 2005 Operation Manual and Art. 11 of the 2005 Rulebook now points out that the Ombudsman will deal with *non discrimination*, (which includes gender rights), in the area of responsibility of Citizens Freedoms and Rights and Minorities Rights. Furthermore, Art. 17 of the Operation Manual now stipulate that non discrimination matters are to be handled centrally in Skopje (the same way as children’s rights matters). As to gender issues, my remaining recommendation is to add to the Article that the Ombudsman can make exceptions from the rule. As to non discrimination *in general* – see the last recommendations under Chapter 14.

## 12. Some issues regarding impact

### General about the impact

Impact – the question if the institution “can make a difference”- is a hard measured quality matter.

Of course the *quantity* is not unimportant (number of cases yearly etc.) but at least one should not concentrate too much on the number of rejected cases. All ombudsmen institutions have a “complaints to admissibility surplus”, i.e. a number of complaints that fall outside the jurisdiction

or have to be rejected for other reasons. The question is why a supervisory organ has such a surplus and whether it is disturbing or not.

The assessment clearly indicates that the Ombudsman's activities have considerable but improvable impact in the crucial task of safeguarding the rights and freedoms of individuals. This is not contradicted by the various obstacles that the Ombudsman encounters and the restraints he has to operate under. But of course there are critical voices both internally and externally as to the activities and present impact of the Ombudsman. It has been pointed out that people perceive that the institution lacks of power and that “nobody trembles when the Ombudsman calls, but when a minister calls, then everybody trembles”. This issue of the impact of the Ombudsman does not appear to be a question of ethnical background, but of general performance.

### How can the Ombudsman achieve greater impact?

#### *Special reports to the parliament*

It is a common opinion among the interviewees that the Ombudsman should not only submit annual reports but also, as said, *special reports* about non-compliance. In addition, ultimately the Ombudsman may call for parliamentary action even to remove responsible officials in grave cases, where it is for the Assembly to decide in such cases. According to the Assembly no such requests have been forwarded by the Ombudsman. The Assembly has expressed that it would be easier for it (through the relevant Committee) to take steps to dismiss high officials if the initiative came from the Ombudsman, since no individual parliamentarian could then be “punished”. The Assembly may also summon officials to meetings in the Commission. See also what is said about reporting to media in Chapter 17.

### Should the Ombudsman have quasi-judicial (executive) powers?

The result of my assessment motivates a brief discussion on the issue of giving the Ombudsman institution quasi-judicial powers, i.e. powers to enforce its decisions.

For instance: power to order the release of detainees who have been held (manifestly) without reasons or for a period exceeding the maximum penalty for the alleged crime.

It is widely accepted that an Ombudsman institution (or similar supervisory organ) should in principle *not* have judicial powers. Such powers are contradictory to the persuasive function of an Ombudsman institution and risk (among other things) to interfere with the independence of the judiciary. The recommendations and other decisions of an ombudsman institution have impact in spite of the lack of implementing powers, namely through the consistent emphasising of the obligation to respect fundamental rights and freedoms, laws and other statutes, the professional and fair investigation into complaints and the quality of reports as well as the use of mass media.

It is another matter that an Ombudsman institution can have certain *investigatory* powers, basically meaning instruments to enforce its legal right to obtain information from authorities and officials under the Ombudsman's jurisdiction.

The Police Ombudsman of Northern Ireland (PONI) has been mentioned as a model by more than one of the interviewed officials. It should therefore be pointed out that the PONI mandate does *not* include any powers to enforce its recommendations. The impact of recommendations depends on the possibility and willingness in practice to use the existing powers. Another issue is the fact that

PONI has power to arrest police officers if they do not show up when summoned for interrogation. In practice PONI has used this power only on a few occasions over the past three years (according to the PONI Information Directorate).

The Swedish Parliamentary Ombudsman has power to impose an administrative fine on authorities which do not comply with requests for documents etc. The instrument has been used on very few occasions, and in those cases it has been enough to remind the authority in question of the possibility of imposing the fine.

Considering the problems that the Macedonian Ombudsman faces with regard to compliance, it can be recommended to the Ombudsman to push for powers to impose an administrative fine on authorities that refuse to submit necessary information. Such a provision could be worked into Art. 24 in the Ombudsman law. In addition to the “reporting and media instruments” the power to impose an administrative fine could be a well needed extra incitement for respondent authorities to comply. The power should relate to the *investigations* only, not to recommendations (due to the above mentioned risks with quasi-judicial power). Furthermore the Ombudsman has suggested proposing amendments to the Law on Labour Relations and the Law on State Administration to achieve a situation where non-collaboration with the Ombudsman is treated as a breach leading to disciplinary action. That would add to the strengthening of the Ombudsman's “investigatory weapons”. Therefore I support the suggestion, but only as long as it does not take aim on the Ombudsman's *final* decisions (recommendations). A third instrument would be to grant the Ombudsman the right to litigate (go to court) to enforce his/her right to summon or subpoena testimony or documents. The three instruments (administrative fine, making non collaboration in the course of investigations a disciplinary offence, and right to litigate for evidence etc.) do not exclude each other.

It should also be observed that the Ombudsman by its law has the power to postpone the implementation of decisions taken by state organs (Art. 33). It is quite unusual that an Ombudsman institution has such powers. Not even the Swedish Parliamentary Ombudsman has it (but instead has another extraordinary instrument to its disposal; the power to prosecute officials). The extraordinary character of these powers has been pointed out also by Mr. Trawick in his assessment report (*Review and Recommendations*, p. 9). However, the Ombudsman has utilized these powers on a few occasions only, and in those cases the governmental institutions in question have in practice often disregarded the Ombudsman's decision.

*Recommendations – see after the following chapter.*

### **13. Particularly about non-compliance**

#### The non compliance problem

When the Ombudsman personnel encounter non compliance they routinely follow the procedure laid down in the Ombudsman law (see. Art. 25 and 34), which ultimately entails the possibility of action by the Assembly on the basis of an Ombudsman request in a special report. The assessment indicates that the “Parliamentary instrument” has not been used by the Ombudsman as it should have.

The latest Annual Report (2003) is very clear as to the setbacks caused by late action of the state bodies (p. 13 and 28).

The Ombudsman Annual Report even gives a “respect rate” of 35.27 % (p. 13) where interventions (proposals, suggestions and recommendations) were not respected. This is of course a dreadfully low percentage. When non compliance related to *requests for information* is added, the problem becomes even more observable.

Within the Ombudsman office the opinions regarding the magnitude of the current non compliance problem varies. According to some kind of “median” opinion in the Ombudsman office the situation today remains that responses from supervised authorities are not submitted, not submitted in time or not in a satisfactory manner, and that the government does not give the Ombudsman's requests and recommendations sufficient attention. One of several examples from one of the Deputies:

We try to contact the authorities. We visit them but they are not always available. If we make an appointment they show up, but actually it is hard to get an appointment to begin with, at least with responsible or otherwise relevant officers. When we get meetings with officers concerned they often give us empty promises.

Information obtained from the Parliamentary Committee for the Protection of Human Rights gave the same result. The Committee added that the cause of the Ombudsman's cooperation problems are to be found mainly outside the Ombudsman institution, i.e. within the authorities supervised.

On a brighter note the Ombudsman officers and other persons interviewed principally agree that the situation has somehow improved after the promulgation of the new Ombudsman law. One example of an *improvement* is that the courts comply better now when they have an *explicit legal obligation* to cooperate with the Ombudsman at the same time as it is clearly expressed in the law that the Ombudsman cannot unduly infringe upon the independence of the judiciary (Art 12 in the Ombudsman law).

However, it is clear that problems persist and that the compliance situation is far from satisfactory in comparison with a “normal European standard”.

I admit that the expression “normal European standard” is vague. On basis of knowledge of the function of several European ombudsman institutions, the expression simply means that the number of incidents of refusal by supervised authorities to submit information to the Ombudsman, or take other action as proscribed in law, represent exceptions to the rule.

#### Possible reasons to the non compliance problem

The country is not used to supervisory organs like the Ombudsman institution. The political situation is very specific and makes it difficult for the Ombudsman to operate properly. It has even been suggested by interviewed officials that the fact that this used to be a closed society is the *main* reason to the non-responsiveness. Personal contacts are important in the process of handling cases, unfortunately one might add, since it should be sufficient that there is a law about it. So to some extent the problem appears also to be “built into the system” in a way which can probably be addressed only marginally in this OSCE project (and then only in the Ombudsman's educational role).

An example: The representative of the Public Prosecutors office in Skopje explained that cases initiated by the Ombudsman (when the Ombudsman wants prosecution) are treated as any other

case, i.e. the Public Prosecutor investigates, decides and reports the outcome to Ombudsman including reasons for the decision. So far the Public Prosecutors views do not raise too many questions. When it comes to Ombudsman investigations the Public Prosecutor finds it problematic to send files on request “since there is no law or other provision that actually obliges PP to *send* files.” Public Prosecutor prefers that the Ombudsman *visits* the Public Prosecutors Office to take part of the files. The Public Prosecutor will not send files in sensitive matters. Public Prosecutor also remarks that a “too frequent asking for files” would be time consuming and constitute a risk for interference with Public Prosecutors tasks. Furthermore the Public Prosecutor says that it is already under supervision from the Prosecutor General (who makes two routine inspections annually).

The Ombudsman law (Art 24) is imprecise in this respect; does the obligation to “submit the demanded explanations, information and evidence” include an obligation to *send* the requested information and evidence “for example” by mail? It should not be taken for granted that for instance the relatively relaxed Swedish system of sending dossiers etc. by “for example” registered mail can be used here. The law may need clarification on this point; with the still existent uncooperative attitude there is a clear risk that authorities may use any legal imprecision as a possibility to withhold sensitive information without sanction. Also, the sanction available to the Ombudsman is to report in accordance with Art 25. See also Art 27.

It has been said by several Ombudsman officials that the problems do not emanate so much from unwillingness from officials in *respondent* authorities, that they often actually wish to cooperate, but instead the problems has been characterized as *political* unwillingness, prestige and lack of respect for, or interest in, the Ombudsman on the governmental “*leader-level*”. Furthermore it should not be forgotten that the supervised authorities also have sparse resources which may affect the level of compliance to Ombudsman requests. In addition, I wish to add that in some respects the Ombudsman institution’s own performance adds to the difficulties, see Chapters 8 (under “Ombudsman letters and reports) and 18.

There seems to be a substantial difference between different areas of responsibilities when it comes to the chances to carry out investigations. In “non-politicized” areas investigations proceed sufficiently. An example is consumers’ rights where most Ombudsman contacts with respondents are made by phone and investigations proceed smoothly. It is in areas that touch upon politically sensitive matters where the Ombudsman encounters difficulties in the investigation into complaints.

#### Steps to improve the situation in general

There is a Governmental contact point for the Ombudsman: the Secretary General of the Government (SG). When the Ombudsman does not receive satisfactory response from “for example” the Ministry of Interior contact should be taken with the SG, who will address the responsible Minister. It is agreed that all contacts should be made this way. This Agreement is not stated in law but has been established to simplify contacts. The Prime Minister, the SG and the (former) Ombudsman were part of this agreement.

The SG asks the respective Ministry to handle the Ombudsman's request. A letter regarding the Ombudsman's request will be signed by SG on the day of reception and forwarded to the Ministry in question the following day. Responses from the Ministries are to be sent from the Ministry to the Ombudsman and the SG simultaneously.

The SG explains that the Government is aware of the Ombudsman's right to visit prisons and detention centres. As to detainees, however, the SG underlines that there might be a risk of abuse of the rights of the Ombudsman (an example mentioned is that an employee would smuggle in a mobile phone) and that this concern calls for guarantees that concerned



Ombudsman officers have received sufficient training. SG also declared that the Ombudsman's requests and recommendations sometimes were found to be presumptuous and in breach of the *audit altera pars* principle. And there are factors suggesting that enhancing the case handling performance of the Ombudsman may also contribute to a better relationship with the supervised authorities (see Chapter 8).

The contact point system appears practical but it has to be for the Ombudsman to decide whether to take part in the Agreement or not. It must not be allowed to jeopardize the independence of the Ombudsman by making Ombudsman dependent of the good will of the Government: a *Parliamentary* Ombudsman is the eyes and ears of the peoples' representation, i.e. the watchdog over the Government's agencies. It would help if the Government (PM) could issue a written order down the line, stressing the importance of cooperation with the Ombudsman institution as stipulated in the Ombudsman law. It may appear strange to have to order state officials to follow a law, but the realities in each situation have to be respected. The SG does not rule out this option but does not seem overwhelmed by the concept either. What the Ombudsman can do is to propose to the Government and to the Parliament the issuing of such an order.

#### Especially about cooperation with the Ministry of Interior

Cooperation with the Ministry of Interior depends on what issues are in question. Sufficient responses are received in citizenship matters and similar, i.e. that the Ombudsman has a fairly good cooperation regarding the administrative issues of the police. But when it comes to police procedures (operational matters) such as police intervention and allegations of abuse, the cooperation is inadequate. The usual response from police in such matters is that the force used was proportionate, etc. The Ombudsman has sent some cases to the Public Prosecutors Office and has had some success with those. The Ombudsman can also ask for disciplinary measures to be taken against wrongdoing officers. Deputies and investigators of the Ombudsman institution find the internal investigations function in the Ministry of Interior (Police Standard Unit) too biased towards their own even though the cooperation has improved some. Police Standard Unit is reluctant to share information and follow Ombudsman recommendations.

From the Ombudsman's point of view it seems like the Police Standard Unit completes investigations and only then contacts the Ombudsman to explain that there "was nothing wrong" without presenting grounds. What would obviously be required is a statement with reasoning, evidence and also forth. The Minister of Interior disregards invitations from the Ombudsman to participate in meetings.

#### One of the Deputies gives a narrative on cooperation difficulties:

The communication with the Ministry of Interior is improving but communication with ministers does not function at all. Part of the problem is the very strict hierarchy within the Minister of Interior. When we call the police for information we will not obtain names of responsible officers. Normally they will not say anything without calling their supervisor. It is very difficult "for example" to obtain names of detainees etc. from the police. Once we visited a police station which had mixed ethnic staff to see how they worked together. No notice was given in advance about this visit. We produced the Ombudsman IDs but the police officer in charge did not state the names of the officers to us. Nor did the police know what the Ombudsman was. The police officers asked a superior if they could give out their names.

There is a contact point within the Ministry of Interior to simplify communications between police (through the Ministry of Interior) and the Ombudsman. The Ombudsman may still be

seen more as an adversary than an ally to the police, but from facing almost complete confrontation in the beginning, the assessment indicates that the Ombudsman's possibilities to obtain information from the Ministry of Interior has improved some. This appears to be the result of the new Ombudsman law, the fact that a contact point has been established and that both people and officials are better informed about Ombudsman competences. The activities of the *MINOP* meetings also seem to contribute.

MINOP is an initiative by the UNHCHR. The MINOP is an advisory Committee for discussions on police procedures where representatives of the Ombudsman, the Ministry of Interior, OSCE, Proxima and certain NGOs discuss not resolved cases.

The Ministry of Interior is aware of the Ombudsman's jurisdiction and Ombudsman's rights to access documents and visit detentions centres. The Ministry of Interior also knew about the obligation of the internal investigations function (Police Standard Unit) to provide the Ombudsman with any file or piece of information. The Ministry of Interior saw no real problems with responses to the Ombudsman and claimed that responses have always been effectuated, at least in citizenship matters. A problem that the Ministry of Interior pointed out was that the Ombudsman's deadlines (for response) are too short and cannot always be met since investigations take time. The Ministry of Interior stated that short deadlines will *not* speed up the process and explained that it “sometimes” asks for extended deadlines.

Stipulations regarding deadlines are laid down in Art. 24 in the Ombudsman law. Dead lines may be extended by the Ombudsman, but eight (8) days is the main rule. The time limit actually appears unrealistically short. The Swedish Ombudsman for instance, by routine, uses dead lines of three-four weeks (depending on the case). However, the investigative procedure is slower here. The Ministry of Interior “complaint” should therefore be heard. I recommend the Ombudsman to work for an amendment in the law to make time limits more flexible and “user friendly”.

### The judiciary

Thanks to the new law the courts better understand the Ombudsman's jurisdiction and realize that the Ombudsman's work is not an interference with the independence of the courts. Implementation of Ombudsman recommendations is better today but the courts have great workloads, which still impedes the cooperation between the Ombudsman and the courts. Responses are still bad, especially from certain courts (in particular from Court No 1 in Skopje and the Supreme Court). In delay cases the Ombudsman give general recommendations to the courts to process the cases. In respect of the courts independence, the Ombudsman uses a more diplomatic approach in its affairs with the courts.

The assessment indicates that the Ombudsman does not act in cases that have been *closed* by the respondent authority even though the Ombudsman is not legally hindered for doing so. Investigations into other court cases than those regarding delay would concern “for example” rude reception by administrative personnel, or administrative “mistakes”. There is a National Judicial Council that supervises the performance of judges. The Ombudsman could gain from establishing cooperation with the council, which could help strengthen the Ombudsman institution as to the sensitive issue of supervision over the judiciary.

The Ombudsman should not be deterred by the fact that a case has been closed by the court. Art 12 in the Ombudsman law does not hinder investigations into cases that *have* been unduly delayed. A point with investigating such cases is the general prevention. One of the tasks of

an Ombudsman institution is to “teach” authorities about the correct procedures and to warn against, among other things, undue delay; and a fault is a fault even if it is too late to correct.

*Recommendations to Chapters 12-13*

- In general – endeavour to use existing powers more frequently
- Issue special reports to the Assembly regarding disrespectful authorities
- Report to media in concrete cases (when possible)
- Use the “stoppage power” more often (after addressing the problem of authorities not respecting such stoppage decisions)
- Propose an amendment in the Ombudsman law to obtain power to impose administrative fines in the course of investigations
- Propose amendments to the Law on Labour Relations and the Law on State Administration to make non collaboration in Ombudsman investigations a disciplinary offence
- Propose an amendment in the Ombudsman law to grant the Ombudsman power to litigate in cases where requests for information are not honoured
- Propose to the Government (PM) to issue a written order to subordinate authorities regarding the obligation to cooperate with the Ombudsman institution as stipulated in the Ombudsman law.
- Endeavour to establish a working relation with the National Judicial Council
- Propose amendment of Art. 24 of the Ombudsman law to make the deadline limit more flexible and “user friendly”, for instance:  
“/.../ within 30 days from reception of the request or within other time that the Ombudsman decides /.../”.

## **14. Non-discrimination and Equitable Representation**

### Non discrimination

As to the Ombudsman's planned activities and general recommendations to supervised authorities regarding non discrimination and equitable representation, cf. p. 16 f of the 2003 Annual Report.

There are only a few complaints on minority rights, during the last 3 -4 years only 30-40 cases. There seems to be several reasons behind this:

- Difficulties (in general) to establish discrimination
- Minority cases are probably often registered within other area of responsibilities
- Complainants may be unaware of the discrimination situation
- Complainants may be reluctant to recognize the minority issue

- Lack of an anti discrimination law
- Discrimination cases occur infrequently (?)
- Lack of reliable statistics on discrimination cases

Potential discrimination matters may be “camouflaged” by, or mixed, with “ordinary” violations or maladministration. This could keep the discrimination matter undetected (“for example” registration as a police abuse matter though indications that the complainant was maltreated due to his ethnical background). To a certain extent the latter problem can probably be remedied by education and training; a case of discrimination “should not have to look like the devil to be recognized” as one of the Deputies put it.

The suggested training in investigation techniques certainly should also cover the detecting of discriminations cases. Furthermore, systematic research would certainly be valuable to help understand how to identify discrimination matters better. These steps will contribute to an increased number of investigations into complaints regarding possible discriminations cases, and that will in its turn enhance skills and experience in this specific area of responsibility.

Though acts of discrimination usually are hard to prove, rational and strategic investigations and reporting routines are likely to substantially enhance the capacity to identify and successfully investigate cases of discrimination.

The Ombudsman should also adopt a strategy on how to handle discrimination cases and how to implement recommendations.

Lack of anti discrimination legislation obviously complicates the Ombudsman's anti discrimination activities.

The Ombudsman should advocate for an anti-discrimination Act. Needless to say the Ombudsman should of course continue to refer to international statutes on anti discrimination (such as Art. 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or the International Convention on the Elimination of All Forms of Racial Discrimination).

It should not be ruled out in the discussion that one reason to the low discrimination case influx may be that discrimination, though grave when it occurs, may not be too frequent.

Adding to the low number of discrimination issues may also be an inconsistent practice as to entering data regarding ethnicity in the complaints form. It appears as the Ombudsman records data regarding ethnicity (see p. 7 of the 2003 Annual Report). According to the information obtained, however, this data is not recorded systematically; either it is not recorded in the complaints form or not entered into the Lotus system (though it could). This could mean that ethnical data presented in the Annual Report may need additional verification. It seems harsh to oblige complainants to enter information regarding ethnicity, but they should be encouraged to (inform complainants that this piece of information will in due course contribute to advancing ethnical equality).

Statistics on minority issues will of course be based on the capacity to identify discrimination issues and the adequate registration of such cases (discrimination matters registered as such). Statistics can be used inter alia as a base of examining any overrepresentation of certain ethnic groups in certain types of complaints etc.

As to the ethnicity of the *Ombudsman* it has been said that it may matter to people emotionally but that it should have no impact on the objective performance of the Ombudsman institution. This is verified in the assessment too. In addition – a person elected as ombudsman has and will have the professional background and experience to guarantee objectivity and impartiality.

*Recommendations:*

- 1) Education and training to Deputies and Investigators in interviewing complainants, identifying and investigating discrimination matters
- 2) Research as to legal (finding and interpreting legal sources), statistical (identifying patterns) and other aspects (“for example” adding specific questions in interviews with complainants aimed at contributing to research projects)
- 3) A manual on the handling of non discrimination matters
- 4) Advocate for anti discriminations legislation (to Government and Parliament)
- 5) Systematically record ethnicity in the complaints form (by encouraging but not obliging complainants to state their ethnicity) and transfer to Lotus system (if not already achieved)

Equitable representation

According to a survey in September 2004 the equitable representation of minorities in the state administration as a whole is still far from reflecting the situation in the population. There are only about 2 % Albanians in the state administration even though the percentage is rising. Equitable representation in state institutions is now a constitutional norm and a very important issue to the Ombudsman who should monitor the implementation of plans for equitable representation (i.e. the Action Plan on equitable representation endorsed by the government).

The assessment indicates that the Ombudsman office has substantial difficulties to fulfil equitable representation *internally*, i.e. in the office. One apparent reason behind this appears to be that no investigators or other key personnel from minority communities responded to Ombudsman job advertisements. The (former) Ombudsman explained that he had to “draft” people with “for example” Albanian origin. Another, and probably the main reason is lack of finances or at least necessary decisions from the Ministry of Finance (regarding salaries etc.).

According to the *Trawick report* another obstacle is that the Ombudsman was established as a single ethnic organisation in the beginning. He has stated that it should have been a model for equitable representation from the very beginning.

The representation of non-majority groups in the Ombudsman Office in December 2004, including personnel employed on a voluntary basis (due to lack of necessary financial decisions from the Ministry of Finance), is presented in the below chart.

	<b>Skopje</b>	<b>Kicevo</b>	<b>Tetovo</b>	<b>Kumanovo</b>	<b>Stip</b>	<b>Strumica</b>	<b>Bitola</b>
<i>Albanian</i> 5	1 Deputy 1 State Counsellor 1 Archivist	1 State Counsellor	1 Archivist				
<i>Turk</i> 1							1 Archivist
<i>Roma</i> 1				1 Archivist			
<i>Serb</i> 2	1 Secretary 1 Receptionist						
<i>Vlach</i> 0							
<i>Bosniak</i> 1	1 State Counsellor						

The Ombudsman Office had in December 2004 45 personnel. The distribution of the ethnic communities (according to the 2002 national survey) respondents to the Ombudsman office look like this:

Community	Nationally	Ombudsman office
Macedonian	64.18	77,77
Albanian	25.17	11,11
Turk	3.85	2,22
Roma	2.66	2,22
Serb	1.78	4,44
Vlach	0.48	-
Other	1.04	2,22

A proportional equitable representation in the Ombudsman office when *all* staff is employed according to the decided personnel plan (128 staff) compared to the attached optional plan (82) *should*, to reflect the national percentage, in number of officers be (approximate):

Ombudsman personnel plan (128)		Optional down sized plan (82)	
82	Macedonians	52,5	Macedonians
32	Albanians	20,5	Albanians
5	Turks	3	Turks
3,5	Roma	2	Roma
2	Serbs	1,5	Serbs
0,5	Vlach	0-0,5	Vlach
1	“Other” (for example Bosniak)	1	“Other” (for example Bosniak).

One of the primary objectives of the Ombudsman is to speed up the process to implement equitable representation in state organs and thus the Ombudsman obviously needs to serve as a model in relation to equitable representation. Ombudsman recommendations in equitable representation matters will, to some extent, lack credibility as long as the basic requirements regarding the “internal equitable representation -situation” remains unsolved. The Ombudsman is aware of this dilemma, and has attempted to explain it in the 2003 Annual Report (p. 17). Such explanations are of course necessary for the Ombudsman's continued work on equitable representation issues (see below).

Practical problems also arise from the present situation. A lack of Albanian translators gives, among other things, cause to fail to translate letters into Albanian, which also is not in accordance with Article 15 in the Ombudsman law (the obligation to respond in Albanian).

The assessment suggests that the Ombudsman office is doing what it can to fulfil equitable representation *internally*, but is shackled by the pending financial decisions from the Ministry of Finance.

However, according to this assessment, the Ombudsman has not systematically engaged itself in *external* equitable representation efforts and it has so far refrained from making use of Art 3 of the Ombudsman law. Invoking the principle of equity means inter alia that the Ombudsman can put into question the application of laws and other statutes that would be contrary to the principle.

In investigations into cases regarding equitable representation the Ombudsman should be proactive and make use of the right to obtain necessary information, “for example” ask for lists over the ethnic distribution in a state agency or recommend the drafting of such lists. In the case of non-cooperation the Ombudsman should report to the parliament as soon as legally possible (cf. Art. 25 and 34). The parliament has explained that it *will* support the Ombudsman (“for example” by making an interpellation to the responsible minister). The Ombudsman should also use media to give attention to the equitable representation issues. In lack of complaints regarding equitable representation the Ombudsman certainly should make use of the power to take initiatives to investigations.

*Recommendations, “internal” equitable representation*

- 1) Prioritize appointing one or two interpreters for translations to- an from Albanian
- 2) If possible put more pressure on Ministry of Finance to release funds and advocate openly for sufficient financial independence
- 3) If internal equitable representation conditions remain deficient due to lack of necessary action by the Ministry of Finance, then report to the assembly and to media in order to speed up Ministry of Finance decisions and explain the obstacles to supervising external equitable representation in authorities

*Recommendations, “external” equitable representation*

- 1) Draft an Ombudsman Action Plan on the supporting of the implementation of equitable representation in supervised organs

This should include strategies for different sectors, such as the Courts, the Public Prosecutors and the Police. As to courts, see the November 2004 OSCE report “*Equitable Representation in the Judiciary*”, especially page 17 and following, and the recommendations on page 43 and following. Among the recommendations there are several that (*mutatis mutandis*) can offer an opportunity to general application, and can be used as input to the Action Plan, “for example”:

- Aim to achieve countrywide equitable representation in the different state agencies, avoiding (where possible) a concentration of non-majority officials in areas with significant non-majority populations
  - Allow positive discrimination modelled on Article 2 of the EU Council Directive 43/2000
  - Use of flexible quotas which guarantee a minimum of places (of employment in an agency) regardless of qualifications
  - Actively encourage non-majority applicants to apply for positions
- 2) Open initiative investigations into important equitable representation matters insofar as no complaints are lodged in these matters
  - 3) Require lists of equitable representation within the authorities and support implementation of equitable representation and establish a follow up system
  - 4) Report non compliance to the Assembly as soon as (legally) possible
  - 5) Use media to report on inadequate measures for equitable representation

### A Deputy for Equitable Representation and Non Discrimination matters?

There is support among the initiated officials and stake holders for the idea of having a special function for equitable representation and non discrimination but also recognition of the administrative difficulties involved. In the following the discussions regarding discrimination concerns discrimination against ethnic groups

Due to the situation in the country, the factors discussed probably have a main bearing on ethnical discrimination aspects, and not (or not so much) on certain other discrimination appearances, such as discrimination against handicapped or elderly.

There are circumstances that gainsay the idea of a specialized function. One factor is that we are discussing one of the *main objectives* of the Ombudsman. Establishing a special function in the form of a Deputy for equitable representation and Non Discrimination Matters entails some risk of moving focus away from the Ombudsman as leader and symbol of the institution; it should be remembered that the Ombudsman is principally a *single member institution*.

The Deputy function is of course crucially important and the Deputies also do have a strong legal position (“for example” same rules for appointment and removal as the Ombudsman). Still the position as Deputy is *in practice* not far from (referring here to parliamentary ombudsmen) a Head of Divisions in Sweden or a Senior Investigator in Finland. It is basically a “middle man” position.

In addition the establishment of Regional Offices appears to be necessary for political and ethnical reasons, not geographical or infrastructural reasons. The Ombudsman also stresses the importance of moving the Ombudsman closer to the people. In any case, it goes without much elaboration that leaving regional Deputies without a mandate to investigate cases regarding non discrimination and equitable representation (which would happen if a Deputy for equitable representation etc. was established) would contradict the idea of decentralization and also entail a risk to slow down the building up of trust among the people in the Ombudsman institution. On the other hand, a specialized Deputy function might instead be regarded as an indicator that the issue is taken seriously, if not so much in the regions, then more among the population in general.

A problem may also be the allocation of cases, i.e. the specialist and generalist issue. The matter is discussed in Chapter 9. Although my conclusion is that the problem is somewhat inflated and probably fully resolvable in practice, instating special functions do not go clear from administrative complications. There may also be too few cases to form a “clean” equitable representation and Non Discrimination area of responsibility.

In strong *support* of the idea is obviously the chance of building up competence regarding non discrimination issues, which of course are crucial. On the other hand the Ombudsman's competences needs to be maintained too.



A summary of factors *pro* and *contra* a Deputy for equitable representation and Non Discrimination matters:

***Pro***

Competence building

May *generally* be regarded as taking the issue more seriously?

***Contra***

Weaken the Ombudsman as leader (thus jeopardize the intentions behind the institution)

The “regional ethnical aspect” (politically sensitive)

Too few cases to occupy a Deputy full time

Administrative complications (the specialist / generalist issue)

*Remarks and recommendations*

Based on the factors for and against a specialized Deputy/function my cautious initial recommendation to that point was *not* to establish the specialized Deputy/function but instead to follow, very closely, and analyse the development of the handling of cases in this specific and obviously very important area.

After my first draft report the Ombudsman institution decided to implement a system which means that the HQ in Skopje will handle *all* cases regarding equitable representation and non discrimination, meaning also that the regional offices will forward all such matters to the HQ (Art. 17 in the 2005 Operation Manual).

My initial recommendation was cautious and I am not against the model chosen by the Ombudsman, but mainly due to the “regional ethnical aspect” the chosen system should be closely followed and regularly evaluated. If the system leads to negative results “for example” in the regions – consider sharing the equitable representation and non discrimination matters between the regional offices and the HQ. Also, I recommend adding to Art. 17 the Ombudsman’s right to make exceptions.

**15. Specifically about IT**

General

The IT system is based on older hardware that needs to be replaced with new computers. The software is the Lotus system, which has been assessed previously. My standpoint is that it is not necessary to change the Lotus system, at least not for the time being. It has a sufficient capacity and search possibilities etc. Some modifications are needed as well as time and resources to update the system with old cases that are not yet entered. The Ombudsman also points out other needs including updating the system with some additional data. Some administrative decisions appear also needed, such as the rules of who has the right to have access what data in the system.

### Access to the system

Among those who has access to the system is the IT officer obviously (full access) the Archivists, State Counsellors etc. All users have different levels of access. The Investigators (i.e. the State Counsellors) have access to their own cases, but not other cases.

Due to the State Counsellors limited access to the system they have difficulties to carry out cross references to old cases (to check “for example” if a complainant has complained about the same matter previously). Basically they have to ask a Deputy in order to make such references. They explain that it is not a problem for them and that they are used to it, but do not disagree to the suggestion that it would enhance efficiency if they had access to other cases. According to Ombudsman standards at least in Northern Europe, the level of access for the investigators should be much higher than in the Macedonian Ombudsman's case.

The reason for the above limitation is said to be protection, likely against unintentional deleting of data or unauthorized amendments. But there seems to be no valid reason not to give the Investigators access to all registered cases; technically it should be possible to grant *read-rights* (only to read, not to change, add or delete any data).

### Certain technical information

#### *Entries*

Official notes:

- How the case was submitted (visit, letter, phone etc)
- From what region
- Area of responsibility
- Initiative?
- Responsible Deputy
- Who carried out the interview
- Name address, telephone
- Details about respondent including (if known) the official in question
- Legal action taken?
- Case No.

Date of birth or ethnicity is currently *not* recorded in the computer. Ethnicity is recorded only manually in a book, on a non-obligatory basis.

#### *Case number*

The system will ask the user if he/she wants to enter the registration. When confirmed positively, the case is given next available file/case number by the system.

### Search possibilities and statistics:

Searching is possible basically on all the above mentioned. In addition it is possible to find data on “for example” - the Ombudsman officer who prepared the case, the officer now responsible for the case (the state counsellor in question) etc., number of cases for certain periods etc. The Annual Reports indicate that the search possibilities give a sufficient base for the necessary compilation of statistics. As said above ethnicity is currently not recorded in the

computer but instead in a book, manually, on a non-obligatory basis. The manual system has been successfully used as base to compile statistics regarding complainant's ethnicity, at least according to the 2003 Annual Report (p. 7). The compilation will, however, obviously become easier when it can be done in the Lotus system. Cross references can be made on surnames.

### Software and hardware

The LOTUS system is a mass produced program but tailor made and configured especially for the Ombudsman's needs. The IT officer and other questioned staff, find the software sufficient. They find no need to change the program. From the Ombudsman's point of view some amendments are needed though. The issue is dependent on an assessment by a computer technician etc., see below in the recommendations box.

The computers are old and slow and sometimes personnel have to endure access times up to five minutes or more.

### Internet

The assessment found that most officials in the Ombudsman office do not have access to an internet connection. This lack of electronic communication appears to be a question of policy rather than technology or resources. All decision makers, investigators, secretaries and other staff involved with decisions, IT, statistics, archives or financial matters, need to have an internet connection. Concerns regarding misuse of the internet should be dealt with by normal procedures (a written policy etc.).

The Ombudsman has a homepage [www.ombudsman.org.mk](http://www.ombudsman.org.mk). Unluckily the English version malfunctioned when I tried to access it from my office in Sweden in mid January 2005.

### Security and maintenance

Security and maintenance has been taken care of by:

- A back-up system
- An anti virus program
- Regular meetings regarding IT problems. If there are problems contact is made with the computer firm that installed the system.

#### *Recommendations*

- Assessment of the computerized system by a computer expert, possibly together with an Ombudsman expert, to identify specific technical needs for improvements and possibilities of the system.
- New hardware is needed; to begin with for (also in regional offices) each Deputy, State Counsellor, the IT officer, the Secretary General and the Secretaries
- There is a clear need of a link between HQ and the Regional Offices

i.e. an intranet system, allowing officers both in the HQ and the regional offices to obtain information from the Lotus based case registry<sup>1</sup>

It is dubious if the above IT assessment financially fits into the current OSCE-project; cost will run rather high especially if the evaluation indicates that new software is necessary.

The above needs may have to be left outside the *current* project due to the budget situation, since *training* has to be regarded as the first priority, perhaps with exception for some 10 computers for the most urgent needs.

- Enter old cases into the computerized system, but only after a possible IT-assessment
- Expand access level for the State Counsellors
- Establish an internet policy and see to it that internet access is provided to all lawyers and secretaries, as well as to the Secretary General and the IT-officer if they do not have a functioning connection

## 16. Specifically on Regional Offices

### Case handling etc.

The regional offices (regional office) were opened on 1 November 2004. Deputies to the regional offices are not yet appointed. For the time being the supervision over the regional offices is shared between the Deputies in Skopje and the Secretary General.

The complaints intake and assessment and the investigation into cases in principal follow the same routines as in the HQ, even though the regional offices need the approval from Skopje to take investigative steps.

The registration is made in a handwritten book. Registration is made centrally in Skopje too after complaints have been directed to the HQ. The regional offices record everything, nothing is rejected. Data regarding name, respondent, circumstances etc., are recorded manually on handwritten paper. The offices do not have the Lotus system installed yet. Judged from my visits to the regional offices in Tetovo and Stip only a few complaints have been investigated at the regional level so far. For instance the Tetovo regional office had received only five visits at the time, of which one led to an investigation. The other were visitors who were informally advised to turn to other agencies (not formally rejected of course).

According to information in Tetovo and Stip the willingness to make complaints is greater than the capacity to investigate. regional office officers stated that many people would definitely contact the Ombudsman in the regions if only the regional offices had been operational. It is obvious that the installation of Deputies to the regional offices is urgent. It seems like people are being put off by the absence of the Deputy (at least they notice that the office is not yet functional).

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<sup>1</sup> Intranet: A private network that is contained within an enterprise or organisation using TCP/IP, HTTP, and other Internet protocols. Intranets may include connections through gateway computers to the Internet using firewall servers for security.

In case of an urgent need for action the regional office officers call the HQ (“for example” in need of the Ombudsman's power to suspend some action by a respondent authority). A deputy in Skopje may take decisions by power of delegation, on an ad hoc basis. If (as a State Counsellor in one of the regional office foresees) standing delegation of powers from the Ombudsman to regional office Deputies would be decided, then the latter can act efficiently without turning to the HQ at all times. Delegation of powers is foreseen in the amendments to the Operation Manual (Art 4).

The regional offices prepare monthly reports which they submit to the Secretary General in the Skopje office. They will also contribute with their material to the annual reports.

#### Cooperation and non-compliance in regional offices

Judged from my visits to Tetovo and Stip it seems as if the regional offices have great difficulties to carry out any real investigative work. In addition to the obvious need for Deputies to run the regional offices, there are several reasons:

- The Ombudsman is not sufficiently known, even though the willingness to lodge complaints is greater than the capacity to handle them
- The State Counsellors lack the necessary authorization (have to obtain authorization from Skopje in each individual case)
- The regional office officers lack the necessary instruments to investigate (“for example” ID-cards)
- There appears to be no systematic cooperation with local authorities yet.

The reason to the lack of cooperation with other authorities (such as the Mayors office and the *Commission for Inter Ethnic Relations*) is probably the authorization problem discussed above. Also, the visited offices do not have any specific plans for public awareness in the regions. Certainly the general non compliance problems play their role.

In municipalities with at least 20 % Albanians (like in Tetovo) a Commission for Inter Ethnic Relations must be consulted by municipal authorities in important issues. However, according to information received, the Commissions have not yet been consulted or at least not consulted properly. The Commissions have no power to make decisions and cannot take their own initiatives. As to the Ombudsman it has no strategy for cooperation with the Commission. The same goes for local authorities and the municipal Commissions. The Commissions would be a natural reference point for the Ombudsman's regional offices on any matter with an ethnic orientation. Cooperation between the Ombudsman and the Mayors are still to be established (“for example” to establish routines for referral of complaints from a regional office to the Mayor for a response). The issue is of course connected to the ongoing efforts to make the regional offices functional (not least the appointment of Deputies to the regional offices).

#### Needs

The regional offices cannot be said to be operational yet. They lack of their heads – the Deputies. They also lack other staff, for instance interpreters. Equipment and supplies have arrived to the offices. However sufficient telephone communication has not yet been installed. The personnel use mobile phones, which is impractical. Computers are installed but the software to handle the computerized registration of cases (the Lotus system) is not. Also,

there is no networking connection with the HQ and no internet connection. – The regional office in Stip has its office in the same corridor on the 2nd floor as its landlord – an insurance company. Since the Ombudsman officers do not have keys to the entrance door they sometimes have to wait in the morning to be let in. They cannot receive visitors after office hours or work overtime. A regional office should not be located near to another agency or company. The Stip office situation should be amended. The problem with keys also appears very impractical. The lack of identity badges makes it difficult to operate regardless of authorization to do so in specific cases. Also, the regional office in Stip does not have an office manual.

#### *Recommendations*

- The appointment of Deputies to the regional office is urgent
- Interpreters to the offices concerned (Tetovo, Kumanovo, Kicevo)
- Delegation of necessary powers to commence investigations in cases
- Draft and finalize Office Manuals to the regional offices
- Public awareness campaigns in the regions should be prepared
- ID cards to regional office personnel
- Plan for cooperation with local authorities
- Install land line telephone
- Install Lotus software to the regional office computers
- Install Internet connection
- Install networking between HQ and regional offices (an intranet system)
- Rearrange the office situation in Stip regional office (and other offices if similar problems)

## **17. Public Awareness raising and the Ombudsman's educational role**

### General

How well can people be made acquainted with (1) an oversight agency as such; and (2) the mandate and tasks of the agency? With proper awareness raising efforts and performance, the institution can surely be made known to most people in the country. When it comes to the mandate and tasks of the institution it is hard to state a figure, but it is clear that *such* familiarity with the institution will involve a much lesser number of people and that advancements re. that sort of knowledge among people in general will proportionally be more and more expensive until it reaches a limit where it is not practicable to continue such efforts.

The results of the survey (in March 2003 by initiative of OSCE) on peoples awareness of the mandate and tasks of the Ombudsman indicate that the public awareness campaigns carried out so far have had limited success. The Ombudsman's Annual Report 2003 reflects that the situation is similar when it comes to peoples' knowledge of their rights and how to protect those. In my assessment these problems have been confirmed. For instance, a 2003 campaign appeared to have had temporary effect insofar as it raised the number of complaints in 2003. But in 2004 the number has dropped to approximately the same level as in 2002. It has been said that the 2003 campaign Ombudsman is on your side should have been followed up and that it was too person focussed. The OSCE is planning to provide financial support in 2005 for a new campaign at the new regional office levels.

The scope of this assessment did not allow an independent evaluation of the 2003 awareness campaign. Therefore I will merely point at a few general factors that hopefully will be of some use in coming campaigns.

### Media

According to media representatives their cooperation with the Ombudsman is good and the Ombudsman open to journalists. However, they find the information too general and theoretical, and ask for more information on *specific* issues. They find that the initiative still is mostly on the media. They understand that some information is sensitive and respect that. According to some journalists the Ombudsman should appear in TV or news more regularly, TV is said to be superior in focussing on the institution and its current problems. The Ombudsman should, the journalists say, relate statements to individual ongoing cases. In written media the Ombudsman could use examples and – with consent from concerned people – photos. The Ombudsman should discuss cases in a “tasty” manners (of public interest) but in a balanced and correct way. Short “commercials” may add to general information about the institution.

According to several persons, the cooperation with supervised authorities is better today. My opinion is that this too needs to be made public; citizens should be informed of the facts, both negative and positive. Giving credit to the governmental agencies that are expected to cooperate with the Ombudsman, when they deserve it, will promote continued cooperation.

The media ask for seminars for media people about the Ombudsman jurisdiction, the possibilities and the limitations of the institution. The Ombudsman does undertake such meetings with the media already, but maybe not in a sufficient manner.

### The international community

The international community representatives mention specifically the Ombudsman's educational role and that citizens need better knowledge of what the Ombudsman is and what it can, and what it cannot, do.

### The message to people

As to the message to people in awareness raising campaigns it is important to be balanced; not emphasizing too much on the limitations of the institution but without raising expectations to a level that will disappoint many future complainants (once they get the result of their complaints). It has to be made clear that the Ombudsman cannot issue binding orders or overrule court decisions etc. but also that the activities clearly have impact and that Ombudsman recommendations in practice eventually will lead to results similar to those of a court etc. (if the complaint has merits the impugned decision will ultimately be changed in favour of the complainant).

A parliamentary Ombudsman is not the legal representative of any complainant. Complainants are in reality one of several sources of information to the supervisory organ. It is not an easy task to inform the individual complainants or the general public about this, since one does not wish to disappoint or discourage people. Still, they should be informed of the fact that this is a parliamentary organ established in a democratic nation to be the “eyes and ears of the Parliament”, the Assembly’s independent “watchdog” over the governmental organs. It has to be made clear that the Ombudsman cannot always help in an individual case, but quite often it actually can, by

mere respect, powers, and skills and – with proper consent from individuals concerned – by mass media attention.

### Awareness raising campaigns in the regional offices and Ombudsman's visits to regions

The campaigns that have been carried out so far do not appear to have had much effect in the regions. It is not clear to what extent the leadership of the Ombudsman Office expects/allows initiatives from the staff in the regional offices while waiting for Deputies to be installed in the regional offices. According to assessment information, many visitors see the Ombudsman as a free of charge legal advice bureau and have somehow heard about it but lack of a sufficient picture of what the institutions does. The regional offices would like to give information to media about the Ombudsman office. They have not planned for distribution of Ombudsman brochures in the region since they appear to await the proper authorization to carry out such activities. They should have a mandate or (if they formally already have that) an incitement to start at least distributing Ombudsman material and give basic information about the office.

The Ombudsman uses a system of visiting complainants in the regions (see p. 15 in the 2003 Annual Report). The system probably has substantial advantages since it will contribute to building bridges between ethnic groups, make the institution known and generate trust. However, the method is very time consuming and demanding in other respects.

#### *Recommendations*

- The policies for media cooperation should be looked over and put down in writing
- Awareness campaigns, including balanced but “tasty” information in TV and news papers etc. about the institution, including information on a few high profile cases, balanced messages to complainants and other people about the Ombudsman's mandate and tasks
- Discuss ongoing, real cases in the media (if the nature of the complaints permits)
- Press conferences, special reports, media seminars
- Continued visits to regions on regular basis – “open days”
- Delegate to regional offices to prepare basic public awareness activities while awaiting Deputies to be installed

## **18. Training needs**

### Induction courses and training on human rights etc.

The State Counsellors have professional backgrounds (most are lawyers) and experience. They appear skilled, mature and very motivated to their tasks. An induction course is still important to all new employed lawyers, but especially for the lawyers in the regional offices (both Deputies and Counsellors) since they will not have (and have not had) a natural day-to-day contact with the activities and progress of the HQ (to mention an obvious example, it is harder to contact more experienced colleagues for guidance). As indicated, the regional office Deputies too will need induction training, not least since they will probably be chosen mainly among lawyers from the private sector (without experience from state agencies and supervisory organisations).



The Ombudsman's internal induction training programme covers a ten day training on inter alia the office organisation, legislation, case handling procedures in the different Annual Reports, observing officers' work, and archives and other administrative aspects. According to a summary report on evaluation of the 18-29 October 2004 induction course, the training was basically successful. During my interviews, however, there were some indications that the training given to the regional office Counsellors may need some improvements as to the case handling part and maybe also completed with a follow up session.

Training in case handling techniques, and advanced human rights training incl. children's' rights, minorities rights and gender issues is proposed as specified below.

#### The non compliance problem

Even if problems regarding cooperation with respondents are not primarily caused by shortcomings in the Ombudsman institutions' performance it does not mean that training of the latter will not contribute to improve the situation. The Ombudsman Annual Reports and samples of letters etc. to respondent authorities are generally of a high quality, but do indicate (see Chapter 8 under section "Ombudsman letters and reports") that additional training in case handling and reporting would be beneficial.

#### Media cooperation

The Ombudsman is dependent on good cooperation with national and regional media. The assessment indicates that there is an honest intention by the Ombudsman office to cooperate with the media to be transparent, and in doing so both to enlighten the general population regarding the institution and to use media as an instrument to gain more impact of its recommendations etc. However, the means of cooperation have not been fully established. Training in media cooperation would be beneficial to the Ombudsman institution.

#### Study visits

The officials of the Ombudsman office believe that study visits to Ombudsman institutions that have regional offices would be beneficial. The same goes for a visit to the Swedish Parliamentary Ombudsman (see Chapter 19) and agencies for the protection of the rights of children, ethnic minorities and women.

#### Participants in general

The training should in principal aim at lifting the Ombudsman's lawyers/investigators (Deputies and Counsellors) to a higher level. The mandate of the present Deputies run out during this year, 2005.

#### Details on training activities:

#### ***Induction Training***

Assessing possible needs requires that an expert actually takes part of- and evaluates a training session. A brief follow up on the induction training could be carried out "for example" within 6-12 months from the induction training. The induction training should be

carried out by “trained trainers”, i.e. those who have participated in the below programmes. The induction training therefore should be built up with output from the below activities.

### ***Training on Case Handling***

Activity:	Training internally (lectures and guidance): for 1-2 working weeks: 1) Introduction to the Ombudsman institution, legal framework, internal regulations and practices (brushing up the induction training) 2) Good governance (rule of law, transparency, accountability etc.) 3) Investigation- and reporting techniques; interview and other fact finding activities, selection & evaluation of information, legal assessment, interaction with authorities under the Ombudsman's jurisdiction, presentation and writing skills (i.e. tone in letters and reports) 4) Various administrative matters (registration, filing, archives, efficient coordination with Regional offices etc.)
Participants:	Ombudsman (if he deems it needed), Deputies and Investigators. Details to be decided by project parties.
Resources:	Fee and other expenses for 1 ombudsman expert, training room, technical support etc. Expert “for example” from the Swedish Parliamentary Ombudsman’s Office or the Council of Europe.
Cost estimates:	6 100 EUR  Fee for 1 expert: 1000 EUR x 5 = 5 000 EUR Travel 600 EUR Accommodation : 100 x 5 = 500 EUR Training room and supplementary costs: to be covered by Ombudsman office
Reserved costs:	3 600 EUR for a 2 (working) days follow up visit by the expert during 2005 (2 hotel nights)
Result expected:	Improved skills in investigation techniques, interaction with respondents, reporting, handling of files and other administrative issues, and improved coordination with regional offices. The training will improve the quality of investigations and reporting with the aim on professional European standards, speed up the processing of cases and strengthen administration in general.
Timetable:	No later than November 2005 (within the OSCE project implementation phase)
Sustainability:	Development of manuals and other written instructions on investigations techniques, reporting formats etc., as well as programmes for training of trainers. It is important that a few participants are selected as trainers to future courses on case handling.  <u>Beyond 2005:</u> An additional expert visit principally following up on- and refining the above activities. Cost estimate are the same as above (6 100 EUR).

### ***Human rights training (advanced)***

Activity:	Advanced training on human rights and constitutional protection of rights, including the special rights of marginalized groups, two weeks course
Participants:	Ombudsman (if he deems it necessary) Deputies and State Counsellors in HQ and regional offices, maximum 30 officers. Final number of participants to be decided in alignment with project budget, time limits etc. (see below under timetable).

Resources:	Fee for 2 week summer course in human rights in the International Institute of Human Rights in Strasbourg France, the Helsinki Foundation for Human Rights in Poland, the Institute for Human Rights at Åbo University in Finland or the Raoul Wallenberg Institute at Lund University in Sweden. Travel and per diems
Cost estimates/participant:	4.110 EUR
Cost estimates 30 participants:	123.300 EUR
August 2005)	Fee (estimated 1.200 EUR per participant) $30 \times 1.200 = 36.000$ EUR ("for example" Åbo Academy 1.180 EUR for advanced course in HR 15-26 Travel $600 \times 30 = 18.000$ EUR Per diem (allowances and accommodation) $165 \times 14 \times 30 = 69.300$ EUR
Result expected:	Deepened understanding/proficiency on human rights and constitutional protection matters, i.e. areas in focus of Ombudsman activities leading to raised quality of investigations and reports
Timetable etc:	During the summer 2005 but preferably after training on case handling (above). A problem is that participants may have to be divided in two groups to keep the office sufficiently manned. Since the course might be given only once per year – the training activity will have to be expanded over two years.  Full results expected when all participants have attended the training course.
Sustainability:	Outputs from training to be added in relevant parts to an investigation- and reporting manual to be developed also for the introduction of new lawyers/investigators. Also, a programme for training of trainers should be developed.

### ***Training on public relations & cooperation with media***

Activity:	In office training on public relations & media cooperation, three working days
Participants:	Ombudsman (if he deems it necessary), Deputies, State Counsellors, PR Officer, General Secretary (number of participants has no significant effect on costs)
Resources:	Fee and other expenses for one international or regional expert (to be identified)), training room, costs for technical support etc.
Cost estimates:	3.900 EUR  Fee for 1 expert: $1000 \times 3 = 3.000$ EUR Travel 600 EUR Accommodation : $100 \times 3 = 300$ EUR Training room and supplementary costs: to be covered by Ombudsman office
Result expected:	Improved understanding of public relations, cooperation with media and balanced use of media as an "operational tool" leading to increased impact of Ombudsman decisions and recommendations
Timetable:	No later than November 2005 (within the OSCE project implementation phase), but after the training on case handling (above).
Sustainability:	Reports/memoranda on the outputs of the training, which also can constitute a part of the investigation- and reporting manual mentioned above. PR Officer to train lawyers and other concerned personnel on media cooperation

### ***Study visit to Sweden***

Activity:	A two week study visit to Sweden to follow the work of: The Parliamentary Ombudsmen The Children's Ombudsman (Governmental) The Ombudsman Against Ethnic Discrimination (Governmental) The Equal Opportunities Ombudsman (Governmental)  To study inter alia selection, registration and investigation of cases, interaction with complainants and respondents, reporting, cooperation with media etc.
Participants:	Ombudsman (if he deems it necessary), Deputies, General Secretary, 11 persons
Resources:	Travel and per diems
Costs:	32.010 EUR (or 2.910 EUR/person)  Travel 600 EUR x 11 = 6.600 EUR Allowance incl. accommodation, 14 days x 165 EUR x 11 persons = 25.410 EUR
Result expected:	Improved knowledge of structures, activities and difficulties of Ombudsman institutions, obtaining ideas for middle and long term benefits to the quality of Ombudsman activities. Deepened knowledge of ways to handle complaints in general but also specifically on children's rights, minority rights and gender rights, not least to support non-discrimination- and Children's Rights functions
Timetable:	No later than November 2005 (within the OSCE project implementation phase), but after the training on case handling (above).
Sustainability:	Reports, memoranda and presentations on observations made during study visits

### ***Additional study visits (regional office studies)***

In addition a visit could be made to another Ombudsman Institution in the Balkans, "for example" Kosovo (the Ombudsman Institution and its Field Offices) or Bosnia and Herzegovina ("for example" the Ombudsman Institution for the Federation, with Field Offices) to study their solutions on organisation and function of regional (field) offices. Costs for travel and accommodation can be estimated to 1.225 EUR per participant for a five working day visit (per diem incl. accommodation = 5 x 165 + travel 400 EUR).

### **The Ombudsman as an educator of other state agencies**

The Ombudsman needs to have a capacity to support and train other officials in human rights including issues regarding children's rights, minority rights and other rights. It can be expected that such activities by the Ombudsman will contribute to making the Ombudsman an international/regional expert on these matters, and be regarded as such. Such training could be given to judges, prosecutors, police chiefs and civil servants in different agencies and should start off with lectures/seminars on Ombudsman issues (the Ombudsman Office and its mandate).

Once a series of such training sessions have been carried out the Ombudsman Office could move on to training on:

- Human rights in general
- Children's' rights in general and the situation in the host country
- Non discrimination in general and in the host country
- Equitable representation in the host country

According to initiated sources, the knowledge within the Assembly itself regarding its relation to, and cooperation with, the Ombudsman is somewhat limited. The same has been said about human rights issues in general. The Ombudsman role as an educator demands capacity on a high level. The Ombudsman should develop programmes for the arrangement of lectures and seminars to different groups. On the regional levels such lectures/seminars could be handled by the regional offices for officers in higher position in municipal authorities.

A training programme for the 27 Basic Courts could involve the following issues:

- 
- 1) Program and identifying lecturers/trainers + estimating costs
  - 2) Contents "for example"
    - a) The Ombudsman Office - an overview of organisation etc.
    - b) Mandate, tasks and aim of activities
    - c) Methods of investigations
    - d) Specific problems (such as non compliance)
    - e) Example of a few cases
    - f) Annual reports and other reports
    - g) How the Ombudsman's activities can benefit court activities and why Ombudsman's activities are not an infringement of court independence
    - h) Training in groups with case studies
  - 3) Selection of participants ("for example" 2-4 from each court), about 80 judges
  - 4) Preliminary dates
  - 5) Invitations
  - 6) Arranging conference room and other facilities
  - 7) Execution of program
  - 8) Feed back and Evaluation

## **19. A link with the Swedish Parliamentary Ombudsmen**

### General

SIDA has aimed, as part of the Macedonian Ombudsman Support Project to develop a "mentoring" link between the Ombudsman's office and the Swedish Ombudsmen's Office. While the limitations of the support that the Swedish Ombudsmen can offer must be taken into consideration, the following practical ways that this link can be developed, including the study visit to Stockholm are suggested and supported by the Swedish Parliamentary Ombudsmen's Office:

### Study visits

The Swedish Parliamentary Ombudsmen receives study visits from other countries regarding development and strengthening of ombudsman institutions worldwide. As a result of the limitations of the Ombudsman's resources and for efficiency reasons a visit with the purpose

to study complaints intake, case handling and reporting etc., must in principal not involve more than five participants. Since the participants will be assigned to different departments, thus split, it is not practicable to accomplish the purposes of the study with interpretation. Therefore the participants need to have sufficient skills in the English language. This does not hinder the visitors to bring an interpreter to help out in certain situations, with translation of documents etc.

### Expert Visit

If funds are granted by Sida or some other organisation after request from- or on behalf of the Macedonian Ombudsman (“for example” by the OSCE) the Swedish Ombudsman's office may send an expert to the Macedonian Ombudsman for a short term mission/short term missions, “for example” for the one week training on case handling (above). A precondition is obviously that the Swedish Ombudsman's office has the possibility to the release necessary personnel resources. The task for the expert is to be decided by the Macedonian Ombudsman in collaboration with OSCE, Sida and the Swedish Parliamentary Ombudsman. The task could be, for instance, to inform generally about the Swedish Ombudsman office and give a picture of its day to day work, problems encountered, statistics, as well as giving lectures/seminars regarding “for example” interaction with supervised authorities and the Riksdag etc., and go through the case handling- and reporting routines. The same person could also be the person to assist in the drafting of manuals etc. mentioned in the introductory chapter of this report. The OSCE Consultant responsible for the present assessment and report is ready to take on such short term missions.

### A mentoring relationship

A continued relationship may also be established where the Swedish office, to the extent appropriate with regard to the resources, appoints a contact person within the office to be at the disposal of the Macedonian Ombudsman via e-mail or otherwise to discuss and give advise on different issues arising at the Macedonian Ombudsman Office.

## **20. Needs for Certain Equipment**

The State Advisers appear to need certain equipment, especially in the AoR police matters, such as a few digital cameras and tape recorders and a video camera to secure “for example” evidence of alleged police abuse.

As already said, there are too few internet connections in the Head office in Skopje. Also, there are no direct phone/fax lines between Skopje and the regional offices.

The Ombudsman has a library but it still has gaps as to adequate and up to date literature on human rights and not least children's rights. In lack of time I recommend an inventory to be made and a presentation of a literature list with estimated costs.

## **21. Conclusions**

The Ombudsman institution's organisation and structure as well as the skills and attitude of its personnel offer an excellent foundation for the development of a high performance Ombudsman institution of modern European standards. Many of the systems of the

Ombudsman already correspond to such standards. The investigation procedures, for instance, are principally similar to those of e.g. the Swedish Parliamentary Ombudsmen.

With this in mind the report suggests steps, which within the implementation period (to and including December 2005), aims at improving the organisational systems and practices of the Ombudsman office. The project budget of approximately 230,000 EUR can carry the suggested steps of which the most substantial one is training of the institution's lawyers, not least its investigators. The budget can also carry upgrading of equipment to some extent. The assessment has also identified areas of improvement beyond 2005, for instance an examination of the current IT-system and the continuous work to bring about amendments to the Ombudsman Law (the latter should of course commence within the project period, but can be expected to extend beyond 2005).

As to the personnel organisation the conclusion made is that the appointment of Deputies to the regional offices is crucial (and it is already ongoing). The appointment of additional interpreters is also very important. Apart from that, the number of staff basically appears adequate to meet the *current* needs. When it comes to the *future* needs and the *planned* personnel organisation my conclusion is that the organisation should be downsized (see attached organigram). That would also give the Ombudsman an opportunity to argue for the reallocation of funds to meet other needs of the institution.

It has been stated in the report that one substantial obstacle to enhanced efficiency is the way the Ombudsman's budget is currently handled by the Government. I have suggested the Ombudsman to work intensely to bring about an amendment to the Ombudsman law and other relevant laws, in order to remove Governmental control over the Ombudsman's budget. The procedure for appointment and dismissal of the Ombudsman also calls for amendments to the Ombudsman law to diminish risks for political control over the Ombudsman and the Deputies. Different steps in this respect have been suggested.

The trust from the people is a cornerstone for the proper function of the institution. Such trust is gained by continuous and persistent efforts to perform high quality investigations and carry out well planned and intelligent awareness campaigns through media and other sources. Here is also the place to emphasize the Ombudsman's opportunity to mediate between ethnic groups. It is an extremely important feature in the Macedonian case. The importance of that role can hardly be overestimated (a relevant comparison is e.g. the situation in Kosovo and the Ombudsperson there). The Ombudsman has an excellent opportunity to contribute substantially to the development of a stable ethnical situation and the fulfilment of equitable representation in state organs. He can do so with existing powers and even more so with suggested improvements. Several measures have been suggested to improve the Ombudsman's engagement in the non discrimination work (additional training, research, written manuals, improved registration of discrimination cases). As to the efforts to achieve equitable representation it has been suggested to prepare an Action Plan on national equitable representation, to start initiative investigations into equitable representation matters, to require equitable representation lists from authorities under the Ombudsman's supervision, and (as to internal equitable representation) to employ additional interpreters etc.

I can support the Ombudsman's decision to handle non discrimination matters (including gender rights) centrally in Skopje. The ethnic situation in certain regions, however, calls for a very close observation and regular re-evaluation of this solution, as well as responsiveness and readiness for changes if circumstances indicate that non discriminations matters – especially concerning ethnic controversies – need to be handled regionally. As to a Children's

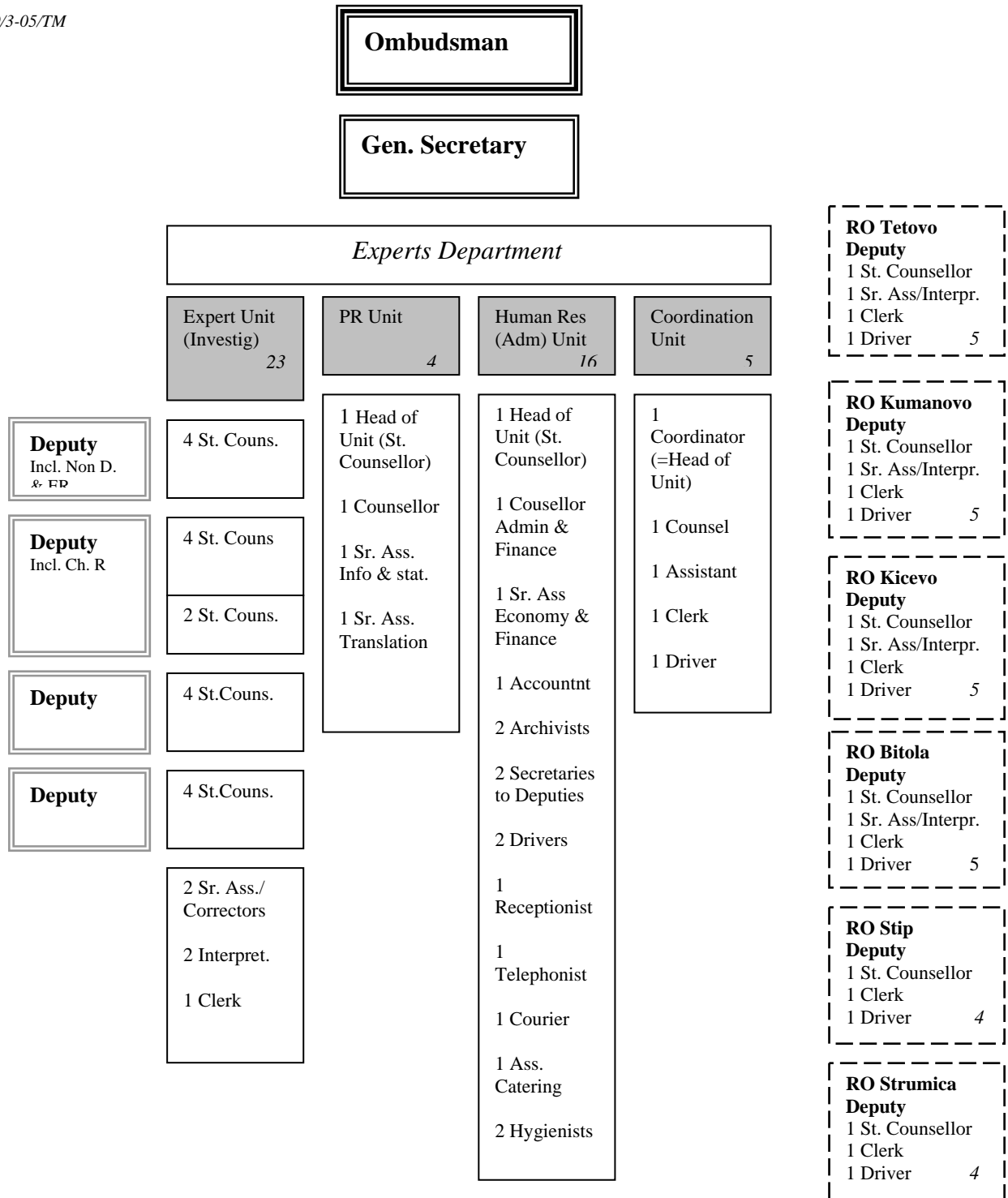
Rights Deputy the Ombudsman's solution is to handle such issues together with certain other matters centrally, in Skopje. The recommendations in this report are not in opposition to this model. A remaining general recommendation is that the Ombudsman's right to make exceptions from the centralized handling of non discrimination cases and children's rights matters should be put into the Ombudsman's internal regulations.

As to the handling of cases, the recommendations aim at making the process more efficient and to counter compliance problems, without compromising the independence of courts or other authorities. It has to be remembered that the Ombudsman institution is dependent not only of trust from the people but also from the authorities under its jurisdiction. The authorities should not be given reasons to doubt the Ombudsman's objectivity and professionalism. Among the recommended steps are different amendments in the Ombudsman law and other statutes, to give the Ombudsman additional and/or sharper instruments to carry out meaningful investigations and oblige authorities under its jurisdiction to hand over documents and other information. Example of suggested measures is power to impose an administrative fine, making non collaboration a disciplinary offence, right to litigate for the access of information, reducing of unnecessary limitations of the Ombudsman's right to use his good judgement.

It is gratifying to see that the investigators of the Ombudsman office not only ask for additional training but also have a reasoned idea of relevant activities. Thus, input from the investigators has been an important base for the suggested training activities presented in Chapter 18. The activities take aim on different quality components of the investigation and reporting procedures, such as enhanced objectivity, efficiency and focus during investigations and in reports (see Chapter 8). The quality level will be increased also by activities such as advanced human rights training and concentrated studies of the since long established Ombudsman system in Sweden. Sustainability of the training activities will be secured to the extent possible by the development of manuals and by follow up training and similar.



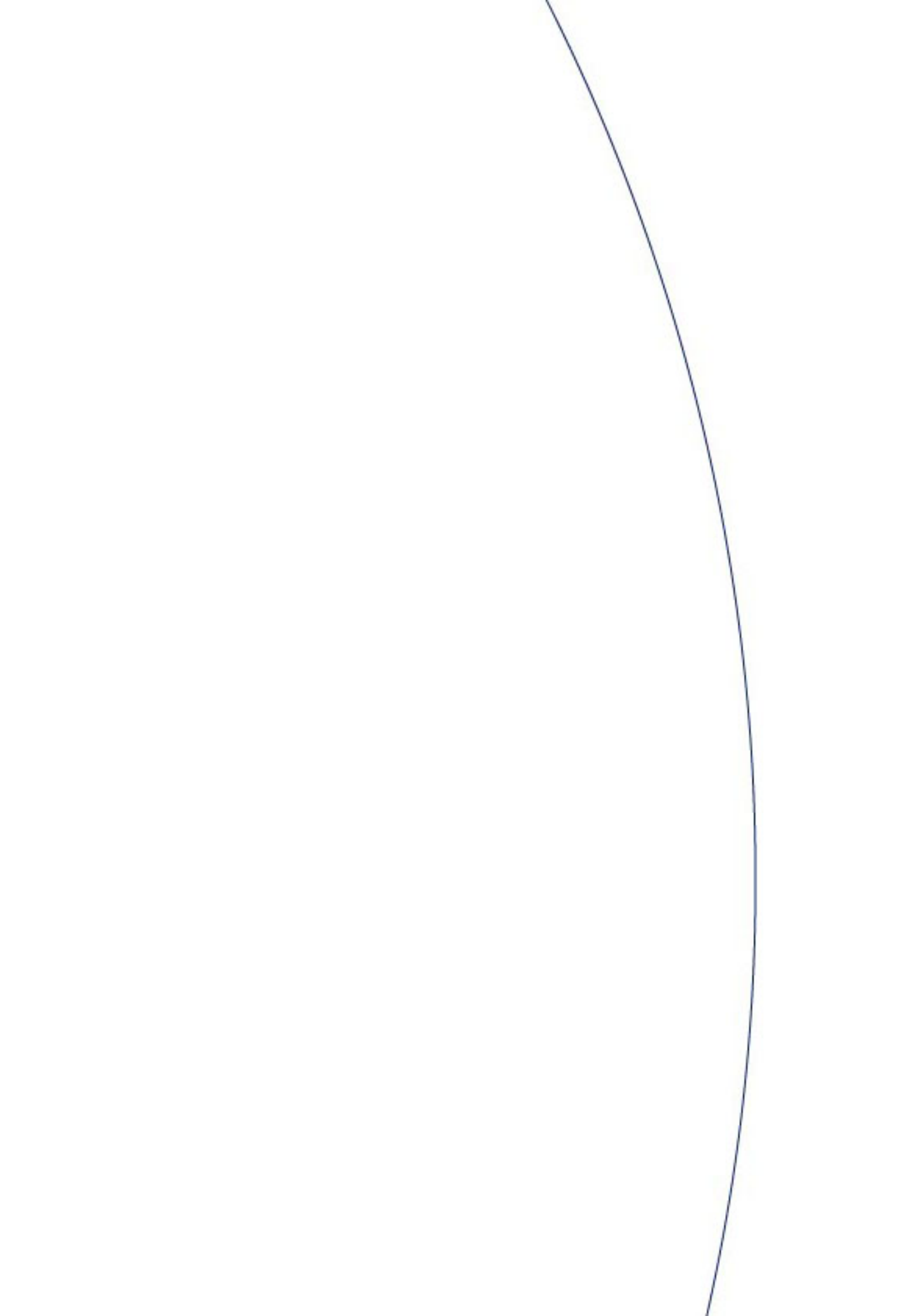
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This simplified Organigram represents a reduced personnel organization; instead of the 128 staff in the Ombudsman's current personnel plan, the above organigram adds up to 82 staff.

The major downsizing is done in the Experts Unit (The Investigations Unit) where i.a. 8 Counsellors and 8 Sr. Assistants have been left out, and the Coordination Unit, where all except 1 State Counsellor (the Coordinator and Head of Unit) has been removed.

The links between the boxes are otherwise the same as in the Ombudsman's organigram.





Organization for Security and Co-operation in Europe  
**Spillover Monitor**  
**Mission to Skopje**

