

# OMBUDSMAN ACT

*In force from 01.01.2004*

*Prom. SG. 48/23 May 2003, amend. SG. 30/11 Apr 2006, amend. SG. 68/22 Aug 2006, amend. SG. 42/5 Jun 2009, amend. SG. 97/10 Dec 2010, amend. SG. 29/10 Apr 2012, amend. SG. 15/15 Feb 2013*

## **Chapter one. GENERAL**

Art. 1. This Act settles the legal status, organisation and activity of the ombudsman.

Art. 2. The ombudsman shall intercede by the means stipulated by this Act, when action or lack of action affect or violate the rights and freedoms of the citizens by the state and municipal bodies and their administrations, as well as by the persons to whom public services are assigned.

Art. 3. (1) In his activity the ombudsman shall be independent and shall only be subordinated to the Constitution, the laws and the ratified international agreements party to which is the Republic of Bulgaria, guided by his personal conscience and ethics.

(2) The ombudsman shall carry out his activity on the grounds of regulations for his organisation and activity. The regulations shall be worked out by the ombudsman, it shall be approved by a decision of the National Assembly and shall be promulgated in the State Gazette.

Art. 4. The activity of the ombudsman shall be public.

Art. 5. The ombudsman shall be assisted in his activity by a deputy ombudsman.

Art. 6. (1) (prev. text of Art. 06 – SG 29/12, in force from 11.05.2012) The state and municipal bodies and their administrations, the corporate bodies and citizens shall be obliged to submit information consigned to them officially, and to assist the ombudsman in connection with the complaints and signals sent to him.

(2) (new – SG 29/12, in force from 11.05.2012) The state and municipal authorities shall be obliged to provide information within 14 days from being requested regarding the places referred to in Art. 28a, the conditions and the number of persons therein, as well as other information required for exercise of the ombudsman's competences under Chapter Four "a".

Art. 7. (amend. SG 15/13, in force from 01.01.2014) The activity of the ombudsman and his administration shall be financed by the state budget and/or other public sources. The ombudsman is a first level budget administrator.

## **Chapter two. OCCUPATION OF POSITION. LEGAL STATUS**

Art. 8. The ombudsman shall be elected by the National Assembly for a period of 5 years and he may be elected for the same position for only one more mandate.

Art. 9. Elected for ombudsman shall be a Bulgarian citizen with higher education, who possesses high moral qualities and meets the requirements for election of a national representative.

Art. 10. (1) Proposal for election of ombudsman may be made by the national representatives and parliamentary groups.

(2) The National Assembly shall elect an ombudsman by secret voting. Elected shall be the candidate having received a majority of more than half of the voting national representatives.

(3) If, as a result of the first voting, none of the candidates has received the required majority, second voting shall be held for the two candidates having received most of the votes. Considered elected by the second voting shall be the candidate who has received the votes of more than half of the voting national representatives.

Art. 11. (1) The deputy ombudsman shall be elected by the National Assembly within one month from the election of the ombudsman on his proposal and for the period under art. 8.

(2) The deputy ombudsman shall meet the criteria for election according to art. 9.

Art. 12. The ombudsman shall occupy the position 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 country and to defend the rights of people and the basic freedoms by exercising conscientiously and objectively my legal capacities."

Art. 13. The election of a new ombudsman shall be held not later than two months before the expiration of the mandate. The ombudsman shall continue to fulfil his duties until the inauguration of the newly elected ombudsman.

Art. 14. The position of the ombudsman and of the deputy ombudsman is incompatible with another state position, a position of management of a trade company or non-profit corporate body, as well as with membership in a political party or trade union. The ombudsman and the deputy ombudsman may not carry out commercial activity.

Art. 15. (1) The legal capacity of the ombudsman and of the deputy ombudsman shall be terminated ahead of terms by the National Assembly for:

1. established incompatibility or non-eligibility;
2. actual inability to exercise his legal capacity for a period longer than six months;
3. enactment of a conviction for deliberate crime;
4. failure to fulfil his duties and for violation of the Constitution and the laws of the country or the commonly accepted moral rules for public conduct;
5. (new – SG 42/09; amend. – SG 97/10, in force from 10.12.2010) entry into force of an act, finding conflict of interests under the Act on Prevention and Findings of Conflict of Interests;
6. (prev. text of Item 05 – SG 42/09) resignation;
7. (prev. text of Item 06 – SG 42/09) death.

(2) The decision for pre-term termination of the legal capacities of the ombudsman or of the deputy ombudsman under para 1, item 1, 2 and 4 shall be adopted by the National Assembly on request of at least one fifth of the national representatives, and the grounds under para 1, item 3, 5 and 6 shall be announced by the chairman of the National Assembly to the National Assembly.

(3) Besides in the cases under para 1 the deputy ombudsman shall be released by the National Assembly upon a motivated proposal of the ombudsman.

(4) The ombudsman and the deputy ombudsman shall have the right to be heard out by the National Assembly in the cases of para 1, item 1, 2, 4 and 5, and the deputy ombudsman - also on para 3.

Art. 16. (1) The ombudsman shall enjoy the immunity of a national representative.

(2) The immunity of the ombudsman may be withdrawn under the conditions and by the order stipulated for national representatives.

Art. 17. (1) (amend. – SG 42/09) In cases of termination of the mandate of the ombudsman ahead of term a new ombudsman shall be elected within one month from the enactment of the decision for termination under art. 15, para 1, items 1, 2 or 4 or from the announcement under art. 15, para 1, items 3, 5, 6 or 7.

(2) In the cases of pre-term termination of the legal capacities of the ombudsman the deputy ombudsman shall take up his position until the election of a new ombudsman.

Art. 18. (1) (amend. - SG 68/06) The ombudsman shall receive basic monthly remuneration amounting to 90 percent of the basic monthly remuneration of the chairman of the General Assembly.

(2) (amend. - SG 68/06) The remuneration of the deputy ombudsman shall be 90 percent of the remuneration of the ombudsman.

(3) The ombudsman and the deputy ombudsman may not receive other remuneration under employment or official legal terms.

### **Chapter three.** **LEGAL CAPACITY**

Art. 19. (1) The ombudsman shall:

1. accept and consider complaints and signals for violation of rights and freedoms by the state and municipal bodies and their administrations, as well as by the persons to whom it is assigned to provide public services;

2. carry out inspections regarding the received complaints and signals;

3. reply in writing to the person who has approached him within one month; should the case require a more detailed inspection this term shall be three months;

4. extend proposals and recommendations for restoration of the violated rights and freedoms to the respective bodies, their administrations and to the persons under item 1;

5. intercede between the administrative bodies and the affected persons for overcoming the admitted violation and reconcile their positions;

6. (suppl. – SG 29/12, in force from 11.05.2012) extend proposals and recommendations for removal of the reasons and conditions which create preconditions for violation of the rights and freedoms, including proposals for normative changes;

7. (amend. – SG 29/12, in force from 11.05.2012) notify the bodies of art. 150 of the Constitution in order to approach the Constitutional Court if it is deemed that interpretation of the constitution or a decision on the compliance of the international treaties signed by the Republic of Bulgaria with the constitution before their ratification, or for compliance of the laws with the generally recognised norms of the international law and with the international treaties to which Bulgaria is contracting party is required;

8. (new – SG 29/12, in force from 11.05.2012) provide opinions to the Council of Ministers and the National Assembly on draft laws concerning the human rights protection;

9. (new – SG 29/12, in force from 11.05.2012) protect the rights of the children through the means provided for in this Act;

10. (new – SG 29/12, in force from 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 the human rights;

11. (prev. text of Item 08 – SG 29/12, in force from 11.05.2012) notify the bodies of prosecution

where there are indications of committed unclassified misdemeanour.

(2) (new – SG 29/12, in force from 11.05.2012) The ombudsman shall exercise the functions of a National Preventive Mechanism in the sense of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 (ratified by a law – SG 34/11) (SG 52/11).

(3) (prev. text of Para 02 – SG 29/12, in force from 11.05.2012) The ombudsman shall act on his initiative when he establishes that the necessary conditions for protection of the rights and freedoms of the citizens are not created.

(4) (prev. text of Para 03 – SG 29/12, in force from 11.05.2012) The ombudsman may assign to the deputy ombudsman some of his legal capacities.

Art. 20. (1) The ombudsman shall have the right:

1. to access to the bodies, their administrations and the persons under art. 2, including to attend the discussions and adoption of decisions by them;
2. to require and receive timely, precise and complete information from the bodies, their administrations and from the persons under art. 2;
3. to express public opinion and statements, including in the mass media.

(2) The ombudsman shall not have the right to make public circumstances having become known to him in fulfilment of his functions, which are state, official or trade secret or which are of personal nature.

Art. 21. The ombudsman shall maintain a public register of the received written and verbal complaints and signals and their movement.

Art. 22. (1) The ombudsman shall present to the National Assembly by March 31 every year an annual report for his activity.

(2) The report shall contain information for:

1. the received complaints and signals on which the inspections have been concluded;
2. the cases when his interference has ended with a positive result;
3. the cases when his interference remained without any effect and the reasons for that;
4. the extended proposals and recommendations, as well as whether they have been complied with;
5. the respect for the human rights and basic freedoms and the effectiveness of the acting legislation in this sphere;

6. (new – SG 29/12, in force from 11.05.2012) the activity of the ombudsman as a National Preventive Mechanism;

7. (prev. text of Item 06 – SG 29/12, in force from 11.05.2012) account of the expenses;

8. (prev. text of Item 07 – SG 29/12, in force from 11.05.2012) expose.

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

(4) On request of the National Assembly, or on his initiative, the ombudsman shall work out reports on individual cases of his practice.

Art. 23. The ombudsman shall issue an annual bulletin for his activity.

#### **Chapter four.**

### **FILING COMPLAINTS AND SIGNALS**

Art. 24. (1) (prev. text of Art. 24 – SG 29/12, in force from 11.05.2012) Complaints and signals may be filed with the ombudsman by individuals without discrimination of citizenship, sex, political affiliation or religious convictions.

(2) (new – SG 29/12, in force from 11.05.2012) Complaints and signals may be filed also by representatives of legal persons for public benefit, which purpose is the protection of the human rights.

Art. 25. (1) The complaints and signals may be written or verbal, filed personally, by mail or in other traditional means of communication.

(2) The complaint shall contain the name and the permanent address of the claimant, description of the offence, the body, the administration or the person against whom the complaint is filed. The complaint may also be accompanied by written evidence.

(3) Anonymous complaints and signals, as well as complaints and signals for offences committed before more than two years shall not be considered.

(4) If the complaint is verbal written records shall be worked out containing the information required under para 2.

Art. 26. The filing of complaints with the ombudsman shall be free of charge.

Art. 27. The received complaints and signals shall be entered in the register under art. 21. Noted in the register shall also be the measures undertaken for each individual case and the result from them.

Art. 28. The bodies and the persons under art. 2, whom the statements, proposals and recommendations of the ombudsman regard, shall be obliged to consider them within 14 days and to inform the ombudsman about the measures they have undertaken.

#### **Chapter four.**

#### **“a” NATIONAL PREVENTIVE MECHANISM (NEW – SG 29/12, IN FORCE FROM 11.05.2012)**

Art. 28a. (new – SG 29/12, in force from 11.05.2012) (1) The competences of the ombudsman as a National Preventive Mechanism shall concern the places with persons deprived of liberty, or detained or accomodated pursuant to an act or with the consent of a state authority, which cannot be left at their will, for the purpose of protection of such persons from torture or other forms of cruel, inhuman or degrading treatment or punishment.

(2) The ombudsman shall have the right to:

1. access without advance notification at any time to all places for detention referred to in Para 1 and their sites and facilities;

2. access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Para 1, as well as the number of places and their location;

3. choose the places referred to in Para 1 he wants to visit and the persons he wants to interview;

4. have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the ombudsman as a national preventive mechanism believes may supply relevant information;

5. access to all information referring to the treatment of the persons referred to in Para 1 as well as their conditions of detention;

6. request information from officials of the visited place for detention, to interview them, and to carry out private interviews with any other person on the territory of the visited site;

7. organise medicinal checks of the persons with their consent.

(3) The employees and officials in the places referred to in Para 1 shall be obliged to render assistance and provide the required information to the ombudsman.

Art. 28b. (new – SG 29/12, in force from 11.05.2012) (1) No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the ombudsman as a National Preventive Mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

(2) Confidential information collected by the ombudsman as a National Preventive Mechanism shall be published. No personal data shall be published without the express consent of the person concerned.

Art. 28c. (new – SG 29/12, in force from 11.05.2012) The ombudsman as a National Preventive Mechanism may assign in an order his functions under Art. 28a, fully or partially, to officials of his administration.

Art. 28d. (new – SG 29/12, in force from 11.05.2012) (1) Following every visit the ombudsman shall draw up a report, which may contain recommendations and proposals for improvement of the conditions at the places referred to in Art. 28a, the treatment of the persons therein, and also for the purpose of preventing the torture or other forms of cruel, inhuman or degrading treatment or punishment.

(2) The report shall be submitted to the competent authority, which, within one month, shall notify the ombudsman of the actions taken to meet the recommendations.

(3) The ombudsman shall publish also annual reports related to his activity as a National Preventive Mechanism in compliance with the requirement of Art. 28b, Para 2.

Art. 28e. (new – SG 29/12, in force from 11.05.2012) The ombudsman as a National Preventive Mechanism shall cooperate with the competent authorities and mechanisms of the United Nations, civil associations, and international, regional and national organisations, whose corporate purpose includes the protection of persons from torture or other forms of cruel, inhuman or degrading treatment or punishment.

## **Chapter five.**

### **ADMINISTRATIVE PENAL PROVISIONS**

Art. 29. Who obstructs the ombudsman to fulfil his official duties shall be punished by a fine of up to 600 levs unless subject to a more severe punishment.

Art. 30. Who does not submit, within the period set by the ombudsman, requested information, documents or acts, shall be punished by a fine of up to 500 levs, unless subject to a more severe punishment.

Art. 31. Who does not fulfil other obligation ensuing from this Act or from a normative act for its implementation shall be punished by a fine of up to 300 levs, unless subject to a more severe punishment.

Art. 32. The administrative punishment under art. 29 - 31 shall be enforced by the respective regional court. The act establishing the administrative offence shall be issued by an official appointed by the ombudsman, and it shall be sent to the respective regional court.

Art. 33. The court shall notify the person, whose punishment is requested, about the receipt of the materials under art. 32, set a period for acquaintance of them, for objections and providing evidence in their support. The period may not be less than one month.

Art. 34. (1) Upon expiration of the period under art. 33 the hearing shall be appointed for an open court session.

(2) The ombudsman may participate in the court proceedings if he deems it necessary.

Art. 35. (1) The regional court shall consider the case in essence and shall rule by a decision which shall enforce the administrative punishment stipulated by this Act, or shall acquit the person whose punishment has been requested.

(2) (amend. - SG 30/06, in force from 12.07.2006) The decision under para 1 shall be subject to cassation appeal before the district court by the order of the Administrative procedure code. Cassation appeal may also be filed by the ombudsman.

Art. 36. Inasmuch as this Act does not stipulate otherwise the Administrative Violations and Penalties Act shall apply.

### **Additional provisions**

§ 1. In the meaning of this Act:

1. "public services" are educational, health, social, water supply, sewerage, heat supply, electric supply, postal, telecommunication, commercial activity, activities on guarding and traffic safety, as well as other similar services provided for satisfying public needs, in relation to whose provision administrative services may be carried out;

2. "traditional means of communication" are letters, telephone, telegraph, telex, fax and electronic mail.

### **Transitional and concluding provisions**

§ 2. Within three months from the enactment of this Act the National Assembly shall elect an ombudsman.

§ 3. Within one month from occupying the position the ombudsman shall present for approval by the National Assembly the regulations for his organisation and activity.

§ 3a. (New – SG 68/06 r.) The funds for increase of the remuneration of the ombudsman and the deputy-ombudsman shall be within the frames of the budget of the ombudsman for 2006.

§ 4. The Act shall enter into force on January 1, 2004.

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The Act was adopted by the 39th National Assembly on May 8, 2003 and was affixed with the official seal of the National assembly.

### **Transitional and concluding provisions TO THE ADMINISTRATIVE PROCEDURE CODE**

(PROM. – SG 30/06, IN FORCE FROM 12.07.2006)

§ 142. The code shall enter into force three months after its promulgation in State Gazette, with the exception of:

1. division three, § 2, item 1 and § 2, item 2 – with regards to the repeal of chapter third, section II "Appeal by court order", § 9, item 1 and 2, § 15 and § 44, item 1 and 2, § 51, item 1, § 53, item 1, § 61, item 1, § 66, item 3, § 76, items 1 – 3, § 78, § 79, § 83, item 1, § 84, item 1 and 2, § 89, items 1 - 4§ 101, item 1, § 102, item 1, § 107, § 117, items 1 and 2, § 125, § 128, items 1 and 2, § 132, item 2 and § 136,

item 1, as well as § 34, § 35, item 2, § 43, item 2, § 62, item 1, § 66, items 2 and 4, § 97, item 2 and § 125, item 1 – with regard to the replacement of the word "the regional" with the "administrative" and the replacement of the word "the Sofia City Court" with "the Administrative court - Sofia", which shall enter into force from the 1st of May 2007;

2. paragraph 120, which shall enter into force from the 1st of January 2007;

3. paragraph 3, which shall enter into force from the day of the promulgation of the code in State Gazette.

**Transitional and concluding provisions**

**TO THE ACT ON AMENDMENT AND SUPPLEMENTATION OF THE OMBUDSMAN ACT**

(PROM. – SG 29/12, IN FORCE FROM 11.05.2012)

§ 6. Within one month from entry into force of this Act the ombudsman shall submit to the National Assembly for approval the relevant changes in the regulations on his organisation and activities.

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

**Transitional and concluding provisions**

**TO THE PUBLIC FINANCE ACT**

(PROM. SG 15/13, IN FORCE FROM 01.01.2014)

§ 123. This Act shall enter into force on 1 January 2014 with the exception of § 115, which enters into force on January 1, 2013, and § 18, § 114, § 120, § 121 and § 122, which came into force on 1 February in 2013.