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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**PRELIMINARY DRAFT ORGANIC LAW  
FOR THE STATE OMBUDSMAN  
OF BOSNIA AND HERZEGOVINA**

**AND**

**EXPLANATORY NOTES**

**Prepared by**

**The Working Group  
on Ombudsman-Institutions  
in Bosnia and Herzegovina**

**I. Nature**

Article 1

The State Ombudsman of Bosnia and Herzegovina (the State Ombudsman) shall be an independent institution set up in order 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 state and entity institutions in Bosnia and Herzegovina, in accordance with the provisions of the present law.

**II. Powers and jurisdiction**

Article 2

The State Ombudsman shall consider 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 State Ombudsman shall act either on receipt of a complaint or on its own initiative.

The State Ombudsman may undertake general investigations.

The State Ombudsman may recommend the appropriate individual and/or general measures.

The State Ombudsman shall not consider cases concerning decisions, facts or events prior to 15 December 1995.

Article 3

The State Ombudsman's competence shall comprise the power to investigate all complaints about violations of rights and freedoms allegedly committed by the military administration.

Article 4

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

Without prejudice to its power to refer cases to the highest judicial authority of the State competent in human rights matters, the State Ombudsman can neither interfere with pending court proceedings nor challenge the legality of a decision by a court or tribunal. This shall not prevent the State Ombudsman from making recommendations to the governmental body party to the proceedings or to be consulted by the parties

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

#### Article 5.

The State Ombudsman shall have exclusive competence to deal with cases

- concerning any institutions, authorities or agencies of the State of Bosnia and Herzegovina;
- concerning at the same time an institution, authority or agency of an entity and an institution, authority or agency of the State of Bosnia and Herzegovina;
- concerning at the same time institutions, authorities or agencies of both entities.

The State Ombudsman may also deal with cases concerning an institution, authority or agency of an entity, whenever 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.

If, at any stage of the procedure, the State Ombudsman finds that a case does not fall within its competence, as described above, it shall refer the case to the entity Ombudsmen.

#### Article 6

The State Ombudsman may refer cases of alleged human rights violations to the highest judicial authorities of the State competent in human rights matters, pursuant to the rules concerning appeals to these authorities, whenever it finds that this is strictly necessary for the effective performance of its duties under Article 1 of this law.

#### Article 7

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

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

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

#### Article 8

Three persons shall compose the institution of the State Ombudsman.

The three 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 suggestions, resolutions and reports the three Ombudsmen act jointly.

### Article 9

The three 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 Presidency.

The appointment shall be held no more than three months after the joint proposal 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 State Ombudsman institution cease their functions.

### Article 10

The three Ombudsmen shall be appointed 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 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 elected 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 as set forth in Article 17 para 4;
- e. His/her conviction, and final sentencing, for of 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, 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 and the House of Representatives, after a debate and following a hearing of the person concerned.

Once a post is vacant, the Presidency 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 as provided for by Article 9 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. Co-operation with Ombudsman institutions of the entities**

##### Article 13

The State Ombudsman 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. In this respect the State Ombudsman of Bosnia and Herzegovina shall in particular

- 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;
- organise regular meetings of the Ombudsman institutions in Bosnia and Herzegovina;
- organise seminars and workshops;
- represent the Ombudsman institutions of Bosnia and Herzegovina in international *fora* as appropriate.

##### Article 14

The State Ombudsman shall refer, in accordance with article 6, to the highest judicial authority of the State competent to deal with human rights issues, any case referred to it 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 is adequately presented to the judicial authority concerned.

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

##### Article 15

The State 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. Each Ombudsman shall act independently, on the basis of the institution's own criteria.

##### Article 16

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 their duties.

In all other circumstances and insofar 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 punished 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 a court at the level of the State of Bosnia and Herzegovina shall be competent to try him/her.

Persons holding any office or appointment under the State 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 State Ombudsman's instructions. In all other circumstances, whenever persons holding an office under the State Ombudsman are arrested, detained or tried, the prosecuting authorities shall duly and promptly inform the State Ombudsman.

#### Article 17

The position of 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.

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 give up his/her duties, within the meaning of article 12, on the date on which the incompatibility arises.

### **V. Investigation Procedure**

#### Article 18

Any natural or legal person claiming a legitimate interest may apply to the State Ombudsman 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 department or authority may not restrict the right to lodge a complaint with the State Ombudsman.

Applying to the State 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 State Ombudsman about matters within its remit.

#### Article 19

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 State Ombudsman finds that circumstances so require.

All the work of the State Ombudsman is free of charge to the person concerned and does not require the assistance of counsel or a solicitor.

#### Article 20

Correspondence addressed to the State 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 an Ombudsman or persons delegated by the State Ombudsman and any of the persons listed in the previous paragraph may never be monitored or interfered with.

#### Article 21

The State Ombudsman shall register and acknowledge receipt of the complaints submitted, whether it considers that they should be pursued or not. When the State 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 State Ombudsman may refuse to pursue anonymous complaints and complaints which it 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 State Ombudsman more than 12 months after the facts, events or decisions complained of.

#### Article 22

No appeal lies against the decisions of the State Ombudsman.



### Article 23

When the State Ombudsman decide that a complaint or a matter considered *ex officio* offer 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 within a time-period indicated by the State Ombudsman. This time limit may be extended when circumstances so require.

The State Ombudsman may demand at any time any document it deems necessary for the investigation.

### Article 24

Where, during the investigation, the State 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 the competent authority 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 addressed to the State Ombudsman, 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.

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

### Article 25

Governmental, judicial and all public authorities and agencies in Bosnia and Herzegovina and the entities, including private agencies performing public functions are obliged to provide the State Ombudsman with preferential assistance in its investigations and inspections.

During the investigation, the State 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 State 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

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

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 State 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 State 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, which may be of the criminal nature.

#### Article 27

Superior officials or bodies which prohibit officials subordinate to them or in their service from responding to a request from the State Ombudsman or from being heard by it shall declare that they have done so in a written document, stating their grounds. This document shall be communicated to the official and the State Ombudsman. The State 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 28

The State 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 State Ombudsman and its staff, including 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 State 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 State 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 Presidency of this fact.

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

#### Article 29

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 State Ombudsman may communicate this finding to the official concerned. On the same date, it shall transmit the same document to the official's superior and set out the recommendations it considers pertinent.

#### Article 30

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

#### Article 31

If a hostile attitude or an attitude impeding the investigation of the State 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 State Ombudsman, or through negligence in sending such documents or by refusing the State Ombudsman access to administrative files or documents necessary to the investigation, the State Ombudsman shall send the relevant file to his/her superior or to the competent prosecuting authorities 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.

### **IX. Recommendations**

#### Article 32

The State 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 State Ombudsman of the effect given to the recommendations within a period indicated by the State Ombudsman.

If, once recommendations have been made, the administrative authority concerned does not take appropriate measures within the time indicated by the State Ombudsman, or if it does not inform the State Ombudsman of the reasons for not doing so, the State 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 State Ombudsman, following this, obtain no satisfaction in a case where it considers that it would have been possible to find a positive solution, it shall include the matter in the annual or in a special report, mentioning the names of the authorities or officials taking this attitude.

The State 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 State 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 State 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 it 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.

## **X. Notification and Communication**

### Article 33

The State Ombudsman shall inform the person concerned of the result of its 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 State Ombudsman shall communicate the positive or negative findings of the investigations to the authority, official or administrative department concerned.

The State Ombudsman may decide to publish its general recommendations in the Official Gazette.

All other recommendations of the State 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**

### Article 34

The State Ombudsman shall each year communicate the result of the institution's activities in a report to the House of Representatives, the House of Peoples and the Presidency of Bosnia and Herzegovina.

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

Annual reports and any special reports shall be published.

Article 35

In the annual report, the State 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 State 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 31.

The report shall also contain an appendix intended for the Presidency, which shall show the expenditure of the institution's budget during the period covered.

**XII. Rules of Procedure**

Article 36

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

**XIV. Staffing and Equipment**

Article 37

The State Ombudsman may freely staff the institution's office(s) and appoint advisors as needed, in accordance with the Rules of Procedure and within the budgetary limits.

The State Ombudsman staff shall be appointed and dismissed by the State Ombudsman.

Article 38

The State Ombudsman advisers shall be automatically dismissed when the new Ombudsman appointed by the House of Representatives and the House of People take up duties. They may be re-appointed.

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

Article 39

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

## **XV. TRANSITIONAL PROVISIONS**

### Article 40

As from the entry into force of the present law, the Office of the Human Rights Ombudsman (Human Rights Ombudsperson) provided for in Annexe 6 to the Dayton Agreement shall be called “Office of the State Ombudsman of Bosnia and Herzegovina” and shall perform its duties in accordance with the provisions of this law.

### Article 41

Until 31 December 2003, there shall be one State Ombudsman of Bosnia and Herzegovina (the transitional State Ombudsman), appointed by the Chairman in office of the OSCE after consultation with the Presidency, the Chairman of the House of Representatives and the Chairman of the House of Peoples of Bosnia and Herzegovina. The transitional State Ombudsman may not be a citizen of Bosnia and Herzegovina or any neighbouring state.

Any person performing the duties of the Human Rights Ombudsperson of Bosnia and Herzegovina at the time of the entry into force of the present law may be appointed as transitional State Ombudsman of Bosnia and Herzegovina in accordance with the provision of the previous paragraph, provided that his/her term of office as a whole does not exceed five years.

The transitional State Ombudsman shall continue to perform his/her duties until the appointment of the Ombudsman pursuant to the provisions of Chapter III of the present Law.

### Article 42

The transitional State Ombudsman shall be accorded all privileges and immunities specified in Article III, para 4 of Annexe 6 to the Dayton Agreement.

### Article 43

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

### Article 44

The transitional State Ombudsman shall communicate his/her annual and special reports to the Presidency, the House of Representatives and the House of Peoples and to the Office of the High Representative

Article 45

Five years after the present law comes into force, the State Ombudsman may propose to the Parliamentary Assembly of Bosnia and Herzegovina, in a report containing reasons, the amendments which it considers should be made to it.