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Department for Legal Affairs



LAW ON THE HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA

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NOTE:

- This law has been adopted by BH Parliamentary Assembly and published in the “Official Gazette of Bosnia and Herzegovina”, 19/02.

Law on the Human Rights Ombudsman of Bosnia and Herzegovina

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I. Nature

Article 1

1. The Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the Constitution of Bosnia and Herzegovina and the international treaties appended thereto, monitoring to this end the activity of the institutions of Bosnia and Herzegovina, its entities, and the District of Brčko, in accordance with the provisions of the present Law.
2. In this Law, the term :
 - a) “Institution” designates the institution of the Human Rights Ombudsman of Bosnia and Herzegovina;
 - b) “an/the Ombudsman” designates one of the three Ombudsmen comprising the institution;
 - c) “the Ombudsmen” designates the three persons comprising the Institution;
 - d) “government body(ies)” refers to all institutions, authorities, agencies, and departments of the government(s) concerned, as well as private agencies performing public services;
 - e) “government body(ies) of Bosnia and Herzegovina” also refers to government bodies of the District of Brčko.

II. Powers and Jurisdiction

Article 2

1. The Institution shall consider cases involving the poor functioning of, or violations of human rights and liberties committed by, any government body.
2. The Institution shall act either on receipt of a complaint or *ex officio*.
3. The Institution may undertake general investigations.
4. The Institution may recommend appropriate individual and/or general measures.
5. The Institution shall not consider cases concerning decisions, facts or events prior to 15 December 1995.

Article 3

1. The Institution's competence shall comprise the power to investigate all complaints concerning violations of rights and freedoms allegedly committed by the military administration.

Article 4

1. The Institution's competence shall comprise the power to investigate all complaints made about the poor functioning of the judicial system or the poor administration of an individual case and to recommend appropriate individual or general measures.

2. An Ombudsman shall not interfere with the adjudicative functions of a court, but may initiate court proceedings or intervene in pending proceedings, whenever he or she finds that such action is necessary for the performance of his or her duties. An Ombudsman may also make recommendations to the government body party or be consulted by the parties.

Article 5

1. The Institution shall have exclusive competence to deal with cases:
 - a) concerning government bodies of Bosnia and Herzegovina;
 - b) concerning at the same time a government body of an entity and a government body of Bosnia and Herzegovina;
 - c) concerning at the same time a government body of both entities.
2. The Institution may also deal with cases concerning a government body of an entity, in particular where it finds that the outcome of a case is of particular relevance for the effective enjoyment of individual rights and freedoms in Bosnia and Herzegovina as a whole.
3. If, at any stage of the procedure, an Ombudsman finds that a case does not fall within the above, he or she may refer the case to the appropriate entity Ombudsman institution.

Article 6

1. An Ombudsman may refer cases of alleged human rights violations to the highest judicial authorities of Bosnia and Herzegovina competent in human rights matters, pursuant to the rules concerning appeals to these authorities, whenever he or she finds that this is necessary for the effective performance of his or her duties.

Article 7

1. The activity of the Institution shall not be interrupted while the legislature is not in session, either because the legislature has been dissolved or because the term of the legislature has expired.
2. Emergency situations shall not interrupt an Ombudsman's term of office.

III. Composition, appointment and resignation

Article 8

1. Three persons shall compose the Institution.
2. The Ombudsmen co-operate in the exercise of their functions. Investigating activity and the addressing of either individual complaints or matters considered *ex officio* may be carried out individually by an Ombudsman, but the distribution of tasks among them shall not rely on the criterion of ethnic origin of the complainant. In their suggestions, resolutions and reports, the Ombudsmen act jointly.

Article 9

1. The Ombudsmen shall be appointed by the House of Representatives of Bosnia and Herzegovina and by the House of Peoples of Bosnia and Herzegovina by a two-thirds majority of each House, following a joint proposal by the Presidency of Bosnia and Herzegovina.
2. The appointment shall be made no more than three months after the joint proposal is deposited with the Parliamentary Assembly of Bosnia and Herzegovina, and, in any case, no more than three months after the date upon which the vacancy occurs.

Article 10

1. The Ombudsmen shall be appointed for a period of five years and may be re-elected.
2. An Ombudsman elected following the resignation of, or in replacement of, another Ombudsman shall serve for that part of the five-year term of office remaining and may be re-elected.
3. *(deleted)*¹

Article 11

1. Any citizen of Bosnia and Herzegovina of age enjoying full civil and political rights who has a demonstrated experience in the field of human rights and is of recognised and high moral stature may be elected as an Ombudsman.

Article 12

1. An Ombudsman's duties shall terminate for any of the reasons below:
 - a) His or her resignation;
 - b) Expiry of his or her term of office;
 - c) His or her manifest inability to perform his or her duties;
 - c) Failure to give up an incompatible position as set forth in Article 17, paragraph 4, of this Law;
 - d) His or her conviction and final sentencing for an intentional offence described in Article 16, paragraph 3, of this Law.
2. An Ombudsman's post shall be declared vacant by the President of the House of Representatives of Bosnia and Herzegovina in the event of decease, resignation, expiry of the term of office, or final conviction. In other circumstances, the decision that a post is vacant shall be taken by a two-thirds majority of the House of Peoples of Bosnia and Herzegovina and the House of Representatives of Bosnia and Herzegovina, after a debate and following a hearing of the person concerned.
3. Once a post is vacant, the Presidency of Bosnia and Herzegovina shall make a proposal for appointing a new Ombudsman within one month.
4. Where an Ombudsman post becomes vacant because of the expiration of a term of office, an Ombudsman whose term has expired shall continue on an interim basis to perform his or her duties until the appointment as provided for by Article 9 has been completed.
5. When one of the three Ombudsmen's posts becomes vacant for a reason other than the expiration of his or her term of office, the remaining Ombudsmen shall provisionally perform his or her duties until the appointment of a new Ombudsman has been completed.

IV. Co-operation with Ombudsman Institutions of the Entities

Article 13

1. The Institution shall co-operate with and promote co-operation among the Ombudsman institutions in Bosnia and Herzegovina and shall facilitate the co-ordination of action taken by the Ombudsman institutions in Bosnia and Herzegovina. In this respect the Institution shall in particular:

¹ Amendment published in the Official Gazette of Bosnia and Herzegovina 35/04

- a) establish a network of liaison officers to disseminate information about the activities of the Ombudsman institutions in Bosnia and Herzegovina among them, in particular information on pending cases;
- b) organise regular meetings of the Ombudsman institutions in Bosnia and Herzegovina;
- c) organise seminars and workshops;
- d) represent the Ombudsman institutions of Bosnia and Herzegovina in international *fora* as appropriate.

Article 14

1. An Ombudsman may refer, in accordance with Article 6, to the highest judicial authority of Bosnia and Herzegovina competent to deal with human rights issues, any case referred to the Institution for this purpose by the Ombudsman institutions of the entities. When referring such cases, the Ombudsman shall also ensure that the views of the entity Ombudsman institution are adequately presented to the judicial authority concerned.

V. Immunities and Incompatibilities

Article 15

1. An Ombudsman shall be under no orders. Within the framework of his or her constitutional and legal competencies, each Ombudsman shall not be given instructions by any authority. Each Ombudsman shall act independently, on the basis of the Institution's own criteria and in accordance with Article 8.

Article 16

1. An Ombudsman shall not be prosecuted, subjected to investigation, arrested, detained or tried for the opinions expressed or for the decisions taken in the exercise of powers associated with his or her duties.
2. In all other circumstances, an Ombudsman may not be arrested or detained, save in case of *flagrante delicto* relating to an offence punishable with a term of imprisonment greater than five years.
3. Decisions to prosecute, to detain or to refer an Ombudsman to a court charged with a criminal offence shall be taken only for offences punishable by a term of imprisonment greater than five years, and only after both the House of Representatives of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina have so decided. Solely a court at the level of Bosnia and Herzegovina shall be competent to try him or her.
4. Persons holding any office or appointment under the Institution shall not be prosecuted, subjected to investigation, arrested, detained or tried for any action, opinion or decision taken while performing their duties upon an Ombudsman's instructions. In all other circumstances, whenever persons holding any office or appointment under the Institution are arrested, detained or tried, the prosecuting authorities shall duly and promptly inform the Institution.

Article 17

1. The position of an Ombudsman is incompatible with the holding of any representative office; with any political activity or office or responsibilities of propaganda; with continued activity in government service; with membership of a political party or with the exercise of leadership of a political party, trade union, association, foundation, or religious organisation or with employment by any of these; with performance of the duties of a judge; and with any activity in an occupation or profession, in commerce or in employment.
2. An Ombudsman who was formerly a civil servant enjoys the guarantee of reintegration in his or her former service at the end of his or her term of office.

3. An Ombudsman shall, within ten days of his or her appointment, and before taking up his or her office, forego any position of potential incompatibility, failing which he or she shall be regarded as having declined the appointment.
4. Where incompatibility arises after an Ombudsman has taken up his or her duties, it is understood that he or she shall give up his or her duties, within the meaning of Article 12, on the date upon which the incompatibility arises.

VI. Investigation Procedure

Article 18

1. Any natural or legal person claiming a legitimate interest may complain to the Institution without any restriction. Nationality, citizenship, residence, gender, minority, ethnicity, religion, legal incapacity, imprisonment of any kind, and, in general terms, a special relationship with, or dependence on, a government body may not restrict the right to lodge a complaint with the Institution.
2. Complaining to the Institution or the latter's intervention shall not entail for the complainant any criminal, disciplinary or other sanction or any disadvantage or discrimination.

Article 19

1. Any complaint must be signed and submitted by the person concerned in a document stating his or her grounds, written on plain paper. A complaint presented in a less formal manner may be accepted where an Ombudsman finds that circumstances so require.
2. All the work of the Institution is free of charge to the person concerned and does not require the assistance of counsel or a solicitor.

Article 20

1. Correspondence addressed to an Ombudsman or to the Institution from places where individuals are held in detention, in imprisonment or in custody may not be the subject of any kind of censorship, nor may such correspondence be opened.
2. Conversations between a complainant and an Ombudsman or persons delegated by the Ombudsman may never be monitored or interfered with.

Article 21

1. The Institution shall register and acknowledge receipt of the complaints submitted, whether it considers that they should be pursued or not. When an Ombudsman decides not to pursue a complaint, he or she shall do so in writing, explaining the grounds and informing the person concerned of the most appropriate means of taking action, if any exist, leaving it to the person concerned to use those which he or she considers most suitable.
2. An Ombudsman may refuse to pursue anonymous complaints and complaints which he or she considers to have been made in bad faith, which are ill founded, which include no claim, which entail damage to the legitimate rights of a third party, or which were lodged with the Institution more than 12 months after the facts, events or decisions complained of.

Article 22

1. No appeal lies against the decision of an Ombudsman or the Institution.

Article 23

1. When an Ombudsman decides that a complaint or a matter considered *ex officio* offers sufficient grounds for investigation, he or she shall inform the government body concerned of the material elements of the case, so that the person in charge can submit a written statement within a time-period indicated by the Ombudsman.
2. An Ombudsman may demand at any time any document he or she deems necessary for the investigation.

Article 24

1. Where, during an investigation, an Ombudsman finds that the execution of a decision of the administration may result in irreparable prejudice for the rights of the complainant, he or she may suggest to the competent government body to suspend the execution of the challenged measure until the expiry of a period of no more than ten days. The authority concerned may refuse to comply with the suggestion, explaining, in a written document which reaches the Institution within three days from the receipt of the suggestion, and in any case before executing the challenged measure, the reasons thereof, failing which, the suggestion becomes mandatory for the authority.

VII. Obligation to Co-operate with the Institution

Article 25

1. Government bodies are obliged to provide the Institution with preferential assistance in its investigations and inspections.
2. During an investigation, an Ombudsman may present himself or herself at any government body in order to check all requisite information, conduct personal interviews or study the necessary files and documents.
3. An Ombudsman may not be denied access to any file or administrative document or to any document relating to the activity or service under investigation, without prejudice to the provisions of Article 28 of the present Law.

Article 26

1. When the case under investigation concerns the conduct of persons employed in government service and is connected with the duties they perform, the Institution shall inform the person concerned and either his or her superior or the body to which he or she is attached and may demand written statements.
2. The official concerned shall reply in writing and submit all the documents and evidence which he or she considers relevant, within the time limit indicated to him or her. Upon request, the time limit may be extended.
3. An Ombudsman may check the veracity of the elements submitted and propose a hearing of the official involved in order to obtain further information. Officials who refuse this hearing may be required by the Ombudsman to give a written explanation of the reasons for their refusal.
1. 4. The information provided by an official during an investigation through personal evidence is confidential, without prejudice to the provisions of the criminal legislation on the denunciation of acts, which may be of a criminal nature.

Article 27

1. Superior officials or government bodies which prohibit officials subordinate to them or in their service from responding to a request from an Ombudsman or from being heard by him or her shall declare that

they have done so in a written document, stating their grounds. This document shall be communicated to the official and to the Ombudsman. The Ombudsman shall then approach the said superior in respect of all operations necessary to the investigation.

VIII. Confidential and Secret Documents and Duty of Discretion

Article 28

1. An Ombudsman may require government bodies to hand over any documents he or she considers necessary to perform his or her duties, including those classified as confidential or secret in accordance with law. In such cases, the Ombudsman shall apply the requisite discretion to these documents and shall not make them available to the public.
2. Investigations conducted by an Ombudsman and his or her staff, including procedural measures, shall be conducted with the greatest discretion without prejudice to the considerations which the Ombudsman finds it appropriate to include in the reports. Special protective measures shall be taken in respect of documents classified as confidential or secret.
3. Where an Ombudsman believes that a document classified as confidential or secret and not handed over by a government body could be crucial to the proper conduct of the investigation, he or she shall advise the Presidency of Bosnia and Herzegovina of this fact.

IX. The Responsibility of Authorities and Officials

Article 29

1. When an investigation reveals that an abuse, an arbitrary procedure, discrimination, an error, negligence or an omission complained of was perpetrated by an official of a government body, the Ombudsman may communicate this finding to the official concerned. On the same date, the Ombudsman shall transmit the same document to the official's superior and set out the recommendations he or she considers pertinent.

Article 30

1. When an Ombudsman in the exercise of his or her duties becomes aware of conduct or acts which appear to be offences, he or she may advise the competent prosecuting authority.

Article 31

1. If a hostile attitude or an attitude impeding the investigation of an Ombudsman is maintained by a government body or its officials, this may be the subject of a special report and shall be mentioned in the corresponding part of the annual report.
2. Where an official of a government body impedes an investigation by refusing to send documents required by an Ombudsman, or through negligence in sending such documents or by refusing an Ombudsman access to administrative files or documents necessary to the investigation, the Ombudsman shall send the relevant file to the official's superior or to the competent prosecuting authorities for the appropriate disciplinary or penal action to be taken, in accordance with the law.
3. Where the competent authority fails to take action, the Ombudsman may, in substitution for this authority, institute disciplinary proceedings against the official responsible or, where appropriate, bring the case before a criminal court.

X. Recommendations

Article 32

1. An Ombudsman may make recommendations to government bodies with a view to the adoption of new measures. Government bodies which receive such recommendations are obliged to reply in writing and to inform the Ombudsman of the effect given to the recommendations within a period indicated by the Ombudsman.
2. If, once recommendations have been made, the government body concerned does not take appropriate measures within the time indicated by the Ombudsman, or if it does not inform the Ombudsman of the reasons for not doing so, the Ombudsman may draw the attention of the Minister responsible for the government body concerned, or of the highest authority of the government body concerned, to the course of the case and the recommendations made. Should the Ombudsman, following this, obtain no satisfaction in a case in which he or she considers that it would have been possible to find a positive solution, the matter should be included in the annual report or in a special report, mentioning the names of the authorities or officials taking this attitude.
3. Neither an Ombudsman nor the Institution has powers to amend or annul government measures or orders, but may suggest the amendment of the criteria used in their adoption.
4. When, following the examination of a case, an Ombudsman finds that the manner in which a rule is implemented leads to inequitable results, he or she may address to the competent government body any recommendation capable of leading to a fair solution to the situation of the affected individual. An Ombudsman may suggest to the competent authority the measures likely to remedy the complainant's situation, including payment of damages, and may propose in the Institution's annual or special report those amendments to laws and regulations he or she finds appropriate.
5. If the activities complained of have been carried out on the occasion of services provided by private persons under a contract of concession of public service, the Ombudsman may ask the competent administrative authorities to exercise their powers of inspection and punishment.

XI. Notification and Communication

Article 33

1. An Ombudsman shall inform the person concerned of the result of his or her investigations and activities and of the reply given by the government body concerned, unless the reply, by its nature, is to be considered as confidential or secret.
2. An Ombudsman shall communicate the positive or negative findings of the investigations to the authority, official or administrative department concerned.
3. The Institution may decide to publish its general recommendations in the Official Gazette.
4. All other recommendations of an Ombudsman or of the Institution shall be accessible to the public, except in cases in which they relate to matters which are confidential or secret, or where the complainant has expressly requested that his or her name and the circumstances of the complaint should not be revealed.

XII. Reports

Article 34

1. The Institution shall each year communicate the results of the its activities in a report to the Presidency of Bosnia and Herzegovina, the House of Representatives of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina.
2. Where the public prominence or urgency of the facts so require, the Institution may submit a special report.
3. Annual reports and any special reports shall be published.

Article 35

1. In its annual report, the Institution may state the number and nature of the complaints received, indicate which were not pursued and the reasons thereof, which were the subject of an investigation, and the findings of such investigations; the Institution may also specify those suggestions or recommendations accepted by the Government.
2. The report shall contain no personal data enabling the persons involved in the investigation procedure to be publicly identified, without prejudice to the provisions of Article 31.
3. The report shall also contain an appendix intended for the Presidency of Bosnia and Herzegovina, which shall show the expenditure of the institution's budget during the period covered.

XIII. Rules of Procedure

Article 36

1. The rules governing the operation of the Institution shall be laid down in compliance with the provisions of this Law by the Institution in Rules of Procedure which shall be published in the Official Gazette.

XIV. Staffing and Equipment

Article 37

1. The Institution may freely staff its office(s) and appoint advisers, deputies included, as needed, in accordance with its Rules of Procedure and within the budgetary limits.
2. The Institution staff shall be appointed and dismissed by the Institution.
3. An Ombudsman may authorise anyone to perform his or her duties in accordance with the Rules of Procedure of the Institution.

Article 38

1. The Institution advisers shall be automatically dismissed when three new Ombudsmen, appointed by the House of Representatives of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina in accordance with Article 9 of this Law, take up duties. These advisers may be re-appointed.
2. Members of the Institution staff who were civil servants prior to employment with the Institution enjoy the guarantee of reintegration in their prior service at the end of their term of employment with the Institution.

Article 39

1. Upon proposal by the Institution, the financial appropriation necessary to the functioning of the Institution shall be included in the budget of the Presidency of Bosnia and Herzegovina.

XV. Transitional Provisions

Article 40

1. As from the entry into force of the present Law, the Office of the Human Rights Ombudsman provided for in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina shall be called "The Human Rights Ombudsman of Bosnia and Herzegovina" and shall perform its duties in accordance with the provisions of this Law.

Article 41

1. Until 31 December 2003, there shall be one Human Rights Ombudsman of Bosnia and Herzegovina (the transitional Ombudsman), appointed by the Chairman in office of the OSCE, after consultation with the Presidency of Bosnia and Herzegovina, the Chairman of the House of Representatives of Bosnia and Herzegovina and the Chairman of the House of Peoples of Bosnia and Herzegovina. The transitional Ombudsman may not be a citizen of Bosnia and Herzegovina or any neighbouring state.
2. A person performing the duties of the Human Rights Ombudsman of Bosnia and Herzegovina at the time of the entry into force of this Law shall be the transitional Ombudsman of Bosnia and Herzegovina.
3. The transitional Ombudsman shall continue to perform his or her duties until the appointment of the Ombudsmen pursuant to the provisions of Chapter III of the present Law.

Article 42

1. The transitional Ombudsman shall be accorded all privileges and immunities specified in Article III, paragraph 4 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

Article 43

1. The provisions in this Law concerning budget appropriation, appointment of staff within budgetary limits and reports to the Presidency of Bosnia and Herzegovina on budgetary liquidation shall not apply to the transitional Ombudsman.

Article 44

1. The transitional Ombudsman shall communicate his or her annual and special reports to the Presidency of Bosnia and Herzegovina, the House of Representatives of Bosnia and Herzegovina, the House of Peoples of Bosnia and Herzegovina, and the High Representative.

Article 45

1. This Law shall come into force eight days following its publication in the Official Gazette of Bosnia and Herzegovina.