

## **The Federal Ombudsmen Act, Kingdom of Belgium, March 22, 1995.<sup>1</sup>**

### **CHAPTER 1. The Federal Ombudsmen**

**Article 1.** There are two Federal Ombudsmen, one French-speaking, the other Dutch-speaking, whose mission it is :

1°) to examine the claims relating to the operation of the federal administrative authorities;

2°) at the request of the House of Representatives, to lead any investigation on the functioning of the federal administrative services that it designates;

3°) to make recommendations and submit a report on the operation of the administrative authorities, in compliance with Article 14, paragraph 3, and Article 15, paragraph 1, based on the observations made while implementing the duties referred to in 1 and 2, above.

The ombudsmen carry out their duties with regard to the federal administrative authorities referred to in Article 14 of the coordinated laws on the Council of State, except for those administrative authorities endowed with their own ombudsman by a specific legal provision.

When the ombudsman's office is assumed by a woman, she is designated by the French term "médiatrice" or the Dutch term "ombudsvrouw" (in English : ombudswoman).

The ombudsmen act collectively.

**Article 2.** The ombudsmen and the staff who assist them are subject to the provisions of the laws on the language used in administrative matters, coordinated on July 18, 1966. They are regarded as services which are extended to the entire country.

**Article 3.** The ombudsmen are appointed by the House of Representatives (lower house of parliament) for a term of six years, after an open invitation to candidates to apply. At the end of each term of office, there is an open invitation to submit applications to renew the board of federal ombudsmen. An ombudsman's term of office can be renewed only once for the same candidate. If his term of office is not renewed, the ombudsman continues to perform his duties until a successor is appointed.

To be appointed ombudsman, it is necessary :

1°) to be Belgian;

2°) to be of irreproachable conduct and to enjoy the civil and political rights;

3°) to hold a degree, giving access to the functions of level 1 of the Civil Service departments of the State;

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<sup>1</sup> As modified by Act of February 11, 2004 and by Act of May 23, 2007.

4°) to demonstrate sufficient knowledge of the other national languages, according to the standards laid down by the House of Representatives;

5°) to have had relevant professional experience of at least five years, either in the legal, administrative or social spheres, or in another field relevant to carrying out this function.

The same person may not serve as ombudsman for more than two terms of office, whether successive or otherwise.

**Article 4.** Before taking up duty, the ombudsmen take the following oath before the Speaker of the House of Representatives : "I swear fidelity to the King, obedience to the constitution and to the laws of the Belgian people".

**Article 5.** During their period in office, the ombudsmen may not carry out the following duties or hold any of the following positions or offices :

1°) magistrate, notary public or bailiff;

2°) lawyer;

3°) minister of a recognised religion or delegate of an organisation recognised by the law which gives moral assistance according to a non-religious philosophy;

4°) a public office conferred by election;

5°) employment remunerated in the public services referred to in Article 1, paragraph 2.

The ombudsmen cannot hold an office, public or otherwise, which could compromise the dignity or the performance of their duties.

For the application of this article, the following are treated as a public office conferred by election : a position as mayor appointed separately from the communal council; director of a public interest organisation and a position as a Government commissioner, including that of Governor of province, Deputy Governor or Vice-Governor.

The holder of a public office conferred by election who accepts a nomination for the office of ombudsman is legally excluded from his elective mandate.

Articles 1, 6, 7, 10, 11 and 12 of the Act of 18 September 1986 instituting political leave for the members of staff of the public service are applicable to the ombudsmen, if they are entitled to such leave, and the necessary adaptations are made.

**Article 6.** The House of Representatives can terminate the ombudsmen's functions :

1°) at their request;

2°) when they reach the age of 65;

3°) when their health seriously compromises the exercise of their duties.

The House of Representatives can remove the ombudsmen from office :

1°) if they carry out the duties or hold one of the positions or offices referred to in Article 5, paragraph 1 and paragraph 3;

2°) for serious reasons.

**Article 7.** Within the limits of their mission, the ombudsmen do not receive instructions from any authority.

They cannot be relieved of their duties due to activities conducted within the framework of their functions.

## **CHAPTER II. Complaints**

**Article 8.** Any interested person can lodge a complaint with the ombudsmen, in writing or verbally, regarding the activities or functioning of the administrative authorities.

As a preliminary matter, the interested party must contact these authorities in order to obtain satisfaction.

**Article 9.** The ombudsmen can refuse to investigate a complaint when :

1°) the complainant's identity is unknown;

2°) the complaint refers to facts which occurred more than one year before the lodgement of the complaint.

The ombudsmen will refuse to investigate a complaint when :

1°) the complaint is obviously unfounded;

2°) the complainant obviously took no steps to approach the administrative authority concerned to obtain satisfaction;

3°) the complaint is primarily the same as a complaint dismissed by the ombudsmen, if it contains no new facts.

When the complaint refers to a federal, regional, community and other administrative authority which has its own ombudsman by virtue of legal regulation, the ombudsmen will pass it on to the latter without delay.

**Article 10.** The ombudsmen will inform the complainant without delay of their decision of whether or not the complaint will be handled, or whether it will be passed on to another ombudsman. Any refusal to handle a complaint will be substantiated.

The ombudsmen will inform the administrative authority of their intention to investigate a complaint.

**Article 11.** The ombudsmen can impose binding deadlines for response on the agents or services to which they address questions in the course of their duties.

They can similarly make any observation, acquire all the documents and information that they consider necessary and hear all persons concerned on the spot.

Persons who are entrusted with privileged information by virtue of their status or profession, are relieved of their obligation to maintain confidentiality within the framework of the enquiry carried out by the ombudsmen.

The ombudsmen may seek assistance by experts.

**Article 12.** If, in the performance of their duties, the ombudsmen note a fact which could constitute a crime or an offence, they must inform the Public Prosecutor in compliance with Article 29 of the Code of Criminal Procedure.

If, in the performance of their duties, they note a fact which could constitute a disciplinary offence, they must inform the competent administrative authority.

**Article 13.** The examination of a complaint is suspended when the facts are subject of judicial appeal or of organised administrative appeal. The administrative authority will inform the ombudsmen of legal proceedings.

In this event, the ombudsmen will report to the complainant of the suspension of the examination of his or her complaint without delay.

The lodgement and the examination of a complaint neither suspend nor stop time limits for judicial or organised administrative appeal.

**Article 14.** The complainant is kept periodically informed of the progress of his or her complaint.

The ombudsmen will endeavour to reconcile the complainant's point of view and those of the services concerned.

They can send any recommendation to the administrative authority that they consider useful. In this case, they will inform the minister responsible.

### **CHAPTER III. Reports by the ombudsmen**

**Article 15.** Every year, by March 31<sup>st</sup> at the latest, the ombudsmen send a report on their activities to the House of Representatives. They can, in addition, submit intermediate quarterly reports if they consider it useful. These reports contain the recommendations that the ombudsmen consider useful and expose possible difficulties that they encounter in the performance of their duties.

The identity of the complainants and of members of staff in the administrative authorities may not be divulged in these reports.

The reports are made public by the House of Representatives.

The ombudsmen may be heard by the House at any time, either at their request, or at the request of the House.

#### **CHAPTER IV. Various provisions**

**Article 16.** Article 458 of the Penal Code applies to the ombudsmen and their staff (professional secrecy).

**Article 17.** The Ombudsmen adopt house rules.

The house rules are approved by the House of Representatives.

After seeking the advice of the ombudsmen, the House of Representatives can modify the house rules. In case the advice has not been given within the 60 days following the request, it is considered favourably.

**Article 18.** Without prejudice to the competence of the House of Representatives – assisted by the Auditor’s Office – to examine the federal ombudsmen’s detailed budget propositions and to approve their budget as well as to verify its implementation and to audit the books, a part of the Kingdom’s general expenditure budget is allocated for the state grant covering this budget.

For their budget and accounts, the federal ombudsmen follow a scheme comparable to the one that the House of Representatives uses for its budget and accounts.

Correspondence sent as part of the ombudsmen's office is sent free of postage.

**Article 19.** Without prejudice to the assignments agreed upon by collegial decision, the ombudsmen appoint, dismiss and direct the members of staff who will assist them in the performance of their duties.

The staffing and the members status are decided by the House of Representatives at the suggestion of the ombudsmen.

After seeking the advice of the federal ombudsmen, the House of Representatives can modify the house rules. In case the advice has not been given within the 60 days following the request, it is considered favourably.

**Article 20.** The ombudsmen enjoy a status identical to that of the counsellors of the Court of Auditors. The rules governing the financial status of the counsellors of the Court of Auditors, in the Act of 21 March 1964 on the salaries of the members of the Court of Auditors, as amended by the acts of 14 March 1975 and 5 August 1992, are applicable to the ombudsmen.

The ombudsmen's pension on retirement is calculated on the basis of the average salary for the last five years, determined in accordance with the applicable arrangement for retirement pensions to be paid by the State, at a rate of one thirtieth per year of service as an ombudsman, providing he or she has carried out his or her functions in the aforementioned capacity for twelve years.

Services by the ombudsmen which are not governed by the previous paragraph and which are acceptable for the calculation of a pension on retirement to be paid by the State, are calculated according to the laws fixing retirement pensions pertaining to these services.

If an ombudsman is not considered fit to carry out his or her functions due to illness or infirmity, but has not reached the age of 65, he or she may draw a pension irrespective of age.

The ombudsmen's pension on retirement shall not be higher than nine tenths of the average salary for the last five years.

Except in the cases referred to in Article 6, Paragraph 1, 1° and 2°, and Paragraph 2, and in the case referred to in Paragraph 4 of this article, an ombudsman whose term of office expires shall receive a severance allowance calculated on the basis of a monthly salary per year of service.

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