

## Civic participation through the Office of the National Ombudsman in the protection of labour rights in Bulgaria

### Abstract

*This article examines the Office of the National Ombudsman as a possible channel for the exercise of citizen's participation in democratic life in Bulgaria. Evidence in this direction is derived from the legally established possibilities and actions of the Office itself, as well as from the results of an empirical study based on in-depth interviews conducted with the occupiers of the position of the National Ombudsman as well as representatives of collective civil society organisations. The exercise of civic participation through the Office is illustrated by describing a case drawn from Bulgarian practice – the protests of workers and employees in defence of their rights to unpaid wages and other compensation in 2017 – which resulted in changes to the legislation championed by the Ombudsman. The Office is not above criticism and the article concludes with some suggestions for how the relationship with civil society could be improved and how the Office could better achieve its goals of strengthening civic life and, in particular, the perception among citizens that they do have the power to influence decision-making within the country.*

**Keywords:** national ombudsman, Bulgaria, civic participation, decision-making process, labour rights, collective civil society

### Introduction

The emphasis in this article on the participation of citizens through the Office of the National Ombudsman was instigated by PhD work that I recently defended (Ushatova-Kalinova 2023), proving the thesis that the National Ombudsman is a possible and desirable channel for the participation of citizens in collective civic activities in Bulgaria. The low levels of trust in institutions, parties and in the political system in general in Bulgaria<sup>1</sup> in recent years pose a serious risk of eroding the democratic foundations of governance. Against this background, the search for new channels to stimulate citizen activity and inclusion in the country's decision-making process is of key importance for the functioning of the state. In the context of prolonged internal political instability, the Office of the National Ombudsman in Bulgaria appears as a focus of citizens' hope that there is a state structure in the country that stands by them and, through its legally established opportunities and

1 Monitoring of social and political attitudes conducted by the 'Alpha Research' agency. Last accessed 26 November 2023 at: <https://alpharesearch.bg/monitoring/34/> (in Bulgarian).

proactive actions, is able to react adequately to crises, civil unrest and pressing social problems.

The article is based on the conclusions of the research and focuses on data taken from the annual reports of the National Ombudsman and on examples of the Office's activity in connection with the protection of labour rights in Bulgaria in order to demonstrate the effectiveness of the institution in its interaction with collective civil society and, in turn, their inclusion within the decision-making process.

### Characteristics of the National Ombudsman in Bulgaria

The Office of the National Ombudsman – also called the Parliamentary Ombudsman (because of the body that elects it) – in Bulgaria was 'born' out of civil society through the long-term efforts of several non-governmental organisations that have been working on researching, modelling and arguing for the introduction of a public defender at national and local levels, realising the need to improve control mechanisms for compliance with human rights. The National Assembly as a legislative body, probably rather as a means of complying with the obligation to harmonise Bulgarian legislation with that of the European Union (EU), introduced the Ombudsman as a public mediator between the state and civil society in 2003 with the adoption of the Law on the Ombudsman; later on (in 2006) it was also constitutionally regulated.

The need for the introduction of this mechanism, which does not duplicate the functions of the existing human rights protection, control and law enforcement mechanisms in the country, but complements their activities and, in certain cases, is their alternative, is conditioned by the insufficiently effective legal protection of citizens, including their relations with the administration.

A fundamental reason for the introduction of the Ombudsman is also contained in the established scale of corruption in the country. For several years in a row, the non-governmental initiative Coalition 2000<sup>2</sup> has been collecting information, conducting research and analysing corruption practices in Bulgaria. In its annual corruption assessment reports, it substantiates the conclusion that Bulgarian citizens identify corruption as one of the most serious problems of the transition, ranking it fourth in importance after unemployment, low incomes and poverty (Coalition 2000: 6). The mechanisms for limiting corruption in the state administration are considered insufficient and ineffective, while the incompetence and sheer malignancy of the state administration is most directly related to the rights of citizens. Indeed, the actions of the judiciary in carrying out its primary task – the protection of the rights of citizens – is also defined in these reports as insufficiently effective.

These factors all played a significant role in realising the need to introduce the Ombudsman especially since, according to the practice of even the most developed

- 2 Coalition 2000 is a non-governmental initiative based on the idea of the Center for the Study of Democracy, which was established in 1997 and includes non-governmental organisations, deputies, judges, diplomats, lawyers, etc. and which carries out its activities with the financial assistance of the American Agency for International Development. The main task of the initiative is the fight against corruption among government officials.

legal states, judicial protection cannot exhaust the mechanisms for guaranteeing human rights.

The principles<sup>3</sup> laid down in the law by which the Office of the Ombudsman is guided in the exercise of its powers are: publicity; independence; affirmation of the rule of law and justice; and judgment based on internal conviction. The National Ombudsman supervises state and municipal bodies and their administrations, the people entrusted with public functions or the provision of public services and private legal entities. Its means of influencing offenders are to make recommendations and legislative proposals and to publicise bad practices. The possibility of the Ombudsman to reach agreement through mediation between the complainant and the relevant institution is extremely valuable.

The National Ombudsman has the power to:

- appeal to the Constitutional Court with a request to establish the unconstitutionality of a law that violates the rights and freedoms of citizens
- give opinions to the Council of Ministers and the National Assembly on draft laws that refer to the protection of human rights and freedoms, as well as to the signing or ratification of international acts in the field of human rights, and to supervise their implementation
- submit a request for interpretative decisions to the Supreme Court of Cassation and the Supreme Administrative Court
- express publicly its position on cases of the violation of civil rights, as well as to request a hearing at the National Assembly.

It is extremely valuable, and in the spirit of the democracy of a state institution, that the annual and specialist reports on the institution's activities, which the Ombudsman submits to the National Assembly, are public (they are published on the Office of the Ombudsman's website) and anyone (who has access to the internet) has the opportunity to familiarise themselves with their contents.

As a result of a content analysis of the Ombudsman's annual reports, the following summaries and conclusions can be drawn about the results achieved and the authority gained by the Office in just 18 years:

- the content of the annual reports provides quantitative and qualitative information about the entire activity of the Ombudsman for each past year. These reports are not only backwards-looking reporting by nature – they also set priority frameworks for those policies that the Ombudsman protects as an institution and which are perceived as:  
... an act of the Ombudsman that brings to the attention of the supreme legislative body issues that affect the rights of citizens (Office of the National Ombudsman 2007: 6)
- the Office considers that statistical data on the number of complaints filed and the citizens served by it (see Table 1) act as an indicator of the degree of trust that citizens hold in it and of its ease of access by them, and also determine its

3 These principles, regulated in the Law on the Ombudsman, are set out in 'International Standards, Basic Principles and Good Practices for the Institution of the Ombudsman' (European Centre for Minority Issues – Bulgaria and Ombudsman of the Republic of Bulgaria 2005).

weight and authority. Data from 2022 give good reason to the current Ombudsman, Diana Kovacheva, to state that the institution ‘has long ceased to be a mailbox for signals’ but that it has ‘won authority and trust’ as a defender of citizens (Office of the National Ombudsman 2022).

Table 1 – Number of complaints and citizens served by year

Year	Ombudsman	No. complaints received	No. citizens served
2006	Ginho Ganev	2516	
2007		3367	
2008		2405	
2009		2686	
2010	Konstantin Penchev	3687	
2011		5530	
2012		5336	
2013		7320	17 775
2014	Maya Manolova	5010	
2015		6202	16 214
2016		10 640	27 037
2017		12 635	34 908
2018	Diana Kovacheva	12 890	36 892
2019		12 916	50 000
2020		13 244	60 000
2021		13 536	65 000
2022		15 189	74 383

Source: Compiled by the author based on data from the annual reports of the National Ombudsman.

For the purposes of this article, statistical data on the profile of the complaints received over the years by the Office are included (see Table 2). Based on these data, the following conclusions can be drawn:

- a lasting trend is being demonstrated for the primacy of complaints about violated consumer rights which, in 2022, will amount to 30% of the total share of those submitted to the Office. In second place, also in 2022, are complaints about violated social rights, education and healthcare, which total 20%. In the ‘violated social rights’ column, the largest share is taken by complaints about labour rights and employment, while complaints registering property problems also have a consistently high share

- the share of complaints about rights violations in respect of administrative service and good governance is also significant. These data, on the one hand, reflect the degree of quality and the efficiency of state institutions and, on the other, the high standards that citizens hold towards the administration which is expected to implement democratic values, not to violate human rights, and to obey the rule of law.

Table 2 – Distribution by type of violated rights as % of filed complaints

Year	% of total no. complaints about violated consumer rights	% of total no. complaints about violated social rights	% of total complaints about property problems	% of total no. complaints about administrative service and good governance	General no. complaints received
2006	15%	16%	36%	7%	2516
2007	27%	14%	23%	5%	3367
2008	19%	11%	23%	8%	2405
2009	21.5%	16%	18%	7%	2686
2010	21.8%	17%	17.5%	6%	3687
2011	23%	18%	15%	4%	5530
2012	23%	19%	15%	3%	5336
2013	27%	17%	14%	4%	7320
2014	30%	11.7%	15%		5010
2015	26.5%	12%	14%	5%	6202
2016	29.5%	13%	11%	5%	10 640
2017	24%	14%	10%	5%	12 635
2018	23%	14.6%	10.5%	6%	12 890
2019	27%	14.8%	8.4%	8.7%	12 916
2020	25.6%	8.5%	11%	7%	13 244
2021	31.5%	7%	11%	7%	13 536
2022	30%	8.6%	12%	5.6%	15 189

Source: Compiled by the author based on data from the annual reports of the National Ombudsman.

## Regulated channels for the connection of the Ombudsman with civil society

The activity of the Ombudsman can be most effective, above all else, when it is associated with active interaction and cooperation with a wide range of non-gov-

ernmental organisations,<sup>4</sup> branch institutions, trade unions, business associations, representatives of academic circles and the media.

The Rules of Procedure set down for the Ombudsman provide for the establishment of advisory councils as work forums for summarising administrative practice in various spheres and for assistance in popularising and implementing the Office's authority. With their activities, these councils, representing public opinion, assist the Ombudsman in efforts to protect real public interests. On the Office's own initiative, a Consultative Constitutional Council was also established in 2015 and constituted within the timeframe of the mandate of that particular Ombudsman. The task of the Council is to discuss complaints received over the constitutionality or otherwise of laws that violate the rights and freedoms of citizens, and it is also authorised to consider proposals from citizens and organisations under which the Ombudsman is requested to propose to the authorities, under Art. 150(1) of the Constitution, appeals to the Constitutional Court.<sup>5</sup>

The goal is to combine the efforts of the responsible state institutions and active civil organizations. By common agreement, the goal of the Council is to work on current problems and promote good practices of the relevant state and civil structures, without encroaching on the autonomy of each of them.<sup>6</sup>

In 2008, the Ombudsman realised the need to create a Public Council on the Rights of the Child as an environment for productive dialogue and, in the same year, a Council for Protection against Discrimination was also established. The Council has an open character and specialist representatives of non-governmental organisations participate in it, including from the Bulgarian Helsinki Committee, the Psychology Research Center and the Bulgarian Center of Women's Studies and Policies.

Non-governmental organisations have an important role in the Monitoring Council under Art. 11 of the Law on Persons with Disabilities, which monitors the implementation of policies for the protection of the rights of disabled people in Bulgaria, in accordance with the requirements of the UN Convention on the Rights of Persons with Disabilities. The composition of this Council includes, in addition to representatives of the Ombudsman and the Commission for Protection against Discrimination, four representatives of organisations of and for disabled people and one representative of the academic community. A transparent and public procedure has been established that allows non-governmental organisations to self-select their representatives in the Council. The detailed involvement of participants facilitates a summary as-

4 In addition to a wide range of NGOs (with different spheres of interest), Article 5(2) of the Rules of Procedure expressly specifies that 'the Ombudsman cooperates with non-governmental organisations whose subject of activity covers the protection of human rights'.

5 Rules for the work of the Consultative Constitutional Council to the Ombudsman can be found at: <https://www.ombudsman.bg/documents/%20%D0%9A%D0%A1.pdf> (in Bulgarian) [last accessed 28 May 2022].

6 The quote is from a message on the page of the Ombudsman: <https://www.ombudsman.bg/news/159?page=152> [last accessed 28 May 2022].

assessment of the problems of disabled people and allows the Ombudsman to take quick and adequate actions. The emergency situation due to the Covid-19 pandemic posed significant challenges to vulnerable groups, including disabled people; thanks to the work of the Council, all problems arising from complaints and reports made by disabled people have been systematised.

In the activities of the Ombudsman, especially during the last five years, major activity has been noticed in the process of expanding the role of the representatives of civil society not only in summarising and systematising the problems caused by rights violations but also in drafting and discussing legislation. In 2020 and 2021 (years that cover the pandemic crisis), the Office has taken a number of initiatives precisely with the support and participation of non-governmental organisations, with a level of cooperation that the Ombudsman evaluates in its annual reports as effective and successful.

There is another functioning mechanism for interaction with civil society at regional level; that is, the regional councils – these include representatives of local authorities and the public in relevant areas, as well as the Ombudsman and the Deputy Ombudsman or representatives of the administration of the Office.

The current regulatory framework excludes the possibility of non-governmental, branch, employer and other organisations and legal entities petitioning the Ombudsman directly, with the exception of those representatives of legal entities created for public benefit whose subject of activity is the protection of human rights.<sup>7</sup> However, the law does give the opportunity to the Ombudsman to take action not only as a consequence of referrals but also on an own-initiative basis, when the necessary conditions for the protection of the rights and freedoms of citizens have not been established.<sup>8</sup> Thus, when the Ombudsman considers that cases brought before the Office represent problems of public importance, the Ombudsman can self-refer and take action. In this direction, the public and advisory councils can play an essential role in communicating and typifying similar cases, according to Art. 14 of the Rules of Procedure.

### The National Ombudsman in Bulgaria as an opportunity for civic participation

A starting point for the study of the state of the Ombudsman's relations with the collective subjects of civil society are some conclusions from an empirical study (Ushatova-Kalinova 2023: 133-153), part of the PhD research mentioned above. The survey was conducted in the period March-May 2023 with two categories of respondents, who numbered 13 in total including representatives of the Office of the Ombudsman and representatives of NGOs and civil society movements. A qualitative method – in-depth (or non-standardised) interview – was chosen to collect the individual empirical information. The purpose of the study was to investigate the relationship between the Office of the Ombudsman and civil society activities, which encompasses both implemented and unimplemented interaction, the effectiveness of that interaction and an assessment of the activity of the Office of the Ombudsman

7 Art. 24(2) of the Law on the Ombudsman.

8 Article 19(2) of the Law on the Ombudsman.

and its development. The important question for the study was to provide research information that would assist in assessing whether the Ombudsman was a possible channel for civic participation.

For the purposes of this article, the next section focuses on the most important conclusions from the analysis of the empirical information gathered during the research:

- there is a strong connection between the Ombudsman and collective civil society. Regardless of the stated wishes of strengthening the lines of communication between the Ombudsman and civil society, the opinion that the relationship between them is strong is well expressed. It is supported both by the examples they provide of their interaction, and by the shared view of specialist representatives of both groups concerning the perceptions of the need for cooperation between them. It is commonly recognised that this is essential in order to achieve better results both in terms of protecting the rights of citizens as well as in the implementation of policies by the state government which are beneficial to society
- the active cooperation and interaction between the Ombudsman and civil society and inclusion in the decision-making process promotes the effective functioning of the Office. Among the reasons for seeking the assistance of the Ombudsman, most frequently mentioned is the ability to influence the legislative and decision-making processes, using all the means of influence given by the law. This is also shared by the specialist representatives of the Ombudsman who consider these interactions to be ‘the main forum for civil participation’.<sup>9</sup> The support of the Ombudsman is sought in cases related to the protection of civil and social rights including protection from gender-based violence; protection of the child victims of domestic violence; advocacy for policy change to overcome barriers to early childhood education; support for the protection of voting rights; labour rights – as an example: a ban on unpaid internships – rights affecting access to healthcare, the rights of disabled people; etc. Cooperation with the Ombudsman is evaluated positively and the Office is perceived most often as ‘partner’,<sup>10</sup> as ‘like-minded’,<sup>11</sup> as a ‘friendly institution’<sup>12</sup> and as ‘natural partner’.<sup>13</sup>
- with regard to the direction of the development of the Office of the Ombudsman, two main trends, motivated (but not undisputed) by the specialists participating in the research, clearly stand out. The first, which promotes the introduction of different ombudsmen with specialist mandates, has in its defence the benefit of the thematic concentration of supervision alongside responsibility for the implementation of policy in a relevant field. Here the main problem that stands out is that the creation of other such institutions is likely to reduce the weight of the National Ombudsman and undermine its authority. For the Ombudsman, its authority is decisive for its success. The other trend is in the direction of strengthening the advocacy role of the Ombudsman. This role clearly stands

9 Interview with Elena Cherneva-Markova, the current Deputy Ombudsman.

10 Interview with Plamena Nikolova from the National Network for Children (NMD).

11 Interview with Nadia Shabani from the Bulgarian Center for Non-Profit Law (BCNP).

12 Interview with Teodora Bakrzhieva from the Bulgarian Donor Forum (BDF).

13 Interview with Plamena Nikolova from NMD.



out as a primary reason for seeking the institution's assistance on the part of collective civil society activities. Even the 'indirect' legislative initiative of the Ombudsman is not a sufficient deterrent for civil society to seek, through this institution, its path to civic participation

- an important conclusion is that experts from civil society have high expectations of the Ombudsman – this can be explained by at least two circumstances. First, civil society has been an active participant in the introduction of this state institution, which it sees as a like-minded partner. Second is the political crisis which has intensified the effects of poorly functioning state institutions and also highlighted the deficits in entire swathes of Bulgaria's social systems
- special emphasis is placed on the person who holds the position of National Ombudsman. According to NGO respondents, having a person of stature in the post is important for the activity, effectiveness and impartiality of the institution. The requirements of specialists vis-à-vis the holders of this position do not stop only at statutory ones. The wishes of civil society specialists can be summarised as a demand that persons accepting the Ombudsman role view it as a vocational one
- the study proves the thesis that the Ombudsman is indeed a possible channel for citizens' participation. Confirmation for this can be found in the interviews conducted with all specialist representatives, of both groups, via the interviews conducted for the research. They clearly situate the Office as a natural mediator between citizens and the state in the decision-making process.

### The Ombudsman and civic activities in defence of labour rights in Bulgaria

After this review of the legally established possibilities of the Office of the Ombudsman in Bulgaria and the important conclusions drawn from empirical research, this article turns next to the actions of the Ombudsman in its interactions with collective civil society in the context of the protection of the labour rights of citizens in Bulgaria.

The protection of the right to work, as a basic human right and reflected as such in a number of international acts, as well as in the national legislation of Bulgaria,<sup>14</sup> falls by definition within the scope of the powers of the National Ombudsman. All the questions, the signals and the complaints of citizens seeking the assistance of the Ombudsman to resolve rights violations in this area can be summarised in the following headlines:<sup>15</sup>

- the right of access to employment and to the job search services provided by the Employment Agency
- the right to labour remuneration and benefits, including violations of the rights of workers and employees related to cases of delays in payment, as well as complete non-payment of due remuneration and benefits, both during the em-

14 Regulated in Art. 16 and Art. 48 of the Constitution of the Republic of Bulgaria.

15 These can be seen here: <https://www.ombudsman.bg/bg/p/trudovi-prava-24> (in Bulgarian) [last accessed 26 November 2023].

ployment relationship and after its termination, and issues related to employment being undertaken without an employment contract

- labour rights, including rights violations in the area of working hours, undeclared work, overtime, the right to rest periods, the use of annual leave entitlements, the specific rights of civil servants, and the right to healthy and safe working conditions
- labour rights and employment, which includes questions related to the emergence of labour or service relationships, the conduct of interim and annual appraisals of employees in state and municipal administrations, etc.
- labour disputes, including the termination of employment, the right to special protections against dismissal, unpaid monetary claims after the termination of employment, and wages and benefits awarded by the courts but which have gone unpaid.

The Ombudsman is extremely active in the field of social policy. By definition, the Office provides support to citizens who have sought assistance, but the role of the institution does not end there. On the basis of these complaints, questions and signals, the problems and difficulties experienced by entire groups of citizens – workers, the unemployed, pensioners, etc. – may be identified. In these cases, the Ombudsman uses all the range of powers provided by the law to ensure that these difficulties and problems are brought to the public agenda and that the appropriate state institutions are actively engaged in overcoming them. In this way, in 2014, when the complaints received about labour rights violations amounted to 23% of all the social rights complaints made during the year, the Ombudsman decided to put the questions and problems referred to it on the legislative agenda.

In that year, as in previous years, complaints and reports about unpaid wages and other forms of compensation resulting from employment represented the majority. Such complaints arise mainly from former and current workers in commercial companies or in organisations and institutions that are not part of the state or the local administration, with citizens preferring to seek payment of their due remuneration and compensation administratively in order to avoid having to resolve these matters in court. Workers complain that they are unable to collect the sums awarded to them when a convicted employer does not have sufficient property or cash; its bank accounts have been seized by another creditor; a specific charge has been placed on the employer's property or all the property has been mortgaged; and where all of its liquid assets has been pledged elsewhere.

The issue here is that the bodies of the Labour Inspectorate are limited to taking measures only where an employment relationship still exists. According to judicial precedence in Bulgaria, after the termination of the employment contract, a worker or employee can only seek protection of the right to remuneration by taking out court proceedings. There are frequent cases where, due to a lack of funds, workers cannot afford to hire a legal representative while their insufficient legal knowledge makes it difficult for them to represent themselves. At the same time, cases are also considered in which, at the end of the court proceedings, the employer has already effectively ceased its activity and does not have sufficient assets to cover its obligations.

Based on the complaints received from citizens in the field of labour, social security, social support and the findings presented in its annual report, the recommendations of the Ombudsman strongly anticipated the need for additional legal measures to ensure effective protection for workers in the following areas:

- establishment of a priority ranking for the satisfaction of workers' and employees' claims for remuneration and compensation over all other creditors, regardless of whether the latter's claims are secured in any way
- the creation of an opportunity for employees to request the opening of bankruptcy proceedings against the employer when required wages go unpaid
- the regulation of a legal basis that would allow the bodies responsible for monitoring compliance with labour legislation to issue coercive administrative measures at the request of workers and employees for rights violations committed by the employer and after the termination of the employment relationship, in particular in respect of unpaid wages.

Over the next two consecutive years, the Ombudsman noted in its annual reports an increase in complaints filed for social rights violations. In 2015, the growth of the relative share of violated labour rights in all social rights amounted to 36.7%. In that year's annual report, the Ombudsman found that the recommendations which did not concern changes in the current legislation were, for the most part, taken into account and implemented by the bodies and institutions to which they were addressed. However, the recommendations regarding the need to change the legislation, unfortunately, had not found a response. In 2016, although individual complaints about labour rights violations did not show growth, entire teams of teachers, people working in medical institutions, etc. sought the assistance of the Ombudsman to protect their labour rights. Analysing the findings of the whistle-blowing inspections undertaken as a result of these complaints, the Ombudsman concluded that the existing mechanisms did not ensure the protection of citizens' right to labour remuneration and other compensation, and appealed again for proper state action in creating the conditions to guarantee the effective exercise of their rights.

Tensions on these issues escalated in 2017. Right from the first months, a large number of citizens individually or collectively sought protection in respect of their right to labour remuneration. More than 200 workers from a chain of grocery stores sought support, holding a rally in March outside the offices of the Ombudsman. This enabled the Office to take a number of actions aiming to protect the labour rights of citizens working for bad employers. Meetings were held with citizens affected in various towns and villages including Dupnitsa, Vetren, Bobov dol, Obrochishte, Ruse, Sofia and Varna. In some cases, more than one meeting was held, including in their workplaces. The Ombudsman personally supported the protests of workers with outstanding wages that were held in Sofia and in Chepelare. With the mediation of the Office, some agreements were signed between representatives of workers and employers; however, not all of these were actually implemented.

At the end of March 2017, the Ombudsman organised a public roundtable on 'Legal guarantees to protect the rights of workers from bad employers' at which proposals for legal changes to guarantee the payment of wages were discussed. This was the culmination of the frequent cases of labour exploitation cited by workers and

employees from all over Bulgaria and who were organising demonstrations, protests and hunger strikes and submitting collective complaints to the Office in respect of unpaid wages and social insurance contributions. They also highlighted abuses in the transfer of commercial companies to people who were not suitable.

The Ombudsman defined the situation as:

... evidence that in the 21st century there is still labour exploitation or so-called 'modern slavery'.<sup>16</sup>

In support of this observation, she cited data from the Australian non-governmental organisation Walk Free<sup>17</sup> on the Global Slavery Index, taken from its report in 2016, according to which Bulgaria moved in a negative direction from 73rd to 32nd place in just one year.

At this roundtable, the Ombudsman sought the cooperation of all interested parties – affected workers, state bodies and employer organisations – to discuss the problems in the labour legislation with the idea of legislative changes being initiated by the Office. Trade union and employer organisations, representatives of the Ministry of Social Affairs, the main Labour Inspectorate, the Employment Agency, the National Insurance Institute, the National Revenue Agency, the Guaranteed Receivables of Workers and Employees Fund,<sup>18</sup> etc. all participated in the event.

At the start of the new parliament (the 44th National Assembly, in April 2017), the Ombudsman submitted a package of legislative proposals for amendments to the labour code, the civil procedure code, the commercial law, the law on the guaranteed claims of workers and employees in the event of the employer's bankruptcy and the law on public procurement. The main goal of the proposals was to stop the practices of labour exploitation, make changes that would oblige employers to pay wages to their workers before transferring a company to unsuitable third parties and to increase the efficiency of the work of the Guarantee Fund which, in 2016, paid out only BGN 2 million out of the available BGN 250 million. These changes concern the following issues:

- in the labour code, it was proposed to introduce a three-month period for the payment of compensation by the employer; increase the monitoring functions of the Labour Inspectorate in connection with the payment of wages and other forms of compensation after the termination of the employment relationship, including the imposition of coercive administrative measures

- 16 This quote from the Ombudsman website can be found here:  
<https://www.ombudsman.bg/bg/n/ombudsmanat-maia-manolova-s-promeni-v-4-zakon-890>  
(in Bulgarian) [last accessed 26 November 2023].
- 17 The Australian human rights organisation Walk Free's Global Slavery Index can be viewed here:  
<https://www.walkfree.org/global-slavery-index/> [last accessed 26 November 2023].
- 18 Editor's Note: In cases of employer insolvency, the Fund guarantees up to a certain amount the rights of workers and employees to receive employment-related remuneration and benefits, accrued but unpaid up to the point of the declaration of insolvency.

- in the commercial law, the Ombudsman's proposals sought a ban on the transfer of commercial enterprises and company shares in the event of unpaid wages and social insurance contributions, along with the possibility for workers themselves to request the opening of bankruptcy proceedings, and the transfer of workers' claims from ranking fourth in bankruptcy proceedings to a position of the first order
- in respect of the law on guaranteeing the claims of workers and employees in case of the insolvency of the employer, the proposals were designed to increase the possibilities for them to receive compensation by extending the period between the termination of the employment relationship and the initiation of bankruptcy proceedings
- in the law on public procurement, it was proposed that any employer who owed remuneration and compensation to employees be removed from participation in public procurement.

Together with the Confederation of Independent Trade Unions in Bulgaria, the Ombudsman brought to the attention of the National Assembly these proposals for changes to protect citizens' rights to labour remuneration and other compensation, including an expansion of their access to payments from the Guarantee Fund. The proposals received the support of the prime minister and they were agreed with the employer organisations who were regular members of the Association of the Organizations of Bulgarian Employers.

These proposals were discussed at the instigation of the National Ombudsman for almost a year in several parliamentary committees, in plenary session and, before that, in the framework of the established Constitutional Advisory Council, which included lawyers with extensive professional experience and public prestige. In 2018, after a long journey, the result was that the National Assembly accepted the Ombudsman's proposals for amendments to the legislation guaranteeing the rights of workers.

## Conclusion

The empirical research and the specific presented example of the protection of labour rights, regardless of the difficulties and established deficits, prove in practice the possibility of the Office of the Ombudsman to be a channel for the inclusion of citizens in the decision-making process. This gives reason to reflect on the following proposals for greater efficiency in the relationship between the Ombudsman and representatives of civil society:

- at this stage, full-fledged dialogue between the Office and civil society takes place in the public and advisory councils. Some of the participants in such councils recognise these as a natural opportunity for citizens' participation, but the problem is that they involve only a small number of organisations. It is recommended that rules be established that would unify the relationship of the Ombudsman with the civil sector, in order to encompass a wider range of organisations and social groups
- as a recommendation for more sustainable relations between the Ombudsman and civil society, a functional relationship needs to be established with particular

authorities which exist at local level. This sort of relationship is currently absent from the Bulgarian model. This would strengthen the Ombudsman's relationship with regional communities which is essential for the wider inclusion and representation of citizens in the decision-making process

- the recognised institutional weaknesses (giving greater priority to the Ombudsman; the different content and arrangement of information in the Office's annual reports), which have a negative impact on the relationship between the institution and civil society organisations can be overcome with more detailed regulation and consolidation of the institution's activity.

## References

Coalition 2000 (2000) 'Corruption Assessment Report', last accessed 26 November 2023 at: <https://csd.bg/bg/publications/publication/corruption-assessment-report-2000/> [in Bulgarian].

European Centre for Minority Issues – Bulgaria and Ombudsman of the Republic of Bulgaria (2005) 'International Standards, Basic Principles and Good Practices for the Institution of the Ombudsman'.

Office of the National Ombudsman (2007-2022) *Annual Reports*.

Ushatova-Kalinova, E (2023) 'The role of the ombudsman in the development of civil society in Bulgaria – civic participation' PhD thesis.



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