



Република Македонија
НАРОДЕН ПРАВОБРАНИТЕЛ
Republika e Maqedonisë
AVOKATI I POPULLIT
O M B U D S M A N
Republic of Macedonia

ЗБИРКА НА ПРОПИСИ PËRMBLEDHJE E RREGULLAVE COMPILATION OF LEGAL REGULATIONS

НАРОДЕН ПРАВОБРАНИТЕЛ
AVOKATI I POPULLIT
OMBUDSMAN
OF THE REPUBLIC OF MACEDONIA

НАЦИОНАЛЕН ПРЕВЕНТИВЕН МЕХАНИЗАМ
MEKANIZËM PARANDALUES NACIONAL
NATIONAL PREVENTIVE MECHANISM

COMPILATION OF LEGAL REGULATIONS

OMBUDSMAN

OF THE REPUBLIC OF MACEDONIA

NATIONAL PREVENTIVE MECHANISM



Throughout world civilization, the history remembers times when torture was used as a legitimate mean to extort a confession from somebody or to punish convicted persons.

Today when the prohibition of torture is ascertained with many international documents, the world firmly stood behind the stance that under no circumstances or threats upon country, there should be no exceptions that would justify act of torture.

Hence, in the real life, prohibited or not, the torture and its other types of ill-treatment are unfortunately still present.

Therefore, having in mind that the existing European and world instruments for monitoring conditions in the places for deprivation of liberty cannot fully respond to the challenges of this phenomena, the United Nations adopted the Optional Protocol to the Convention against Torture, that not only foresees establishment of a Subcommittee for Prevention of Torture, but also establishment of National Preventive Mechanisms in those countries that have adopted this document.

At the end of 2008, the Republic of Macedonia ratified the Optional Protocol to the Convention against Torture and with the Law for its ratification designated the Ombudsman as a National Preventive Mechanism.

In 2009 the amendments of the Law on Ombudsman were adopted, foreseeing establishment of a special unit for prevention against torture. Furthermore, the Rule Book and the Methodology for prevention of torture were also adopted that year.

The Unit for prevention of torture, acting the role of a National Preventive Mechanism, has commenced functioning in March 2011.

I am convinced that through accomplishing the main goals of the National Preventive Mechanism, i.e. determining the conditions in the places where people are or can be deprived of liberty, it will alleviate prevention of all forms of torture and other inhuman treatment as well as will give appropriate protection to the victims of torture, at the same time sanctioning its perpetrators.

OMBUDSMAN

Ixhet Memeti

A handwritten signature in blue ink, appearing to read 'Ixhet Memeti'.

**SELECTED PROVISIONS FROM
THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA**

("Official Gazette of the Republic of Macedonia" No.52/91)

Article 77

The Assembly elects the Ombudsman.

The Ombudsman protects the constitutional and legal rights of citizens when violated by bodies of state administration and by other bodies and organizations with public mandates.

The Ombudsman is elected for a term of eight years, with the right to one re-election.

The conditions for election and dismissal, the competence and the mode of work of the Ombudsman are regulated by law.

Amendment XI

("Official Gazette of the Republic of Macedonia" No.91/01)

1. The Assembly elects the Ombudsman by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to communities not in the majority in the population of Macedonia.
2. The Ombudsman protects the constitutional rights and legal rights of citizens when these are violated by bodies of state administration and by other bodies and organizations with public mandates. The Ombudsman shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.
3. Item 1 of this amendment replaces paragraph 1 of Article 77, and Item 2 is added to paragraph 2 of Article 77 of the Constitution of the Republic of Macedonia.

Amendment XII – excerpt

(“Official Gazette of the Republic of Macedonia” No.91/01)

1. The Assembly shall establish a Committee for Inter-Community Relations.

The Committee consists of 19 members of whom 7 members each are from the ranks of the Macedonians and Albanians within the Assembly, and a member each from among the Turks, Vlachs, Romas, Serbs and Bosniaks. If one of the communities does not have representatives, the Ombudsman, after consultation with relevant representatives of those communities, shall propose the remaining members of the Committee.

**LAW ON RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION
AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT**

("Official Gazette of the Republic of Macedonia" No.165/08)

Article 1

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 in New York, is ratified.

Article 2

The Protocol in original in English and translated in Macedonian is as follows:

Article 3

The Ministry of Justice, the Ministry of Internal Affairs and the Ministry of Foreign Affairs are determined as competent organs of the state administration which shall take care of the implementation of this protocol.

Article 4

In regard of the Article 17 of the Protocol the Republic of Macedonia submits the following statement:

"In accordance with the Article 17 of the Protocol, Republic of Macedonia declares that the Ombudsman of the Republic of Macedonia is designated to work as a National Preventive Mechanism.

In cooperation with and on the basis of the previous agreement by the Ombudsman, nongovernmental organizations registered in the Republic of Macedonia and organizations which have a status of humanitarian organizations in the Republic of Macedonia, can take over some of the competencies of the National Preventive Mechanism."

Article 5

This Law enters into force the eighth day of its publication in the Official Gazette of the Republic of Macedonia.

**OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

(“Official Gazette of the Republic of Macedonia” No.165/08)

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.
6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve

as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

- (a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;
- (b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;
- (c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
 - (a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
3. The visits shall be conducted by at least two members of the Subcommittee on Prevention.

These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short followup visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

- (a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
 - (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
 - (c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
 - (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
 - (e) The liberty to choose the places it wants to visit and the persons it wants to interview.
2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person

or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged.

No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V

Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI

Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the

Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

**SELECTED PROVISIONS FROM THE LAW ON SUPPLEMENTING AND AMENDING
THE LAW ON THE OMBUDSMAN**

("Official Gazette of the Republic of Macedonia" No.114/09)

Article 1

New article 11-a is added after the article 11 of the Law on the Ombudsman (Official Gazette of the Republic of Macedonia No.60/2003), reading:

"Article 11-a

The Ombudsman guarantees special protection of the rights of the children, the persons with disabilities and persons subjected to torture and other cruel, inhuman or degrading treatment or punishment in the bodies, organizations and institutions where the freedom of movement is limited."

Article 3

Two new articles 31-a and 31-b are added after the article 31, reading:

„Article 31-a

The Ombudsman, when following the situation with respect and protection of the constitutional and legal rights of the persons in the bodies, organizations and institutions where the freedom of movement is limited, undertakes activities in line with the law and international agreements ratified according to the Constitution of the Republic of Macedonia.

The Ombudsman, aiming to achieve the activities from paragraph 1 of this article, undertakes regular and unannounced visits to the bodies, organizations and institutions where the freedom of movement is limited and prepares separate report.

The manner in which the visits from paragraph 2 of the article are carried out is regulated by Rulebook adopted by the Ombudsman.

Article 31-b

The persons acting in official capacity in the bodies, organizations and institutions where the freedom of movement is limited are obliged to allow the Ombudsman with unlimited access to all documents and information regarding the persons whose freedom of movement is limited.

The persons acting in official capacity in the bodies, organizations and institutions where the freedom of movement is limited are obliged to act according to the suggestions and recommendations of the Ombudsman and to inform the Ombudsman of the undertaken actions not later than 30 days counting from the day of the receipt of the special report.”

Article 5

The words: “or for certain groups of vulnerable persons” are added in article 45 paragraph 1 after the word “areas”.

New paragraph 2 is added after paragraph 1, reading as follows:

“The Ombudsman establishes separate units for protections of the rights of the children and the persons with disabilities, unit for protection of the persons from discrimination and torture and other cruel, inhuman and degrading treatment or punishment, as well as unit for adequate and equitable representation of the citizens.“

Paragraph 2 becomes paragraph 3.

Based on Article 4 of the Law on Ratification of the Optional Protocol against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“Official Gazette of the Republic of Macedonia” No.165/2008), Article 4 and Article 17 of the Optional Protocol against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Article 31-a, paragraph 3 of the Law on the Ombudsman (“Official Gazette of the Republic of Macedonia” No.60/2003 and 114/09) and Article 5, line 9 of the Ombudsman Rulebook (“Official Gazette of the Republic of Macedonia” No.11/2005) the Ombudsman issued the following

**BOOK OF REGULATIONS
ON THE MANNER OF PREVENTION BY THE OMBUDSMAN
AS A NATIONAL PREVENTIVE MECHANISM**

Article 1

This Book of Regulations determines the manner of prevention against torture and other cruel and inhuman or degrading treatment and punishment, by the Ombudsman as a National Preventive Mechanism in places where individuals are or might be deprived of their liberty.

Article 2

Prevention is performed by establishing a system of visits, which can be regular and irregular or unannounced.

Article 3

Visits have an aim to prevent torture or other cruel, inhuman and degrading treatment or punishment of persons deprived of their liberty.

Regular visits have an aim to ascertain the situation in the institutions over a determined period of time and to record the progress or aggravation of the detention conditions and treatment of persons deprived of their liberty.

Unannounced visits have an aim to check the already ascertained situations in places where persons are or might be deprived of their liberty and to reduce the risk for the current situation to be presented in an inadequate way.

Article 4

The visits stated in the Article 3 of this Book of Regulations shall be performed by the Ombudsman in police stations, departments for pre-trial detention and departments for convicted persons in the penitentiary-correctional institutions, educational-correctional institutions, psychiatric hospitals, other places for deprivation of liberty and unofficial places for which the Ombudsman can have information that there are persons deprived of their liberty.

Article 5

During the visits the Ombudsman shall ascertain the situation of the material conditions in institutions, inspect all information to determine every aspects regarding the number of persons deprived of their liberty, conditions and treatment. At the same time he shall talk with persons deprived of their liberty without witnesses, in person or with an interpreter, if necessary, and with any other person, which the Ombudsman believes can provide crucial information.

The Ombudsman has absolute freedom in selection of persons whom he will talk to.

Article 6

Estimation of conditions in places for deprivation of liberty includes insight of: dimension of premises, number of persons detained in a premise, hygiene, inventory equipment of the premise (beds, bed linens, blankets, wardrobe and similar), lighting (daily and natural lighting), heating, toilet conditions, contacts with employees and other circumstances which can eventually lead to inhuman or inadequate residence.

Article 7

Insight in documentation shall especially be aimed at establishing the number of persons deprived of their liberty detained in an institution and all other information regarding their treatment, meaning their health conditions or other issues which could give a real picture of the treatment of the persons deprived of their liberty and conditions of their accommodation.

Article 8

The interview with persons deprived of their liberty shall be conducted without witnesses, in person or with an interpreter if found needed. The Ombudsman has an absolute freedom in selection of persons for interview.

During the interview, an Official Note shall be written on the allegations expressed by the persons deprived of their liberty.

Article 9

The conversations with the officials have an aim to explain the meaning of the visit, their duty to cooperate with the Ombudsman and to point out certain omissions so they would not be repeated.

Article 10

Following a visit, a special report shall be prepared which should compulsory contain: description of the ascertained conditions, situation analysis, conclusions and recommendations.

Article 11

This Book of Regulations enters in force on the day it is issued.

OMBUDSMAN

Ixhet Memeti

METHODOLOGY
OF PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT BY THE OMBUDSMAN
AS A NATIONAL PREVENTIVE MECHANISM

This Methodology closely regulates the manner of undertaking regular and irregular visits of places where persons deprived of their liberty are or might be detained, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment according to Article 4 of the Law on Ratification of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette of the Republic of Macedonia No. 165/08), Article 4 and Article 17 of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Articles 31-a and 31-b of the Law on the Ombudsman and the Book of Regulations for Prevention against Torture.

The subjects of this methodology are: types of preventive visits, places which shall be visited, aim of visits, insight of places and information, interview with persons deprived of their liberty and with the personnel, and preparation of reports and adequate recommendations.

1. AIM AND TYPES OF PREVENTIVE VISITS

Visits shall be conducted in order to prevent possible violations of the rights of the persons deprived of their liberty through constructive dialogue with the representatives of places where persons deprived of their liberty are or might be detained, and with representatives of other institutions and bodies competent for the institutions, and to reduce the possibility for the persons deprived of their liberty to be obstructed when submitting complaints regarding their status, detention conditions, treatment etc.

Establishing the system of visits (regular and irregular) is aimed to improve all conditions in places where persons deprived of their liberty are or might be detained.

Preventive visits can be: regular and unannounced.

- **Regular visits** – are aimed at conducting a detailed analysis of places where persons deprived of their liberty are or might be detained, with an aim to identify the reasons which

might lead towards cruel, inhuman or degrading treatment or punishment, as well as preparation of recommendations for overcoming the determined conditions.

- **Unannounced visits** – are aimed at securing the highest possible realistic and objective description of the material conditions in the places where persons are or might be deprived from liberty with aim to decrease the risk of concealing or modifying the existing situation, as well as to examine the implementation of the recommendations previously issued by the Ombudsman. These visits at the same time aim to decrease the risk the persons deprived of liberty to be threatened, intimidated or limited in their contacts with the Ombudsman.

2. PLACES WHICH CAN BE VISITED BY THE OMBUDSMAN

In realization of its function as a National Preventive Mechanism, the Ombudsman shall visit all places where persons deprived of their liberty are or might be detained, such as: police stations, departments for pre-trial detention and departments for convicted persons in the penitentiary-corrective institutions, educational-corrective institutions, psychiatric hospitals, other places for deprivation of liberty and unofficial places about which the Ombudsman can have information that there are persons deprived of their liberty.

3. INSIGHT IN INSTITUTIONS AND INFORMATION

The Ombudsman shall be allowed access to all parts of the places where persons are deprived of their liberty.

After an insight of every premise in a building, the Ombudsman gets complete impression about detaining conditions for persons deprived of their liberty, acting towards and treatment of those persons.

During the visits of places of deprivation of liberty, special attention shall be paid to the information which can be obtained from the registries and the material conditions.

- With regard to the obligation for keeping **records** on every person deprived of his/her liberty, as well as every event at places for deprivation of liberty, the checking of registers about persons deprived of their liberty, daily events registers, health condition records and medical documents of every individual as well as folders, meaning personal files of these persons and other documents is binding.

- During an insight in the **material conditions**, special attention shall be paid to the conditions in which persons deprived of their liberty are detained. This primarily refers to the legally determined dimensions of the premise, the number of persons detained in a premise, hygiene conditions (of the premise, clothes of persons deprived of freedom and their bed linens), equipment of the premises (beds, wardrobes, tables, chairs etc.), lighting, heating in winter conditions, ventilation, toilets, conditions for personal hygiene etc., and possibility or the manner in which those persons contact with the personnel.

4. INTERVIEW WITH PERSONS DEPRIVED OF THEIR LIBERTY

The Ombudsman must be compulsory allowed to talk directly with persons deprived of their liberty.

Depending on the type of visit, the Ombudsman can talk to a particular person or group of persons and with persons randomly chosen, and if it is about a member of one of the communities or a foreign citizen, an interpreter will be provided, if necessary. One of the most important aspects of the visit is the possibility to conduct the interview without witnesses, meaning officials, which enables persons deprived of their liberty to speak more openly and with less fear.

The Ombudsman has complete freedom in election of persons he will talk to.

During a visit, the Ombudsman is free to choose the place he considers safe and adequate for conducting an interview with a person deprived of his/her liberty.

If officials suggest a certain place as inadequate from the security aspect, the Ombudsman shall not reject such suggestion immediately, but he will consider it carefully and determine himself the place where the interview will be undertaken.

During a conversation it is especially important for the Ombudsman to gain confidence by the person he is talking to, without giving promises which are not possible to be realized.

First of all, it is necessary for the Ombudsman to introduce himself and to explain the reason for his presence; the Ombudsman's competences; that the conversation is confidential and that the person will not suffer any harmful consequences by anyone, especially not by the officials.

During the conversation, the manner of speaking shall be clear and simple and any kind of behavior which could be considered as an inquiry should be avoided.

In order to have a successful conversation and to achieve its aim, it is of utmost importance for the Ombudsman to express ability to listen, to be patient and to demonstrate empathy during the conversation.

At the same time the person with whom the interview is being conducted should be enabled to speak; suggestive questions should be avoided and the conversation should not be limited only to the themes he/she has initiated.

In case of allegations of bad treatment by the officials, the person with whom conversation is made should be stimulated to give all relevant facts.

An official note shall be written for a conducted interview.

5. WRITING A REPORT WITH RECOMMENDATIONS

On the basis of the situation ascertained, the Ombudsman shall prepare a report which will be submitted to the competent bodies along with adequate recommendations, by which he suggests measures which should be taken for improvement of all conditions in places for deprivation of liberty.

Recommendations should be: specific, measurable, achievable, aiming towards results, timely determined by priority, explained; they should comply with the subject matter and suggest a solution for overcoming or promotion of the current situations.

The Ombudsman monitors the implementation of the recommendations through direct contacts with the officials in places where persons are deprived of their liberty and with other competent bodies and organizations according to Article 2 of the Law on the Ombudsman.

The recommendations have an aim to eliminate negative aspects ascertained, as well to improve the detaining conditions and treatment of persons deprived of their liberty.

Follow-up visits by the Ombudsman should estimate systematically if previous recommendations have been implemented completely and, at the same time, to identify every new problem which possibly appeared in the meantime. If during a visit there are individual complaints on particular violations of rights, the Ombudsman shall treat them separately, but from the aspect of protection of human rights.

OMBUDSMAN

Ixhet Memeti

Based on Article 39 of the Law on the Ombudsman (“Official Gazette of the Republic of Macedonia” No. 60/03), the Ombudsman issues the following

BY-LAW

On the form, content and procedure for issuance, usage and confiscation of the official cards of the Ombudsman, his deputies and the employees in the Ombudsman’s Professional Service

(“Official Gazette of the Republic of Macedonia No.65/2011)

Article 1

This By-law shall establish the form, content and procedure for issuance, usage and confiscation of the official cards of the Ombudsman, his deputies and the employees in the Ombudsman’s Professional Service and the employees in the Ombudsman’s Professional Service as a National Preventive Mechanism.

Article 2

The official card shall have dimensions 8cm. x 11 cm. and shall consist of two parts, one part shall be the cover, and the other shall be a plastic bright gray inset, containing personal data of the holder of the official card and his authorizations.

The cover of the official card shall be made of genuine leather in brown color.

In the front page of the cover in the upper part, the text REPUBLIC OF MACEDONIA, OMBUDSMAN shall be printed, in the middle part the logo of the Ombudsman shall be printed, and the text OFFICIAL CARD shall be printed below.

In the inner right-hand side of the leather cover, the logo of the Ombudsman shall be imprinted on a 4 cm. metal format.

On the front page of the inset shall be printed text REPUBLIC OF MACEDONIA, OMBUDSMAN, for the official cards of the employees in the Ombudsman’s Professional Service as a National Preventive Mechanism shall be printed text REPUBLIC OF MACEDONIA, OMBUDSMAN, NATIONAL PREVENTIVE MECHANISM and the text OFFICIAL CARD shall stand below. Below this text, on the left-hand side shall be a place for

the photograph and on the right-hand side shall contain a register number, date of issuance, a signature of the Ombudsman or of an authorized person, and a place for official seal (POS). The bottom of the same page shall contain the following: date, name and surname, function or position, unique registry number and residing address of the holder of the official card.

The second page of the inset for the official cards of the Ombudsman and his deputies shall contain excerpts from the Law on the Ombudsman (Official Gazette of RM No. 60/03 and 114/2009), regarding their authorizations and special rights, with the text printed on the form. The second page of the inset, for the official cards of the employees in the Professional Service who act upon submissions by citizens or other persons, shall contain excerpts from the Law on the Ombudsman (Official Gazette of RM No. 60/03 and 114/2009), regarding their authorizations, with the text printed on the form.

The second page of the inset, for the official cards of the employees in the Professional Service as a National Preventive Mechanism shall contain excerpts from the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (Official Gazette of RM No. 165/2008) and from the Law on the Ombudsman (Official Gazette of RM No. 60/03 and 114/2009), regarding their authorizations, with the text printed on the form.

The second page of the inset shall not contain any text for other holders of the official card.

Article 3

The form of the official card shall be printed in addition to this By-law, and shall represent its integral part.

Article 4

The Ombudsman himself, or another person authorized by him, shall issue the official card after the selection, i.e. employment in the Ombudsman's Professional Service, and it shall be valid in the period while the person to whom it has been issued has the official capacity of Ombudsman, Deputy Ombudsman, employee in the Ombudsman's Professional Service, or in the Ombudsman's Professional Service as a National Preventive Mechanism.

Article 5

The person whose function or employment in the Ombudsman's Professional Service, or in the Ombudsman's Professional Service as a National Preventive Mechanism shall terminate, shall return the official card.

The returned or replaced official card shall be invalidated.

Article 6

Records shall be kept for the issued and confiscated official cards in the Ombudsman Office.

The records for an issued official card shall contain an ordinal numbers, name and surname of the person to whom the official card has been issued, date of issuance, a serial number and a column for remarks.

Article 7

The official card shall be replaced with a new one when it becomes useless due to damaging or wear and tear, if the person to whom it has been issued loses it, or if the holder of the official card changes the personal data.

Every holder of an official card shall immediately and within 24 hours at the latest, inform the Ombudsman if he/she loses the Official Card and if the official card is replacing with a new one due to damaging or wear and tear, the holder of the card shall need to return the old one.

Article 8

The official card of the Ombudsman, the Deputies and the employees in the Ombudsman's Professional Service, issued pursuant to the By-law on the form, content and procedure for issuance, usage and confiscation of the official cards of the Ombudsman, his Deputies and the employees in the Ombudsman's Professional Service (Official Gazette of the Republic of Macedonia No. 11/2005), shall be replaced with new one within 60 days from the day of enforcement of this By-law.

Article 9

On the day of enactment of this By-law, the previous By-law on the form, content and procedure for issuance, usage and confiscation of the official cards of the Ombudsman, his Deputies and the employees in the Ombudsman's Professional Service (Official Gazette of the Republic of Macedonia No 11/2005), shall cease to be valid.

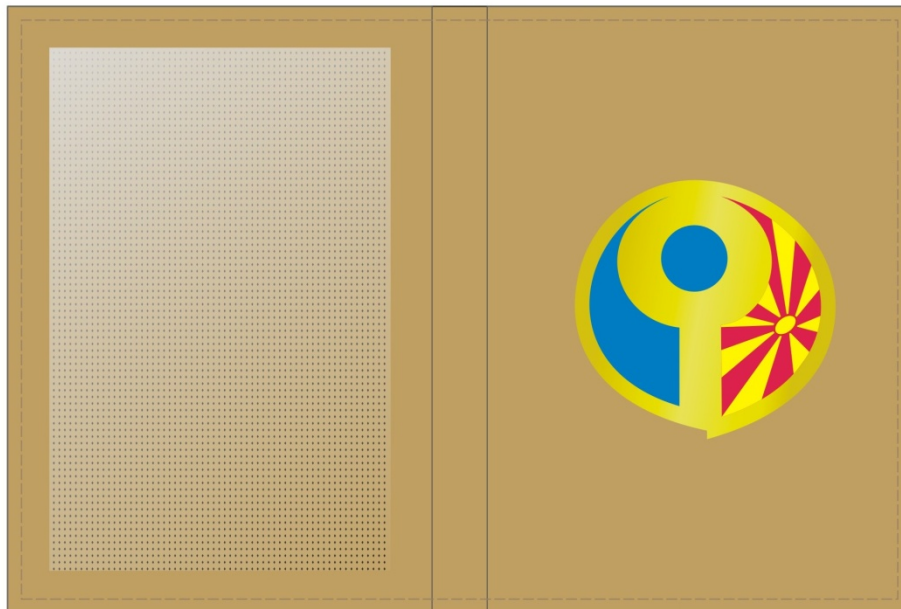
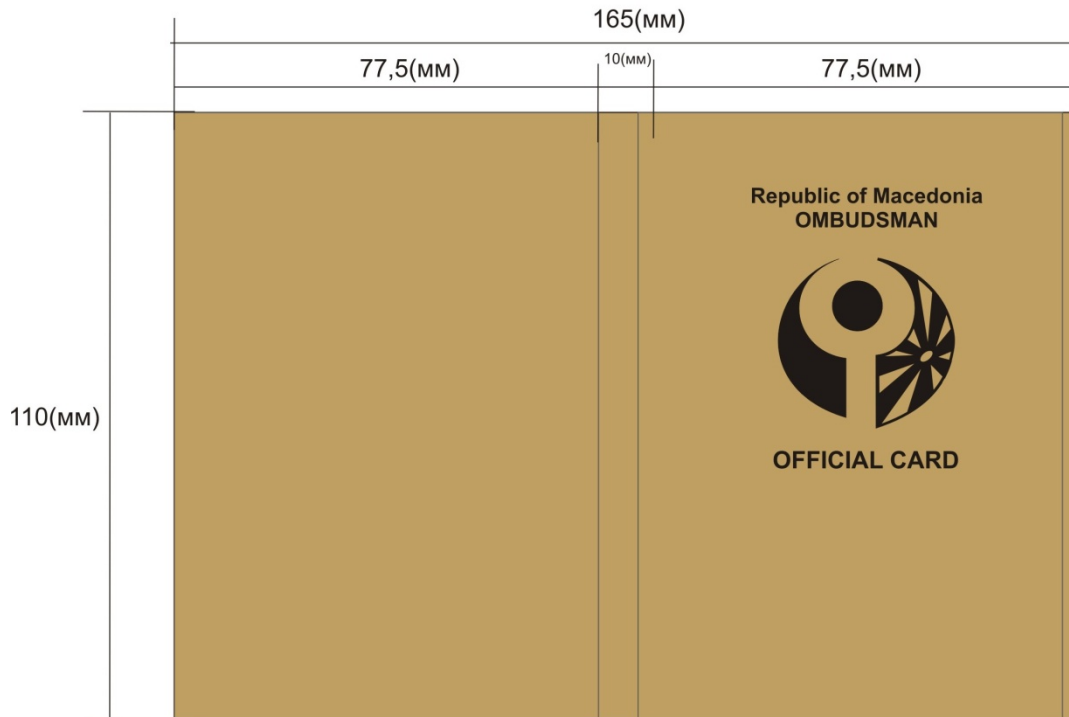
Article10


This By-law shall enter into force on the next day after the day of its publishing in the Official Gazette of the Republic of Macedonia.

OMBUDSMAN

Ixhet Memeti

PATTERNS – 5 (five)



Republic of Macedonia OMBUDSMAN OFFICIAL CARD		
<div style="border: 1px solid black; width: 100%; height: 100%;"></div>	<p>REGISTER NUMBER _____</p> <p>DATE OF ISSUANCE _____</p> <p>S.P. _____ Ombudsman Ixhet Memeti</p>	
<p>_____ Name and surname</p> <p>_____ Title</p> <p>_____ URN</p> <p>_____ Address of residence</p>		

Republic of Macedonia OMBUDSMAN OFFICIAL CARD		
<div style="border: 1px solid black; width: 100%; height: 100%;"></div>	<p>REGISTER NUMBER _____</p> <p>DATE OF ISSUANCE _____</p> <p>S.P. _____ Ombudsman Ixhet Memeti</p>	
<p>_____ Name and surname</p> <p>_____ Function</p> <p>_____ URN</p> <p>_____ Address of residence</p>		<p>The holder of this card with the Law on the Ombudsman ("Official Gazette" no. 60/2003 and 114/2009), is authorized to:</p> <ul style="list-style-type: none"> - Enter in the premises of the bodies referred to in Article 2 of the Ombudsman Law, to make a direct insight into the objects and matters in their competence and be provided with all evidences, data and information, regardless of confidentiality level; - At any time without prior notice and approval to carry out a visit and insight at the organs, organizations and institutions - places of detention, and to speak with residents there, without presence of officials with aim to protect their freedoms and rights; - To call for an interview elected or appointed person, official and any other person who can provide certain data in the procedure; - To enter and have free access at stations, airports and ports, only by showing an official ID; - The free usage of public, land or lake traffic in the Republic of Macedonia; - The special protection of his/her person, family and property, upon request submitted to the police in the place of residence, whenever there are serious reasons for his/her safety. <p>The Ombudsman and Deputy Ombudsman can't be held accountable for an opinion and action taken, measures and activities in carrying out of his/her function.</p>

Republic of Macedonia OMBUDSMAN NATIONAL PREVENTIVE MECHANISM OFFICIAL CARD		<p>The holder of this card by the Constitution, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Law on Ombudsman for conducting prevention is authorized to:</p> <ul style="list-style-type: none"> - At any time without prior notice and approval to conduct regular and unannounced visits and inspections in the organs, organizations and institutions - places of detention, as well as in any other place on which may have information that persons are or may be deprived of liberty; - To be allowed by free choice of places he/she wanted to visit, and unfettered access to all facilities, equipment and installations, to all documents and information relating to persons deprived of liberty; - To be allowed by free choice and speak with persons deprived of liberty without presence of officials, in person or with a translator if necessary, and with any other person for whom the Ombudsman believes can provide essential information.
<div style="border: 1px solid black; width: 100px; height: 100px; margin-bottom: 10px;"></div> <p>REGISTER NUMBER _____</p> <p>DATE OF ISSUANCE _____</p> <p>M.П. _____</p> <p>Ombudsman Ixhet Memeti</p> <p>_____ Name and surname</p> <p>_____ Function/title</p> <p>_____ URN</p> <p>_____ Address of residence</p>		

Republic of Macedonia OMBUDSMAN OFFICIAL CARD		<p>The holder of this card with the Law on the Ombudsman ("Official Gazette" no. 60/2003 and 114/2009) is authorized to:</p> <ul style="list-style-type: none"> - Enter the premises of the bodies referred to in Article 2 of the Law, to make a direct insight into the objects and things in their competence and be provided with all evidence, data and information, regardless of confidentiality level; - At any time without prior notice and approval to carry out a visit and insight at the organs, organizations and institutions - places of detention, and to speak with residents there, without presence of officials with aim to protect their freedoms and rights; - To call for an interview elected or appointed person, official and any other person who can provide certain data in the procedure.
<div style="border: 1px solid black; width: 100px; height: 100px; margin-bottom: 10px;"></div> <p>REGISTER NUMBER _____</p> <p>DATE OF ISSUANCE _____</p> <p>P.S. _____</p> <p>Ombudsman Ixhet Memeti</p> <p>_____ Name and surname</p> <p>_____ Title</p> <p>_____ URN</p> <p>_____ Address of residence</p>		