

Ombudsman Act

Promulgated, State Gazette No. 48/23.05.2003, effective 1.01.2004, amended, SG No. 30/11.04.2006, effective 12.07.2006, amended and supplemented, SG No. 68/22.08.2006, SG No. 42/5.06.2009, amended, SG No. 97/10.12.2010, effective 10.12.2010, amended and supplemented, SG No. 29/10.04.2012, effective 11.05.2012, amended, SG No. 15/15.02.2013, effective 1.01.2014

Text in Bulgarian: Закон за омбудсмана

Chapter One GENERAL PROVISIONS

Article 1. This Act regulates the legal status, organization and activities of the Ombudsman.

Article 2. The Ombudsman shall intervene by the means provided for in this Act, when citizens' rights and freedoms have been violated by actions or omissions of the State and municipal authorities and the administrations thereof, as well as by the persons commissioned to provide public services.

Article 3. (1) The Ombudsman shall be independent in his or her activities and shall obey only the Constitution, the laws, and the ratified international treaties whereto the Republic of Bulgaria is a party. He or she shall be guided by his or her personal conscience and morality.

(2) The Ombudsman shall perform his or her activities on the basis of the rules of organization and operation of the institution. The said rules shall be elaborated by the Ombudsman, shall be approved by a resolution of the National Assembly, and shall be promulgated in the State Gazette.

Article 4. The activities of the Ombudsman shall be public.

Article 5. The Ombudsman shall be assisted in his or her activities by a Deputy Ombudsman.

Article 6. (1) (Previous Article 6, SG No. 29/2012, effective 11.05.2012) The State and municipal authorities and the administrations thereof, the legal persons and citizens shall be obliged to provide the Ombudsman with information officially entrusted thereto, and to provide assistance to the Ombudsman in connection with the complaints and alerts sent to him or her.

(2) (New, SG No. 29/2012, effective 11.05.2012) State and municipal authorities shall be under the obligation to provide, within 14 days of being so requested, information on the places referred to in Article 28a, the conditions and the number of persons therein, as well as any other information necessary for the Ombudsman to perform his/her powers under Chapter Four (a).

Article 7. (Amended, SG No. 15/2013, effective 1.01.2014) The activities of the Ombudsman and his or her

administration shall be financed by the state budget and/or by other public sources. The Ombudsman shall be a budget authoriser by delegation.

Chapter Two

ASSUMPTION OF OFFICE. LEGAL STATUS

Article 8. The Ombudsman shall be elected by the National Assembly for a term of five years and may be re-elected to the same office only once.

Article 9. Eligibility for the office of Ombudsman shall be limited to Bulgarian citizens, holding a university degree, demonstrating high integrity and possessing the qualifications for election of National Representative.

Article 10. (1) The National Representatives and the Parliamentary Groups may submit nominations for election of Ombudsman.

(2) The National Assembly shall elect the Ombudsman by secret ballot. The candidate, who has received more than a half of the votes of the National Representatives participating in the voting, shall be elected.

(3) If none of the candidates has received the required majority at the first voting, a second voting shall take place, in which only the two candidates who have received the greatest number of votes shall participate. The candidate who has received more than half of the votes of the National Representatives participating in the second voting, shall be considered elected.

Article 11. (1) The Deputy Ombudsman shall be elected by the National Assembly within one month after the election of the Ombudsman on a nomination by the Ombudsman and for the term referred to in Article 8 herein.

(2) The Deputy Ombudsman shall meet the eligibility criteria covered under Article 9 herein.

Article 12. The Ombudsman shall assume office after taking the following oath before the National Assembly: "I swear in the name of the Republic of Bulgaria to observe the Constitution and the laws of the land and to protect the human rights and fundamental freedoms by exercising conscientiously and impartially my powers".

Article 13. The election of a new Ombudsman shall take place at least two months before the expiry of the term of office of the incumbent Ombudsman. The Ombudsman shall continue to discharge the duties thereof until the newly elected Ombudsman assumes office.

Article 14. The office of Ombudsman and Deputy Ombudsman shall be incompatible with any other state office, managerial position in any commercial corporation or not-for-profit legal entity, as well as with membership in any political party or trade union. The Ombudsman and the Deputy Ombudsman may not pursue commercial business.

Article 15. (1) The powers of an Ombudsman and a Deputy Ombudsman shall be terminated by the National Assembly before the expiry of their term of office in case of:

1. establishment of incompatibility or ineligibility;

2. inability to exercise his or her powers for more than six months;
3. entry into effect of a sentence for a premeditated criminal offence;
4. failure to discharge his or her duties and violation of the Constitution and the laws of the land or the commonly accepted ethical rules;
5. (new, SG No. 42/2009, amended, SG No. 97/2010, effective 10.12.2010) upon entry into force of an act which ascertains any conflict of interest under the Conflict of Interest Prevention and Ascertainment Act.
6. (renumbered from Item 5, SG No. 42/2009) resignation;
7. (renumbered from Item 6, SG No. 42/2009) death.

(2) (Amended, SG No. 42/2009) The resolution to terminate the powers of an Ombudsman or a Deputy Ombudsman before the expiry of their term of office on the grounds of Items 1, 2 and 4 of Paragraph (1) shall be adopted by the National Assembly on a motion by at least one-fifth of the National Representatives; the grounds under Items 3, 5, 6 and 7 of Paragraph (1) shall be announced before the National Assembly by the Chairperson of the National Assembly.

(3) Apart from the grounds under Paragraph (1), the Deputy Ombudsman shall be dismissed by the National Assembly on a reasoned proposal by the Ombudsman.

(4) The Ombudsman and the Deputy Ombudsman shall have the right to address the National Assembly in the cases under Items 1, 2, 4 and 5 of Paragraph (1) ; the Deputy Ombudsman shall have the same right in the case under Paragraph (3) as well.

Article 16. (1) The Ombudsman shall enjoy the same immunity as a National Representative.

(2) The immunity of the Ombudsman may be lifted under the terms and according to the procedure applicable to National Representatives.

Article 17. (1) (Amended, SG No. 42/2009) In cases of termination of the credentials of the Ombudsman before the expiry of his or her term of office, a new Ombudsman shall be elected within one month after the entry into force of the resolution on termination under Items 1, 2 or 4 of Article 15 (1) herein, or following the announcement under Items 3, 5, 6 or 7 of Article 15 (1) herein.

(2) In cases of termination of the powers of the Ombudsman before the expiry of his or her term of office, the Deputy Ombudsman shall assume the office until the election of a new Ombudsman.

Article 18. (1) (Amended, SG No. 68/2006) The Ombudsman shall receive remuneration amounting to 90 per cent of the monthly remuneration of the National Assembly Chairman.

(2) (Amended, SG No. 68/2006) The remuneration of the Deputy Ombudsman shall be 90 per cent of the remuneration of the Ombudsman.

(3) The Ombudsman and the Deputy Ombudsman may not receive other remuneration under an employment relationship or civil service relationship.

Chapter Three

POWERS

Article 19. (1) The Ombudsman shall exercise the following powers:

1. receive and consider complaints and alerts regarding violations of rights and freedoms by the State and municipal authorities and the administrations thereof, as well as by persons commissioned to provide public services;
2. make examinations on the complaints and alerts received;
3. reply in writing to the person who has lodged the complaint or alert within one month; if the case requires a more thorough examination, this time limit shall be three months;
4. make proposals and recommendations for reinstatement of the violated rights and freedoms to the respective authorities, the administrations thereof, and persons under Item 1;
5. mediate between the administrative authorities and the persons concerned for overcoming the violations committed and reconcile their positions;
6. (supplemented, SG No. 29/2012, effective 11.05.2012) make proposals and recommendations for elimination of the reasons and conditions which create prerequisites for violation of rights and freedoms, including proposals for regulatory amendments;
7. (amended, SG No. 29/2012, effective 11.05.2012) notify the authorities, listed under Article 150 of the Constitution, to approach the Constitutional Court, when he or she is of the opinion that it is necessary to interpret the Constitution or to pronounce on the compliance of the international treaties entered into by the Republic of Bulgaria with the Constitution prior to their ratification, and on the compliance of the laws with the generally recognised rules of international law and with the international treaties whereto the Republic of Bulgaria is a party;
8. (new, SG No. 29/2012, effective 11.05.2012) submit opinions to the Council of Ministers and the National Assembly on bills relevant to human rights;
9. (new, SG No. 29/2012, effective 11.05.2012) protect children's rights by the means provided for in this Act;
10. (new, SG No. 29/2012, effective 11.05.2012) make proposals and recommendations to the Council of Ministers and the National Assembly concerning the signing and ratification of international acts in the field of human rights;
11. (renumbered from Item 8, SG No. 29/2012, effective 11.05.2012) notify the prosecuting magistracy when there is reason to believe that an indictable offence has been committed.

(2) (New, SG No. 29/2012, effective 11.05.2012) The Ombudsman shall function as a National Preventive Mechanism within the meaning of and in conformity with the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002 (ratified by an Act, SG No. 34/2011), (SG No. 52/2011).

(3) (Renumbered from Paragraph 2, SG No. 29/2012, effective 11.05.2012) The Ombudsman may act on his or her own initiative as well when he or she has established that the conditions necessary for protection of citizens' rights and freedoms have not been created.

(4) (Renumbered from Paragraph 3, SG No. 29/2012, effective 11.05.2012) The Ombudsman may delegate some of his or her powers to the Deputy Ombudsman.

Article 20. (1) The Ombudsman shall have the right:

1. to access to the authorities, the administrations thereof and the persons under Article 2 herein, including the right to be present when they discuss and make decisions;
2. to request and receive timely, accurate and comprehensive information from the authorities, the administrations thereof and the persons under Article 2 herein;
3. to publicly express opinions and statements, including in the media.

(2) The Ombudsman shall not have the right to disclose any circumstances that come to the

knowledge thereof in the performance of his or her functions, which constitute a State, an official or a commercial secret or are of personal nature.

Article 21. The Ombudsman shall maintain a public register on the received oral and written complaints and alerts and their movement.

Article 22. (1) The Ombudsman shall submit an annual report on his or her activities to the National Assembly on or before the 31st day of March every year.

(2) The report shall contain information on:

1. the complaints and alerts received, the examinations on which have been completed;
2. the cases when his or her intervention has led to a certain result;
3. the cases when his or her intervention has had no consequences and the reasons thereof;
4. the proposals and recommendations made and whether these have been taken into consideration;
5. the respect for human rights and fundamental freedoms and the efficiency of the effective legislation in this area;
6. (new, SG No. 29/2012, effective 11.05.2012) the Ombudsman's activities as a National Preventive Mechanism;
7. (renumbered from Item 6 SG No. 29/2012, effective 11.05.2012) a report on the expenditures;
8. (renumbered from Item 7, SG No. 29/2012, effective 11.05.2012) a summary.

(3) The report under Paragraph (1) shall be public.

(4) The Ombudsman shall prepare reports on particular cases upon request by the National Assembly or on his or her own initiative.

Article 23. The Ombudsman shall publish an annual bulletin on his or her activities.

Chapter Four

SUBMISSION OF COMPLAINTS AND ALERTS

Article 24. (1) (Previous Article 24, SG No. 29/2012, effective 11.05.2012) Complaints and alerts to the Ombudsman may be submitted by natural persons, irrespective of their citizenship, gender, political affiliation, or religious beliefs.

(2) (New, SG No. 29/2012, effective 11.05.2012) Complaints and alerts may also be submitted to the Ombudsman by representatives of legal entities established for the public benefit whose subject of activity involves human rights protection.

Article 25. (1) Complaints and alerts may be written or oral, and may be submitted in person, by post or by other conventional means of communication.

(2) A complaint must state the name and permanent address of the sender, description of the violation, and the authority, administration, or person against whom the complaint is lodged. Written evidence may also be enclosed with the complaint.

(3) Anonymous complaints and alerts and complaints of violations committed more than two years before the time of the

complaint shall not be considered.

(4) A memorandum shall be drawn up on oral complaints, stating the information required under Paragraph (2).

Article 26. The submission of complaints to the Ombudsman shall be free of charge.

Article 27. The complaints and alerts received shall be entered into the register referred to in Article 21 herein. The action taken on each case and the results thereof shall also be entered into the said register.

Article 28. The authorities and the persons under Article 2 herein, to whom the opinions, proposals and recommendations have been addressed, shall be obliged to consider them within fourteen days and to notify the Ombudsman of the action taken.

Chapter Four (a)

(New, SG No. 29/2012, effective 11.05.2012)

NATIONAL PREVENTIVE MECHANISM

Article 28a. (New, SG No. 29/2012, effective 11.05.2012) The powers of the Ombudsman as a National Preventive Mechanism shall apply to the places where persons are imprisoned, or kept in custody or placed as a result of an act or as sanctioned by a government authority, which places those persons are not free to leave, with a view to protecting such persons from torture or other cruel, inhuman or degrading treatment or punishment.

(2) The Ombudsman shall have the power:

1. to access, without prior notice, all detention places referred to in Paragraph 1, as well as their facilities and sites;
2. to access all information on the number of imprisoned people kept at the detention places, and the number and location of such places;
3. to choose the places referred to in Paragraph 1 which he/she wishes to visit and the persons whereto he/she wishes to talk;
4. to conduct conversations in private without witnesses with the imprisoned persons, either personally or through an interpreter if necessary, and with any other persons believed by the Ombudsman as a National Preventive Mechanism to be able to provide the relevant information;
5. to access all information relevant to the treatment of the persons referred to in Paragraph 1 and the conditions at the detention places;
6. to require information from the staff of the detention place being visited and talk to them, as well as to personally talk to any other persons within the site being inspected;
7. to arrange medical examinations of the persons, subject to their consent.

(3) The staff and officials at the places referred to in Paragraph 1 shall be under the obligation to assist the Ombudsman and provide the necessary information to him/her.

Article 28b. (New, SG No. 29/2012, effective 11.05.2012) (1) No authority or official may order, apply, permit or allow any kind of sanctions in respect of a person or organisation on account of such person or organisation having communicated any information, either true or not, to the Ombudsman as a National Preventive Mechanism, and no such person or organisation may suffer any damage on that account.

(2) No confidential information collected by the Ombudsman as a National Preventive Mechanism may be made public. Personal data may only be published after the person whereto such data relates has expressed his/her explicit consent.

Article 28c. (New, SG No. 29/2012, effective 11.05.2012) As a National Preventive Mechanism, the Ombudsman may, by an order, delegate his/her powers referred to in Article 28a, in full or in part, to employees of his/her administration.

Article 28d. (New, SG No. 29/2012, effective 11.05.2012) After each visit the Ombudsman shall draft a report, which may contain recommendations and suggestions aimed at improving the conditions in the places referred to in Article 28a or the treatment of the persons placed therein, and at preventing torture and other cruel, inhuman or degrading treatment or punishment.

(2) Such report shall be submitted to the relevant competent authority, which shall be under the obligation to inform the Ombudsman within one month thereafter of the actions undertaken to implement the recommendations.

(3) The Ombudsman shall also publish annual reports related to his/her activities as a National Preventive Mechanism, subject to the requirements of Article 28b, Paragraph 2.

Article 28e. (New, SG No. 29/2012, effective 11.05.2012) The Ombudsman, as a National Preventive Mechanism, shall engage in cooperation with the relevant bodies and mechanisms of the United Nations, citizens' associations, as well as international, regional and national organisations whose subject of activity involves protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

Chapter Five

ADMINISTRATIVE PENALTY PROVISIONS

Article 29. Any person, who hinders the Ombudsman to perform his or her official duties, shall be liable to a fine not exceeding BGN 600, unless subject to a severer sanction.

Article 30. Any person, who fails to submit data, documents or certificates requested by the Ombudsman within the time limit specified thereby, shall be liable to a fine not exceeding BGN 500, unless subject to a severer sanction.

Article 31. Any person, who fails to perform another obligation specified by this Act or the statutory instruments of secondary legislation on the application thereof, shall be liable to a fine not exceeding BGN 300, unless subject to a severer sanction.

Article 32. The administrative penalty for any violations covered under Articles 29 to 31 herein shall be imposed by the competent regional court. The written statement ascertaining any such administrative violation shall be drawn up by an official designated by the Ombudsman, and shall be transmitted to the competent regional court.

Article 33. The court shall notify the person whose penalization has been demanded, of the records received under Article 32 herein, and shall give the said person time to familiarize himself or herself with the said records, to lodge objections and to adduce evidence in their support. The said time may not be shorter than one month.

Article 34. (1) After the expiry of the time limit under Article 33 herein, an open session shall be scheduled.

(2) The Ombudsman may participate in the court proceedings if he or she finds it necessary.

Article 35. (1) The regional court shall hear the case on the merits and shall render judgment imposing the administrative penalty specified in this Act or discharging the person whose penalization has been demanded.

(2) (Amended, SG No. 30/2006) The said judgment shall be subject to cassation appeal before the district court according to the procedure established by the Administrative Procedure Code. The Ombudsman may also appeal the decision.

Article 36. Unless otherwise provided for in this Act, the Administrative Violations and Sanctions Act shall apply.

SUPPLEMENTARY PROVISION

§ 1. Within the meaning given by this Act:

1. "public services" shall be educational, health and social activities, activities related to water, heat and electricity supply, postal and telecommunications activities, commercial activities, activities related to security and transport safety, as well as other similar services, provided to satisfy public needs and in relation to which administrative services may be performed;

2. "conventional means of communication" shall be letters, telephone, telegraph, telex, fax, and electronic mail.

TRANSITIONAL AND FINAL PROVISIONS

§ 2. The National Assembly shall elect an Ombudsman within three months after the entry of this Act into force.

§ 3. The Ombudsman shall submit to the National Assembly for approval the rules of organization and operation of the institution within one month after assuming office.

§ 3a. (New, SG No. 68/2006) The funds needed for the increase in the ombudsman and deputy ombudsmans remuneration are allocated within the 2006 Ombudsman Budget.

§ 4. This Act shall enter into force on the 1st day of January 2004.

The Act was passed by the 39th National Assembly on the 8th day of May 2003 and the Official Seal of the National Assembly has been affixed thereto.

TRANSITIONAL AND FINAL PROVISIONS

to the act to Amend and Supplement the Ombudsman Act

(SG No. 29/2012, effective 11.05.2012)

§ 6. Within one month after this Act's entry into force, the Ombudsman shall table the relevant amendments to the rules of organisation and operation of his/her activities before the National Assembly

for approval.

§ 7. This Act shall enter into force one month after its promulgation in the State Gazette.