

## **OBJECTIVE CRITERIA. COUNTRY REPORT - BULGARIA**

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### **INTRODUCTION**

The present report is intended to summarize and analyze the results of the objective and legal analysis done within the frames of the international project “*Accountable Government in Central and Eastern Europe: Public and Self-Perception*”. The project is being implemented using a standard methodology in Romania, Slovakia, and Bulgaria, and includes two research modules.

The first one consists in conducting sociological surveys following a unified theoretical model among the population of age in each country and among the representatives of the legislative bodies (Parliament, National Assembly).

The second part of the project involves collecting and analyzing objective statistical and legal information concerning the main aspects of government and the extent to which individual citizens are practically and legally empowered to vindicate their personal rights before the state, as represented by its institutions. This module also includes the evaluation of the extent to which the state is liable for the actions and inaction of government institutions, as well as the legally established and enforced sanctions with respect to public officials violating the law. The information under this module has been grouped into the following major categories:

**Transparency of the activity of government bodies.** Examined under this section are the possibilities to access information about the various levels of government. This includes the extent to which individual citizens are entitled to use public and government information. Also under consideration are the constitutional and legal provisions, as well as various practices of government institutions in this area.

**Accountability of state institutions.** This section includes the results of the interviews conducted with representatives of the agencies in charge of handling citizen complaints, requests, and petitions addressed to state institutions. The discussions held with the local public mediators (with ombudsman functions) make up an important part of the study since, even when their functions have not been legally regulated, they play a critical role in mediating between the citizens and state institutions.

**State responsibility.** The analysis under this section is based on the sanctions imposed on public officials and government institutions. It covers instances of corruption and misuse of public office in the territory of Bulgaria, with an emphasis on the towns in which crimes of this type are presumably concentrated. The analysis explores the reasons for such violations and the possible measures to help restrict them.

## **1. STRUCTURE OF THE PUBLIC SECTOR**

### **PUBLIC ADMINISTRATION AND PUBLIC OFFICIALS (LEGAL FRAMEWORK)**

The main issues related to the organization and activity of public administration have been provided for by the **Law on the Administration** of 1998. This Law was promulgated on November 5, 1998 and enforced as of December 6, 1998.

Subject to legal regulation by this Law are the structure of the administration, the main principles of organization of its activity, the positions within it, the main requirements for assuming those positions, as well as the powers of the bodies of the executive (Art. 1). The Law also applies to the administration of the other state bodies provided for by the Constitution, as well as to the local government authorities, unless otherwise stipulated by a special law.

The **fundamental principles** guiding the administration in the exercise of its functions are the principles of legality, openness, accessibility, liability, and coordination (Art. 2). The Law obliges the administration to provide information to citizens, legal entities, and state bodies while exercising its functions, as well as to respond to received inquiries, requests, complaints, proposals, and signals from citizens and legal entities on matters of legitimate interest.

The Law contains detailed provisions on the structure of the bodies of the executive and the organization of the administration. It includes relatively detailed regulation of the distribution of powers among the bodies of the executive, the structure and organization of the activity of their administrations. At the same time, the regulation of the guarantees for transparency in the work of the administration and the liability of the officials is referred to special laws, regulations or intra-institutional normative acts, which have, for the most part, not been adopted yet.

**Public officials.** According to Art. 116 of the Constitution, “public officials shall be the executors of the nation's will and interests. In the performance of their duty they shall be guided solely by the law and shall be politically neutral”. The Constitution expressly stipulates that the legal status of public officials is to be regulated by a special law.

The **Law on Public Officials** was promulgated on July 27 1999 and enforced as of August 28, 1999. This law regulates the establishment, content, and termination of official legal relations between the state and the public officials during, or in connection with, the exercise of their official duties, unless otherwise stipulated by a special law (Art. 1). As defined by the Law, a public official is a person holding a paid position in the administration or who has been granted public official status by a special law (Art. 2).

The Law contains detailed provisions on the manner and procedure of appointing and dismissing public officials and on their status. The **fundamental principles** guiding public officials in the exercise of their duties are legality, loyalty, liability, stability, political neutrality, and hierarchical subordination (Art.18).

On the basis of these principles the Law further regulates the specific **obligations** of public officials. Established first are the obligations to the public. The public official must respond without delay to citizens’ requests, duly and promptly fulfilling those that are legitimate, and must facilitate the acknowledgement of citizens’ rights and legitimate interests (Art. 20). It is expressly noted that the public officials are not to display any rudeness, incivility or disrespect in their interaction with the public.

Public officials are **liable** for non-fulfillment of their obligations. The Law first establishes **disciplinary liability**. Public officials may be liable to disciplinary action for certain violations laid down in the Law. Among them, non-fulfillment or delayed execution of official duties, exceeding their official powers, violation of the established obligations to the public, rude, uncivil, or disrespectful treatment of citizens (Art.89). In such cases disciplinary liability is also established for the supervisor neglecting complaints from citizens about violations committed in their regard by his/her subordinates. The provided penalties are notice, reprimand, delayed promotion, demotion, and dismissal (Art. 90).

Public officials incur **property liability** for any damages caused to either the state or citizens, intentionally or through gross negligence, either through unlawful action or inaction during, or in connection with, the exercise of their official duties (Art. 101). When the damages have been inflicted to citizens the state is jointly liable with the respective public officials who caused

them. Property liability of public officials is settled through claims filed with the competent courts.

## **2. TRANSPARENCY**

### *2.1. ACCESS TO PUBLIC AND GOVERNMENT INFORMATION (LEGAL FRAMEWORK)*

#### **Right to information.**

**The Constitution of the Republic of Bulgaria** of 1991 explicitly establishes **the right to information** as one of the **fundamental** civil rights. According to Art. 41, paragraph 1, everyone is entitled to seek, obtain, and disseminate information. The exercise of this right may not harm the rights and good reputation of other citizens, nor national security, public order, public health and public morals. Article 41, paragraph 2, stipulates that citizens are entitled to receive information from government bodies and agencies on matters of legitimate concern to them, unless the information constitutes a state secret or other confidential information protected by law, or affects the rights of others.

The establishment of the right to information as a constitutional right makes it **inalienable** under Art. 57, paragraph 1. The exercise of this right is subject to temporary limitation only upon declaration of war, martial law, or other extraordinary circumstances.

#### **Access to public information.**

**The Law on Access to Public Information**, regulating the conditions and manner of exercising the constitutional right of citizens to seek and obtain information about public life in this country, was adopted in July 2000.

The Law regulates the public relations connected to the right to access public information. As defined by the Law, this is any information about public life in the Republic of Bulgaria and information allowing citizens to form their own opinion of the activity of the entities laid down in the law, regardless of actual medium – text, plan, map, photograph, image, disk, audio or video tape, and others. Personal information about citizens is not included in the term “public information” under this Law and is explicitly excluded from its field of application.

The Law regulates the access to public information created or kept by the bodies of national or local government in the Republic of Bulgaria, or by other public law entities, as well as by natural and legal persons if it concerns an activity of theirs financed by the national budget.

The Law also applies to the access to public information which is created and kept by the means of mass communication and is connected to the transparency of their activity.

All citizens of the Republic of Bulgaria, foreign nationals, and persons without citizenship rights, as well as all legal entities, can access public information. They may not exercise this right to the detriment of other persons’ rights and reputation, or against national security, public order, public health and morals.

The Law explicitly lays down the **fundamental principles** of the exercise of the right to access public information:

- Openness, authenticity, and completeness of the information; providing equal conditions of access to public information;
- Securing legality in seeking and obtaining public information;
- Protecting the right to information;

- Protecting personal information;
- Guaranteeing the safety of society and of the state.

Access to public information may only be limited when the information constitutes a state secret or other confidential information in the cases established by law.

**With regard to the public information created and kept by state authorities and their administrations, the Law distinguishes between official and operative information.** Official information is the one contained in the normative acts issued by national and local government authorities in the exercise of their powers. Operative information is collected, created, and kept in connection with official information, as well as in connection with the activity of the authorities and their administrations.

**The access to official information contained in normative acts is secured through their promulgation.** Promulgation also secures access to other types of official information in the cases provided by law or by a decision of the authorities that prepared it. Upon requests to access such information the respective authorities must cite the publication in which it was promulgated, as well as the date and issue of the publication. Access to other official information beyond the explicitly cited cases is free and takes place according to the provisions of this Law.

Access to operative information is also free and may only be limited in the cases provided by law, but not if more than 20 years have passed since its creation.

The Law obliges state authorities to inform the public about their activity through publications or other forms of announcement. They are further obliged to disclose information collected or discovered in the process of their activity when this information may avert a threat to the life, health and safety of citizens or their property, when it refutes widespread inaccurate information with a bearing on important public interests, or when it is, or may be, of public interest, or must be prepared and provided under the provisions of a law.

The heads of administrative structures within the system of the executive must regularly publish current information in order to secure transparency of the activity of the administration and facilitate as far as possible the access to public information. The Minister of Public Administration publishes annual summarized information about the authorities and their administrations and is responsible for its dissemination. This information must also be made available for inspection by the public by each of the administrations.

The Law contains detailed provisions on the **procedure of granting access to public information.**

Access to public information is granted upon filing a written request and under the conditions set by the respective authorities. Access to public information may also be granted in response to a verbal inquiry. In this case, if the person requesting public information is denied access or deems the information provided insufficient, he/she may file a written request.

The forms of accessing public information include reviewing the information (originals or copies), verbal information, paper copy or copy on a technical data medium.

The Law establishes the deadlines for considering requests for access to public information within which the respective authorities, or persons specifically designated by them, must decide to grant or deny the requested public information and to notify the requestors in writing about the decision taken.

When the respective authorities issue a decision to grant access to the requested public information they must determine the extent, deadlines, location, form, and cost of granting access to this information. When the information in question is not available but the authorities know where it can be obtained, they must forward the request within 14 days and notify the

requestor. When the information is not available with the respective authorities and they do not know where it can be obtained they must notify the applicant within a 14-day deadline.

Access to public information may be denied when the requested information constitutes a state secret or classified information, when it affects the interests of a third party in the absence of express written consent to grant the requested information, or when the requested public information was already provided to the applicant in the preceding 6 months. The decision to deny access must cite the legal and factual grounds for refusal and the appeal procedure.

Notifications of the decisions to grant or deny access to public information must be handed to the requestors in person or sent by certified mail. They are subject to appeals before district courts or the Supreme Administrative Court, depending on the issuing authority, under the provisions of the Law on Administrative Court Proceedings or the Law on the Supreme Administrative Court. Should the court establish non-conformity with the law, it may fully overturn or partially modify the appealed decision, obliging the authority in question to grant access to the requested public information.

Access to public information is free of charge. Subject to payment are only the costs incurred in providing public information, based on rates which are to be fixed by the Minister of Finance and which may not exceed the actual costs incurred. Proceeds from the provision of public information accrue under the budget of the respective government body.

The Law finally provides for **administrative penalties** in the form of fines and property sanctions for violations of its provisions. The process of establishing violations and of imposing, appealing, and enforcing penalties is subject to the procedures laid down in the Law on Administrative Violations and Penalties.

### **State Archive Fund.**

The **Law on the State Archive Fund** was passed in July 1974 and has since been subject to several amendments, the latest dating from 1993. This Law regulates the organization and activity of the State Archive Fund in the collection, registration, processing, preservation, and use of archive documents. The Law defines the State Archive Fund as a collection of valuable documents – openly accessible or confidential. They may be documents related to the activity of institutions or scientific, economic, public, and other organizations, as well as documents of an economic, scientific, cultural, political, religious, or other character, owned by individual citizens or civic organizations. The selection of documents to be included in the State Archive Fund is done by permanent committees with the institutions, the scientific, economic, and other organizations, in coordination with the bodies managing the State Archive Fund.

The Law specifies the **competent bodies** managing the State Archive Fund and defines their powers. These are the Chief Directorate of Archives with the Council of Ministers, Central State Archive, and state archives. The Chair of the Chief Directorate of Archives is appointed by the Council of Ministers. The cited bodies preserve and use the State Archive Fund following the procedures established by the Law.

The documents of the State Archive Fund may be used by all institutions, organizations, and citizens of the Republic of Bulgaria, as well as by foreign nationals. The procedures for the use of these documents are laid down in the **Rules of Implementation of the Law on the State Archive Fund**, adopted by the Council of Ministers on April 25, 1989, and promulgated on May 12, 1989. The Bulgarian nationals who wish to use archive documents are to address their written requests to the head of the respective archive and must indicate the subject they are interested in and why. Foreign nationals may only use archive documents with the permission of the Chief Directorate of Archives. The documents relating to foreign policy and those from the

Central Military Archive are used with the permission of the Ministry of Foreign Affairs and the Minister of Defense, respectively.

### **Access to documents of the former State Security.**

**The Law on the Access to Documents of the Former State Security** was adopted in August 1997 and regulates the access, disclosure, and use of information preserved in the documents of the former State Security. Under the Law a document is any material medium carrying information and created in conformity with existing regulations, with the exception of documents that were unlawfully seized and preserved.

Under the Law, every Bulgarian citizen is entitled to submit a written request to the Minister of the Interior and inquire whether information had been collected on him/her by the former State Security. The checks are done by a special commission chaired by the Minister of the Interior and including the heads of the National Security Service, National Intelligence Service, Military Counter Intelligence, Intelligence Directorate with the Chief of Staff, National Security Agency, and the Archives Department with the Minister of the Interior. After completing the check the commission must notify the requestor in written form.

The persons on whom the former State Security had been collecting information classified into separate files may access this information. Access is granted after submitting a written request to the Minister of the Interior. The Ministry of the Interior must notify in writing the requestor of the time and location where he/she may inspect the documents.

With a written request to the Minister of the Interior, each person affected may ask for access to be barred to certain documents or parts of documents containing personal or family confidential information for a period of time that they may set themselves, but which may not exceed 100 years after their date of birth. When the person concerned is deceased such rights are conferred to the husband/wife, the parents and children, if they are Bulgarian nationals, and in this case the period for which the information may be classified cannot exceed 25 years after the demise of the person concerned.

### *2.2. ACCESS TO GOVERNMENT INFORMATION.*

This section describes the structure and content of the Government Web site (<http://www.government.bg>).

#### GENERAL INFORMATION ABOUT THE GOVERNMENT

The information is grouped into several sections. The first one contains biographical data about Prime Minister Ivan Kostov. It includes speeches and statements of his before the National Assembly, as well as various international forums and organizations. The page also features a number of interviews with Ivan Kostov by representatives of Bulgarian and foreign mass media, as well as ample photographic material covering key moments of the activity of the Cabinet. A separate link has been provided for contacts with the public relations department of the Council of Ministers. The entire section tends to focus on the person of the Prime Minister yet no possibility has been provided for personal contacts with him.

A separate page contains general information about the other members of the Government, as well as possibilities to contact the public relations departments with each ministry.

## TRANSPARENCY OF GOVERNMENT ACTIVITY AND ACCESS TO INFORMATION

The Web site contains ample material popularizing government activity that has been divided into several major sections: relations with the mass media, topical international and domestic information, and a public debate section.

The section related to the media is confined to brief announcements of forthcoming activities or initiatives of the Prime Minister or the whole Government. Such announcements are available for an extended period of time, which makes it possible to examine government activity retrospectively.

There are a number of parallel features providing information about the immediate activity of the Government. The entire government bulletin archive for the period June 1999 – March 2000 has been made available by months and issues.

This section also includes the online publications of various government brochures in PDF format.

The Web site of the Bulgarian Government further offers an extensive archive of official documents. They are generally related to the process of Bulgaria's accession to the European structures. The major emphasis is on the Bulgaria 2001 Program, which contains the Government's agenda for leading the country out of the economic crisis and affiliating it with the European structures.

One of the major initiatives related to the transparency of government activity is the **Dialogue 2001** public debate. It covers the opinion and evaluations of the public at large about the execution of the Government's strategic program Bulgaria 2001. The page hosts the public debate by the personal initiative of the Prime Minister. Special rules have been established for the purpose. The discussion is open and accessible to each visitor. The procedure consists in posting a specific opinion or comment. Visitors have the possibility to first acquaint themselves with the administrative and legal aspect of the various activities, as well as with reports and objective information in the specific areas – foreign policy, infrastructure, industrial policy, culture, healthcare, etc. The comments are posted on the government server. This greatly facilitates the process of sending and receiving comments. Visitors are also able to review the opinions and comments sent so far, as well as to engage in discussions among themselves. A similar debate also exists in English and though not so comprehensive, it provides some idea of public opinion.

This initiative also has certain shortcomings. In the first place, this is its low level of popularization. There is no reference to the debate in any of the other official Web sites (the site of the Parliament, the official site of the President, the Web page with general information about Bulgaria). Up to now none of the other media have covered the discussion. This narrows down the range of participants to immediate Internet users.

### GOVERNMENT BULLETIN

The government bulletin is regularly published in the Government's Web site. It is essentially meant to provide information on the Government's current activities. The bulletin is intended for the mass media and is prepared and published daily.

In this respect the Government's Web site is a good source of information. The archive of the government bulletin is regularly updated. Back issues are arranged by months and are preserved for a longer period of time. It is possible to find issues dating back to July 1999. The government bulletin is also published in English.

### *2.3. ACCESS TO PARLIAMENT INFORMATION*

This section describes the structure and content of the Web site of the Bulgarian Parliament (<http://www.parliament.bg>).

#### GENERAL INFORMATION ABOUT PARLIAMENT

The information content of the Web site is generally related to the immediate activity of the National Assembly and is divided into several more notable domains. The first one is the chronological presentation of the different sessions of the 38<sup>th</sup> National Assembly. These documents contain general information about the proposed and adopted draft laws and amendments to existing laws, as well as detailed information about these processes.

The second domain covering parliamentary activity covers news from the press center. The content of this feature is organized through links to the main documents or to other pages. A separate link refers users to a page containing telegraphic announcements of forthcoming events related to domestic and international parliamentary activity. There are separate links to documents presenting the working agenda of the sessions, announcements of the date and time of forthcoming working meetings of the parliamentary committees, a list of adopted draft laws, as well as announcements and analyses of discussions held between the Chair of Parliament and representatives of international organizations and parliaments. There is also a detailed description of the latest parliamentary oversight session.

An important element of this site is the possibility to contact the Public Relations Office with the National Assembly, which is in charge of working out and implementing the information and PR policy of the National Assembly and its administration. The telephone numbers, address, and e-mail addresses of the administrative management are provided.

#### TRANSPARENCY AND ACCESS TO INFORMATION

The Web site of the Bulgarian Parliament features detailed information about the individual MPs from both the 38<sup>th</sup> and the 37<sup>th</sup> National Assembly. Each MP has a home page that can be reached through a special search form. It contains a photograph, brief biographical data, and the chief parliamentary activities of the respective MP, in chronological order. Some of the MP home pages also include topical statements before the National Assembly. There is the possibility to view the complete list of members of the National Assembly (there are a total of 240 MPs), as well as an option for additional sorting by parliamentary group and/or by parliamentary committee.

Another important aspect in terms of the transparency of government decisions is the access of each user to all of the bills introduced by the Council of Ministers. A separate table lists the name of the bill, its registration number and abbreviation, as well as the leading parliamentary committee that introduced it. In addition, visitors can view the texts of the decisions by the Council of Ministers to propose the respective draft law, as well as a description of the entire procedure.

A separate column features the option to e-mail comments on each of the proposed draft laws. Though appropriate, this idea has been poorly implemented. On the one hand, there is no information anywhere on the page to whom these comments will be addressed and what their subsequent fate will be. No option has been provided to view the comments sent by other users. Thus the participation of the individual Internet users can hardly be called a debate or even a two-sided discussion, but is reduced to expressing a personal opinion.

As permanent parliamentary bodies, the various parliamentary committees have their own home pages.

An important part of the content of the parliamentary Web site is devoted to Bulgaria's affiliation with the European structures. A number of documents on this subject are provided. In the *Bulgaria and the EU* domain visitors can find the Bulgarian translations of: *The White Book – Preparation of the Associated Countries from Central and Eastern Europe for Integration in the Internal EU Market, 1995, National Program for Adopting the Acquis Communautaire*, as well as *Partnership for Accession* and other documents of a similar character.

### 3. HORIZONTAL ACCOUNTABILITY

#### 3.1. STATE ACCOUNTABILITY (LEGAL FRAMEWORK)

According to Article 45 of the Constitution, citizens are entitled to submit complaints, proposals, and petitions to government bodies. The related legal regulations are contained in the **Law on Proposals, Reports, Complaints, and Requests**, of July 1980. This law was already in place when the new Constitution was adopted and needs to be thoroughly revised in order to be brought in line with the constitutional provisions. It can at present only be enforced insofar as its norms do not counter the Constitution.

The Law creates a number of **guarantees** for the free exercise of citizens' and organizations' right of proposals, reports, complaints, and requests. It obliges government bodies to create proper conditions for the exercise of the right of organizations and citizens to make proposals and report irregularities for the purpose of improving the work of government bodies, as well as to file complaints and requests for the protection of their rights and legitimate interests. The Law specifically bans persecution on grounds of proposals, reports, complaints, or requests filed in conformity with its provisions. Government bodies must consider and decide on the proposals, reports, complaints, and requests within the deadlines set and in an objective and lawful manner.

The Law contains detailed provisions on the procedure of **reviewing the proposals, reports, complaints, and requests**. They may be filed in written form, verbally, or by other means. The proposals, reports, complaints, and requests submitted to an incompetent body must be forwarded to the competent authorities within 7 days of their reception, and the senders must be duly notified. The Law obliges the bodies to which the proposals, reports, complaints, and requests are addressed to assist and advise citizens as to their rights and obligations.

#### 3.2. THE OMBUDSMAN INSTITUTION (PUBLIC MEDIATOR) IN BULGARIA

In 1995 the Center for Social Practices took part in the Citizens and the Administration Project for the establishment of the institution of the Public Mediator. The project was sponsored by the PHARE Democracy Program. One of its main goals was to establish the Ombudsman (Public Mediator) institution using the democratic principles on a local level in order to successfully address citizens' problems. The project comprised 4 municipalities in this country – Mladost municipality in the capital, Sapareva Banya, Sevlievo, and Koprivshitsa. Actual implementation began in October 1998. To date, functioning Public Mediator institutions exist in the municipalities of Mladost, Sevlievo, and Koprivshitsa.

At this stage a draft law regulating the activity of the Ombudsman on a local and national level has been prepared and is about to be introduced into the National Assembly. The draft law was prepared by experts with the Center for the Study of Democracy and external experts. Its full text is presented in Appendix 4.

## GENERAL PROVISIONS AND STATUS OF THE LOCAL OMBUDSMAN

The Public Mediator, or Ombudsman, is an institution independent from the local and central government, protecting the rights and legitimate interests of citizens from unlawful action on the part of the public administration. The Public Mediator is vested with the authority to fulfill this role by civic and non-governmental organizations. Public Mediators receive and review complaints under cases involving violations of administrative procedures and legal regulations. The Public Mediators represent a third party in arising disputes and their role is to reconcile the positions of the aggrieved citizen and the respective administrative body. Specifically, their work consists in preparing proposals and recommendations intended to rectify errors and violations committed by the administration and in analyzing the underlying causes and conditions. The Public Mediator accepts and considers citizens' complaints and grievances in the following roughly outlined areas:

- Failure to observe the conditions and deadlines established by law for the provision of administrative services and for issuing administrative documents;
- Humiliating treatment of citizens;
- Providing incorrect information or refusal to provide information on the part of a given institution;
- Inflicted damages and offenses of citizens;
- Demonstration of incompetence and abuse of power.

The Public Mediator may also carry out checks and is granted access to information and documents by the local administrative bodies. Through their activity Public Mediators strive to improve the quality of public services provided by the administration and to enhance the rules and mechanisms of the relations between ordinary citizens and public officials. An important element of the activity of the Public Mediator is to inform citizens of their rights and obligations. They also provide consultations regarding the powers of the local authorities and the administrative procedures.

The Public Mediator may accept complaints in cases involving social assistance services. Close contacts are maintained with employees at the Municipal Social Assistance Center, with social workers and local experts in this area.

The Public Mediator also considers alleged violations of children's rights. In cases of abuse and other forms of mistreatment of children, the Public Mediator investigates the facts and engages the Commission for Countering Juvenile Delinquency.

The Public Mediator may also assist citizens in their contacts with the central and local administration, as well as with employers in any sector, with healthcare institutions, and the army.

Not subject to consideration are complaints related in some way or another with court trials or complaints concerning:

- a citizen's private life;
- labor disputes;
- labor union action;
- recruitment policy;
- business transactions;
- internal regulations and management of schools.

The powers of the Public Mediator are essentially confined within the municipality in which the institution is functioning. They also tend to vary depending on the type of institutions with which interaction is most frequent, and depending on the administrative organization of the community in question. All services provided by the Public Mediator are free of charge.

#### COMPLAINTS. TYPES AND CRITERIA.

Complaints may be filed with the Public Mediator in verbal or written form by filling out a form by the aggrieved party or a person duly authorized by him/her. Each written complaint needs to be conform to the following administrative conditions:

- it must concern an administrative service subject to monitoring by the Public Mediator;
- it must concern a problem subject to monitoring by the Public Mediator;
- it must first have been addressed to the respective administrative service and the due deadline for issuing a formal response needs to have expired;
- it must include all relevant details (data, documents, copies of the correspondence exchanged under the case, etc.);
- it must be filed within three months after the final deadline by which the respective service should have responded.

## 4. STATE RESPONSIBILITY

### *4.1. ACCOUNTABILITY OF THE EXECUTIVE*

The Bulgarian Constitution proclaims the principle of separation of powers and accordingly distinguishes between the legislative, executive, and judicial branches of power. In line with this principle, the National Assembly, as a body exercising the legislative power, controls the activity of the Council of Ministers, which constitutes the supreme body of the executive. The mechanisms of parliamentary oversight are also laid down in the Constitution.

Above all, the National Assembly exercises parliamentary control through its parliamentary committees. The Constitution grants the parliamentary committees the power to oblige ministers to attend their sessions and to answer questions that have been addressed to them.

Secondly, the National Assembly exercises parliamentary control through the constitutional right of members of parliament to address questions and inquiries to the Council of Ministers or individual ministers, who are obliged to reply. The questions must be topical, of a current nature, and of public interest. They are addressed through the Chair of the National Assembly in written form no later than 48 hours before the opening of the working session at which the ministers are supposed to reply. Replies may be delivered verbally or in written form. Inquiries must concern major issues in the activity of the Prime Minister, deputy prime ministers, individual ministers or their subordinated administrations. Inquiries are also addressed through the Chair of the National Assembly in written form. Replies may once again be delivered verbally or in written form. By motion of one fifth of the MPs the inquiry may become subject to deliberations and a decision may be adopted.

Thirdly, the National Assembly exercises parliamentary control over the activity of the Council of Ministers through the no-confidence vote procedure. A motion for such a vote may be made by one fifth of the MPs and is passed by a majority of over half of all members of parliament. When the National Assembly passes a no-confidence vote of either the Prime Minister or the Council of Ministers, the Prime Minister must submit the cabinet's resignation. If the no-

confidence vote does not pass, a new motion on the same grounds cannot be made in the next 6 months.

The Council of Ministers may itself request a confidence vote from the National Assembly on its overall policy, its program, or on a specific issue. In this case the motion passes with a majority of more than half of the attending MPs. Should the Council of Ministers not obtain the confidence requested, the Prime Minister is again obliged to offer the cabinet's resignation.

Article 7 of the Constitution stipulates that the state is liable for any damages inflicted by unlawful acts of its bodies and officials. The detailed regulation of this matter is contained in the **Law on State Liability for Damages Inflicted to Citizens** adopted in August 1988 and enforced since January 1, 1989.

The Law refers to two groups of government bodies that are liable for damages under its provisions – the **bodies of the administration** and the **bodies of the system of justice**.

The state is liable for damages to citizens resulting from illegal acts, actions, or inaction of state bodies or public officials in the process of, or in connection with, the performance of administrative activity. When the damages result from an illegal act issued by an administrative body, it is possible to seek compensation only after the respective act has been abolished following the established procedures. The latter include administrative appeal before a higher administrative body, appeal in court, as well as challenging the act through the special means of control over administrative acts in force. When the damages result from a void act issued by the administration, the act is declared void by the court with which the compensation claim was filed without first seeking its suspension. A void act is one with such serious flaws that it cannot have any legal consequences. When the damages result from illegal action or inaction on the part of the administration, indemnification may be sought directly through a claim in court which, in turn, must rule on the legality of the action or inaction.

The state is also liable for damages to citizens inflicted by the bodies of the justice administration system. Those are the bodies of the investigation, prosecution, the courts, and special jurisdictions. The Law thoroughly enumerates the cases when citizens may seek indemnification for damages inflicted by the bodies of the justice administration system.

In order to facilitate citizens in the exercise of their right of compensation, the body that suspends the illegal act or terminates the illegal official action or inaction, is required by law to advise citizens about the procedures through which they may defend their rights.

The Law determines the **size of the indemnification** owed by the state under the provisions of the same Law. This indemnification covers both property and other losses sustained as a direct or indirect consequence of the damage done, **regardless of whether there is willful misconduct** on the part of the official. However, if the aggrieved party contributed to the damage through their own conduct and actions, compensation may be reduced or not awarded at all.

The Law regulates the **procedure** of filing and hearing claims in court. The claim is to be filed against the body whose illegal act, action, or inaction caused the damages. Regarding competent courts, the aggrieved party may choose between two options – either the court by place of residence or the court of the location where the damage was inflicted. A prosecutor must obligatorily be involved in such actions. Trial costs are not paid by the claimant in advance but are only due in the event that the claim is completely or partially rejected.

#### *4.2. CONTROL INSTITUTIONS*

The Constitution of the Republic of Bulgaria establishes institutions, which, in addition to their regular activity, are charged with exercising financial and administrative control over other state institutions and organizations.

**Constitutional Court.** It is subject to provisions by the Constitution, the Law on the Constitutional Court, and the Rules of Organization and Activity of the Constitutional Court. The members of the Constitutional Court are appointed by the National Assembly, the President, and the judges from the Supreme Court of Cassation and the Supreme Administrative Court. In addition to its other prerogatives, the Constitutional Court rules on the constitutionality of the laws and other acts passed by the National Assembly, as well as the acts issued by the President. When the Constitutional Court establishes that a certain act is not conform with the Constitution, the respective act is declared anti-constitutional and is not enforced.

**Supreme Administrative Court.** It is regulated by the Law on the Supreme Administrative Court of 1997. The Supreme Administrative Court hears appeals of acts issued by the Council of Ministers, the prime minister, vice prime ministers, ministers, heads of other agencies immediately subordinated to the Council of Ministers, and the district governors. When the Supreme Administrative Court finds that a certain appealed act is unlawful, it has the power to suspend it.

**National Audit Office.** It has been provided for by the Constitution and is subject to detailed regulation by the Law on the Audit Office and the Rules of Enforcement of the Law on the Audit Office. The members of the Audit Office are appointed by the National Assembly. The Audit Office is independent from the executive. Its chief task is to exert control over budget execution in the various state institutions.

**National Assembly.** According to the Constitution, the National Assembly exerts parliamentary oversight of the executive as represented by the Council of Ministers. This oversight is ensured through the parliamentary committees and through the right of MPs to address inquiries and questions to the Council of Ministers or individual ministers, who are obliged to answer them. In this respect the highest prerogative of the National Assembly is to pass a no-confidence vote against the government.

**Council of Ministers.** Under the provisions of the Constitution the Council of Ministers exerts control over the activity of the individual ministers and may suspend unlawful acts issued by them.

#### *4.3. MISUSE OF PUBLIC OFFICE AND CORRUPTION*

**Corruption.** In 1999 there were 268 criminal investigations under way at the regional investigation services under art. 301-307 of the Criminal Code (bribery). Of those, 183 were from previous periods, 75 were newly initiated, and 10 cases were forwarded from other divisions and then reopened or transformed.

In the same period, at the district investigation services in Blagoevgrad, Vidin, Russe, Haskovo, and Sofia, there were 53 criminal investigations, of which 30 from a previous period and 20, newly initiated. The remaining 3 were forwarded from other divisions and then reopened or transformed. The table below summarizes the aggregate annual data.

**Table 1. Bribery – articles 301-307 of the Criminal Code**

	<i>Cases under investigation</i>	<i>Cases closed</i>	<i>Defendants charged</i>				
			<i>Total</i>	<i>Held in detention</i>	<i>Subject to other measures</i>	<i>Bulgarian nationals</i>	<i>Foreign nationals</i>
<i>Total for the country</i>	488	127	90	17	73	62	30
Sofia City	46	11	7	0	7	7	0
Blagoevgrad	3	0	0	0	0	0	0
Vidin	16	4	1	0	1	1	0
Russe	2	2	2	1	1	2	0
Haskovo	18	3	2	0	2	2	0

*Source: National Investigation Service*

The analysis of the statistical data reveals the following more notable tendencies:

- The number of newly initiated criminal investigations for the country as a whole in the second half of the year has increased from 32 to 43, or 1.34 times. For the remaining investigation services the number of cases instituted in the second half of the year marked a drop of 3.7% compared to the first half.
- There is a slight increase in the number of cases closed for the whole country. In the first half of the year they numbered 41, or 15.2% of all cases, and in the second half their number reached 45, which amounts to 16.8%. By contrast, for the remaining investigation services there was a decrease: in the second half of the year there were 9 corruption-related cases closed, while in the first half of the year, their number was 11.
- There emerges a positive tendency towards increasing number of cases closed with a court judgment for the country as a whole. In the first half of 1999 they were 23 (26.7%) and increased to 28 in the second half, amounting to 32.5% of all cases. Despite this relatively high share, in the monitored district divisions of the investigation service there was a decrease in their total number – from 55% in the first half of 1999, to 15% in the second half.
- The number of defendants charged in the country as a whole remains stable – an equal number of 30 persons were charged in the first and the second half of the year. For the regional investigation services their number fell from 8 to 4 compared to the first half of the year.
- The efforts of investigators to ensure the recovery of damages inflicted have been productive. For the country as a whole, 70% of the total amount of damages under all crimes committed were recovered in the second half of the year, and 22.6%, for the entire 1999. In the municipalities surveyed only 33.3% of the total amount of damages inflicted were recovered.
- The number of proposals by investigators aimed at removing causes and conditions favoring acts of bribery as detected during the investigations has increased. For the country as a whole their number in the first half of the year was 4, and increased to 6 in the second half.

**Misuse of public office.** At the end of 1999 there were 3,474 criminal investigations under way in the regional investigation services in the whole country on crimes under Articles 282-285 of the Criminal Code (misuse of office). Of those, 2,487 from past periods, 915 newly initiated, and 72 reopened or transformed.

For the same period, there were 570 criminal investigations under way in the district investigation services in Blagoevgrad, Vidin, Russe, Haskovo, and at the Specialized Investigation Service in Sofia.

**Table 2. Misuse of office – Articles 282-285 of the Criminal Code**

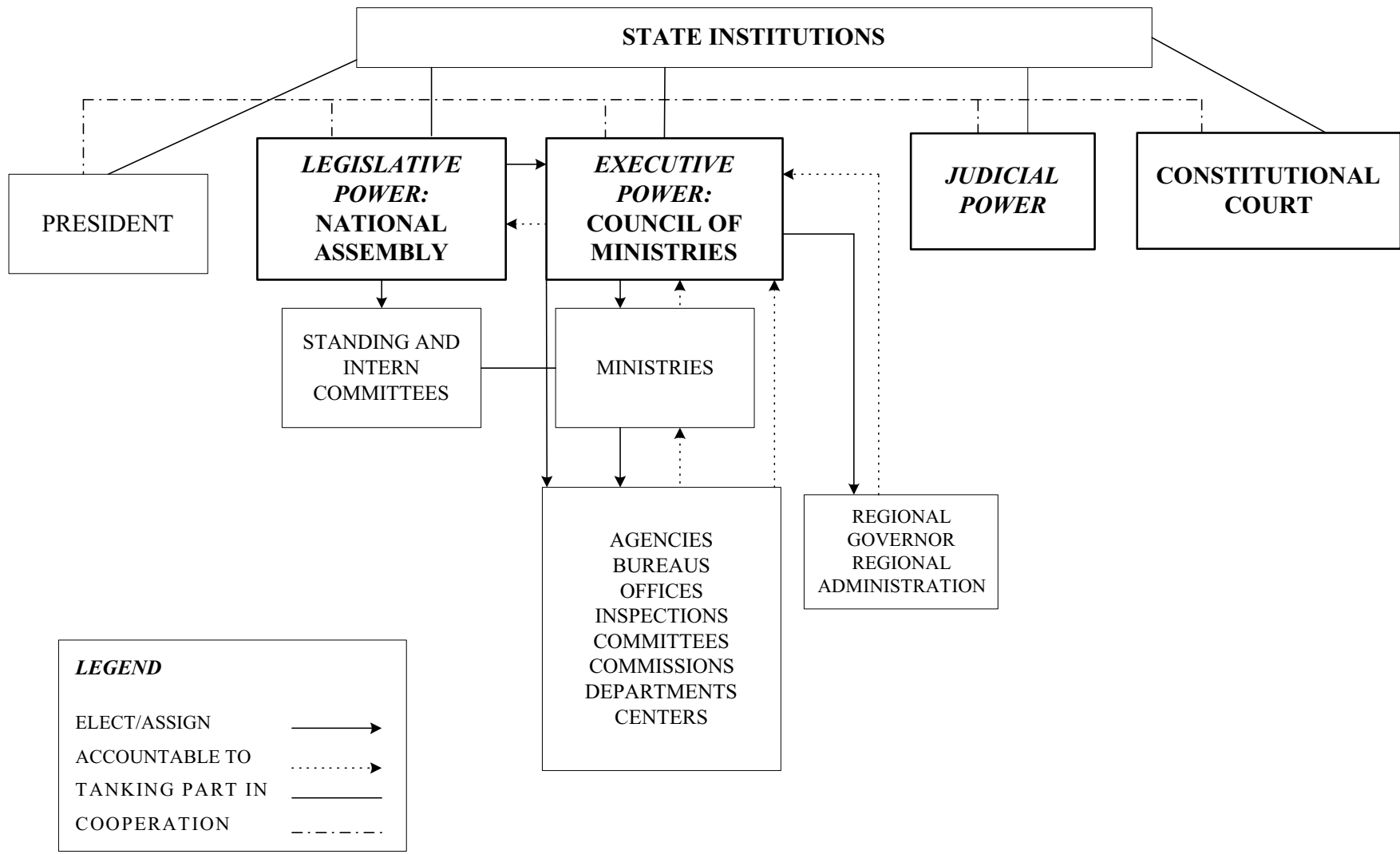
	<i>Cases under investigation</i>	<i>Cases closed</i>	<i>Defendants charged</i>				
			<i>Total</i>	<i>Held in detention</i>	<i>Subject to other measures</i>	<i>Bulgarian nationals</i>	<i>Foreign nationals</i>
<i>Total for the country</i>	6,428	1,189	485	17	468	482	2
Sofia City	348	125	21	1	30	31	0
Blagoevgrad	225	16	10	0	10	10	0
Vidin	86	26	9	0	9	9	0
Russe	112	27	19	0	19	19	0
Haskovo	127		0	0	0	0	0

*Source: Specialized Investigation Service*

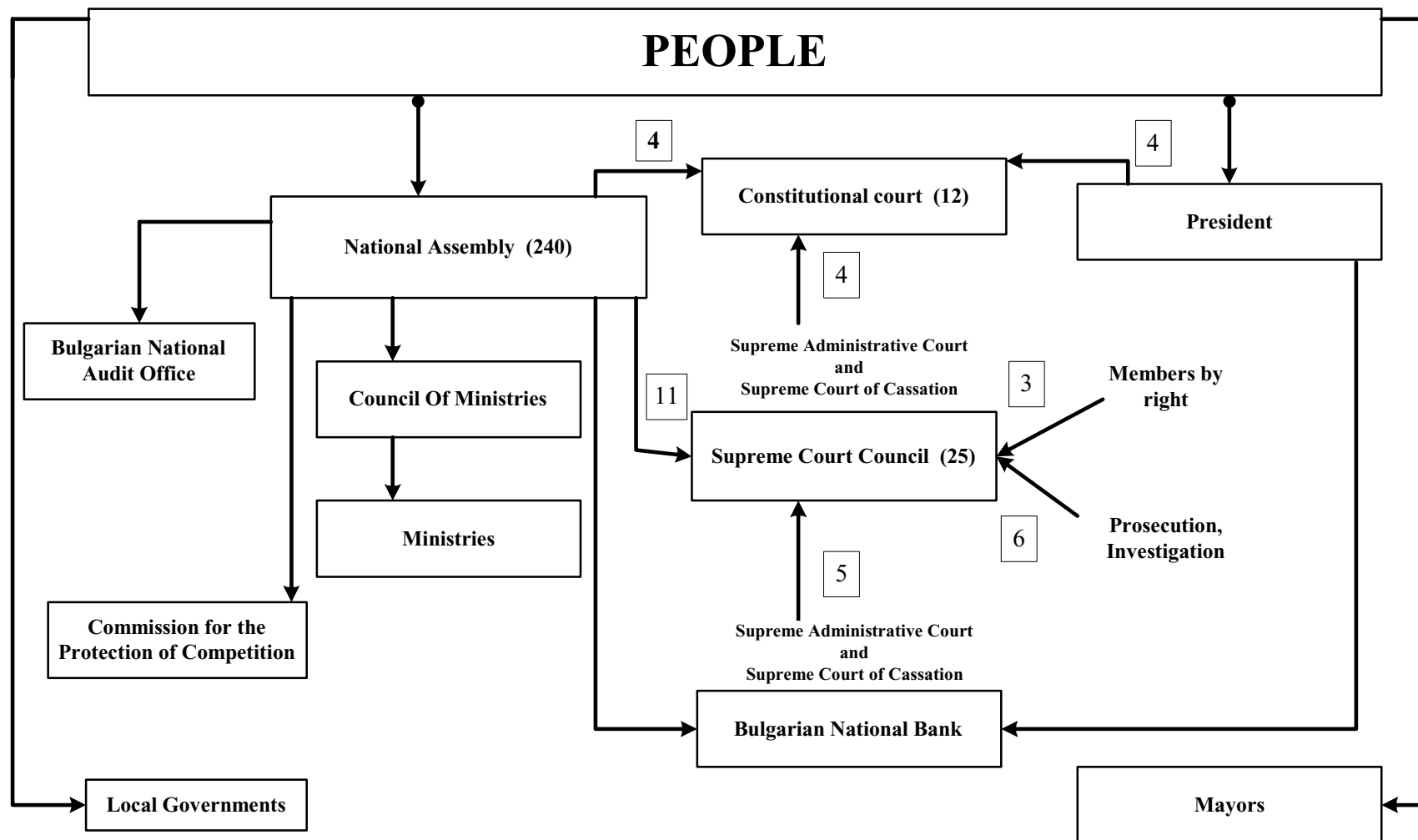
The analysis of the 1999 data on crimes under Articles 282-285 of the Criminal Code suggests the following more notable conclusions:

- There is a tendency towards increase in the number of newly initiated cases in the country as a whole. Their number in the first half of the year was 428, or 12.3% of all cases under these provisions of the Criminal Code, while in the second half, they numbered 487 (14.0%). The same applies to the newly initiated cases in the 4 district towns surveyed and in the capital. The total number of newly opened cases in the first half of the year was 119, and reached 130 by the end of the year.
- There appears a positive tendency towards increasing number of cases closed with a court judgment for the country as a whole. From 96, or 11.7% in the first half of the year, their number reached 116, or 14.2% in the second half. The same applies to the remaining regions included in the survey
- The number of defendants charged for the country as a whole has increased considerably, In the first half of the year they numbered 147, and in the second half, 191. For the remaining municipalities the total number of persons charged was 29 and 40 for the first and second half of the year, respectively
- The efforts of investigators to ensure the recovery of the damages inflicted under crimes involving misuse of office proved unsatisfactory both for the country as a whole and for the specific regions studied.

**Appendix 1. State Institutions**



Appendix 2. Formation of the government\*



\*The numbers in brackets indicate the number of the members of the respective institution. The numbers in squares show the number of officials in the respective institution, who are elected by other institutions.



## APPENDIX 3

### CRITERIA FOR ESTABLISHING THE ADMISSIBILITY OF COMPLAINTS

The criteria serving to determine whether a complaint is admissible or not are laid down in the Rules of the Activity of the Public Mediator.

In Mladost municipality Procedures for the Handling of Complaints, Reports, and Inquiries Addressed to the Public Mediator have been adopted and ratified, and have also been endorsed in the Framework Agreement with the municipal administration in the Mladost region. The document defines the fundamental principles and rules of the activity of the Public Mediator. In the presence of the proper conditions, meetings are held with both the citizen and the representative of the service which is the object of the complaint. After hearing the parties concerned, the prospects of resolving the dispute are evaluated. The next stage in the handling of the complaint is the collection of information. The citizen must provide copies of the documents at his/her disposal. The Public Mediator requests the necessary official information from the respective municipal service through the Mayor.

The Public Mediator accepts not only complaints but also informal questions and inquiries. When they cannot be directly referred to an appropriate institution, citizens are provided with updated directories listing all municipal offices and the administrative services they provide. In other cases the Public Mediator offers advice and consultations within his competence based on specific research and analyses.

### EFFECTIVENESS OF PUBLIC MEDIATOR ACTIVITY

Most of the cases that are not resolved are referred to other competent authorities, but in both municipalities it was noted that they constitute an insignificant part of the complaints received. Typically, the reasons for the failure to achieve a positive outcome were associated with the practical or normative limitations – the respective municipal office did not have due administrative authority, the powers of the Public Mediator were limited, there were no established procedures, etc.

The Public Mediator in Mladost municipality had received one corruption-related complaint concerning a public official. An express inquiry by the Public Mediator found that similar signals concerning the same person had on several occasions reached the regional mayor, on account of which the official in question had been dismissed two weeks before the signal was received at the Public Mediator's office. Similar complaints had not been received in the other municipality and the activity of the Public Mediator had not led to any specific administrative penalties and sanctions.

### THE PUBLIC MEDIATOR AND THE OTHER INSTITUTIONS

The contacts between the Public Mediator and the institutions depend on the specific cases dealt with and the scope of the powers delegated to him. These contacts essentially consist in relations with state institutions and relations with non-governmental organizations.

Relations of the former type are quite limited owing to the absence of legal regulation of the powers of the Public Mediator with respect to state institutions. The Public Mediators have sought assistance from representatives of the Ministry of Agriculture and Forests and the Ministry of Regional Development and Planning, as well as the local government authorities. Closest contacts are generally maintained between the Public Mediator institutions and the officials from the municipal administrations.

Next by importance are the relations with the representatives of non-governmental organizations. Most frequent are the contacts with the Center for Social Practices, which is the coordinator of the project for the creation of the Public Mediator institution at the municipalities, with the Center for the Study of Democracy, in the form of round tables and discussions, the Partners Bulgaria Foundation, which is implementing a USAID program on the problems of out-of-court conflict resolution, etc.

## OBSTACLES TO THE ACTIVITY OF THE PUBLIC MEDIATOR

In the opinion of both of the Public Mediators interviewed, in their activity to date they had not encountered any insurmountable obstacles or problems.

In Mladost municipality, according to the Public Mediator, the main problems are related to the absence of civic structures and local self-government bodies through which the Municipality, as well as the Public Mediator himself, can establish contacts with individual citizens. In this connection, his recommendations concerned seeking appropriate forms of cooperation, of creation of local bodies of civic self-government, etc.

Another source of problems is the persistent mistrust and the reticence of administrative officials to disclose all the details about a given case.

The limited powers of the Public Mediator constituted another obstacle to the immediate activity. All too often it had been necessary to address problems with the assistance of superior institutions, such as Greater Sofia Municipality, as well as various ministries. Owing to the limited status of the Public Mediator, in those cases it had been necessary to forward the requests or complaints to the reception offices of the ministries, which is a time-consuming and not particularly effective process.

## POPULARIZING THE ACTIVITY OF THE PUBLIC MEDIATORS

One of the fundamental characteristics of the activity of the Public Mediator is its openness. In both of the municipalities surveyed the popularization of these institutions is done through interviews in the regional, as well as the national, media, through public lectures, brochures disseminated among the local population, announcements, etc. Annual reports have been prepared for 1999, summarizing the main results of the activity in both municipalities and the idea is to prepare a joint publication for all Public Mediators in Bulgaria – in Mladost municipality, Koprivshtitsa municipality, and Sevlievo municipality.