

# Law on the Ombudsman

**OMBUDSMAN FOR LAW AND OTHER LAWS assign rights and duties OMBUDSMAN**

**Law No. 8454, dated 4.2.1999 as amended by Law No. 8600 dated 10.04.2000, amended by Law nr.9398, dated 12.05.2005**

**FOR OMBUDSMAN**

Pursuant to Articles 60-63, 81 and 83 point 1 of the Constitution, upon the proposal of the Council of Ministers.

**ASSEMBLY OF THE REPUBLIC OF ALBANIA DECIDED:**

## **Chapter I**

**GENERAL PROVISIONS**

### **Article 1**

#### **Scope of the law**

The object of this law is to define the rules of organization and functioning of the Ombudsman.

### **Article 2**

#### **Duties of Ombudsman**

Ombudsman defends the rights, freedoms and lawful interests of individuals from unlawful acts or omissions and incorrect public administration bodies, as well as third parties acting on its behalf.

Ombudsman guided by the principles of fairness, confidentiality, professionalism and independence carries out in defense of the rights and freedoms stipulated in constitutional provisions and laws. The provisions of this Law shall apply to the protection of the rights of foreigners, who are not resident or regular in Albania, refugees, and stateless persons in the territory of the Republic of Albania, under the conditions provided by law .

**Ombudsman performs other duties assigned by special laws.**

### **Article 3**

#### **Conditions to be elected Ombudsman**

Ombudsman can be any person who meets the following conditions:

- a): an Albanian citizen.
- b) have outstanding knowledge and activities in the field of fundamental freedoms and human rights and law;
- c): the outstanding professional skills and clean image ethical and moral;
- d) not be criminally convicted
- d) not be a member of the Legislature Assembly that proposes a choice.

## **CHAPTER II**

## CHOICE, AND WITHDRAWAL RIGHTS OMBUDSMAN

### Article 4

#### **The manner of election of the Ombudsman**

The Ombudsman is elected by three-fifths of all members of the Assembly.

**Before making or taking Ombudsman office takes the oath before the Assembly. The formula of the oath: "I swear that during the performance of my duties will always protect the freedoms and fundamental human rights without discrimination, in accordance with the Constitution and laws of the Republic of Albania".**

### Article 5

#### **Length of term**

The Ombudsman is elected to office for a period of five years which may be renewed.

### Article 6

#### **Immunity and salaries**

Ombudsman submits annual report to the Assembly. Ombudsman reports to Parliament when requested, and may ask the Assembly to be heard on issues he deems important. Ombudsman enjoys immunity of a judge of the High Court. His salary equal to that of the High Court.

### Article 7

#### **End of the function of the Ombudsman**

The Ombudsman's function ends:

- a) he resigns;
- b) when the deadline expires five-year term in office;
- c) his death;
- d): when downloaded.

### Article 8

#### **Removal from Office of the Ombudsman**

Ombudsman removed from office only if:

- a) has been convicted by a court of final judgment;
- b) is physically or mentally unable to perform his duties;
- c) carrying out activities contrary to the provisions of Article 10 of this Law;
- d) is absent from work for more than 3 months.

The motion for dismissal of the Ombudsman made at least one third of the MPs.

The decision for the removal from office of the Ombudsman deals with 5.3 votes of members of Parliament.

## **Article 9**

### **Choosing the new People's Advocate**

The Assembly elects the Ombudsman within one month of termination or removal from office. Until the election of the new People's Advocate, as in cases where the Ombudsman is unable to perform his duties, his office will conduct oldest commissioner in office.

## **Article 10**

### **Inconsistencies with the function of the Ombudsman**

The Ombudsman is prohibited from participating in political parties or organizations, conduct other political, professional state and take part in the management of social organizations, economic and commercial. He can exercise his right as the author of teachers.

## **Article 11**

### **Provide previous work of the Ombudsman**

With the end of the function by the letters "a" and "b" of Article 7, the Ombudsman has the right to regain function or public work that had first choice as Ombudsman.

When this is not possible, should be provided an equivalent to what he had before his election to the office of Ombudsman.

## **CHAPTER III**

### **COMPLAINTS, THE REVIEW AND POWERS OF THE OMBUDSMAN**

## **Article 12**

### **The right to complain**

Any individual, group of individuals or non-governmental organizations, who claim that they have rights and freedoms and legitimate interests of the unlawful acts or omissions and incorrect public administration bodies, have the right to complain or notify Advocate People and seek his intervention for restoration of the right or freedom violated.

The Ombudsman shall maintain confidentiality if it deems appropriate, and if so requested by the person making the complaint, request or notification.

## **Article 13**

### **Start of assessing**

Ombudsman starts the procedure for examining the case when it observes or suspects that there has been a violation of the law, according to the complaint or request of the person concerned or damaged, as well as its own initiative, for special occasions made public, but with the consent of the interested or injured.

**In cases where the Ombudsman begins the procedure for examining the case on its own initiative and when the custodian or his legal representative fails, does not require consent of the victim when it is a minor or mentally incapacitated or disabled or for the protection of rights to a large number of individuals.**

**In defense of the interests of a wider community who may be affected by the administrative proceeding, the Ombudsman has the right to initiate an administrative proceeding and to participate in it, in accordance with the requirements of the Administrative Procedure Code.**

#### **Article 14**

##### **Terms of receipt of complaints, requests and notifications**

The Ombudsman can not start or terminate the investigation if the same matter is decided or is under review by the prosecution or the court. In these cases, it is entitled to request information by these bodies, **which have to respond to his requests as soon as possible, but no later than 30 days.**

#### **Article 15**

##### **Not taking the form of complaints and notices**

For complaints, requests and notifications addressed to the Ombudsman does not require any particular form, but they must clearly express the object of the complaint or request. The Ombudsman does not accept anonymous complaints or requests.

#### **Article 16**

##### **Free service**

All the services rendered by the Ombudsman regarding complaints, requests or notifications is free.

#### **Article 17**

##### **The management of complaints or reports from the Ombudsman**

Ombudsman, following the complaint, request or notification of a violation, decides:

- a) whether or not to accept the case for review;
- b) send a reply to stakeholders, showing the rights and the ways in which he can protect this right;
- c) forward the case to the competent body.

In all the above cases, the Ombudsman shall notify the applicant within 30 days of receiving the complaint, demand or notice.

#### **Article 18**

##### **Procedure after receiving the complaint, demand or notice for review**

After receiving the complaint, demand or notice of review, the Ombudsman conducts one of the following actions:

- a) conduct himself an investigation;
- b) requires an explanation from the authorities adminis-strummer, and prosecution in cases of arrest and detention;
- c) recommends to the State Supreme Audit exercise its functions.

#### **Article 19**

##### **Investigative Procedures**

Where decides to conduct an independent investigation, the Ombudsman has the right:

- a) carry out investigations in the country, **including the entry into any office of public institutions and examination instead of acts or documents related to investigating the issue.**
- b) seek explanations from any body of central and local administration, as well as to any files or material relevant to the investigation;
- c) to question any person who, according to him, is related to the matter under investigation, **and call in his office all persons without immunity;**
- d) conduct or require expertise.

**The Ombudsman has the right to set a time for performing the above actions.**

### Section 1.19

**Ombudsman or his authorized persons have the right to enter at any time without restriction and without prior authorization, but by informing the head of the institution, in all public administration institutions, in prisons, in places where the police or keep people accompanied prosecution, detained or arrested, (the inmates), in wards or state institutions, psychiatric hospitals, in nursing homes, foster homes, and anywhere else where there is data and finds that there is a possibility of violation rights and freedoms.**

**Moving all of the above settings can be made as to investigate a complaint, a request or notice given, as well as the initiative of the Ombudsman for the purposes of inspection or study. Ombudsman in these cases can take a meeting, talk confidentially without the presence of the officials with any person located or maintained in these environments.**

**Any type of correspondence of these persons with the Ombudsman should not be restricted or controlled.**

### Article 20

The right to request information or documents state secrets

The Ombudsman has the right to request the information or documents relating to the matter under review, classified as a state secret. In these cases, it is bound to observe the requirements for protection of state secrets.

### Article 21

#### **Operations after completion of the investigation and powers**

After completing the investigation, the Ombudsman performs the following actions:

- a) explain to the complainant that his rights were not violated;
- b) make recommendations to remedy the infringement of the administrative body, which, according to him, has caused a violation of human rights and freedoms;

**Submission of recommendation suspends illegal acts or actions or irregular to review this recommendation and the response to the Ombudsman.**

- c) make recommendations on measures to remedy the violations to the superior organ of the body that triggered the violation, **failing to consider the recommendation within 30 days suspend the acts or unlawful or improper.**
- d) recommends prosecution to start an investigation if he finds that the figure of a criminal offense **or resume investigations dismissed or suspended.**

- d) for serious violations observed, proposes every body, and Assembly-Elevating dismiss officials who are under their jurisdiction;
- f) for violations of rights by judicial bodies, without interfering with their procedures comply, the Ombudsman writes violations competent authority;
- 's) recommends persons damaged file suit in court;

These actions are not mutually exclusive.

## Article 22

### **The obligation of the administration to respond to the Ombudsman's recommendations**

Bodies, which the Ombudsman has submitted a recommendation, request or proposal for dismissal shall review the recommendation, request or motion for dismissal and shall reply within 30 days from the date of the recommendation, request or proposal for dismissal. The answer must contain reasoned explanations on the matter, as well as the actions, omissions or measures taken by the body.

**Ombudsman must be notified and have the right to attend and speak at meetings of the collegial bodies of public administration, which considered the recommendation, request or his proposal.**

## Section 1.22

### **Sanctions for non-cooperation with the Ombudsman**

**Refusal to cooperate with the Ombudsman by a civil servant, official or public authority is due to the Ombudsman to request the competent authority initiation of administrative proceedings and disciplinary measures up to and including termination or civil service.**

## Article 23

### **Pursuing the matter further by Ombudsman**

If the Ombudsman does not consider sufficient responses and measures taken by the body, he has the right to proceed with the highest body in the hierarchy. In repeated cases, as and when appropriate body does not respond to the recommendations of the Ombudsman, the latter may present to the Assembly a report proposing concrete measures to remedy the violations.

## Article 24

### **Right Ombudsman for legislative recommendations**

When the Ombudsman notes that it is the content of the law or other normative acts and not their implementation that leads to the violation of human rights recognized by the Constitution or other laws, is entitled:

- a) recommend to the authorities who have the right to make proposals for legislative change and improve laws;
- b) propose to amend and improve the administration of the sub **failing to consider the proposal within 30 days results in the suspension of the power of bylaws that cause violations of rights and freedoms.**
- c) **put in motion the Constitutional Court with a request to repeal such acts.**

## Article 25

### **Persons and acts outside the jurisdiction of the Ombudsman**

Are outside the Ombudsman's jurisdiction and persons following acts:

- a): The President of the Republic
- b): Chairman of the Council of Ministers

Also, are outside the jurisdiction of the Ombudsman:

- military orders to the Armed Forces

**Ombudsman receives complaints, claims or reports of violations of human rights arising from the administration of the judiciary, the final decisions and proceedings. The investigation and requests the Ombudsman does not affect judicial independence in decision making.**

## **CHAPTER IV**

### **RELATIONS WITH PARLIAMENTARY OMBUDSMAN, OTHER GOVERNMENTAL AND NON-GOVERNMENTAL ORGANISATIONS**

#### **Article 26**

##### **Reporting to Parliament**

The Ombudsman shall present an annual report, to be discussed in plenary session. A copy of the report sent to the President of the Republic and President of the Council of Ministers.

**Annual Report for the following year must be filed no later than 30 April the following year.**

#### **Article 27**

##### **Special Reports in Parliament**

In addition to reporting requirements of section 26, the Ombudsman may report to the Assembly at its own initiative or at the written request of the Mayor or to a group of deputies. Assembly Speaker on whether the report will be:

- a. in plenary;
- b. the distribution of the report;
- c. the standing committees of the Assembly;

Even in these cases, copies of the report sent to the President of the Republic, President of the Council of Ministers, as well as the highest superior, subordinates whom are mentioned in the report.

#### **Article 28**

##### **Publication of reports**

The annual and special reports made public and published no later than one month from the date of the discussion in the Assembly.

The publication made by the Assembly.

#### **Article 29**

## **Preparation of reports, human rights**

The Ombudsman can help and give opinions and make recommendations in preparation of reports and other documents prepared by the Albanian state, rights and freedoms in the Republic of Albania.

### **Article 30**

#### **Cooperation with NGOs**

In performing its functions, the Ombudsman works closely with non-governmental organizations, taking periodically their thoughts on the situation of human rights and freedoms.

The Ombudsman, in cooperation with non-governmental organizations, organizes, at least once a year, national situation of human rights and freedoms in the Republic of Albania.

## **CHAPTER V**

Commissioner, Office of the Ombudsman

AND BUDGET

### **Article 31**

#### **Structure**

Ombudsman's Office is divided into three specialized sections on top of which the commissioners decided.

These sections are:

1. Section of central administration bodies, local government and third parties acting on their behalf;
2. Section for the police, secret service, prisons, armed forces and judiciary.
3. General Section to address issues outside the areas mentioned above, for co-operation with non-governmental organizations and research activities in the field of human rights and freedoms.

### **Article 32**

#### **The appointment of a local representative**

In cases where the Ombudsman thinks fit, he may appoint a local representative about an issue and time. Local government bodies have a duty to provide the representative office, and to create work conditions necessary for the implementation of all requirements of this law. This representative is paid from the budget of the Ombudsman.

### **Article 33**

#### **Choosing the Commissioners and their salaries**

Commissioners selected from among the most distinguished lawyers, for a three-year term which may be renewed.

The commissioners apply the conditions provided for in Article 3 and Article 10 of this Law. The salary of the commissioners is two-thirds of the salary of the Ombudsman.

### **Article 34**



## **End of function and removal of Commissioners**

The rules in this law for termination of functions and removal of the Ombudsman shall also apply to the commissioners.

In case of the removal of commissioners, with the expiry of the 3-year and in the cases specified in paragraphs "a", "c" and "d" of Article 7 and in the cases provided for in Article 8 of this Law, the Ombudsman Within a month of the Assembly proposes the election of a new commissioner.

**These may be removed at the request of the Ombudsman before the end of the 3-year period for misconduct, and acts or behavior that seriously discredit their position and reputation.**

## **Article 35**

### **The staff of the Office of the Ombudsman**

The staff of the Ombudsman's office is part of the civil service of the Republic of Albania.

The structure and organization of the Office of the Ombudsman is appointed by the Ombudsman.

### **Ombudsman and a free three commissioners Official Journal.**

## **Article 36**

### **Budget Ombudsman**

Monies Ombudsman borne by the state budget, where the Ombudsman has a special chapter.

The draft proposed by the Ombudsman in the Standing Committee for Economy, Finance and Privatization, which is submitted for approval in the Assembly, in accordance with Law No. 8379, dated 29.07.1998 "On the design and implementation of the state budget."

The Ombudsman shall prepare its annual accounts in accordance with Law No. 8379, dated 29.07.1998 "On the design and implementation of the state budget." The financial records of the Ombudsman audited by the State High.

## **Article 37**

### **Donations can be given to the Ombudsman**

Ombudsman may benefit from donations of money or materials. Donations should be free of conditions that could compromise the independence, impartiality and constitutionality of the Ombudsman's activity. Donations should be declared and recorded in a register that the Ombudsman's office maintains for this purpose. At the end of the year, the Ombudsman is obliged to send a copy of the registry entries and exits State Supreme Audit and a copy of the Standing Committee of Economy, Finance and Privatization. The register must contain the type of assistance, the amount, time, subject to giving donation and manner of delivery of the donation. The register must contain the name and signature of the donor.

## **CHAPTER VI**

### **TRANSITIONAL PROVISIONS**

## **Article 38**

**Transitional provisions**

Within two months of the entry into force of this law Assembly elects the Ombudsman.

**Article 39****Internal Regulation**

Within three months of his election, the Ombudsman, in cooperation with the commissioners, internal regulations work.

**Article 40**

This law enters into force 15 days after publication in the Official Journal.