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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE OMBUDSMAN
OF SERBIA

I. INTRODUCTORY PROVISIONS

Article 1

The Ombudsman is hereby established, as an independent body that shall protect the rights of citizens and control the work of government agencies and other bodies and organisations, and enterprises and institutions which have been delegated administrative authority (hereinafter: administrative authorities).

The Ombudsman shall also ensure that human freedoms and rights are protected and promoted.

Article 2

The seat of Ombudsman shall be in Belgrade.

The Ombudsman may issue a decision to establish an office outside its seat.

The general act determining the organisation of the Ombudsman shall also govern the organisation of offices outside its seat.

II APPOINTMENT AND END OF OFFICE

Article 3

The National Assembly of the Republic of Serbia (hereinafter: the Assembly) shall appoint the Ombudsman following the proposal of the National Assembly Committee for Constitutional Issues (hereinafter: the Committee).

(**Alternative:** following the proposal of the Committee for Administration)

The proposal of the Committee has to be supported by a majority vote of all the members of the Committee.

The Ombudsman is appointed for a period of five years and may be re-appointed.

The procedure for the appointment of Ombudsman shall start at least six months before the end of office of the outgoing Ombudsman.

Article 4

A person is eligible for the position of Ombudsman if they are nationals of the Republic of Serbia and meet the following requirements:

- bachelor's degree in law;
- at least ten years of experience in jobs related to the purview of the Ombudsman;
- high moral character and qualifications;
- significant experience in the protection of civil rights.

Article 5

The Ombudsman shall have four deputies. The deputies shall help the Ombudsman in performing the duties prescribed by this Law, and within the powers delegated to them by the Ombudsman.

The Ombudsman shall designate a deputy who will replace him/her when absent or prevented to perform his duties.

A Deputy Ombudsman shall be appointed by the Assembly following the recommendation of the Ombudsman.

A Deputy Ombudsman shall be appointed to a five-year term of office and may be re-appointed.

A person is eligible for a Deputy Ombudsman if they have a bachelor's degree in law; at least ten years of experience in jobs related to the purview of the Ombudsman; if they are persons of high moral character and qualifications and have significant experience in the protection of civil rights.

Article 6

The Ombudsman and his deputies shall swear the following oath before taking office: "I solemnly swear to perform my duties conscientiously and impartially, in compliance with the law and the Constitution and will protect the rights and freedoms of citizens."

The Ombudsman shall swear the oath before the National Assembly, and Deputy Ombudsmen before the Speaker of the National Assembly.

Article 7

The Ombudsman and Deputy Ombudsmen shall not hold other public office in a government agency, institutions of Serbia and Montenegro, a body of the Autonomous Province, municipality, the City of Belgrade or perform another professional activity.

The Ombudsman and Deputy Ombudsmen shall not be members of political organisations.

The Ombudsman and Deputy Ombudsmen shall have the status of officials pursuant to the law regulating the conflict of interests in performing public functions, and the provisions of this law shall fully apply to them.

Article 8

The term of office of the Ombudsman or his deputy shall cease in the following cases:

- with the end of mandate, unless he/she is re-appointed;
- in case of death;
- by resigning from office;
- by meeting requirements for mandatory retirement pursuant to regulations on labour relations in government agencies;

- by dismissal.

Article 9

The Ombudsman shall be dismissed from office by the National Assembly, following the proposal of the Committee or at least one third of the total number of deputies.

If the motion for dismissal is initiated by the Committee, it must be supported by a majority of the members of the Committee.

The Ombudsman may be dismissed only in the following cases:

- due to incompetence or negligence in discharging his duties;
- if he engages in an activity which is incompatible with his office;
- if convicted for a criminal offence which makes him unsuitable for this function.

Article 10

The provisions related to the end of office of the Ombudsman shall accordingly apply to Deputy Ombudsmen. The proposal for the dismissal of a Deputy Ombudsman may also be made by the Ombudsman.

Article 11

In the event of termination of office of the Ombudsman or a Deputy Ombudsman for reasons specified under Article 8, paragraph 1, item 1 – 4 hereof, the Assembly shall state without a debate that the conditions for the end of office have been met.

Legal consequences of the end of office shall come into effect as of the date when the decision referred to in paragraph 1 of this Article was passed.

Article 12

In the event of end of office of the Ombudsman, Deputy Ombudsmen shall perform the function of the Ombudsman by rotation every month.

Alternative: The Deputy Ombudsman designated by the Ombudsman to replace him when absent or prevented from work shall perform this function.

II POWERS

Article 13

The Ombudsman shall have the power to control the violations of the rights of citizens resulting from acts, actions or failure to act by administrative authorities if they are violations of the laws, regulations and other general acts of the republic.

The Ombudsman shall have the power to control the legality and regularity of the work of administrative bodies.

The Ombudsman shall not have the power to control the work of the Government of Serbia as a whole.

Article 14

The Ombudsman shall not have the power to control the work of the courts, unless a complaint concerns a violation of the court's Rules of Procedure, procrastination of the proceedings or another act or failure to act, which prevents or significantly impairs a party's access to justice.

Article 15

The Ombudsman shall have the power to launch initiatives with the government for the amendment of laws or other regulations or general acts, if he deems that violations of citizens' rights are a result of deficiencies of such regulations. He shall also have the power to launch initiatives for new laws, other regulations and general acts, if he considers it significant for the protection of citizens' rights.

The government shall be obliged to consider the initiatives of the Ombudsman.

The Ombudsman shall have the power to give his opinion on draft laws and regulations if they concern the issues relevant for the protection of citizens' rights.

Article 16

The Ombudsman shall have the power to initiate proceedings before the Constitutional Court for the assessment of legality and constitutionality of laws, other regulations and general acts which govern issues related to the freedoms and rights of citizens.

Article 17

The Ombudsman shall have the power to file a motion to initiate misdemeanour, criminal or other appropriate proceedings against an official or employee of the administrative authorities, as well as to launch an initiative for the dismissal of an official who violated a citizen's right.

Article 18

Administrative authorities shall co-operate with the Ombudsman and enable his access to their premises and information available to them, regardless of the degree of confidentiality of such information.

The Ombudsman shall have the duty of confidentiality as regards the information acquired during his term of office even after the end of office.

Refusal to co-operate with the Ombudsman shall constitute a grave violation and a reason for dismissal of an official, that is, a reason for establishing of disciplinary accountability of an official.

Article 19

The Ombudsman shall have the authority, without prior notice, to undertake inspection of penal institutions and to speak in privacy with persons deprived of liberty.

Article 20

The President of the Republic, the Prime Minister and members of the Government, the Speaker of the National Assembly and officials in administrative agencies are obligated to receive the Ombudsman at his request at latest within fifteen days.

IV PROCEDURE

Article 21

The Ombudsman initiates proceedings following a complaint of citizens or *ex officio*.

Article 22

Every person who considers that his/her rights have been violated by an act, action or failure to act of an administrative authority may file a complaint with the Ombudsman.

Prior to submitting of a complaint a citizen is required to endeavour to protect his/her rights in pertaining legal proceedings.

The Ombudsman shall direct the complainant to instigate relevant legal proceedings when such proceedings are provided, and shall not instigate investigation until all legal remedies have been exhausted.

Exceptionally, the Ombudsman may initiate proceedings even before all legal remedies have been exhausted if the complainant would sustain irreparable damage.

The Ombudsman shall not proceed on anonymous complaints.

Article 23

A complaint is filed in writing or orally on record and shall not require payment of any fees or other dues.

A complaint may be filed not later than one year from the day the violation of the right of citizen has occurred and/or from the date of the last action undertaken by the administrative authority in respect of violation of the right of citizen.

Article 24

The complaint shall contain the name of the administrative authority involved, description of the violation of the right, facts and evidence supporting the complaint, data on legal remedies used and data on the complainant.

Persons deprived of freedom are entitled to submit their complaints in sealed envelope. All institutions where there are persons deprived of freedom shall visibly and publicly provide adequate envelopes, which shall be ensured by the management of such institutions and the Ministry of Justice.

Article 25

The Ombudsman shall reject the complaint:

- if the case is not under the competencies of the Ombudsman
- if filed after expiry of the statutory deadline;
- if filed prior to exhausting all available legal remedies;
- if anonymous;
- if it does not contain information required to proceed, and such deficiency is not corrected even in the subsequent period determined for supplementing the complaint;

In the case specified in paragraph 1 of this Article the Ombudsman is required to notify the complainant of the reasons for rejecting the complaint.

Article 26

If the Ombudsman does not reject the complaint, he shall commence investigation.

The Ombudsman shall notify the complainant and the administrative authority involved that investigation is being undertaken.

The administrative authority is required to respond to all requests of the Ombudsman and to provide all requested information and documents within a period set by the Ombudsman that may not be less than 15 or longer than 60 days.

Article 27

If the administrative authority involved corrects the irregularities by itself, the Ombudsman shall so notify the complainant and leave him/her a 15-day period to declare whether he/she is satisfied with such action.

If the complainant declares that he/she is satisfied with the manner the irregularity has been corrected, and also when the complainant fails to respond within the set deadline, the Ombudsman shall discontinue proceedings.

Article 28

Upon determination of all relevant facts and circumstances the Ombudsman shall deliver his decision.

The decision may reject the complaint as unfounded or the Ombudsman may find that irregularities existed in the work of the administrative authority.

If the Ombudsman determines that irregularities exist in the work of the administrative authority, he shall deliver a recommendation to the administrative authority on steps to be undertaken in order to rectify the noted irregularity.

An administrative authority is obliged to proceed pursuant to the Ombudsman's recommendation within 15 days and so inform the Ombudsman.

If the administrative authority fails to proceed pursuant to the recommendation, the Ombudsman may so inform the public, as well as the Assembly, and may instigated proceedings to determine the accountability of the official in charge of the administrative authority and/or the president of the court or judge if the investigation is undertaken in respect of a complaint on the work of a court.

Article 29

Provisions of Articles 26 through 28 shall accordingly apply to proceedings instituted by the Ombudsman *ex officio*.

V REPORT TO THE ASSEMBLY AND MUTUAL CO-OPERATION OF OMBUDSMAN

Article 30

The Ombudsman shall submit a regular annual report to the Assembly that shall include information on activities in the preceding year, data on noted irregularities in the work of administrative authorities and recommendations to improve the status of citizens in relation to administrative authorities.

The report shall be submitted not later than 15 March of the following year and shall be published in the "Official Gazette of the Republic of Serbia", and on the Internet page of the Ombudsman and shall be delivered also to public media.

The Ombudsman may submit special reports during the year, if so required.

Article 31

The Ombudsman shall co-operate with the ombudsman of the autonomous province and the civic defender (ombudsman) in local self-government units where established, with the objective to exchange information on noted problems and manifestations in the work of administrative authorities.

VI EMPLOYMENT RIGHTS

Article 32

The Ombudsman and his deputies are employed in this organ and regulations in force for Deputies permanently engaged (employed) in the National Assembly shall apply to them in respect of employment rights.

The Ombudsman is entitled to a salary equal to that of the salary of the president of the Constitutional Court, and deputies to that of a judge of the Constitutional Court.

VII FUNDS FOR WORK OF THE OMBUDSMAN

Article 33

The funds for the work of the Ombudsman are provided in the Republic budget.

The Ombudsman shall draft a proposal for funds for the following year, pursuant to methodology and criteria in force for other budget spending units and shall deliver it to the Government for inclusion as an integral part of the proposed Republic budget.

VIII SECRETARIAT

Article 34

A Secretariat of the Ombudsman shall be established to discharge specialised and administrative tasks.

The Secretariat shall be managed by the Secretary General, who shall hold a degree in law and have minimum five years experience and meet the requirements for employment in governmental administrative authorities.

The Ombudsman shall issue a general act on organisation and work of the Secretariat.

The Ombudsman shall decide on employment of staff in the Secretariat.

IX TRANSITIONAL AND FINAL PROVISIONS

Article 35

The Assembly shall elect the Ombudsman within three months of coming into force of this Law.

The Ombudsman shall submit the proposal for election of deputies within 60 days of taking office and the Assembly shall elect the deputies Ombudsman within 30 days from the date of submitting of the proposal.

Article 36

The Ombudsman shall issue the general act on organisation and work of the Secretariat within 30 days of taking office.

Staffing of the Ombudsman's Secretariat shall be done within 60 days of coming into force of the general act on organisation and work of the Secretariat.

Article 37

The Government shall provide premises, means and other prerequisites for work before election of the Ombudsman.

Article 38

The Ombudsman shall not proceed in cases occurring prior to coming into force of this Law.

Article 39

This Law shall come into force on the eighth day of publication in the "Official Gazette" of the Republic of Serbia.