

## THE ROLE OF THE OMBUDSMAN INSTITUTION: A COMPARATIVE LEGAL ANALYSIS WITH A FOCUS ON NORTH MACEDONIA

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### ABSTRACT

The ombudsman institution is a vital and crucial mechanism in modern democratic states, established to safeguard citizen's rights, ensure public administration accountability, and prevent violations of fundamental rights. It serves as a mediator between citizens and public institutions, resolving complaints and enhancing public service quality. In the Republic of North Macedonia, the Ombudsman operates within a legal and constitutional framework, tasked with protecting constitutional rights, ensuring compliance with the law, and addressing grievances effectively. The institution investigates violations by state bodies and public service providers, advocating for citizen's rights and preventing discrimination. This study evaluates the structure, functioning, and effectiveness of the Ombudsman institution in North Macedonia, addressing its historical development, theoretical foundations, and practical implementation through a comparative approach. It also highlights the challenges faced by the institution and provides recommendations for enhancing its efficiency. A detailed analysis of the Ombudsman institution's structural and functional characteristics is essential to strengthening justice, transparency, and trust in state-citizen relations. The study emphasizes the importance of these improvements for reinforcing the rule of law and protecting fundamental rights in North Macedonia.

**Keywords:** Ombudsman, Fundamental Rights Protection, North Macedonia, Comparative Law.

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## **Introduction**

The ombudsman institution has emerged as a significant mechanism in modern democratic states, aiming to protect citizens' rights and ensure transparency and accountability in public administration. In this context, ombudsman institutions oversee the administrative activities of the state, ensuring the protection of individuals against rights violations. Acting as a mediator between citizens and public institutions, the ombudsman facilitates the resolution of complaints and enhances the quality of public services, serving as a key oversight mechanism. In the Republic of North Macedonia, the Ombudsman institution operates within a framework established by constitutional and legal provisions. (Körbayram, 2021, s. 93-108). The ombudsman institution in the country is tasked with protecting citizens' constitutional rights, ensuring that public administration acts in compliance with the law, and preventing violations of fundamental rights and freedoms. In North Macedonia, the ombudsman plays a crucial role in investigating violations committed by various state bodies and public service providers, advocating for citizens' rights, and addressing grievances effectively. This study examines the structure, functioning, and effectiveness of the ombudsman institution in the Republic of North Macedonia, evaluating its role and significance in protecting fundamental rights. The study addresses the historical development and theoretical foundations of the ombudsman concept through a comparative approach, while analyzing the practices and legal frameworks in North Macedonia. Furthermore, it identifies the challenges faced by the ombudsman institution and provides recommendations for overcoming these obstacles. The effective functioning of the ombudsman institution contributes to reinforcing justice, transparency, and trust in citizens' interactions with the state. Therefore, a detailed examination of the structural and functional characteristics of the ombudsman institution in North Macedonia is crucial for developing recommendations aimed at enhancing its effectiveness.

## **Methodology**

Adopting a comprehensive literature review methodology, the study meticulously analyzed relevant scientific works alongside a variety of current sources. These sources included scientific books, printed research

papers, as well as online databases like Google Scholar, Researchgate and Dergipark, which feature journals indexed on prestigious platforms such as EBSCO, SCOPUS, and WEB OF SCIENCE. Our search was meticulously guided by specific keywords, which included "Ombudsman", "Fundamental Rights Protection", "North Macedonia", "Comparative Law" and the "Comparative Law." From this perspective, an attempt has been made to analyze the level of authority and relevant procedures of the Ombudsman in North Macedonia, while also referencing regulations in other countries. In this context, the study aims to highlight aspects that could enhance the effectiveness of the mechanism and provide recommendations accordingly.

## **Theoretical Framework**

### **1. Definition, Duties, and Powers of the Ombudsman**

The attainment of the rule of law by a state is contingent upon its strict adherence to and respect for the legal norms it has established. In a rule-of-law system, not only citizens but also those in positions of authority are obligated to comply with laws and legal principles. Within this framework, institutions established under the rule of law must possess the capacity to safeguard the rights and freedoms of citizens, not only against other individuals but also against the state itself. (Küçüközyiğit, 2006, s. 93-94). With the concepts of human rights, democracy, and the rule of law becoming fundamental values for both individuals and societies, the ombudsman institution has rapidly gained global prominence. (Küçüközyiğit, 2006, s. 90-111).

Today, the ombudsman institution manifests in various forms. Among these, general-purpose and specialized ombudsmen play roles in overseeing public services across different domains, while national ombudsmen address complaints concerning state institutions on a countrywide scale. Additionally, supranational examples, such as the European Ombudsman, which handles complaints against European Union institutions, also demonstrate the institution's oversight capabilities at a transnational level. (Ristovska, Spiroska, Veljanovska, Tintevski, & Masalkovski, 2024). By definition, an ombudsman is a public official authorized by Parliament to operate independently and impartially. The ombudsman investigates complaints from individuals who have been

adversely affected by various administrative actions, prevents the misuse of discretionary powers by public officials, and issues recommendations to ensure compliance with legal provisions. Additionally, the ombudsman provides annual reports to inform both the public and Parliament. (Reha, Kılavuz , & İzci, 2003). The most widely accepted definition of the ombudsman, provided by the International Bar Association in 1974, is as follows: "An ombudsman is an independent office established by a constitution, law, or parliamentary resolution, accountable to parliament. It is empowered to receive complaints regarding officials and employees within state departments, act on these complaints or on its own initiative, conduct investigations and inquiries, make recommendations to rectify errors, and prepare reports." (Oğuz & Hatiboğlu, 1997) (Oğuz& Hatiboğlu, 1997, s. 1-59). Similarly, in the constitutional doctrine of Macedonia, inspired by the constitutional definition, the institution is described as follows: "The ombudsman is an institution that protects the constitutional and legal rights of citizens. It defends the rights of individuals whose rights have been violated by state administrative bodies or other institutions and organizations vested with public authority." (Renata, 2015, s. 389).

## 2. The Evolution of the Ombudsman Institution and Its Role in the Legal System

The institution of the ombudsman, originating under the name "ombudsman" globally, was first introduced through the Swedish Constitution in 1809. This oversight body, tasked with protecting citizens' constitutional rights against public administration, has since evolved into a widely utilized mechanism. However, differences can be observed between its initial purpose and its contemporary applications. In Sweden, the Royal Ombudsman served as the first of its kind, starting in 1709. (Savo, Deskoska, & Karakamiseva, 2012, s. 513). The primary duty of the ombudsman, authorized by the monarchy, was to ensure the implementation of the laws and regulations in force within the country. The Royal Ombudsman later assumed the title of Chancellor of Justice. In 1809, following the abdication of King Gustav IV, the Swedish Parliament resumed its role after many years. During this period, a constitution was adopted, based on the principle of separation and balance of powers

between the King and the Parliament. The Swedish Constitution of 1809 recognized and safeguarded both the Chancellor of Justice and the Ombudsman institutions. The Chancellor of Justice was appointed by the King, while the Ombudsman was appointed by the Parliament. (Eklundh, 1990, s. 7-9). The Swedish Ombudsman has functioned from the outset as a parliamentary representative with the authority to oversee the legality of the actions of senior state officials and judges on behalf of Parliament. This office is also empowered to file charges against ministers in cases of violations of the Swedish Constitution. Thus, in its traditional functions, the Ombudsman is clearly established as an integral component of parliamentary oversight over the Government before the legislative body. (Svetomir, 2009, s. 757-758).

A distinctive feature of Sweden, compared to other countries, is its possession of various types of ombudsman institutions. While many countries maintain only a general ombudsman institution, Sweden hosts a wide range of specialized ombudsmen, including the Consumer Ombudsman, the Children's Ombudsman, the Ombudsman for Equal Opportunities, the Ombudsman for the Prevention of Ethnic Discrimination, the Disability Ombudsman, and the Press Ombudsman. This diversity highlights Sweden's commitment to implementing the ombudsman institution across multiple domains. (Vučina, 2007, s. 298). From a chronological perspective, Finland became the second country to establish the ombudsman institution with its 1919 Constitution. Under this constitution, the Finnish Ombudsman was granted the authority to oversee the activities of ministers and judges. Additionally, the ombudsman was empowered to monitor the actions of officials within military and criminal justice authorities. Subsequently, in 1952, the Norwegian Constitution incorporated the Military Ombudsman institution, and in 1962, administrative oversight powers were also introduced. (Svetomir, 2009, s. 758). In 1953, Denmark incorporated the ombudsman institution into its legal system, granting it jurisdiction over the activities of all state and military officials. In 1965, Germany adopted this institution, inspired by the Swedish model. In 1967, the United Kingdom introduced the ombudsman into its legal framework to humanize administration and improve relations between the government and citizens. This institution evaluates complaints concerning the activities of administrative bodies for which ministers are accountable to Parliament. Archival records indicate

that, in 1978, the institution reviewed 1,259 complaint petitions. (Slavoljub, 1990, s. 123).

In 1969, Canada, as a developed nation hosting a population with diverse cultural, ethnic, and religious backgrounds, established an ombudsman institution tasked with addressing complaints regarding the legal status of official languages. This institution has the authority to assess complaints, particularly those related to the inadequate recognition of official languages by the Federal Government, and to take necessary actions. In 1973, France introduced a mediation mechanism (*médiateur*) that allows individuals to file complaints in cases of human rights violations within public services. This mechanism operates through members of Parliament and Senators. Building on these developments, the ombudsman institution today appears in various forms. Among these, general-purpose and specialized ombudsmen play roles in overseeing public services in different areas, while national ombudsmen address complaints concerning state institutions at a national level. (Korbayram, Kuzey Makedonya Cumhuriyeti Anayasa Hukuku, 2024, s. 417)

Additionally, there are supranational examples of ombudsman institutions, such as the European Ombudsman, which addresses complaints related to the institutions of the European Union. The European Ombudsman investigates cases of maladministration within various EU bodies and institutions. The establishment of the European Ombudsman marks a significant milestone in implementing the ombudsman institution within a supranational organization. (Korbayram , *Karşılaştırmalı Hukuk Bağlamında Kamu Denetçiliği (Ombudsman) Kurumunun Temel Hakların Korunmasındaki Rolü: Kuzey Makedonya Cumhuriyeti Örneği*, 2024, s. 47-56).

### 3. The Ombudsman of the Republic of North Macedonia (Народен Правобранител)

#### Election, Duties, Powers, and Procedures

The Ombudsman institution in the Republic of Macedonia represents a relatively new entity introduced into the legal system through the 1991 Constitution and harmonization laws within the framework of the European Union accession process. (The Official Gazette of the Republic

of Macedonia“no.52/91, no. 1/92, no. 31/98 and no.91/01) from 1991. (Renata, Ristovska, & Hristovska, 2021, s. 720). This institution of the Ombudsman was established with the adoption of the initial Law on the Ombudsman in 1997, followed by the enactment of the current Law on the Ombudsman in 2003. (Deskoska, Ristovska, & Hristovska, 2021, s. 720). The Republic of North Macedonia has established the Ombudsman institution, referred to as "Public Ombudsman," inspired by the Scandinavian model. This significant oversight body (ombudsman, parliamentary prosecutor) was created to protect the constitutional and legal rights of citizens when violated by state administrative bodies or other institutions and organizations vested with public authority (Constitutional Amendment XI, Official Gazette No. 91/01, Paragraph 2). (Denkova & Stoilova, 2016, s. 71-78). This institution is not regulated under the judiciary section of the 1991 Constitution but is instead addressed in the third chapter, titled "Organization of State Authorities," under Article 77, which falls under the powers of the Parliament responsible for legislative functions. This article, along with Constitutional Amendment XI, reflects the legislative role of the Ombudsman, stemming from its selection by Parliament. However, while not formally part of the judiciary, the Ombudsman's mandate to protect fundamental rights places it conceptually closer to a judicial function.

The selection of the Ombudsman is carried out by Parliament through a double majority voting system (Badenter majority), which requires not only a majority of the total number of Members of Parliament but also a majority of representatives from non-majority communities. The Ombudsman is elected for a term of eight years and is eligible for re-election, allowing the same individual to serve for up to two terms. (Korbayram, Kuzey Makedonya Cumhuriyeti Anayasa Hukuku, 2024, s. 418-419). In the Republic of North Macedonia, the Ombudsman operates as an independent and impartial institution in fulfilling its functions and duties. Although the Ombudsman is elected by Parliament, which requires the submission of an annual report, it is not a legislative body. Instead, it functions as an autonomous institution, performing its duties within the scope of its legal authority and in accordance with the Constitution and applicable laws. (Law on the Ombudsman, Article 5, "Official Gazette of the Republic of North Macedonia," No. 60/03, dated September 22, 2003). To qualify as a candidate for the position of Ombudsman, individuals must meet the general requirements specified by law, hold a law degree, possess

more than nine years of professional experience in legal affairs, and demonstrate proven activity in the field of protecting fundamental rights. Candidates meeting these criteria are elected by Parliament to fulfill the role. The same legal requirements apply to candidates for the position of Deputy Ombudsman, with the exception that a minimum of seven years of professional experience is required. (Law on the Ombudsman, Article 6). Article 9 of the Law on the Ombudsman outlines the conditions under which the Ombudsman's term of office may end. (For the Law on the Ombudsman of North Macedonia, 2024). These include the Ombudsman's request to resign, being sentenced to at least six months of unconditional imprisonment for a criminal offense, permanently losing the psychophysical ability to perform the duties of the office as determined by a competent medical institution, meeting the requirements for retirement, or demonstrating unprofessional, biased, or negligent behavior incompatible with the role. In the legal framework of the Republic of North Macedonia, the Ombudsman's duties and powers are defined within a constitutional context. As stated in Article 77 of the Constitution, amended by Constitutional Amendment XI, the Ombudsman is tasked with protecting the constitutional and legal rights of citizens. Additionally, the Ombudsman must give special attention to ensuring non-discrimination, adequate and fair representation of community members, and adherence to these principles in state administration, local government units (municipalities), and public institutions and services. (Skaric, 2014, s. 344).

The procedure for initiating a case before the Ombudsman can be triggered either by a petition submitted by the affected party whose rights have been violated by public administration units or at the Ombudsman's own initiative. In cases initiated through citizen petitions, any individual may file a complaint with the Ombudsman if they believe their constitutional or legal rights have been violated or if they suspect a breach of public law principles. (Akcagunduz, 2024, s. 81-107). Beyond responding to citizen complaints, the Ombudsman may also act on its own initiative. This includes investigating matters related to the prevention of discrimination and ensuring the adequate and fair representation of community members in local governments, as outlined in Article 2 of the Law on the Ombudsman. (Law on the Ombudsman, Article 13). The violations for which citizens can seek protection of their rights include the



following areas: pension and disability insurance; healthcare; labor relations; urban planning and construction; property and legal relations; police procedures; non-discrimination and adequate and fair representation; public services and consumer rights; finance; judiciary; social rights; housing; education; local self-government; environmental protection; child protection; customs operations; defense; science, sports, and culture; correctional facilities; and other rights.

The petition submitted to the institution must be signed and include the personal details of the petitioner, as well as the circumstances, facts, and evidence on which the petition is based. The petition should explicitly name the institution, organization, authority, or public official against whom the complaint is being filed. Additionally, it must indicate whether the petitioner has already exercised other legal remedies and, if so, specify which legal avenues have been pursued.

The petition to initiate proceedings can be submitted in writing or orally, in which case it must be formally recorded. There is no predefined format for the petition, and the petitioner is exempt from all fees and charges associated with submitting a petition to the Ombudsman. (Law on the Ombudsman, Article 16). The Ombudsman, acting upon a complaint, may decide to refrain from initiating proceedings, initiate the necessary procedures, or suspend or terminate ongoing proceedings. In this regard, the legislator has addressed each of these three scenarios as separate provisions.

The Ombudsman will not initiate proceedings regarding a complaint in the following circumstances:

- The petition is anonymous, i.e., submitted without a name, except in cases involving matters of public interest.
- The petition contains offensive language directed at the institution or constitutes an abuse of the right to submit a petition.
- The petition fails to meet the necessary requirements and is not subsequently rectified.
- The subject of the petition is deemed not significant or likely to yield meaningful results upon review.

- The petition, its circumstances, and the attached facts and evidence do not indicate any violation of the constitutional or legal rights of the petitioner or the individual referenced in the petition.
- More than one year has passed since the action or final decision of the authority, institution, or organization, unless it is determined that the petitioner missed the deadline for valid reasons.
- The complaint pertains to an alleged rights violation that is still subject to ongoing judicial proceedings.

If the Ombudsman decides to reject a petition, they are required to notify the petitioner within 15 days from the date of receipt of the petition, providing justification for the rejection and, where possible, explaining the legal recourse available to the petitioner. (Articles 20 and 22 of the Law on the Ombudsman). If the Ombudsman decides to initiate proceedings, they must inform both the petitioner and the relevant authority, institution, or organization to which the petition pertains.

The Ombudsman may initiate a procedure on its own initiative following the submission of a complaint or in the following cases: when the evidence and facts attached to the petition, or other information obtained, reasonably indicate that citizens' constitutional and legal rights have been violated by authorities. Additionally, the Ombudsman may act when there is an alleged violation of the principles of non-discrimination and adequate and fair representation of community members by public institutions or organizations.

Furthermore, the law authorizes the Ombudsman to independently initiate proceedings to protect the constitutional and legal rights of large groups of citizens, minors, individuals with disabilities, or persons lacking full legal capacity. In such cases, the Ombudsman is not required to obtain consent or approval from the affected parties. (Law on the Ombudsman, Article 21).

Within the scope of its authority, the Ombudsman has the power to undertake the following actions during the course of proceedings:

- Request necessary explanations, information, and evidence regarding the allegations in the petition.

- Access official public buildings to review necessary information and documents within its jurisdiction.
- Summon public officials, including elected and appointed individuals, who may provide relevant information and data concerning the matter under review.
- Seek opinions from scientific and professional organizations.
- Take other actions and measures as determined by laws or regulations (Law, Article 24).

High-ranking officials, relevant parties, and public servants within governmental institutions and organizations are legally mandated to cooperate with the Ombudsman. This obligation includes the provision of all requested evidence, data, and information, irrespective of its confidentiality status (Law on the Ombudsman, Article 27). Under the legal framework, the Ombudsman may decide to suspend or terminate proceedings upon completing the following actions:

- Determining, after completing the investigation, that the petitioner's constitutional and legal rights have not been violated by public authorities.
- Learning that the petitioner has initiated judicial proceedings.
- Observing that the petitioner shows no interest in continuing the process.
- Receiving a withdrawal of the petition from the petitioner.
- Determining, during the course of proceedings, that the petitioner has passed away and their heirs have not requested the continuation of the case.
- Identifying, during the process, that the petitioner has exercised their petition rights.

If the Ombudsman decides to suspend or terminate proceedings based on a complaint, they must immediately notify the petitioner and provide an explanation within 15 days from the date the situation leading to the suspension or termination occurred. The notification must clarify the reasons for the suspension or termination and, where possible, explain how the petitioner can exercise their rights.

If the Ombudsman determines that constitutional or legal rights have been violated, or other irregularities have occurred, and believes that the implementation of an administrative action could cause irreparable harm to the individual concerned, the Ombudsman may request the following:

- The temporary suspension or postponement of the administrative action until a decision is made by the secondary authority.
- The temporary suspension of the administrative action until a decision is issued by the competent court.

Consequently, the Ombudsman does not have the authority to directly intervene in the actions of administrative institutions or organizations by altering, canceling, or annulling their decisions. However, the Ombudsman is empowered to make proposals and requests to authorities to amend laws, as well as related rules and regulations, to align them with the Constitution and international agreements ratified under the Constitution. Additionally, the Ombudsman may submit proposals to the Constitutional Court of the Republic of North Macedonia to evaluate the constitutionality of laws and other regulations (Law on the Ombudsman, Article 30).

If the Ombudsman determines that the constitutional and legal rights of the petitioner have been violated by the authorities specified in Article 2 of the Law, or that other irregularities have occurred, the Ombudsman may:

- Provide recommendations, proposals, opinions, and suggestions to eliminate the identified violations.
- Propose the re-implementation of a specific regulation in accordance with the law.
- Initiate a disciplinary investigation against a responsible individual.
- Request the initiation of the necessary procedures to establish criminal liability by referring the matter to the competent Public Prosecutor.

In this context, the authorities specified by the law (administrative institutions of the executive branch, local self-government units

(municipalities), and public institutions and organizations) are obligated to inform the Ombudsman within a maximum of 30 days from the date of receiving the request, recommendation, opinion, or proposal, or within the time period specified by the Ombudsman, about the measures taken to comply with these directives.

If an institution fails to notify the Ombudsman within the prescribed time regarding the conclusions, requests, proposals, opinions, recommendations, or measures, or if it partially accepts the Ombudsman's recommendations, the Ombudsman may immediately submit a separate report to the highest-level executive or supervisor, or to the Government of the Republic of North Macedonia. Should these institutions fail to perform their duties effectively, the Ombudsman may request the Parliament of the Republic of North Macedonia to take the necessary measures (Law on the Ombudsman, Article 32). If a violation of constitutional and legal rights is identified, the Ombudsman may share case details with the public, with the costs borne by the institution to which the case pertains (Law on the Ombudsman, Articles 33 and 43). To fulfill its responsibilities within its jurisdiction, regional offices of the Ombudsman have been established in several cities, including Tetovo, Kicevo, Stip, Strumica, Kumanovo, and Bitola. These offices are managed by Deputy Ombudsmen, as stipulated in Article 44 of the Law on the Ombudsman. Nevertheless, it is evident that this institution, which holds a unique position within the legal framework, is implemented in North Macedonia primarily as a general ombudsman institution. However, given the diversity of the country's population, emphasis is placed on the need for the institution to demonstrate sensitivity in preventing discrimination. The Ombudsman Institution of North Macedonia has an organizational structure spread across the country. The North Macedonian Ombudsman has established offices in seven major cities, including the capital. In contrast, the Ombudsman Institution in Turkey is centralized in the capital, Ankara, with only one additional office located in Istanbul. Therefore, there are opinions in Turkey advocating for the establishment of more offices for the Ombudsman Institution. For example, offices should be increased based on criteria such as geographical regions and population size. These offices should focus on promoting and enhancing the Ombudsman Institution in the cities where they are located. (Akcagunduz, 2024, s. 103).

## **Discussion And Conclusion**

In the future, discussions may focus on transitioning from a general ombudsman model to a specialized ombudsman system, as implemented in the Swedish example. Additionally, expanding the powers of the ombudsman to include oversight of public officials and ministers could be considered, particularly given the country's less-than-favorable position in combating corruption. (Gjorgjievska, 2020, s. 165-184). When examining the Ombudsman of North Macedonia, the other notable point concerns the election process. The Ombudsman serves an eight-year term, and a double-majority voting system is employed for their selection. According to this system, the candidate must first secure the majority vote of the Parliament (simple majority). Additionally, the nominated individual must obtain the majority vote of the representatives of minority groups present in the Parliament. Another noteworthy aspect of the North Macedonian Ombudsman is their authority to temporarily suspend actions and decisions of administrative bodies if they are found to harm the rights and interests of citizens or any minority group, particularly concerning human rights. A further significant point is that the North Macedonian Ombudsman is required to submit an annual activity report to the North Macedonian Parliament. Participation in this parliamentary session is mandatory for all members of Parliament. The report provides a comprehensive analysis of the Ombudsman's activities, recommendations for the protection and promotion of human rights, and a review of whether constitutional and legal rights, as well as rules prescribed by international law, are being upheld. The report pays particular attention to issues of non-discrimination against various ethnic and religious groups and the protection of constitutional and legal rights. This report is discussed in a special session of the Parliament, where attendance is mandatory for all participants, including the Ombudsman.

In conclusion and as recommendations, the expansion of powers and resources stands out as a priority. Extending the jurisdiction of the Ombudsman and providing the institution with additional resources would significantly contribute to establishing a more effective oversight mechanism. This would enable the Ombudsman to respond to a greater number of complaints more quickly and efficiently. Public relations and awareness-raising efforts are also crucial. Educating and informing the public about the activities of the Ombudsman institution would encourage

citizens to utilize this mechanism more effectively in their pursuit of justice. To this end, public awareness campaigns and educational programs should be organized.

Legal and Institutional Reforms; To enable the Ombudsman institution to operate more independently and effectively, the necessary legal and institutional reforms must be implemented. In this context, measures should be introduced to strengthen the institution's independence and enhance its accountability. In conclusion, the Ombudsman institution in the Republic of North Macedonia plays a vital role in protecting constitutional and legal rights. However, to ensure its full effectiveness and transform it into a more efficient mechanism for safeguarding fundamental rights, the structural and functional improvements mentioned above must be undertaken. By doing so, the principles of the rule of law, justice, and democracy will be more robustly upheld, and the protection of citizens' rights and freedoms will be achieved more effectively.

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