



Strasbourg, 18 February 1998  
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**N° 036 / 97**

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CDL (98) 12  
Or.fr.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**PRELIMINARY DRAFT LAW  
ON THE OMBUDSMAN  
OF THE REPUBLIKA SRPSKA  
(BOSNIA AND HERZEGOVINA)**

## **I. Nature**

### Article 1

The Ombudsman of the Republika Srpska shall be an independent institution set up in order to protect the legitimate rights and interests of natural and legal persons, as enshrined in particular in the Constitutions of Bosnia and Herzegovina and the Republika Srpska and the international treaties appended thereto, monitoring to this end government activity, in accordance with the provisions of the present law.

## **II. Powers**

### Article 2

The Ombudsman shall have the power to admit, follow up or investigate any complaint whatsoever made to it about the poor ordinary functioning of, or the violations of human rights committed by, any government department, authority or official or any other agency performing public services.

The Ombudsman's competence shall comprise the power to investigate all complaints made about the dysfunctioning of the judicial system.

It also comprises the competence to ensure that the military administration functions properly and respects human rights.

The Ombudsman has the power to refer complaints to the Human Rights Chamber, provided for in Appendix VI to the Dayton Agreement, but must do this through the Human Rights Ombudsperson for whom provision is made in the same Appendix.

The Ombudsman also has the power to refer complaints to the Constitutional Court of the Republika Srpska in cases of alleged violations of human rights.

## **III. Appointment and resignation**

### Article 3

1. Three persons shall compose the institution of the Ombudsman, belonging to the constituent peoples of Bosnia and Herzegovina as defined in the Preamble of the Constitution of Bosnia and Herzegovina,. They will be elected by Parliament by a three-quarters majority, following a joint proposal by the President of the Republic, the President of the Parliament and the Prime Minister.

2. The election shall be held no more than three months after the candidature is deposited with Parliament, and, in any case, no more than three months after the date on which the vacancy occurs or on which one or all three of the members of the Ombudsman institution cease their functions for a reason provided for by this law.

3. Until the new election has been held, the Ombudsmen who are to be replaced, for any

reason provided for by law, shall continue to perform their duties on an interim basis.

#### Article 4

The Ombudsmen shall be elected for a period of five years and may be re-elected only once.

Any Ombudsman elected following the resignation, or in replacement, of another shall only serve for that part of the five-year term of office remaining.

#### Article 5

Any citizen of the Republika Srpska of recognised prestige and high moral stature who is of age and enjoys full civil and political rights may be elected as an Ombudsman.

#### Article 6

1. An Ombudsman's duties shall terminate for any of the reasons below:
  - a. His/Her resignation;
  - b. Expiry of his/her term of office, except as provided in Article 3.3;
  - c. His/Her decease or incapacity following an accident;
  - d. Action by him/her with conspicuous negligence in discharging his/her obligations and duties;
  - e. His/her conviction, and final sentencing, for of an intentional offence.
2. An Ombudsman's post shall be declared vacant by the President of the Parliament 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 Parliament, after a debate and following a hearing of the person concerned.
3. Once a post is vacant, the procedure for appointing a new Ombudsman shall be started within one month.
4. When one of the three Ombudsmen's posts becomes vacant for a reason for which there is statutory provision, the remaining Ombudsmen, in the order of seniority, shall provisionally perform his/her duties.

### **IV. Prerogatives and incompatibilities**

#### Article 7

1. The Ombudsman shall be under no specific orders. Within the framework of his/her constitutional and legal competences, the Ombudsman shall not be given instructions by any authority. The Ombudsman shall perform his/her duties independently, on the basis of his/her own criteria.
2. The Ombudsman shall not be prosecuted, subjected to investigation, arrested, detained or tried for the opinions expressed or for the decisions taken while exercising the powers

associated with his/her duties.

3. In all other circumstances, and insofar as he/she performs his/her duties, the Ombudsman may not be arrested or detained, save in case of *flagrante delicto* relating to an offence punished with imprisonment of more than five years. Decisions to prosecute, to detain or to refer the Ombudsman to a court charged with a criminal offence shall be taken after the National Assembly has lifted the above immunity. He/she shall be tried solely by the Criminal Chamber of the Supreme Court.

#### Article 8

1. The position of Ombudsman is incompatible with the holding of any representative office; with any political activity or office or 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. The Ombudsman who is a civil servant enjoys the guarantee of reintegration in his service at the end of his/her term of office.

3. The Ombudsman shall, within ten days of his/her appointment, and before taking up his/her office, forgo any position of potential incompatibility, failing which he/she shall be regarded as having declined the appointment.

4. Where incompatibility arises after they have taken up their duties, it is understood that they shall give up their duties on the date on which it arises.

#### **V. Investigation procedure**

#### Article 9

1. The Ombudsman shall take action either on receipt of a complaint or *ex officio*.

2. Any natural or legal person claiming a legitimate interest may apply to the Ombudsman without any restriction. Nationality, citizenship, residence, gender, minority, legal incapacity, imprisonment of any kind, and, in general terms, a special relationship with, or dependence on, a government department or authority may not restrict the right to lodge a complaint with the Ombudsman.

3. No administrative body or authority or legal person of public law may complain to the Ombudsman about matters within its remit.

#### Article 10

The activity of the Ombudsman shall not be interrupted while Parliament is not in session, either because it has been dissolved or because its term has expired.

Emergency situations shall not interrupt the Ombudsman's term of office.

#### Article 11

1. Any complaint must be signed and submitted by the person concerned, who shall indicate his/her surnames, first names and address, in a document stating his/her grounds, written on plain paper, within a maximum of six months from the time when he/she became aware of the facts complained of.
2. All the work of the Ombudsman is free of charge to the person concerned and does not require the assistance of counsel or a solicitor.

#### Article 12

1. Correspondence addressed to the Ombudsman from places where individuals are held in detention, in imprisonment or in custody may not be the subject of any kind of censorship.
2. Conversations between Ombudsman or people delegated by the Ombudsman and any of the persons listed in the previous paragraph may not be monitored or interfered with.

#### Article 13

1. The Ombudsman shall register and acknowledge receipt of the complaints submitted, whether they are declared admissible or rejected. When The Ombudsman rejects a complaint, he/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/she considers most suitable.
2. The Ombudsman shall reject anonymous complaints and may reject complaints which he/she considers to have been made in bad faith, which are ill-founded, which include no claim or which entail damage to the legitimate right of a third party. No appeal lies against the decisions of the Ombudsman.

#### Article 14

The Ombudsman cannot intervene in pending court proceedings nor can he/she challenge a decision by a court or tribunal, but has the power to make recommendations to the governmental body party to these proceedings.

#### Article 15

1. Once a complaint has been received, the Ombudsman shall conduct a summary and informal investigation to elucidate the details of the case. In all cases, he/she shall advise the body or administrative service concerned of the material part of the application, so that the person in charge can submit a written report within a time-period indicated by the Ombudsman. This time limit may be extended when circumstances so require.
2. A refusal or negligence by the official or his/her superiors responsible for submitting the

requested initial report may constitute a hostile attitude impeding the Ombudsman's duties. In this case the Ombudsman shall publicise this immediately and underline this attitude in the annual or, if applicable, a special report to Parliament, without prejudice to the criminal action which he/she could bring.

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.

## **VI. Obligation to co-operate with the Ombudsman**

### Article 16

1. Governmental, judicial and all public authorities are obliged to provide the Ombudsman with preferential and urgent assistance in his/her investigations and inspections.

2. During the investigation of a complaint, or where a matter is investigated by the Ombudsman *ex officio*, the Ombudsman or the person to whom he/she has delegated the task may present himself/herself at any office of a government department, attached to it or assigned to a public service in order to check all the requisite information, conduct personal interviews or study the necessary files and documents.

3. The 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 19 of this law.

### Article 17

1. When the complaint under investigation concerns the conduct of persons employed in government service and is connected with the duties they perform, the Ombudsman shall advise the person concerned and either his/her superior or the body to which he/she is attached.

2. The official concerned shall reply in writing and submit all the documents and evidence which he/she considers relevant, within the time limit indicated to him/her. Upon request, the time limit may be extended.

3. The 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.

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 the criminal nature.

### Article 18

Superior officials or bodies which prohibit officials subordinate to them or in their service from

responding to a request from the Ombudsman or from having a hearing with the Ombudsman shall declare that they have done so in a written document, stating their grounds, sent to the official and to the Ombudsman. The Ombudsman shall then approach the said superior in respect of all the operations necessary to the investigation.

## **VII. Confidential and secret documents and duty of discretion**

### Article 19

1. The Ombudsman may require the public authorities to hand over documents he/she considers necessary to perform his/her duties, including those classified as confidential or secret in accordance with the law. In such cases, the Ombudsman shall apply the requisite discretion to these and shall not make them available to the public.

2. Investigations conducted by the Ombudsman and the Ombudsman's staff, and procedural measures, shall be conducted with the greatest discretion, where both individuals and public services and bodies are concerned, without prejudice to the considerations which the Ombudsman finds it appropriate to include in the reports to Parliament. Special protective measures shall be taken in respect of documents classified as confidential or secret.

3. Where the Ombudsman believes that a document classified as confidential or secret and not handed over by the government could be crucial to the proper conduct of the investigation, he/she shall advise Parliament of this fact.

## **VIII. The responsibility of authorities and officials**

### Article 20

When the investigation reveals that an abuse, an arbitrary procedure, a discrimination, an error, a negligence or an omission complained of was perpetrated by an official, the Ombudsman may communicate his/her finding in this respect to the official concerned. On the same date, he/she shall transmit the same document to the official's superior and set down the suggestions he/she considers pertinent.

### Article 21

1. If a hostile attitude or an attitude impeding the investigation of the Ombudsman is maintained by a body, officials, holders of positions of responsibility or members of a public service, this may be the subject of a special report, and it shall also be drawn to attention in the corresponding part of the annual report.

2. Where an official impedes an investigation by the Ombudsman by refusing to send documents required by him/her, or through negligence in the sending of such documents or by refusing him/her access to administrative files or documents necessary to the investigation, the Ombudsman shall send the relevant file to the State Prosecutor's Office for the appropriate action to be taken, in accordance with the law.

### Article 22

When the Ombudsman in the exercise of his/her duties becomes aware of conduct or acts which seem to be offences, he/she shall immediately advise the competent judicial authority.

## **IX. Resolutions**

### Article 23

1. The Ombudsman has no power to amend or annul government measures or orders, but may suggest the amendment of the criteria used in their drafting.
2. When, following the examination of a case, the Ombudsman finds that the implementation of a Law leads to iniquity, he/she may address to the competent governmental body any recommendation capable to set a fair solution to the situation of the complainant, suggest to the competent authority the measures likely to remedy to the complainant's situation, including payment of damages, and propose those amendments to Laws and regulations that he/she finds appropriate.
3. 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.

### Article 24

1. The Ombudsman may, when conducting investigations, make recommendations and suggestions to government authorities and officials with a view to the adoption of new measures. In every case the authorities and officials are obliged to reply in writing and 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 administrative authority concerned does not take appropriate measures within a reasonable time, 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 department concerned or of the highest authority of the government department concerned to the course of the case and to the recommendations made. Should the Ombudsman, following this, obtain no satisfaction in a case where he considers that it would have been possible to find a positive solution, he/she shall include the matter in the annual or in a special report, mentioning the names of the authorities or officials taking this attitude.
3. In case of non-execution of a court judgment, the Ombudsman may order the department concerned to give effect to the judgment within a time-limit indicated by the Ombudsman. If the order is not followed, the non-execution of the court judgment shall be included in the annual or a special report to the National Assembly.

## **X. Notification and communication**

### Article 25



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

## **XI. Reports to the National Assembly**

### Article 26

1. The Ombudsman shall communicate to the National Assembly each year the result of the institution's administration in a report submitted to Parliament during an ordinary session.
2. Where the public prominence or urgency of the facts so require, the Ombudsman may submit a special report.
3. Annual reports and any special reports shall be published.

### Article 27

1. In the annual report, the Ombudsman shall state the number and nature of the complaints received, indicate which were rejected, and the reasons thereof, and which were the subject of an investigation, and the findings of this; the Ombudsman shall 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 21.1.
3. The report shall also contain an appendix intended for Parliament, which shall show the liquidation of the institution's budget during the period covered.
4. The Ombudsman shall give an oral presentation of the report to the National Assembly and the parliamentary groups shall be able to state their position.

## **XII. Rules of Procedure**

### Article 28

The rules governing the operation of the Ombudsman institution shall be laid down in compliance with the provisions of this law by the Ombudsmen themselves, in Rules of Procedure of which Parliament shall be informed and which shall be published in the Official Gazette.

### **XIII. Staffing and equipment**

#### **Article 29**

The Ombudsman may freely appoint the advisers needed, in accordance with the Rules of procedure and within the budgetary limits.

#### **Section 30**

1. The advisers shall be automatically dismissed when a new Ombudsman appointed by Parliament takes up his/her duties; they may be re-appointed.
2. The advisers who are civil servants enjoy the guarantee of reintegration in their service at the time of their dismissal.

#### **Article 31**

Upon proposal by the Ombudsman, the financial appropriation necessary to the functioning of the institution shall be included in the budget of Parliament.

### **TRANSITIONAL PROVISIONS**

#### **Article 32**

On the entry into force of the present Law, the Human Rights Ombudsperson for Bosnia and Herzegovina shall appoint, after consultation with the President of the Republic, the President of Parliament and the Prime Minister, three persons to exercise provisional, for a period of twelve months, the powers of the Ombudsman. The persons thus appointed shall remain in office in accordance with Article 3.3.

#### **Article 33**

Five years after the present law comes into force, the Ombudsman institution may propose to Parliament, in a report containing reasons, the amendments which it considers should be made to it.

### **FINAL PROVISION**

The present Law does not apply to facts prior to 15 December 1995.