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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

**PRELIMINARY DRAFT ORGANIC LAW  
FOR THE OMBUDSMEN  
OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

*prepared by the Working Group  
on the Ombuds-institutions in Bosnia and Herzegovina  
at its meeting in Paris, 18 February 1999  
and adopted by the Venice Commission  
at its 38<sup>th</sup> Plenary Meeting  
(Venice, 22-23 March 1999)*

## **I. Nature**

### Article 1

The Ombudsman<sup>1</sup> of the Federation of Bosnia and Herzegovina is an independent institution set up in order to protect human dignity, the rights and liberties of natural and legal persons, as enshrined in particular in the Constitutions of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina and the international treaties appended thereto, and to reverse the consequences of violations of these rights and liberties and especially of ethnic cleansing, examining to this end government activity of any institution in the Federation, in accordance with the provisions of the Constitution of the Federation and of the present law and in cooperation with Ombudsman institutions in Bosnia and Herzegovina.

## **II. Powers**

### Article 2

The Ombudsman shall act either on receipt of a complaint or *ex officio*.

The Ombudsman shall have the power to admit, follow up or investigate cases involving the poor functioning of, or violations of human rights and liberties committed by any government department, authority, or official or any other agency, including private agency, performing public services.

The Ombudsman shall have the power to recommend the appropriate individual and/or general measures.

### Article 3

The Ombudsman's competence shall include the power to investigate all cases about violations of rights and freedoms allegedly committed by the military administration, by security services, including secret services, and to investigate cases concerning detained persons whatever the reason for their detention and irrespective of the authority of the Federation responsible for the detention and recommend the appropriate individual and/or general measures.

### Article 4

The Ombudsman's competence shall include the power to investigate all cases about the poor functioning of the judicial system of the Federation and recommend the appropriate individual and/or general measures.

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<sup>1</sup> In the present draft, the term "Ombudsman" is used to designate the institution as a whole; "an Ombudsman" is used for one of the three persons composing the institution; "the Ombudsmen" is used to designate the three persons composing the institution.

The Ombudsman shall not interfere with the judicial functions of courts and tribunals in the Federation but may initiate court proceedings or intervene in pending proceedings, in accordance with the relevant provisions of the laws of the Federation, whenever it finds that such action is strictly necessary for the effective performance of its duties. The Ombudsman may also make recommendations to a governmental body party to the proceedings or be consulted by the parties.

In case of non-execution of a court judgement, the Ombudsman may recommend the department concerned to give effect to the judgement within a time limit indicated by the Ombudsman. If the recommendation is not followed, the non-execution of the court judgement shall be included in the annual or a special report.

#### Article 5

The Ombudsman of the Federation shall co-operate with and promote co-operation among Ombudsman institutions in Bosnia and Herzegovina and shall facilitate the co-ordination of action taken by the Ombudsman institutions in Bosnia and Herzegovina.

If, at any stage of the procedure, the Ombudsman finds that a case falls within the exclusive competence of another Ombudsman institution in Bosnia and Herzegovina it shall refer the case to that Ombudsman institution.

#### Article 6

The 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 these authorities.

#### Article 7

The activity of the Ombudsman shall not be interrupted while the legislature is not in session, whether it has been dissolved or its term has expired or for any other reason.

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

### **III. Composition, appointment and resignation**

#### Article 8

Three persons shall compose the institution of the Federation Ombudsman.

The Ombudsmen co-operate in the exercise of their functions. In carrying out their activities, they will follow, to the furthest extent possible, the principle of personal contact with the applicants. Investigating activity can be carried out individually by each Ombudsman, but distribution of tasks among them shall not rely on the criterion of ethnic origin of the applicant. In their recommendations, resolutions and reports the Ombudsmen act jointly.

### Article 9

The Ombudsmen shall be appointed by the House of Representatives and by the House of Peoples by a two-thirds majority of each House, following a joint proposal by the competent permanent joint committee of the House of Representatives and the House of Peoples. The joint committee shall adopt the proposal, by a majority of two-thirds of its members.

### Article 10

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

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

### Article 11

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 appointed as an Ombudsman

### Article 12

An Ombudsman's duties shall terminate for any of the reasons below:

- a. His/her resignation;
- b. Expiry of his/her term of office;
- c. His/her manifest inability to perform his/her duties;
- d. Failure to give up an incompatible position ;
- e. His/her conviction of, and final sentencing for an intentional offence.

An Ombudsman's post shall be declared vacant by the President of the House of Representatives in the event of decease, resignation, or final conviction of an Ombudsman, or expiry of his/her term of office. In other circumstances, the decision that a post is vacant shall be taken by a two-thirds majority of the House of Peoples and the House of Representatives, after a debate and following a hearing of the person concerned by the competent permanent joint committee of the House of Peoples and the House of Representatives.

Once a post is vacant, the joint committee of the House of Peoples and the House of Representatives shall make a proposal for appointing a new Ombudsman within one month.

Where a post or posts become vacant because of the expiration of office, the Ombudsman or the Ombudsmen whose term has expired shall continue on an interim basis to perform his/her/their duties until the appointment has been completed.

When one of the three Ombudsmen's posts becomes vacant for a reason other than the expiration of his/her term of office, the remaining Ombudsmen shall provisionally perform his/her duties until the appointment of a new Ombudsman has been completed.

#### **IV. Immunities and Incompatibilities**

##### Article 13

The Ombudsman shall be under no specific orders. Within the framework of his/her constitutional and legal competencies, each Ombudsman shall not be given instructions by any authority. The Ombudsman shall act independently, on the basis of the institution's own criteria.

Without prejudice to the provisions of this Law, the functioning of the Ombudsman may not be subject to any investigation, control or monitoring procedure by an administrative authority.

##### Article 14

The Ombudsmen 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 their duties.

In all other circumstances and as long as he/she performs his/her duties, an Ombudsman may not be arrested or detained, save in case of *flagrante delicto* relating to an offence punishable with imprisonment of more than five years.

Decisions to prosecute, to detain or to refer an Ombudsman to a court charged with a criminal offence shall be taken after the House of Representatives and the House of Peoples have lifted the above immunity. Solely the Supreme Court of the Federation shall be competent to try him/her.

Persons holding any office or appointment under the Ombudsman shall not be prosecuted, subjected to investigation, arrested, detained or tried for any action, opinion or decision taken while performing their duties upon the Ombudsman's instructions. In all other circumstances, whenever persons holding an office under the Ombudsman are arrested, detained or tried, the prosecuting authorities shall duly and promptly inform the Ombudsman.

##### Article 15

The position of Ombudsman is incompatible with the holding of any representative office; with any political activity or office; 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.

An Ombudsman who is a civil servant enjoys the guarantee of reintegration in his service at the end of his/her term of office.

An 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.

Where incompatibility arises after an Ombudsman has taken up his/her duties, it is understood that he/she shall resign, within the meaning of article 12, on the date on which the incompatibility arises. The decision as to whether the position taken is incompatible shall be taken by the competent joint committee of the House of Peoples and the House of Representatives.

## **V. Investigation Procedure**

### Article 16

Any natural or legal person claiming a legitimate interest may apply to the Ombudsman without any restriction. Nationality, citizenship, place of residence, gender, minority, ethnicity, religion, 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.

Applying to the Ombudsman or the latter's intervention shall not entail for the applicant any criminal, disciplinary or other sanction or any disadvantage or discrimination.

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

### Article 17

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. A complaint presented in a less formal manner may be accepted where the Ombudsman finds that circumstances so require.

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 18

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.

Conversations between Ombudsman or people delegated by the Ombudsman and any of the persons listed in the previous paragraph may never be monitored or interfered with.

### Article 19

The Ombudsman shall register and acknowledge receipt of the complaints submitted, whether they are admissible or not. When the Ombudsman decides not to pursue a complaint, it 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.

The Ombudsman may refuse to pursue anonymous complaints, complaints which concern facts, events or decisions prior to the entry into force of the Constitution of the Federation and complaints which they consider 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 Ombudsman more than one year after the facts, events or decisions complained of.

### Article 20

No appeal lies against any action or decision of the Ombudsman, including decisions to investigate or not to investigate a complaint.

### Article 21

When the Ombudsman decides that a complaint or a matter considered *ex officio* offers sufficient grounds for investigation, it shall inform the body or administrative service concerned of the material part of the case, so that the person in charge can submit a written statement and any information or document requested by the Ombudsman within a time-period indicated by it. This time-limit may be extended when circumstances so require.

### Article 22.

Where, during the investigation, the Ombudsman finds that the execution of a decision of the administration can result in irreparable prejudice for the rights of the complainant, it can suggest that the competent authority 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 addressed to the Ombudsman, within three days from the receipt of the suggestion and in any case before the execution of the challenged measure, the reasons thereof, failing which, the suggestion becomes mandatory for the authority.

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

### Article 23

Governmental, judicial and all public authorities and agencies of the Federation of Bosnia and Herzegovina, including private agencies performing public functions are obliged to provide the Ombudsman with preferential assistance in the Ombudsman's investigations and inspections.

During the investigation, the Ombudsman, or a person to whom the Ombudsman has entrusted investigation tasks, may present himself/herself at any governmental office or agency or service in order to check all the requisite information, conduct personal interviews or study the necessary files and documents.

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 26 of this law.

#### Article 24

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

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.

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.

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 that may be of a criminal nature.

#### Article 25

Superior officials or bodies which prohibit officials subordinate to them or in their service from responding to a request from the Ombudsman or from being heard by the Ombudsman shall declare that they have done so in a written document, stating their grounds. This document shall be communicated to the official and 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 26

The Ombudsman may require the public authorities to hand over any documents he/she considers necessary to perform his/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 and shall not make them available to the public.

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. Special protective measures shall be taken in respect of documents classified as confidential or secret.

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 the President and Vice-President of this fact.

### **VIII. The Responsibility of Authorities and Officials**

#### Article 27

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

#### Article 28

When the Ombudsman in the exercise of its duties becomes aware of conduct or acts which seem to be offences, it shall immediately advise the competent judicial authority.

#### Article 29

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 shall be mentioned in the corresponding part of the annual report.

Where an official impedes an investigation by refusing to send documents required by the Ombudsman, or through negligence in the sending such documents or by refusing the Ombudsman access to administrative files or documents necessary to the investigation, or otherwise displays a hostile attitude or impedes the investigation, the Ombudsman shall send the relevant file to his/her superior or to the competent Prosecutor's Office for the appropriate disciplinary or penal action to be taken, in accordance with the law.

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 30

The Ombudsman may make recommendations 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.

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.

The Ombudsman has no power to amend or annul government measures or orders, but may suggest the amendment of the criteria used in their adoption.

When, following the examination of a case, the Ombudsman finds that the manner in which a rule is implemented leads to inequitable results, it may address to the competent governmental body any recommendation capable of leading to a fair solution to the situation of the affected individual. The Ombudsman may suggest to the competent authority the measures likely to remedy the complainant's situation, including payment of damages, and propose in the institution's annual or special report those amendments to laws and regulations that the Ombudsman finds appropriate.

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 31**

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.

The Ombudsman shall communicate the positive or negative findings of the investigations to the authority, official or administrative department concerned.

The Ombudsman may decide to publish his/her general recommendations in the Official Gazette.

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.

## **XII. Reports**

### Article 32

The Ombudsman shall each year communicate a report on the institution's activities to the Prime Minister and the Deputy Prime Minister of the Federation, to each Cantonal President, to the OSCE and to the House of Representatives and the House of Peoples and of the Federation of Bosnia and Herzegovina.

Where the public prominence or urgency of the facts so require, the Ombudsman may submit a special report.

Annual reports and any special reports shall be published.

### Article 33

In the annual report, the Ombudsman may state the number and nature of the complaints received, indicate which were not pursued and the reasons thereof, and which were the subject of an investigation, and the findings of this; the Ombudsman may also specify those suggestions or recommendations accepted by the government.

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 29 para.1.

The report shall also contain an appendix intended for the competent permanent joint committee of the House of Peoples and the House of Representatives, which shall show the expenditure of the institution's budget during the period covered.

## **XIII. Rules of Procedure**

### Article 34

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 which shall be published in the Official Gazette.

## **XIV. Staffing and Equipment**

### Article 35

***The Ombudsmen may, following approval by the President, appoint deputies.***

The Ombudsman may, within the budgetary limits, freely staff the institution's offices, in accordance with the Rules of Procedure. The Ombudsman staff shall be appointed and dismissed by the Ombudsman.

### Article 36

The Ombudsman staff shall be automatically dismissed when the new Ombudsman appointed by the House of Representatives and the House of Peoples takes up duties. They may be re-appointed.

Members of the Ombudsman staff who are civil servants enjoy the guarantee of reintegration in their service at the time of their dismissal.

### Article 37

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

## **XV. TRANSITIONAL PROVISIONS**

### Article 38

The Ombudsmen of the Federation of Bosnia and Herzegovina in office on the entry into force of the present Law shall continue to perform their duties for a period of at least one year after the entry into force of this Law. After this period, they shall continue to perform their duties until the appointment of Ombudsmen pursuant to the provisions of the present Law. They can be re-appointed once.

The provisions in this Law concerning budget appropriation, appointment of staff within budgetary limits and reports to the competent joint committee of the House of Peoples and the House of Representatives on budgetary expenditure, shall not apply with regard to the contributions by international organisations to the institution's functional costs.

During the said period the Ombudsman shall communicate its annual and special reports to the Office of the High Representative.

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.

